

UNIVERSITY OF SOUTHAMPTON

INTERNATIONAL CROSS FRONTIER CRIME: POLICY AND PRACTICE ON
IDENTIFICATION, MEASUREMENT AND INVESTIGATION WITH SPECIAL
REFERENCE TO AUTO THEFT, ART AND ANTIQUITY THEFT AND CREDIT
CARD FRAUD IN THE CONTEXT OF BRITISH AND EUROPEAN UNION
POLICE CO-OPERATION STRATEGIES.

ALAN RICHARD COLLIER LL.B HONS

MASTER OF PHILOSOPHY

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF POLITICS

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ABSTRACT

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INTERNATIONAL CROSS FRONTIER CRIME: POLICY AND PRACTICE ON IDENTIFICATION, MEASUREMENT AND INVESTIGATION WITH SPECIAL REFERENCE TO AUTO THEFT, ART AND ANTIQUITY THEFT AND CREDIT CARD FRAUD IN THE CONTEXT OF BRITISH AND EUROPEAN UNION POLICE CO-OPERATION STRATEGIES.

The problems of international cross frontier terrorism and drug trafficking have been recognised for a number of years and considerable attention has been paid to providing a legislative policy and practical co-operative framework to combat these areas. Both the legislative and the practical co-operative initiatives have taken place on a global, regional and national basis with varying degrees of success on each level.

The thesis examines the legal and co-operative mechanisms which have been developed that have influenced those established areas. More recently, other areas of crime have emerged which appear to have an international dimension. These areas include motor vehicles and art and antiques theft together with credit cards fraud. The research uses interview and questionnaire surveys with law enforcement and government officials both to try to draw conclusions about whether the mechanisms which have developed for terrorism and drugs can be transferred to assist in combatting the recently recognised areas of international criminal activity.

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CHAPTER ONE

Context and Research Methodology

Introduction.

'.....one of the biggest difficulties is the fact that there is no more than a poor understanding of the proportions, the nature and the evolution of crime in Western Europe. this tremendous lack of quantitative insight makes it extremely difficult to estimate the need for internationally aimed investigation in Western Europe.' C.J. Fijnaut. in The Internationalization of Criminal Investigation in Western Europe, in Police Co-operation in Europe at the International Symposium on Surveillance Techniques in 1987 at Leeuven Netherlands.

Although each member state of the European Community has its own criminal law system, the Community itself, initially had no plans to involve itself in a supra national criminal law system. It was decided in the 1950s that criminal law matters would remain the responsibility of member states. However, in the wider definition of criminal law both Treaties and secondary Community law require obligations by member states to be undertaken in the criminal law area. Sevenster 1992 says that in looking at ' the effects of completing the Internal Market. Not only does the Member States' scope for policy making diminish in proportion to the activities in Brussels; but also, the Community covers fields which, until recently, were not supposed to have any EEC relevance at all.'¹ These general tendencies have manifested themselves in all fields of law including national criminal law.

Despite the fact that there is no Community criminal law and no penal sanctions at a Community level, EC law does

limit sovereignty in the national criminal law. There have been occasions when an EC regulation has caused a national criminal law provision to be adapted. The implementation of Directives is one area where its application by a member state is subject to certain rules as defined by Article 189 EEC. Case law of the European Court also has an effect on national criminal law and procedure.

One of the effects of the lowering of border controls highlighted by Sevenster² is that divergences between criminal law systems of member states may result in the choice to commit an offence in one country rather than another because differing penalties are imposed for the same act. A higher level of integration may also result in the increase of members' obligations towards the Community.

Although calls for harmonization of legal systems have been made in the past there are still relatively strong political and ideological reasons why this will not be achieved in the near future. One area where an attempt has already been made was in measures to combat fraud against the Community. Two draft treaties were submitted to the Council in 1976 to combat this type of problem, both were never progressed. One was to make the EC civil servants criminally liable, the other concerned the protection of EC financial interests by using the criminal law. No action in relation to harmonisation came out of either measure, however the Commission did set up an anti Community fraud unit.

A small number of exceptions exist. The first is in Article 194(1) Euratom which concerns the obligation of professional secrecy. The article imposes an obligation on each member state that they shall treat an infringement of this obligation as falling within their jurisdiction and it requires them to prosecute the civil servant in question. The second concerns Articles 3 and 27 of the Statute of the European Court concerning the prosecution of judges, witnesses and experts. The

provision requires member states to treat the offence as if it had been committed before one of their own courts. The effect of both is to impose a duty to prosecute if certain conditions are met.

One way in which the Community has moved member states towards the implementation of common criminal law measures is through the Directives. An example of this, which is probably the closest to a police definition of a criminal law matter, is the draft Directive relating to money laundering. In the draft version,³ the Community sought to make member states define money laundering as a result of serious crime as a criminal offence. The final directive left members to determine the sanctions in respect of this matter. However, there was a declaration by the member states meeting in the Council that before the 31st December 1992 criminal legislation would be enacted to meet the obligations of directives and international treaties.⁴

As can be seen, the establishment of the European Community was originally intended to help the member countries in the areas of goods, services and finance. It did not concern itself with any area of criminal law enforcement nor did it consider the policing and crime impacts that assisting countries to achieve the easier passage of those goods, services and finance could have. There appeared to be no appreciation that allowing the transfer of legitimate goods and services to be more easily achieved could also assist in the growth of international criminal activity in which stolen goods and criminals would find it easier to cross frontiers without being checked.

Trevi

One of the organisations which has made the most progress towards multi lateral police co-operation was Trevi, (the European Community Interior Ministers Council). Originally

established in 1976 as a result of a United Kingdom initiative it was until the Maastricht Treaty, the main forum for discussion among member states of the European Community in respect of co-operation at a practical, operational level in the areas of terrorism, drug trafficking and other serious crime and public order problems. Because police matters are still mainly considered to be outside the Community competence, Trevi existed outside of the EC institutional structure and the EC Commission was not represented at any of its fora.

Originally established to deal solely with the co-operation in the area of terrorism, the range and volume of its work began to widen about ten years ago so that it included the other areas already mentioned. It also considered training, equipment and scientific and technical matters in all these areas together with a particular focus on violence at sporting events. The organisation had a number of working groups operating at different levels and established within its remit a working group to examine the implications of the lowering of border controls. This latter working group focused its attention on the mechanics of police co-operation over a much wider area of crime and considered the advantages of the use of liaison officers and the creation of a common information system. Many of the functions of those working groups are being transferred to groups formed under the Maastricht Treaty, who are expected further to develop much of the work started by Trevi. The highest level of the new working groups concerned is known as the K4 Committee.

The British Government, in its evidence to the Home Affairs Committee Enquiry ⁵ saw Trevi's distinctive strength lying in 'the informal, spontaneous and practical character of its discussions'. They also noted that it had done much to help day-to-day liaison providing a supportive network of contacts. Finally it considered that the six monthly ministerial level meetings ensured that the worthwhile practical initiatives received appropriate political impetus in member states.

As has already been stated, TREVI which was best described as a forum rather than an organisation, was originally created to provide a greater basis for European co-operation to combat terrorism. It operated at three levels, ministerial, senior official and working groups. Sometimes senior police officers became involved at the senior official level which prepares policy advice for the ministerial level. The majority of police involvement is however, at the working group level. Working Group I was originally established by Ministers on the 31st May 1977 and it sought to facilitate efforts against terrorists. It regularly analysed information on known and suspected terrorist groups and developed the means to rapidly communicate this information to member states through secure lines of communication.

At the same time as Working Group I was established the Ministers also established Group II, which is known as the Technical Forum. The function of this group was to promote co-operation in a number of areas notably police training, public order, police equipment, forensic science and other technical matters. Working Group III was only established some eight years later during a meeting in Rome and was set up to deal with activities about serious crime including drug trafficking. It also included armed robbery, stolen vehicles, environmental crime, money laundering and illicit traffic in works of art. This group developed the Drugs Liaison Officer Network which placed members of police or customs in drug producer and transit countries. They also aided the progress of the establishment of a national drugs intelligence unit in each member state. The Programme of Action of 1990 also asked member states by bilateral or multilateral means to implement other forms of co-operation as agreed in the 1988 UN Convention against Illicit Drugs and Psychotropic Substances. The Group also sought to assist in establishing police activities to combat money laundering.

Between 1988 and 1992 Trevi had a fourth working group which was tasked to consider the wide ranging implications of the

abolition of frontier controls within the European Community Gradually, because the Trevi Forum consisted of Ministers of the Interior and other law enforcers, it began to widen its remit through establishment of a number of committees operating at various levels including ministerial, senior government official and practitioner level.

In December 1989, in Paris, the Trevi Ministers adopted a formal declaration which restated their determination to reinforce co-operation in the fields of law enforcement and security. They reiterated, in the preamble, the previous Declaration of the European Council in Rhodes in 1988 that the achievement of Community goals was dependant on progress in co-operation in combatting terrorism, international crime and illegal trafficking in narcotics.⁶

The Trevi Group also noted at that time, its concern over the development of crime across frontiers, the increasing adeptness in professional criminals to exploit the limits of national agencies and the gaps in police co-operation. It was at this point that Trevi began to set out its stall as to how it proposed to combat these problems. These measures included the improvement of communications, the assignment of liaison officers and a number of other measures relating to border control,

By June 1990 Trevi had more clearly stated its proposals in its Programme of Action⁷ to include the fight against organised crime including 'the traffic in valuable pictures, works of art, cultural property and vehicles' amongst others.

Maastricht and Beyond

This theme was developed during the preparation of the Maastricht Treaty so that Article VI, in dealing with provisions relating to justice and home affairs recognises both areas as

being of common interest. Whilst these issues will still remain as intergovernmental matters the European Commission and the European Parliament will now have a formal role.

Article K.1 seeks to ensure that member states will regard the following matters as being of common interest:

- (1) asylum policy
- (2) rules governing the crossing of external borders of Member States and the exercise of control thereon.
- (3) immigration policy
- (4) combatting drug addiction
- (5) combatting fraud on an international scale
- (6) judicial co-operation in civil matters
- (7) judicial co-operation in criminal matters
- (8) customs co-operation
- (9) police co-operation for the purposes of preventing and combatting terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs co-operation, in connection with the organisation of a Union wide system for exchanging information within a European Police Office (Europol)

Article K.4 of the Treaty provides for the establishment of a Co-ordinating Committee to organise police and judicial co-operation within the European Union. This Committee which is known as the K.4 Committee, is composed of senior civil servants. Under this 'third pillar' of the Union there are six monthly meetings of Ministers. The actual role and structure of the K.4 Committee is not yet fully developed but it oversees the work of two steering groups, one of which is considering policing and security matters including anti-terrorist work, combatting serious crime, European Drugs Unit/Europol amongst others. It has absorbed the majority of the work of the Trevi Group within its remit. Under the terms of the Maastricht Treaty, the

European Commission will be ' fully associated' with the work of the K.4 Committee and with developments in police and judicial co-operation. The European Parliament will also receive reports on the K.4 Committee work

Finally Article K.2.(2) seeks to ensure that any measures taken under Title VI will not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

The Conceptual Framework.

This thesis examines both the legal measures, including international conventions and the cooperative mechanisms which have been developed between the various law enforcement agencies particularly in the Europe of the European Community (EC)/European Union (EU) , to control these areas of criminal activity. It attempts to divide both sets of measures into international, regional and national areas. Some of the legal and cooperative mechanisms to be found in these areas have been in existence for a number of years and it is useful to examine their effectiveness before considering the emerging areas of concern which are the subject of the case studies which feature later in this thesis. Anderson⁸ points out that 'certain crimes - acts of violence commonly known as terrorism, large or spectacular fraud, drug trafficking and associated money laundering, and certain public order offences such as football hooliganism - attract a great deal of intermittent public and political attention. This attention has prompted changes in national legislation, new international agreements and higher government priority for international police co-operation.' Both in terms of the legal framework put into place to tackle the problems of terrorism and drug trafficking and the cooperative mechanisms which have been introduced on an international, regional and national basis in these areas, this study will seek to examine whether they form a useful basis to develop law

enforcement policies related to the emerging areas of international cross frontier crime. It will also consider whether there are important distinctions between those established and emerging areas which prevent the easy application of the established legal and cooperative mechanisms.

The examination of the new areas first attempts to consider them under the same broad headings as those used to examine the two primary areas. It is contended that the primary and secondary areas are distinct from each other and therefore it may not be possible to use the measures from the primary area without modification as a template for solving the problems in the secondary areas. The research first examined the way in which the primary areas of co-operation had been developed in the United Kingdom. In order to test the validity of the British view of the problems in the areas of the research it was decided to extend the research to discover the viewpoint of police services in other countries which border the Channel and the North Sea, specifically France and the Netherlands, to test whether they considered that the emerging or secondary areas were serious enough to merit consideration and if they are, how they are tackling the problem.

Methodology.

The research project started from the position that it was necessary to establish the proper definition of the selected areas of criminal activity. Many organisations and Government Officials had only identified the areas of concern in very broad terms. For example, Trevi, in its Programme for Action had only identified the categories stolen vehicles and art in very broad definitions as being areas of concern. The study initially involves an in depth consideration of the literature and practice relating to terrorism and drugs, where a considerable quantity of material is already in existence. The project also sought through field work to establish the views of a number of key

players who were working in these two areas. These included the European Liaison Unit of the Metropolitan Police Special Branch, the International and Organised Crime Branch at the Metropolitan Police and the National Drugs Intelligence Unit.

A considerable amount of effort was taken to try and arrive at a definition of international crime and some confusion was found in the literature between international crime and organised crime. It was discovered that a crime did not necessarily have to be organised to be international nor did the reverse apply. International crime can appear in a number of forms but the most appropriate area for consideration for this project can be termed international cross frontier crime. The primary need was to establish the difference between comparative domestic crime figures which are sometimes called international crime figures and the area which the research focuses on where property and/ or criminals actually physically move from one country to another during the commission of the offence or acts preparatory to or subsequent to the main act.

The study also re-examines the work of Alan Waymont PhD., a colleague from the Metropolitan Police, who had previously looked at the application of areas of public policy making to policing issues in the area of drugs when researching his thesis.⁹ It attempts to apply the rationale used by Waymont to the other areas of crime contained in the case studies.

Once the mechanisms and legal tools had been identified in the established areas, the project moved on to examine the emerging areas mentioned above using fieldwork visits to and other forms of contact with academic and police sources who are working in or had knowledge of the research areas. In order to acquire the necessary information it was decided to carry out semi structured interviews with the key players in a number of police forces in this country to establish in detail, the mechanisms which exist at the practical level. Those forces chosen included a number who had direct ferry links with other

EC member states together with, as a comparison, a force which had no such ferry links. The forces covered were Hampshire, Sussex, Kent, Essex, Suffolk, Greater Manchester and the Metropolitan Police. Those interviewed included those operating both at the strategic level and the operational level. An example of the semi structured interview form is at Appendix A. This process helped to design the questionnaire which was being prepared for circulation to all forces in England and Wales to establish what the levels of awareness and activity were in the research areas. An example of the national questionnaire is shown at Appendix B. The results of the survey and the resulting analysis are shown later in this document.

In order to explore some of the initial research findings and to gain more research information a conference was organised at the University of Southampton. It took place in July of 1991 and a number of the leading figures in this area attended including representatives of police forces, regional crime squads, central government, academics and members of the commercial world who are concerned about this problem. The latter group included representatives of the insurance world and one of the most clear benefits to all attending was a stark realisation that it was a problem which could only be solved by a co-operative or partnership approach. The initial findings were presented to the conference together with papers by a wide variety of other speakers including a member of the Bundeskriminalamt (The German Federal Criminal Police) who gave a European perspective to a number of the issues.

It was also felt to be an important part of the research to be able to contrast the situation in countries which faced the United Kingdom on the other side of the Channel and the North Sea. Research was therefore carried out in the Netherlands and France using the broad outline of the semi - structured interviews carried out in the selected U.K. forces in order to make some comparisons of the mechanisms in use here with those of countries which have different legal and law enforcement

systems. The enthusiastic way in which the colleagues in those countries responded to the concept of this research project allowed me to have almost unlimited access to a wide range of material helping the maximum amount of information to be gleaned during my fieldwork in each country. The success of this phase of the research was aided by the arrangements made at government level through the Home Office. The fieldwork in France was conducted entirely in the medium of the french language.

Further discussions on the results of the research and the issues raised have been carried out with a wide range of practitioners and policy makers in the police service, central government and the commercial sector in order to obtain a balanced view. Papers have also been given on a number of occasions and at various locations including the Universities of Portsmouth, Exeter, and Edinburgh where a paper was eventually published.

Before the thesis begins to concentrate on the definitional problems and the two established areas of law enforcement co-operation, terrorism and drugs, it is necessary to examine briefly some of the reasons for the growth of concern in relation to international cross frontier crime, including the changing face of controls between the neighbouring states in the European Community.

The Political Will and the Move Toward a Greater Europe.

The six countries which originally formed the embryo of the European Economic Community or Common Market as it became known, founded the organisation by the signature of the Treaty of Rome in 1957. This treaty was the vision of two men, Robert Schumann and Jean Monnet who together had a concept of a united post war Europe. Other post war agreements between groups of countries on mainland Europe had set the foundations for an organisation which would promote the idea of the free movement

of people, goods and capital across international frontiers.¹⁰ As has already been mentioned, this fails to take account of the threat that this might pose in terms of developing conditions which would make international criminal activities easier.

Previous trade agreements had existed between the Benelux countries (Belgium, Luxembourg and the Netherlands) and there had also been agreements between Germany and France over trade amongst other areas. Italy was also a very early member of the group. Although the United Kingdom government was a member of a rival trade organisation, the European Free Trade Association, (EFTA) it had indicated a wish to become a member of the Common Market in 1960s, though it was prevented from doing so by the then president of France, Charles de Gaulle. It was therefore, not until 1973 that the British application to join was approved. Since that time the number of member states of the European Community has risen to twelve including Spain, Portugal, Denmark and Greece and Eire.

The spectacular changes which took place in Eastern Europe at the start of this decade meant that a whole new market place was opened up to the major industrial nations of Western Europe and the former communist states in the east began to look to the representative organisation of those industrial nations, ie the European Community for support. Frank Gregory¹¹ provides a useful summary of these issues in his article in which he cites the hypothesis of Carter¹² who said that 'organised crime groups from Eastern Europe will aggressively spread into Western Europe during the present decade'. Amongst other areas indicated by Carter in this article where he expected the Eastern organised crime groups to become involved was black marketeering, which he defines as the distribution of counterfeit material and stolen property. Gregory gives an example of this type of distribution of stolen property. It concerns the evidence in a BBC2 Assignment programme, in an edition entitled Blood on the Icons (27th April 1993), which investigated the theft of icons from Russian churches and the growth of the theft of works of art from state

and private collections. The programme stated that much of the material was 'stolen to order' for clients in the West.

This transformation of the political scene in Europe took place at a time when the Community was looking to fulfil the original objectives set out in the Treaty of Rome, which were then modified under Article 8(a) of the Single European Act of 1985 which sought to define that:

The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.

This was one of the prime objectives of the Treaty of Rome and the former French President of the European Commission, Jacques Delors, was one of the main driving forces behind the development of the original objectives of the Treaty into realities through the Single European Act. The implications in relation to the development of legitimate trade and travel are enormous if the spirit of the Act is to be implemented by all member states. The Commission was concerned that in the late 1980s, there was little preparation amongst member states to achieve the objectives of the Act. They therefore issued a paper which sought to raise the profile of the Act and achieve the goals within a relatively short time span. This communication COM(88) 640 Final, issued by the Commission in 1988 clearly identified the main areas where agreement would need to be reached prior to the target date of 31.12.92 when at certain frontiers all controls would be abolished. This document was crucial to raising the awareness, not only of member governments but also of many other organisations within member states including the police services.

One of the geographical areas where the most dramatic impact should be felt is at the internal frontiers within the community. Internal frontiers are those frontiers which are

common to community members. The proposals to abolish all checks at such frontiers have far reaching implications for the movement of goods and people within the community. It is only at the external frontiers between Community members and those countries which are not members of the Community, that controls on the movement of people and goods can be carried out. External borders are probably best defined as those land frontiers where a member state abuts directly onto a non member state. It also includes airports and seaports where the boat or plane arrived directly from a destination which is not within the territory of a Community member. The concern about external frontiers has caused widespread anxiety amongst Community members who believe that some of the border controls carried out at the external frontiers of other EC states will not be of the same standard as they themselves would seek to enforce. These fears are particularly in the areas of immigration and anti terrorist controls.

Additionally, some of the Community members have, historically relied on their frontier controls to a greater extent than others have. In particular this applies to Great Britain and Eire which are totally insular in nature and have never had to rely on other forms of control away from the frontiers. In mainland Europe many of the countries have developed sophisticated methods of control which do not rely on those checks taking place at the physical frontier. This includes the ability of some of the police organisations eg. the Police de l'Air et des Frontieres (PAF) in France, to carry out immigration, identity and other stop checks within fifty kilometres of the border. They also have a compulsory identity card system and a more rigid method of checking hotel registers. Anyway, any attempt to carry out such border controls would be less than effective, bearing in mind the great lengths of land borders which exist in mainland Europe.

Despite the signing of the Maastricht Treaty, it is clear that not all member states see the future of Europe in the

same light. Arnold¹³ questions the status of the Treaty, when he says that it does not envisage political union along the lines of the European Monetary Union (EMU). He goes on to say that 'restrictions in the foreign, security and monetary field cannot be achieved selectively and gradually, but only, if at all, jointly and simultaneously as a complete relinquishment of national sovereignty'. He also notes that now the threat of cold war has receded, the movement towards the goal of a federal Europe is far from smooth. This is perhaps evidenced by the fact that the Convention which will set the framework of Europol is still not agreed between member states even though the Corfu Summit called for its completion by October of 1994. Arnold sees the Maastricht Treaty as the end of an era and views the future as being European policy only as an all European policy and not just that of western Europe.

The Advantages of the Lowering of Community Internal Border Controls.

The easing of travel restrictions on citizens of member states of the Community will speed the transit of those travellers helped by the provision of single format computer readable passports which will remove the waiting time which has been experienced in the past at internal border controls within the community. Com(88) 640 Final drew up a list of the main priority areas for action to achieve the Single Market. One of these was the need for a co-ordination of visa policies to facilitate controls on non EC nationals when they cross the Community's external frontiers. The complementary strengthening of the external controls was another priority within the Communication(88) 640 Final. It is intended to protect the Community members against the arrival of persons who are not welcome within the member countries of the Community. Each country has a long list of people who are excluded from entry into it for reasons of security, immigration policy etc. The strength of the external border controls relies on the agreement

on a common policy for external border controls between community members and the rigid enforcement of such a policy to satisfy the concerns of member states. Anderson¹⁴ points out the need for 'actions compensatoires' to make up for the loss of frontier controls. He also draws attention to the fact that the 'issue of non EC immigrants disturbs all the electorates in the Community countries'. Gregory¹⁵ said that it was 'important to distinguish between trends in police organisation and practice which may be said to have been accentuated by the Commission's proposals re 1993 and the consequences, actually at entry points for the police if HM C&E and HMIS presence was significantly reduced.' A point which the police forces with port and airport responsibilities were becoming more and more concerned about.

In terms of trade, the lowering of internal border controls brings the opportunity to enter a huge open market which contains some 320 million customers. Companies will compete on an equal footing with their Community neighbours and one of the provisions within the Act requires that public authorities are required to give enterprises within the Community an equal opportunity to compete for high value contracts.

The former delays in transportation at intra community frontiers which existed because of customs formalities have been lessened due to the introduction of a simplified customs procedure by way of the Single Administrative Document. The cost of such delays was estimated to be in the region of £17 billion by the European Parliament.

The restrictions on capital movements within the Community have been abolished and citizens of member countries will find it easier to open bank accounts and take out mortgages in the majority of European member countries. Fijnaut¹⁶ in his examination of organised crime highlights the 'tendency for these (organised crime) groups to shift their activities in the direction of white collar crime: economic, financial and fiscal crime.'

Additional benefits of these proposals are a common recognition of qualifications and diplomas in the employment field, common standards of consumer protection in relation to imported goods, the abolition of protectionist practices in terms of trade allowing increased market access to companies within member states.

The Disadvantages of the Abolition of Border Controls

Together with all the obvious advantages mentioned above there are a similar number of disadvantages in connection with the new face of Europe. The free movement of people within the Community without immigration and other controls is a matter of grave concern for the British Government because of the real threat from Irish terrorism which has existed for many years. Frank Gregory¹⁷ says that 'What the British Government objected to was, firstly, that the proposals appeared to intrude into an area of exclusive national competence, secondly that the Commission was once again trying to exceed its competence and thirdly that Britain, as an island state found it more practical and effective to carry out entry controls at points of entry rather than by such post entry measures as Hotel register checks or customs inland road blocks'. Three years after the introduction of the proposals of the Single European Act, Margaret Thatcher who was, at that time, the Prime Minister expressed the concerns of the British government and people in a speech to the College of Europe in Bruges. She acknowledged the need to allow for the easier passage of goods and people within the Community but stated that it was '.... a matter of plain common sense that we cannot totally abolish frontier controls if we are also to protect our citizens and stop the movement of drugs, of terrorists, of illegal immigrants.'¹⁸. The concern of the government of the day over the lack of security at the borders began to be reflected in the British Police Service.

The need for a new approach to the traditional control points for entry into this country began to be examined. The Home Office, Police Requirements Support Unit funded research project by Chief Inspector Della Canning in Devon and Cornwall "Policing in Europe Towards 1992" begun in 1988 sought to:-

- (1) Identify the key cross border issues likely to affect policing within the European Community following the introduction of the Single European Act and
- (2) To assess the potential effects of these on policing in the UK. ¹⁹

During this project she examined the major issues facing the police in the light of the lowering of border controls and the changing face of Europe. She identified the need for the police in the United Kingdom to assess 'the shortfalls in co-operation between the various policing agencies of the European Community to ensure work is carried out to close any gaps'.

Whilst this project was being completed, a similar project looking at the implications for policing of the proposed changes was being carried out at Leicester University, Centre for the Study of Public Order under the leadership of Dr John Benyon and funded by European Community.

The Senior Command Course held at the Police Staff College, Bramshill, which provides training for those officers in the police service who are about to enter upper echelons of the rank structure began to widen its area of study at about the same time. In 1988, a group of officers on that course examined the implications of Policing Europe without Internal Frontiers, identifying that there should be other areas of international concern in addition to drugs and terrorism. In the paper it went on to say, 'There is a need for cooperation on crimes that will not hit the headlines, such as the organised theft of cars.' ²⁰

Each year the Senior Command Course continues to include a European perspective in its programme, providing opportunities for the officers to visit and consider the differing policing organisations which exist in mainland Europe. It was, during consideration of the question of the policing implications of 1992 that the course identified 'a serious failure of co-ordination of effort between the Police, Customs, Immigration and the Judiciary'²¹, a matter which will receive further consideration when the question of drugs is examined. The course formed the impression that this fragmentation was not unique to the United Kingdom but existed elsewhere in Europe to a lesser extent. Information gathered during this research supports the above hypothesis, but also suggests that the level of the problem is common within the countries researched. The Senior Command Course clearly identified the different ministerial control of the agencies mentioned above as being responsible for a lack of strategic vision and overview.

They also clearly identified the reservations of the UK. Government over the border control issue, noting that they appeared to be looking to rely on the caveat added to the Single European Act reserving the rights 'of member states to take such measures as they consider necessary for the purpose of controlling immigration from third countries, and to combat terrorism, crime, traffic in drugs and illicit trading in art and antiques'.²² They noted that, 'It is perhaps not surprising that the UK Government should base their policy on this caveat for it was at their insistence that it was added to the SEA.'²³

Concerns of the UK Police Service.

The Association of Chief Police Officers (ACPO) also were concerned about the implications of the lowering of border controls in respect of the impact it would have on crime. They formed the ACPO International Affairs Advisory Committee. Originally intended to be a temporary committee set up to advise

the other ACPO standing committees such as Crime and Traffic on the implications of the Single European Act on the UK Police Service it was headed by Mr (now Sir) Roger Birch, the Chief Constable of Sussex.

The Metropolitan Police had, in 1988, through their Policy Analysis Unit based at New Scotland Yard, begun monitoring work on European issues, and established in 1989 a sub section, the European Unit and a 'priority project' to examine the implications of the Channel Tunnel on the Metropolitan Police. Although there was an embryo of interest amongst those forces which would directly be affected by the implications of the abolition of internal frontier controls the whole scene was uncoordinated. Except for the Kent force whose traditional contacts with their near neighbours in the Pas de Calais region of France and their intense involvement in the planning and implementation stages of the Channel Tunnel project through their dedicated team made them leaders in the awareness of the need for international police cooperation, whilst the other police forces of the UK were only paying 'lip service' to the problem at this stage.

During 1989 the interest level began to increase amongst those forces who were most directly affected by the implications of the Act. It was then agreed that the already established Metropolitan Police European Unit, should become the Joint ACPO/Metropolitan Police European Unit. The ACPO International Affairs Advisory Committee and the ACPO Council endorsed the proposal on the 19th October 1989 and agreed that there should be support to the unit in the form of two provincial officers seconded at cost to their parent forces. Whilst the unit would continue to perform its original function on behalf of the Metropolitan Police it would have an extended brief to serve the interests of ACPO and had the following ACPO terms of reference.

- (1) To service the ACPO International Affairs Advisory Committee.

- (2) To maintain and co-ordinate service strategy on Europe.
- (3) To receive and disseminate information.

At the same time the Metropolitan officers within the Unit had their existing force terms of reference which were:

- (1) Maintain and co-ordinate force strategy on Europe.
- (2) Service the priority project team and the Force European Committee
- (3) Obtain, analyse and disseminate information on relevant police related subjects.
- (4) Establish liaison with appropriate individuals and organisations.

The identified tasks of the joint unit were:

- (a) To identify the wide range of contacts.
- (b) To create a comprehensive collection of documented information.
- (c) To prepare papers identifying matters of concern to the service, formulating a common approach and presenting a unified response to European policing issues.

In the Autumn of 1989, at the same time as the creation of the joint unit, the ACPO Secretariat circulated the UK Home Office Police Forces requesting the supply of details of each force's European Liaison Officer. These nominees were expected to be the point of contact within each individual force through which the Joint ACPO/ Metropolitan Police European Unit could transmit information judged to be of interest and concern to the UK police forces. The rank of the officers appointed differed considerably, however a channel of communication was established

to raise the level of awareness on European issues. Initially the established channel of communication worked well with briefing papers being passed from the Joint Unit to the European Liaison Officers. However, after a relatively short life the ACPO constituent and the Metropolitan Unit parted company with responsibility on the ACPO front reverting to the ACPO Secretariat. The history of the unit and its subsequent demise is well documented in a University of Warwick report by Inspector P.J. Gorry of the Metropolitan Police published in January 1991.²⁴

Since its demise the interest in this area has dramatically declined. Chief Inspector CANNINGS, in her research had produced a European Audit of Constabulary for 1992. The paper which was circulated to all, in force European Liaison Officers in the country, contained in the preface, the hope 'that action will be taken to find those areas where at present there is insufficient information, where improved or changed practices are required to ensure that the Police are more professional in dealing with Euro- nationals and co-operation with EC Police systems'. The paper set out ten areas for consideration which were:

- (1) What is the Constabulary's position or policy on 1992?
- (2) Do we have an officer to co-ordinate issues on 1992. Is there an information system adequate to cope?
- (3) Have we identified specialists in the main areas to assess the implications upon their specialisms for the Constabulary?
- (4) Are we in close touch with other organisations similarly involved?
- (5) Which areas of policing are most likely to be affected by 1992? Are we prepared? Have we a planned strategic

approach?

- (6) Are we discussing implications of 1992 with our neighbouring areas? Are our specialists within the Constabulary in close touch with their colleagues elsewhere, both in Britain and across the Community?
- (7) Are we in contact with equivalent police systems in other member states to find out how they are tackling things?
- (8) What is the Constabulary's policy on improving language training?
- (9) Do we have social/ sporting activities where the concept of 1992 can be encouraged? Would a Europe week help etc?
- (10) Do our senior decision takers and those responsible for formulating policy know enough about 1992?²⁵.

This was a useful set of questions aimed at concentrating the minds of senior police managers on the problems ahead and preparing to solve those problems. However a subsequent survey carried out by the writer of this paper about twelve months later showed that hardly any police force had considered this approach. During this enquiry it was discovered that the identity of the European Liaison Officer, had often changed a number of times and wide differences in the rank of the postholder were identified. It was interesting to note that one senior post holder told the researcher that although he had held the position for some time it was the first time he had ever been asked to respond in that role.

The United Kingdom Government Position in Comparison to that of its EC partners.

Parliament began to be concerned about the impact of

the abolition of internal frontiers at an early stage, however no serious consideration of implications of the proposals was to emerge until a House of Lords European Communities Select Committee considered the implications of just one quarter of the area where activity was planned to be eased. This area was the movement of people.

Although some would say that the original proposals were only to lower the internal frontiers as opposed to abolish them altogether it is clear that this is not the case. If one considers the original Treaty of Rome it clearly calls for common action to eliminate the barriers which divide Europe. The European Council, meeting in Fontainebleau reinforced the proposals by calling on Council and member states to put in hand, without delay, a study of measures to bring about in the near future the abolition of all police and customs formalities for people crossing intra-Community frontiers. Plans were developed over the next two years with repeated calls to prepare for the creation of the "internal market". These were consolidated in the Single European Act of 1986. The declaration previously mentioned was a product of Coreper in that year.

The Commission was aware of some reluctance to abolish frontiers amongst some of its member states who were relying on the provisions of the declaration and they produced a statement that 'the Single European Act sets an objective which goes beyond the mere easing of frontier controls. The concept of an area without frontiers necessarily implied that internal frontier controls must also be abolished.'²⁶

The Select Committee began its deliberations in 1988, recognising that 'the creation of a frontier free Europe raised fundamental questions for the United Kingdom, which having (with the exception of Northern Ireland) the natural advantage of being an island, has traditionally relied on tight control of its borders accompanied by relatively relaxed internal police control of immigrants.'²⁷

They concluded that the Single European Act did not impose a legal obligation to abolish national border controls, but required Member States to co-operate in regard to immigration from outside the Community and in combatting crime. They proposed that border controls be retained for a number of purposes including checks to prevent escape of suspects and to enforce civil and criminal law.

This approach echoed the concerns expressed above by the Prime Minister, Margaret (now Baroness) Thatcher in her Bruges speech.

The House of Commons Home Affairs Committee, under the chairmanship of Sir John Wheeler, in May 1990, began to consider a much wider area of concern when it took evidence on Practical Police Co-operation in Europe. Based partly on a massive increase in leisure and business travel into and out of this country, the committee acknowledged that more foreigners would come into contact with the British Police and more Britons with foreign police forces for a variety of reasons. The police service through the Association of Chief Police Officers and the other two staff associations together with specific memoranda from the City of London Police, the British Transport Police, the UK National Central Bureau of Interpol, the Chief Constable of Kent and the Metropolitan Police Special Branch all contributed through the submission of oral and written evidence to the Committee. A great deal of effort was put into the preparation of some of the submissions and that task undoubtedly raised the profile of this issue, particularly amongst the forces having ports and airports which connect to mainland Europe.

The Committee at the conclusion of its deliberations sought to recommend inter alia:

- (1) An urgent reassessment of the deployment of border services
- (2) A recognition of the value of the Trevi organisation.
- (3) The recognition of the status of European Liaison Officers

in each force.

- (4) That cooperation between European countries should not be regarded as a compensatory measure for lower border controls but as desirable in its own right.
- (5) That the Home Office commission research to examine in detail the advantages of a police force acting in certain limited fields,....., across the whole of Europe.

The Government response in 1991, to these issues was:²⁸

- (1) That they welcomed the suggestion for a fully co-ordinated frontier control service rather than the unified service which they saw as creating complicated legal, financial and organisational issues.
- (2) The Government said that it supported the wider role that TREVI had begun to play by extending itself into other areas of international crime including drug trafficking. It thought that there was a need to ensure that there was not a duplication of effort with the work of other bodies.
- (3) They recognised that there was a need to raise the status of the European Liaison Officer and that the network could be used to disseminate information on European matters.
- (4) Government recognised the value of co-operation and took the opportunity to restate its view that it would maintain checks on people travelling within the Community for the purposes of preventing acts of terrorism, drug trafficking and other serious crime.
- (5) In this area the Government felt that any pan European activities could create substantial problems of power and accountability. They restated their priority of improving practical police co-operation between police forces of member states and in Europe generally.

The Other European Players

Finally, it must be recognised that not only the European Commission/ European Union has influence in these areas but also substantial work has already come from the wider forum of the Council of Europe, especially in the field of terrorism and drugs. The latter organisation has been active over a number of years in producing measures to combat terrorism, the most notable of which is the 1977 Council of Europe Convention for the Suppression of Terrorism. It tried to overcome the loophole of the 'political offence' by gaining agreement from the signatories that certain offences could not be regarded as political and therefore extradition would apply. The Convention's effect was diluted by the addition of two articles.

The Council of Europe was originally established in 1949 and now has a membership of 22 nations. Even the European Community itself is currently seeking to join the Council of Europe. Its role has been enhanced by the disappearance of the old communist regimes in Eastern Europe and it has acted as a bridge between the EC and those 'new' independent states. Its main aims are 'to promote European unity, foster social and economic progress and protect human rights'.²⁹

One of the major effects of the Council of Europe was to set up the European Group to Combat Drug Abuse and Illicit Traffic in Drugs. Known as the Pompidou Group because it was created at the initiative of the French President it sought to coordinate work on drugs and drug related crime. Amongst the areas it has considered are:

- (1) An examination of the effectiveness of asset confiscation of drug traffickers.
- (2) The consideration of educational initiatives.
- (3) The collection and analysis of data to assist with policy

formulation in the area of drugs.

- (4) Research into the way in which criminal justice systems respond to the problems of drug misusers.

The Council of Europe has also established the European Committee on Crime Problems which has, for many years, undertaken research on the many facets of crime in Europe. The biggest advantage of the Council of Europe is its extended membership.

Conclusion.

This research utilises a hierarchy of conceptual tools:

Firstly, it examines the explanations offered by literature on public policy making, not seeking to break new ground but evaluating the areas of the research using the Waymont approach.

Secondly, it offers new ways of looking at terrorism and drugs by exploring the possibility of transferable approaches to crime control from established co-operative areas to the new areas of this study.

Thirdly, it offers a critique of the subject of international crime literature to examine the relevance to police policy making.

The research also offers original inputs into the debate on international crime and methods of co-operation by:

- (i) finding out in detail 'police knowledge' in one state, ie. the United Kingdom, and cross checking findings with the police in France and the Netherlands.

(ii) examining in detail three other areas highlighted by government and police in the European Union as needing co-operative action.

Finally, the research relates conceptual and empirical material in order to identify areas where established cooperative mechanisms might be transferable.

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CHAPTER TWO

Studies of Public Policy Making and their Application to Policy Making in the Police Area - a Re-examination of the Waymont Approach.

Alan Waymont, in his University of Southampton PhD thesis An analysis of the failure of the drugs law enforcement policies of the governments of Britain and the United States of America, adopted an approach which sought to examine whether one could analyse the contents of drugs policy in the context of public policy making. This dissertation will attempt to do the same, applying public policy criteria to the wider areas chosen for study.

Policy Making and International Crime.

In order further to understand the reasons why some of the necessary steps to solve the problems of international crime have not been taken in this country and elsewhere, it is useful to examine briefly the process of policy making against the background of definition problems in Chapter 4 and the noted areas of policy progress in drugs and terrorism addressed in Chapter 3. There are many organisations and individuals which may influence the development of public policy in this area. These exist on three levels:-

- International
- National
- Local

On the international level, such organisations as the United Nations, the European Community, the Council of Europe, the Trevi Group now the Maastricht K.4 group, the Pompidou Group which developed out of a Council of Europe initiative to combat

drug trafficking, and a number of others can be shown to influence the development of policy relating to an area or areas of international crime. For example, United Nations and the Pompidou Group can be shown to have influenced the development of asset seizure policy amongst their member states.

On the national level, the Government, Parliament, the Home Office including the Police and Immigration, the Treasury including HM Customs and Excise, ACPO, the Advisory Council on the Misuse of Drugs and a number of other statutory and other bodies have or could influence the same policy area.

On a local level Chief Constables, Police Authorities, County Councils, local pressure groups and other organisations who work with the police, particularly in port areas together with individuals can influence policy decisions on how the police service tackle international cross frontier crime.

In political science, there are a number of theories which have been developed to explain the decision-making processes adopted in arriving at a particular policy for use in national or local government. Many of these theories when applied to government are not mutually exclusive. 'Each view is partial in that each concentrates on certain aspects of the policy process'¹. In applying this to government and police policy decisions this view equally applies. It is necessary to try and initially define the term "policy".

What is policy?

Policy in the academic literature has a number of definitions. Heclo describes it as '.....a course of action or inaction rather than specific decisions or actions'², whilst David Easton notes that it '... consists of a web of decisions and actions that allocate values'.³ Others, including Friend et al are much more vague when they define it as '..essentially a

stance which, once articulated, contributes to the context within which a succession of future decisions will be made'.⁴ It is difficult, because of the lack of commonality concerning the definition to identify clearly when policy is in fact made.

Governments will assess what they can and should do. Sometimes those things which they would wish to do are not always possible. The interests of that government are often put before those of the individual because government expects the law to solve its problems. Often, the extent to which the wishes of society can be satisfied is subject to the extent to which individuals are prepared to accept legal controls. Governments often have to balance what constitutes harmful behaviour against what might be acceptable to control it. The debate between individual liberty and the good of society is a complex one. Professor Hart for example, believed that individual liberty was very important. He thought that the individual should be allowed to do what he wanted to even though it distressed others.⁵ On the other hand, Lord Devlin, thought that society had an interest in private morality. He believed that the law was not only a device to protect individuals from harm but also moral framework for society.⁶

Often politicians find themselves taking a course of action which they would not necessarily choose but because it is a matter of concern to a powerful group in society they feel they must act. Often the courses of action are those which are most acceptable to their own supporters.

Policies are frequently interconnected, this is true not only in the same subject area such as terrorism or drugs but also across different areas of government policy. Peters recognised that a policy can have a secondary and tertiary effect in other areas and this can spread 'like ripples on a pond'. Also the existence of one government policy may create the need for a complementary policy in another area.⁷

Government policies create a framework for their agencies within which they will normally be expected to work. Their strategy statements create indicators to the individual agencies about the direction in which the government expects them to move eg Home Office Tackling Drug Misuse Strategy Document⁸. These strategies are not binding on the agencies but if those organisations choose to divert from that strategy they would undoubtedly be called to account if a divergent decision was later proved to be ill advised. An example of this would be the new provisions contained within the Police and Magistrates' Courts Act 1994 which allows the Home Secretary to set Key National Objectives which Chief Officers will be expected to achieve. The government has also set performance indicators which indicate the way in which such achievement will be measured. Many of the issues which are raised are contained within the underlying socio-economic environment⁹ or they are raised in one off situations which occur in everyday life. Whether an issue is considered important enough to become policy is dependant on the importance attached to it by the particular political party or faction. Hogwood and Gunn describe six reasons for an issue arriving on the political agenda. These are:

- * The issue reaches crisis proportions and can no longer be ignored.
- * The issue receives particularity ie it is seen as a major cause of concern within a particular area.
- * The issue has an emotive aspect or the 'human interest angle' which attracts media attention.
- * The issue seems likely to have wide impact
- * The issue raises questions concerning power and legitimacy in society.
- * The issue is 'fashionable.'¹⁰

Terrorism and drugs both fit many of the above conditions. The former certainly raises questions concerning

power and legitimacy in society and is a major cause of concern within a particular area. Drugs also has an emotive aspect together with many of the other headings contained above. On the other hand it is more difficult to apply the criteria to the case study areas. There is no true recognition by the public that the issues of international vehicle theft, art and antique theft and credit card fraud have reached crisis proportions because no empirical evidence exists and they have also not achieved particularity. On the question of whether these issues have an emotive aspect or human interest angle this is certainly not as great as that of terrorism or drugs. However the press are beginning to highlight problem areas such as car theft by young offenders¹¹ and they will undoubtedly achieve a human interest aspect in the future spurred on by the upward spiralling of insurance premium charges to car owners which such activities bring. They do not immediately raise questions about legitimacy and power in society and they are not especially fashionable topics at the moment although they could become so in the future.

As will be shown in more detail in the next chapter, the mechanisms to combat terrorism and drug trafficking have come from two major sources. The first is the effort of the UK government, both domestically and internationally, to provide the necessary legal and conventional framework to allow legal co-operation in solving the two problem areas. Secondly there has been considerable effort by the police and other law enforcement agencies to establish practical mechanisms to allow co-operation at the operational level in order to combat the threat from both areas.

Waymont, in examining the public policy issues that relate to drugs law enforcement, draws the conclusion that 'no specific theory is applicable but rather an amalgam of several.' He also points out that, 'with the exception of specific legislation, government policy can best be described as little more than broad guidelines from which the various drugs law enforcement agencies can develop their own policies and

systems.¹²

A useful way of considering this area may be the 'policy networks' approach.¹³ Cope, Starie and Leishman¹⁴ use this approach to explain relations between central and local government. They identify that 'a variety of different relationships exist within government and between government and pressure groups.' They say that government rely increasingly on pressure groups for the formulation and implementation of policy. Policy networks have in the past been categorised according to interests. They identify that a policy network may be 'relatively depoliticised' and may be characterised by 'communities of experts'. They highlight that a law and order policy network can be broken down into judicial, policing and probation policy making arenas. Some of these areas overlap but they identified the following who are involved in the policing arena.

Home Secretary
Civil Servants from the Home Office
Police Authorities
Chief Constables
Police Staff Associations

A Political Studies Association/Politics of Law and Order Group discussion held at Chilworth Manor, Southampton on Saturday 22nd October 1994 centred around whether each of these players took an equal part in policy formation in discussing the Portsmouth paper referred to above. It is certainly true that all are involved to certain extent but some such as Chief Constables, ACPO and Civil Servants from the Home Office are key players whilst the others play a more minor part. It may be more appropriate to show this model in either a three dimensional form or certainly with an inner core to represent the true situation

It is useful to recite some of the major theories relating to the policy process in order to identify later on in this chapter, how they apply to policy development in the area

of international crime examined in this thesis. The ways in which policy makers arrive at policy decisions are worthy of examination. Whether they set out objectives and attempt to achieve them or are more politically motivated, seeing the need to compromise any objectives in order to accommodate those political considerations is an issue which needs to be addressed. One way of achieving these is by examining the actions of policy makers through behavioural theories. Each of the theories makes statements about how policy makers recognise, inform themselves about and tackle policy problems together with a consideration of how and to what extent policies are altered during the process.

The Rational View.¹⁵

In this theory the policy maker, having identified a problem which requires a response is required to do four things:-

- (1) To identify and rank his objectives.
- (2) To research the range of solutions to the problem.
- (3) To consider the consequences of using each solution.
- (4) To select the solution which is most likely to achieve the objectives.

The identification of the nature of a problem may change over time. An illustration of this is given by Burch and Wood¹⁶ who cite the problem of inner cities which in the 1960s was seen as being caused by poor quality housing resulting in the bulldozing of large areas and the building of blocks of flats. By the early 80s the same problem was identified as being caused by social economic and physical forces which resulted in policies to tackle both the economy and environment of the inner cities.

The problems then need to be ranked, which involves the use of a number of often conflicting criteria these include

retaining power and status, together with maintaining a favourable image. Identifying all the solutions and their likely consequences is also a difficult exercise, whilst selecting the appropriate solution may be even more of a problem. The rational theory was popular in the 1950s but was recognised as being too complex although elements of it had real value.

Identifying the objectives is problematical from the outset as the police service, has to respond to a wide variety of demands on its services. On a general level, one of its main aims is to respond to public need but identifying that need is an area in which the police service has yet to arrive at a method of identifying the true public need. Once the problem is identified the solution may not be immediately apparent or its achievement may be proscribed by other influences. Since the Scarman Report,¹⁷ the police service as a whole has been more conscious of identifying objectives and police liaison groups have been set up in the majority of areas in an effort to allow the public to communicate its concerns at a local level. Additionally through the police authority, one part of the triangle of chief constable, local authority and central government, the public has in theory, the opportunity to express its concerns on law and order issues through its elected representatives.

The government has recently been seen to be concentrating more on inputs and outputs, requiring the police through the police authority to prepare annual plans which are eventually expected to be fully costed. These plans are directed to a great extent by the power that the Home Secretary gave himself within the Police and Magistrates' Courts Act 1994 to set national key objectives for the police service. The police service and individual forces will be judged by the performance indicators which have been set externally to measure their outputs. There are currently sixty six performance indicators which cover a whole range of activities and these indicators are supplied to the Home Office, Her Majesty's Inspectorate of Constabulary and

the Audit Commission. It is worth noting that none of the indicators relate directly to international cross frontier crime and only one of the Home Secretary's Key National Objectives relates to any of the issues covered in this research. The exception relates to drugs but is included in an objective concerning crime which is of greatest concern to the community.

There is however, a need to establish closer contact with the public as a whole as concern exists that the organisations mentioned above are only used as a means of communication the needs of the vociferous minority and not the silent majority whose concerns may differ.

The recent Audit Commission Report¹⁸ and Home Office Circular¹⁹ indicate that the police service should be trying to make closer contact with the general public as a whole to identify their concerns. With the introduction of qualitative performance indicators by both central government and the Audit Commission, the police service is being forced, somewhat unwillingly in some areas, to carry out surveys of public attitudes to the service which the police currently offer.

If the Police Service is able to identify the concerns of the public, it remains to be seen whether the issues would change from area to area. Even if international cross frontier crime was a major concern amongst the public across this country and was seen as a priority, it is currently difficult to ensure that it be ranked as being a top priority by all of the chief officers in this country.²⁰ Their current autonomy allows for the fact that they are, to a large extent independent in operational matters. These can be affected by central government through the Home Office and Her Majesty's Inspectorate of Constabulary and to a limited extent by budgetary constraints imposed by the Police Authority, but whilst there remains this important cornerstone of the British Police Service, each chief officer remains independent in setting his priorities. International cross frontier crime is by its very nature, a

national issue, but it will be shown in Chapter 4 that it does not rank highly amongst the concerns of chief officers.

This may change in the future. In recent months new legislation has been introduced by central government through the Police and Magistrates' Courts Act 1994 which gives the Home Secretary the power to set objectives nationally for the police service. This he has already done in 1994²¹ and there is little doubt that this power will be used in the future to influence the policy decisions within individual forces. Chief Constables may seek to reinforce their independence in the area of policy but the plain fact is that the government will, in the future, have control over 90% of the cash required for carrying out the policing function. This could result in sanctions being used against Chief Constables who fail to carry out the Objectives set by the Home Secretary.

Other influences are being brought to bear on Chief Constables which will undoubtedly have an effect on the way in which they formulate their policy. Foremost amongst these are the influences of the Audit Commission and the Inspectorate of Constabulary who together are also setting objectives for the police service to which Chief Constables may, in the future be expected to respond.

Finally the Association of Chief Police Officers (ACPO) in realising the very real threat to their current position are themselves beginning to formulate national policy in a number of areas in the hopes that they will influence the retention of policy decisions by themselves.

The Rational View is being forced to some extent upon the Chief Constables of the United Kingdom. Through the provision in the Police and Magistrates' Courts Act 1994 allowing the Home Secretary to set Objectives for the police and the requirements of the same Act and the accompanying Home Office Circular requiring the preparation of Annual Policing Plans the

police service is being encouraged to adopt the 'rational view' in its policy formulation.

Incrementalism.²²

This theory relies on the taking of small steps from an existing position towards an eventual goal.²³ It relies very heavily on the identification of the existing position before the move forward can be made. In the area of international crime, the existing position is not clearly identified either in terms of data or perception. This identification relies implicitly on the need clearly to identify that position and there appears to be a marked reluctance in the police service in this country to identify a problem which will then need to be addressed.

Incrementalism is seen to be means orientated and it is often found to be the means rather than the objectives which determine policy. In the days of shrinking or static budgets the policy makers are unlikely to wish to identify another problem area which currently remains for the large part, undiscovered, when this would require a large injection of capital and resources to make any move forward. The "ostrich" syndrome with occasional glances out of the sand is most probably the most appropriate description.

Incremental strategies are seen to be remedial and deal with problems as they arise and relies on the recognition of the problem in the first place. If it is not seen to be a problem then no remedial action will be taken. The most important part of this theory is that incrementalism is reconstructive and serial recognising that decision making has to be flexible enough to respond to the change in direction of a particular problem or the identification of a new problem resulting from attempts to solve an original area of concern.

Finally, incrementalism is seen as fragmentary. Policy

is acknowledged to be made across time and space. This is certainly true of the police service with its triangular control lines, each corner of that triangle being influenced by different pressure groups.

The two preceding theories describe the behaviour of the policy makers but do not throw much light on the system by which policy is made and who is involved in the making of policy. A number of theories exist which attempt to describe policy making from this viewpoint.

Pluralism²⁴

This theory highlights interests rather than formal institutions as being the important element of policy making mechanisms. The key point of this theory is that society consists of a number of interests including commerce, agriculture, consumers who seek to interact with one another in a process of bargaining and conciliation. This may result in policy being representative of particular interests or alternatively it could result from a consensus of competing interests. It does not concern itself with recognised institutions but more on nebulous groups of interests.

There are three views of government in a pluralist society.

- (1) Government establishes the rules of competition and ensures fair play between all the parties.
- (2) Government is seen as an adjudicator, settling disputes.
- (3) Government participates in the debate because it itself is an interest.

This theory is seen as being one of the closest to the

British political model in that it recognises competing interests but fails to recognise the position of institutions and the Government who can make policy which conflicts with some very powerful interests

Elitism.²⁵

This theory challenges the pluralist approach by arguing that a political elite is necessary and indeed an inevitable feature of our society. This was the view of the original elitists Pareto and Mosca. Pareto. 1939 p.50 points to '....a class that rules and a class that is ruled....'. Although the classical elitists saw that political elites achieve their position in a number of ways including revolutionary overthrow, military conquest etc., in the modern state they are related to the development of large scale organisations in many areas of life. Bottomore states that the political elite includes members of the government and of the high administration, military leaders and in some cases, politically influential families.²⁶

Modern elite theory is represented by C Wright Mills who in the 1950s drew attention to the fact that institutional position is a source of power.²⁷ A number of writers have attempted to reconcile elitism with pluralism whilst others have attempted to say that the ruling class is the same as the power elite. Institutions are recognised as being run by minority groups however those groups may come from the same social backgrounds. Miliband points to the similarity of social background between state officials and the bourgeoisie in challenging the pluralist theories.²⁸

This theory is not a particularly good representation of the processes which exist today in respect of police policy making. At a government level the Home Office is influenced in its policy making by a number of outside influences including the

Treasury from within the government network and organisations like the Association of Chief Police Officers (ACPO) who today have a very real influence on the policy making process. In the same way internal force policy making is influenced by a wide variety of factors, not least the views expressed by elected and non elected individuals and organisations. An example of this is the influence of the police liaison committees set up under Section 106 of the Police and Criminal Evidence Act 1984 which now have a statutory right, under the provisions of the Police and Magistrates' Courts Act 1994, to be consulted over the preparation of the Annual Policing Plan for their area.

The Conventional View.²⁹

This theory relies on the fact that policy making is responsible to and representative of public opinion. If one examines the triangle represented above it can be seen that there are publicly elected representatives who are involved in the central government and local government extremities of the triangle. The third corner, the Chief Officer, is not directly elected and although he is controlled in some aspects by the other two groups, he is not subject to direct control in all matters. The principle of accountability has been with the Police service for some considerable time and the need to seek public views to help in the formation of the police policy is high on the agenda. However it is relatively early days along this road and it is not clear as to how much influence the public can exert on internal police policies of any sort. The government are however seeking to involve the public views more and more in relation to law and order through the provisions of the Police and Magistrates' Courts Act 1994 which requires Police Authorities to produce Annual Policing Plans for the Force for which they are responsible and to make those plans public.

In all these theories the bureaucracy occupies a different position dependent on which theory is being considered

at any one time. Elitist theory argues that the bureaucracy occupies an important position in the policy making process alongside other large scale organisations, whilst pluralists see bureaucracies as being organisations who pursue not only their own ends but also responding to pressure from outside groups and individuals. Towards the end of the nineteenth century a number of writers began to realise the growing importance of the administrative or bureaucratic machinery in an industrialised society. One of these was Weber who regarded the development of bureaucratic administration as intimately associated with the development of industrialised society.³⁰

The Bureaucratic Power Model³¹

This is another model which may also be applicable to policy making in this area. It sees policy as arising as a result of bargaining between groups and individuals within the political system. It recognises the fact that top civil servants and council chief officers wield a great deal of power in the policy formation arena. It is they who are central to the policy making process and not ministers, Chairmen, MPs. or councillors. Burch and Wood identify the fact that 'the supremacy of these individuals is exercised through sheer weight of numbers, superior knowledge, control of information, continuity and the ability to work away from the glare of the public...'.³²

The bureaucratic power model is seen as a conservative theory, since officials are particularly adept at preserving the status quo. Others claim that officials represent the public or national interest in that they are seen as a middle way in the changing world of party politics. Much evidence is available to support this view in that the weight of business is such that politicians have no alternative but to delegate a large proportion to government officials. Allison saw that under this model the policies neither emanated from choices nor outputs but from the result of many individual decisions from bargaining.³³

One of the issues that needs to be recognised when trying to examine public policy is that it is dynamic in nature. That is to say that it is not static but changes over time, adjusting to the perceived demands placed upon it. Perhaps one of the better definitions of public policy is that suggested by Hogwood and Gunn, namely that it is;-

.....a series of patterns of related decisions to which many circumstances and personal, group and organisational influences have contributed. The policy making process involves many sub-processes and may extend over a considerable period of time. The aims or purposes underlying a policy are usually identifiable at an early stage in the process but they may change over time and, in some cases, may be defined only retrospectively.....It must to some degree have been generated or at least processed within the framework of government procedures, influences and organisation.³⁴

An examination of the more prominent theories relating to public policy making and their application to policing issues will help to explain why movement in the areas of recognition and resolution of international cross frontier crime issues appears to be painfully slow. These theories cannot successfully be applied in isolation to this area of public policy making, especially because decisions relating to policy on law and order are not taken entirely at national or local government level. This is due to the current structure of the British Police Service where central and local government can only influence but not control the policies carried out by more than fifty individual forces. The long coveted independence of the individual chief constable remains very much in existence today although attempts at some erosion of this power are appearing through greater financial control from central government.

Who makes decisions about policy.

In reality it is not only governments and their officials who make policy but also those people and organisations who are responsible for the implementation of the final objectives. However the field of involvement is often much wider than governmental and quasi governmental organisations. Also involved in the policy making process are individual members of the public, interested organisations, expert bodies and pressure groups. During the Thatcherite era the pluralist approach was largely ignored. However, under the current government an element of pluralism can be detected. A classic example of such an approach can be seen in relation to the government's new Criminal Justice and Public Order Bill which is currently passing through parliament. There is no doubt that the police service through ACPO has had considerable influence on this Bill, however the interests of other organisations have also been brought to bear on this particular piece of legislation both during drafting and in its passage through both Houses. One example of this is in relation to the provisions for dealing with trespassers on land which were introduced as a result of pressure from the hunting lobby to try to regulate the protests of the hunt saboteurs.

Moving on to European police co-operation as a policy making process Den Boer considers that all such processes are linguistic in character.³⁵ She cites Majone who notes ' We miss a great deal if we try to understand policy making solely in terms of power, influence and bargaining to the exclusion of debate and argument'.³⁶ If one follows this argument to its conclusion it leads us to view policy making as a process conducted by a group of people whose objectives may not always coincide. This allows the examination of the policy making process to look behind the end product to the various stages which formed it.

Anderson examines the political theory of European integration by examining the clash between the functionalist, neo

functionalist, pluralist and federalist theories which he views as having been given a new topical relevance by the Maastricht Treaty.³⁷ He feels that the functionalist view is one which frequently is in the background of discussions on police co-operation. The theory assumes that economic and technological factors are at the foundation of changes in the international system. The theory is seen as a practitioners perspective because many international and European public servants see themselves as contributing to human welfare problems which are the direct outcome of these changes. Anderson argues that functionalists would argue that closer police co-operation arises directly from their functional needs of policing contemporary society. Because of the increasing mobility of the populations in the Community there is a need for closer co-operation in order to maintain adequate levels of crime control.

The neo functionalists regard the intermediaries ie, governments, ministries, agencies, political parties, interest groups and international organisations as playing an important role in the integration process. They see the interaction between these groups as, in certain conditions and circumstances, resulting in political integration. Haas, the most celebrated exponent of neo-functionalism attempted to identify the transfer of authority/legitimacy from one level to another, which in the European context means the continued existence of the state but the recognition of the European level as a legitimate arena for action and decision. This theory fits rather better, the problem of police co-operation in that governments and police authorities are involved in a process of bargaining in relation to medium and long term strategic goals from which the scope and the institutional framework of co-operation will emerge.

The pluralist view means that power is distributed amongst the states. However, states can be brought together for the purposes of co-operation. There are many varieties of this view but all retain the concept of the sovereign state which operates within a security community when addressing this type

of issue. The theories allow for the exclusive role of the sovereign state. They see that the areas of defence and foreign policy should remain firmly under the control of the state whilst taxation, trade and industrial policy are suitable arenas for interstate agreements. This view does not preclude European unity but a pre-requisite is that Europe should become the accepted security community. Similarly with policing, both the realist and the functionalist theories see that policing relating to state security remains the province of the sovereign state whilst circulations about fugitive offenders and ordinary crime are suitable for transfer to a European agency.

The pluralist theories overlap into at least one of the federalist approaches. The federalist theories are concerned with the federation being the end product of European integration. Wheare defines federation as 'the methods of dividing powers so that the general and regional governments are each, within a sphere, coordinate and independent'.³⁸ The means of achieving such a federation is by an explicit political bargain. Anderson says that the debate over police powers is likely to be parallel to but not identical with the development of legislative judicial authority at the federal level. This is reflected in the recent European experience where the debate over Europol and closer European police co-operation has taken place partly as a response to practical problems of law enforcement and partly as a consequence of the growth of European law.

The basic difference between these approaches that some, like the functionalists, believe that there is an underlying dynamic leading to European union, based on systemic factors. At the opposite end of the scale are those who believe that European Union, if achieved will result from a number of stages including that of federal union.

Conclusion.

None of the theories outlined above exactly fits the police policy-making arena although the policy networks approach seems to represent most closely the way in which current general policy in respect of the police is formulated. Examples of this type of approach where the government relies on pressure groups to formulate policy can be seen where the Audit Commission and ACPO have given rise to changes in government policy over recent times. The policy-making processes in relation to the development of co-operative mechanisms in respect of combatting international crime do not comfortably sit with any particular theory. On the anti terrorist front which will be considered in the next chapter, the policies have very much been influenced by the centre with the police influence being more marginal. This may be due to the duality of operations in this area between the Security Service and the Special Branch and also the threat that Irish Terrorism in particular has posed personally to government ministers and officials.

In the area of drugs the picture is not quite so clear with considerable influence being exerted by organisations both within and outside central government, including the power struggle between police and customs bodies over control of this issue which will be outlined more fully in the next chapter. The other areas of crime which are considered within the case studies currently show a stronger influence of the police in respect of policy making but the influence of central government is also beginning to grow in the area of the development of Europol although ACPO is represented in the negotiations. There are also other influences which are concerned with the development of policy in these latter areas including the commercial world and these influences will be explored more fully in the case studies in Chapters Six, Seven, and Eight.

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CHAPTER THREE

An Established Area of International Cross Frontier Crime - Terrorism - Requiring Cooperation.

Introduction.

Terrorism and Drugs, which will be considered in Chapter Four, are two areas which have received considerable attention over the recent past in both academic and 'practitioner' based literature. Anderson¹ says that 'Changes in public mood and in moral values also affect attitudes towards policing and police co-operation: for example, prevalent attitudes towards prostitution, pornography and drug taking have all shifted over the last twenty five years.' The same could be said in respect of terrorism which has, over the same period, had a much greater impact on the public than ever before. They are areas which can usefully be examined to establish current legislative and cooperative mechanisms to test whether they could successfully be applied to the emerging areas of international cross frontier crime because of the following characteristics which also seem to be applicable to other areas of international crime. These characteristics include:

- (a) Both terrorism/drugs and the case study areas involve crossing borders in many cases.
- (b) They all involve some form of illicit object movement.
- (c) They also involve illicit people movement.

Terrorism identified.

Many differences of definition exist when referring to Terrorism, both in the political and the legal sense. Wilkinson² tries to refine the many definitions into one when he says that terrorism is 'a specific method of struggle rather than a synonym for political violence or insurgency' In the same article, he also identifies five major groups of participants in the terrorism process.³

- (1) The perpetrators of violence.
- (2) The immediate victims.
- (3) The wider target group or society that the terrorist intends to intimidate.
- (4) The neutral bystanders within society who are experiencing the terrorism.
- (5) International opinion.

He goes on to differentiate between internal terrorism being systematic violence carried out within a single state and international terrorism which is a terrorist attack carried out across international frontiers, or against a foreign target in the terrorist's state of origin. We necessarily concentrate on the later in this document and it is rarer, in fact, to find examples of internal terrorism. The actions of the Provisional IRA and the Basque Separatist organisation ETA often transcend international frontiers in their actions.

Wilkinson seeks to categorise the perpetrators of international terrorism into five main groups:

- (1) Nationalist Terrorist are groups looking for political self determination. Examples of these are currently evident in the former Soviet bloc where various groups seek to liberate areas of a particular country for their own use. Another example is the Palestinian Liberation Organisation who seek self determination for Palestinians in the state

of Israel by carrying out terrorist activities in other European states.

- (2) Ideological Terrorists seek to change the whole structure of existing political social and economic systems. An example of this type of terrorist group was probably the Baader Meinhoff group which was part of the Red Army Faction (RAF) sought to change the existing structure of West Germany by terrorist acts within that country and elsewhere in Western Europe.
- (3) Religious Fanatics are most common within the Middle East and consist of fundamentalist groups which seek to overthrow a prevailing religious order. These include the Islamic Jihad movement of fundamentalist Shi'ites who have employed international terrorism in an attempt to overthrow the established religious structures in many Middle Eastern states
- (4) Single Issue Fanatics seek to change a specific aspect of policy and included in this category are the anti nuclear movement, the anti vivisection movement and the anti abortion movement. It also includes the actions of the Animal Liberation Front
- (5) State Sponsored International Terrorism is the final category and includes such examples as the Libyan leader Gaddafi's hit squads sent abroad to murder dissidents and the Soviet backed Palestinian extremists of the 1970's.

Although the practitioners would not necessarily use the terms shown above, interviews with senior Special Branch officers⁴ show that they probably group terrorists into broadly the same areas as those outlined by Wilkinson. They do however tend to amalgamate the ideological and single issue groups under one heading.

The Dimension of International Terrorism.

In the late 1960s, the influence of the Arab terrorist cause began to affect the Western world. They sought to highlight the claim of the Palestinian nation to their territory which they believe was unjustifiably taken from them by the Jewish nation during the creation of the state of Israel and subsequently. The hijacking of various forms of public transport including aircraft, trains and ships together with attacks at airports brought the need for international measures both in the legal area and the law enforcement cooperative arena into sharp focus. The hijacking of American and European citizens concentrated the minds of national governments.

In that period the recording of terrorist incidents was carried out on a very arbitrary basis. The records kept by the Central Intelligence Agency of the United States were later acknowledged to be a considerable under estimate. Their 1979 research report⁵ accepted that the recording procedure was flawed. This resulted in a revision of the figures of terrorist incidents which increased from 3,336 for the period 1968 to 1979 in the report of that year, to 6,714 international terrorist incidents for the period 1968 to 1980 in that year's report. During the period 1968 - 1985 over 51% of all terrorist incidents involved acts which were in the bombing category whilst siege/hostage incidents accounted for only 1.7% whilst kidnapping has shown no clear trend over the years⁶

Terrorism has, in the past 25 years touched the majority of Western European states, from the Baader Meinhoff and Red Army Faction in Germany in the late sixties and early seventies, to the Red Brigades of Italy in the same period who carried out organised political violence against the state. France had suffered from terrorism in the form of the OAS in the early sixties, who sought to influence French government policy against granting a greater degree of self determination to its former colony Algeria. In the late sixties and early seventies,

the Netherlands suffered from a number of terrorist incidents carried out by South Moluccan extremists resident within the Netherlands who sought renewed association with the Dutch in preference to being absorbed into the relatively new state of Indonesia.

Many other groups have flexed their muscles during this period across a whole range of countries in Europe and elsewhere. For some their appearance is only momentary whilst others carry out their campaigns over a period of years. The Irish Republican Army has waged a 'campaign of intermittent violence in Ireland for about sixty years'.⁷ The Provisional IRA (PIRA) emerged from a division of the IRA in 1969-70. They sought national liberation as opposed to national socialism which was the aim of the other arm, the Official Irish Republican Army. During the sixty years and certainly since 1969, it is Northern Ireland which has borne the brunt of the PIRA campaign, but that terrorist campaign began to extend to the mainland and to Europe, where the targets were either political or military in the main in the early years. In the recent past the ambit has been widened to include economic targets including retail premises, industrial and commercial centres and the service industry sites.

The PIRA has become a sophisticated military like organisation, operating in brigades and smaller units, obtaining supplies and finance from across the world and operating through a number of terrorist media including bombing, shooting, kidnapping, in fact any method guaranteed to attract publicity to their cause.

It is the widening of their fields of operation by terrorist groups, more than any other factor, which has caused the creation of sophisticated international cooperative mechanisms between law enforcement agencies in Europe. Examples related to PIRA, where this cooperation came sharply into focus include the shooting of two Australians, mistaken for British servicemen, at Roermond on the Dutch, German, Belgian border and

the investigation into the MV Eksund which was intercepted by the French authorities, carrying arms and other supplies from Libya to Ireland. The Lockerbie disaster, where a American 747 aircraft blew up in flight as a result of a bomb planted by Libyan extremists, also saw considerable cooperation worldwide in the pursuit of the perpetrators, who had carried out the attack in support of the Palestinian struggle to re establish a homeland in Israel.

Terrorism - The International Response.

One of the biggest problems which the international political community faces in the need to co-operate in the field of terrorism is the historical lack of common ground on the definition of 'terrorism and the terrorist'. The current attitude of world leaders to the problems of terrorism is perhaps best summed up by a statement by the leaders of the G7 meeting of the world's industrial leaders in Tokyo on the 6th of May 1986 in their declaration on terrorism when in their first paragraph of that declaration stated;⁸

We, the heads of state or governments of seven major democracies and the representatives of the European Community , assembled here in Tokyo, strongly reaffirm our condemnation of international terrorism in all its forms, of its accomplices and of those, including governments who sponsor or support it. We abhor the increase in the level of such terrorism since our last meeting and in particular its blatant and cynical use as an instrument of government policy. Terrorism has no justification. It spreads only by use of contemptible means, ignoring the values of human life freedom and dignity. It must be fought relentlessly and without compromise.

These leaders therefore recognised that contemporary terrorism constitutes a potential threat to the stability and in

the extreme, the existence of democratic states. However, their previously mentioned failure to agree on a common definition of the problem means that effective international action is prevented from being taken. France, a member of the G7 Group has a long history of an ambivalent attitude to terrorism often providing sanctuary for leaders of minority groups in exile. Anderson⁹ points to the fact that 'Attempts to classify terrorism according to the context of terrorist actions involve value judgements about which there is no general agreement.' It is just this very lack of agreement over a definition which has stalled effective legal and practical co-operation between nations.

Another example of a close neighbour who does not have the same definition of terrorism as the United Kingdom is France which has a long history of internal struggle. In the past, the French have been strong supporters of the right of political asylum. They took ten years to ratify the 1977 European Convention on the Suppression of Terrorism (Council of Europe) and eight years to ratify the 1979 Dublin Agreement on the Application of the European Convention on Terrorism (European Community) both of which needed the parties to agree to extradite or try suspected terrorists. The former sought to force states not to treat acts such as attacks on diplomats as political crimes. In order to obtain ratification by the French National Assembly, the government was forced to make a solemn declaration that it would refuse extradition if it thought that the rights of political exile were being infringed.

France has been inconsistent in its approach to terrorist matters. President Giscard d'Estaing proposed an 'espace judiciaire europeen', a region where particular crimes would be dealt with in identical ways. But France has also served as safe haven to Basque terrorists and to members of the Italian Red Brigades who sought a refuge within France.

The attempts, among countries who have tried to

establish bilateral and multilateral agreements seeking extradition rights concerning terrorism, have been dogged by the same failure to agree on a common definition of a terrorist or terrorist act, which has often been clouded by the labelling of such acts as political.

One consideration which may prevent the reaching of such agreements is the vulnerability of some countries who fear that if they were to try and deal with suspected terrorists within their own judicial systems or agree to extradition, they could put their own nationals living abroad at risk of being held hostage for the release of such imprisoned terrorists. In the past the Palestinian terrorist organisations have sought to release their own people by holding others hostage eg the recent hostage taking of an Israeli soldier by Hamas which resulted in the storming of a house on the West Bank by Israeli forces and the tragic death of the hostage. Economic interests could also be targeted in retaliation for any such future action, but could also adversely affect that country's interests abroad in terms of trade or sabotage of industrial premises abroad.

A number of North African and Middle Eastern countries have, in the past, provided shelter and support to various terrorist groups. Chief amongst these were Libya, where Colonel Gaddafi openly supported the Palestinian terrorist groups and the IRA amongst others, providing facilities for training and support in terms of equipment to allow them to develop their activities. Other countries who have provided such support include Syria and Iran. The hard line taken by Britain against these countries has not, in the past, been consistently supported by other members of the European Community, who often have political and economic interests in those countries

The History of Political Co-operative Efforts.

The International Level.

During the nineteenth century many governments were affected by terrorism but there was little movement towards the necessary international co-operation to combat it because the characteristics of the terrorist incident meant that it was almost entirely an internal matter. Governments were prompted to act by the growth of the internationalisation of terrorism, for example, the hijacking of aircraft such as that carried out by the Palestine Liberation Organisation (PLO) when they hijacked TWA Flight 847 to Beirut in 1985 and the kidnap and murder of diplomats such as the attack on the meeting of oil ministers at the Organisation of Petroleum Exporting Countries (OPEC) in Vienna in 1975 by a mixed team of Red Army Faction (RAF) and Popular Front For the Liberation Of Palestine (PFLP). Military personnel were also targets of this change in tactics as evidenced by the various attacks on British Army bases in West Germany by the IRA in the 1980s. Finally, businessmen were also targets and all of these crimes prompted the attempts to develop such co-operation. One of the reasons advanced by Wardlaw¹⁰ for the growth in international terrorism, was that of the increased availability of publicity which will draw world wide attention to the cause. In the past the limits of media coverage meant the majority of terrorist incidents were internal or if international were carried out against individuals or installations of the home countries.

The earlier growth of such internationalisation in the twentieth century prompted the first attempts by the League of Nations to develop international co-operation in this area. After the assassination of King Alexander I of Yugoslavia and the French Foreign Minister Louis Barthou in Marseilles on the 9th October 1934 the League debated two measures to combat terrorism. The 1937 Convention for the Prevention and Punishment of Terrorism sought to criminalise incidents involving heads of

state and other internationally protected persons. Additionally it proscribed the destruction of public property of and injuries to the citizens of one country by citizens of another. The second convention sought to establish an International Criminal Court. This Convention sought to give signatories the opportunity of committing persons accused of terrorist offences for trial at an international court established for that purpose. Unfortunately, insufficient of the member countries saw fit to ratify these measures and their objectives were never realised. One of the reasons was probably that the proposals were overtaken by the events of the Second World War which began shortly afterwards but equally important was the concern by many countries that the breadth of the definition of terrorism was too wide. The United Kingdom gave the reason for not ratifying as 'an anticipation of the difficulty of framing the relevant domestic legislation'.¹¹ In fact, only India eventually ratified the first Convention and not a single nation ratified the second.¹² This issue will be discussed further in relation to the several attempts to define international crime.

The question of an international judicial body to deal with terrorism was also not carried forward, however in 1989 a resolution by Trinidad and Tobago to the Sixth Committee of the United Nations which supervises the work of the International Law Commission, requested it to consider setting up an international criminal court which would have jurisdiction over illicit drugs trafficking. At the same time, the eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders was considering an updated proposal by Professor Bassiouni, Secretary General of the International Association of Penal Law, supporting the establishment of an international criminal court. So far, such attempts have not received the necessary support from the major states and Richard Latter in an August 1991 Wilton Park Paper doubts whether it would succeed, maintaining that countries would only refer the more difficult cases to such a body 'in the knowledge that they would fail, but with the assurance that their formal responsibilities have been met and

thus international criticism avoided'.¹³ The question of the International Criminal Court still attracts attention.

At the forty fifth session of the International Law Commission in 1993¹⁴, it considered the report of a working group which contained a Draft Statute for an International Criminal Tribunal. This is the second stage of work that began in 1992. The issue has in fact been around since 1945, but was revived as a result of the reports of ethnic or communal violence and mass violations of human rights in Yugoslavia, Somalia and Iraq. The ad hoc tribunal which arose out of the Yugoslavian conflict was imposed by the Security Council of the United Nations and not by the victorious powers, which had been the criticism of the Nuremberg and Tokyo tribunals after World War II.

The current proposals seek to establish an International Criminal Tribunal by treaty. The tribunal would consist of eighteen judges who would be elected for twelve year terms. The jurisdiction of the tribunal would include crimes defined by treaties. This would solve the current problem over who should deal with suspects for the Lockerbie bombing because neither the United States nor Great Britain would have to agree to the case being heard by the International Tribunal because the suspects are in Libya. It would therefore be up to Libya to opt to have the case dealt with by the tribunal. The jurisdiction would extend only to individuals and not states and would be consensual in its application to member states but would not replace the need for national criminal trial systems.¹⁵

The tribunal would also have a second strand of jurisdiction in two categories of crime, crimes under general international law and crime under suppression conventions. In the first case, such a crime is defined as 'a crime..... under a norm of international law accepted and recognised by the international community of States as a whole as being of such a fundamental character that its violation attracts the criminal

responsibility of individuals'.¹⁶ Amongst those areas expected to be included in this type are aggression, genocide and crimes against humanity not covered under the 1949 Geneva Convention.

The second category under this area of crimes governed by suppression conventions gives a possibility of an international trial for an offence under national law, where the national law gives effect to a provision of a suppression convention. The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is listed as an example. The Commission came under considerable pressure from the Caribbean and Central American states to consider a jurisdiction for the court in this area. An example given is where a head of state had been charged with large scale drug trafficking which would probably be an appropriate case. However, it is pointed out that the current conventions do not create or define crimes under international law but envisage that national legislation will deal with them. The list is rather an open one in this area but would probably be restricted to exceptionally serious crimes. Support for the concept of an international criminal court comes from the American Bar Association Task Force on an International Criminal Court¹⁷ but they have reservations over this open ended aspect and would prefer the crimes and in particular those relating to drug trafficking to be defined in the statute of the International Criminal Court rather than having to refer to national legislation. It is also proposed by the Commission that the Security Council would also be able to refer crimes to the court in certain cases.

The Report sets out the conditions under which the Tribunal will operate, making provision for co-operation in such matters as obtaining evidence and the arrest and transfer of the accused. The International Law Commission intends to take this idea further in the hope that it will be accepted. The question of whether there is a case for the application of national legislation is more difficult. There are two parts to an

argument that it should, firstly there is already a case for the court to apply national legislation in respect of the suppression convention proposals. Secondly, the cases of forums which have already dealt with cases involving individuals and states eg, the Iran/US. Claims Tribunal also supports this idea.

A number of lawyers views have been published since the Commission's Draft in 1993.¹⁸ Bassiouni in 1986 had already pointed to the fact that there are over 300 international instruments, conventions and international agreements¹⁹ and this number is growing by the day. He thought that the need for an international criminal court revolved around three issues:

Whether the tribunal can improve co-operation in international law enforcement, add to the capabilities of the various nations in matters of international criminal law, or contribute in any incremental way to the solution of international and transnational criminal law problems by improving current practice and enhancing the effectiveness of all concerned?

Would the recommended system have a better or equal chance of operating as effectively as the best existing systems of national criminal justice?

Will the recommended system improve efficiency and co-operation without causing additional problems of a magnitude as great or greater than the solutions it presents.

He also outlines his views on the jurisdictional bases of the proposals which he believes can be divided into three areas.

- (1) The court could act as conflict resolution mechanism over certain crimes in cases of concurrent jurisdiction and conflicts between national criminal

justice systems.

- (2) The court may have a concurrent jurisdiction with national criminal justice systems based on either:
 - (a) a loose concurrent jurisdictional approach.
 - (b) a transfer of criminal proceedings from a national criminal justice system.
- (3) the Court may also have exclusive jurisdiction with respect to certain offences, certain offenders or upon certain circumstances.²⁰

This view is much wider than that envisaged by the Commission. Anderson takes the view that even an international criminal court with a limited jurisdiction would have sufficient work to justify its separate existence from the International Court of Justice at the Hague, especially if the growth of narco/terrorism was to be included within its jurisdiction. The importance of the inclusion of this area of crime is also recognised by Gianaris but he also mentions money laundering, bank and securities fraud and white collar crime as being worthy of the Court's attention.

Conventional and customary international criminal law currently recognises more than twenty two categories of international and transnational crimes despite the difficulties of definition of international crime, experienced earlier by the League of Nations which had continued when it was succeeded by the United Nations. In 1972, the UN Secretary General Kurt Waldheim, asked the General Assembly to consider 'measures to prevent terrorist and other forms of violence which endanger or take innocent human lives or jeopardise fundamental freedoms.'²¹ Many difficulties were identified in the progress of this proposal not least that the General Assembly amended them to include a concentration on the causes of terrorism. This need to consider causes was a major stumbling block to the progress of this proposal. A subsequent proposal by the United States

which sought to extend the range of crimes to include acts not covered under existing international accords was put forward, but other state groups and in particular the Afro-Asia block opposed the draft. They were concerned not to hinder the colonial liberation struggle and wanted UN policy to support self determination for subject peoples. The irreconcilable views of the various member states caused the sub committee charged with considering the growing number of proposals arising to be unable to agree on any of the basic issues and therefore the good intentions of the Secretary General foundered.

The United Nations continued to fail to reach agreement on a general control of terrorism, however, they did manage to agree on two conventions on specific forms of terrorist action. The United Nations Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents was approved in 1973. It seeks to prevent the kidnap, murder or other attack upon the person or liberty of internationally protected persons or any attempts at such action, threats concerned with such action or being an accomplice to such acts, or the violent attack upon the official premises, private accommodation, or means of transport of such internationally protected persons. Even in this case the United Nations resolution sought to reserve the exercise of the legitimate right to self determination and independence..... by peoples struggling against colonisation, alien domination, foreign occupation, racial discrimination and apartheid²² which undoubtedly weakens the effect of the convention. The perennial problem of ratification exists and the convention has not been ratified by many of the member states.

Another area where vigorous international efforts have been made is that of aerial hijacking. There are a number of conventions concerning hijacking. These include the 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, which considered the question of jurisdiction if an aircraft should be hijacked during flight. The convention gives

the state where the aircraft lands the option of returning the hijacker to his/her state of origin or the state of registration of the aircraft. During the actual flight the convention places authority over the would be hijacker in the hands of the aircraft commander who is authorised to hand over the hijacker to the local authorities on landing.

The second convention concerning hijacking is the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft which made the hijackers subject to extradition to;

- (a) The country of registration of the aircraft.
- (b) The country where the aircraft with the hijacker on board landed.
- (c) The country whose citizens charter a plane without chartering the crew.

If the hijacker is not extradited he must be tried in the detaining country.

The third measure against hijacking is the 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation. This convention requires signatories to extradite or prosecute any persons who commit acts of sabotage or in any way damage or destroy aircraft, installations or air navigation services. The convention also covers acts of violence on board aircraft and the giving of false information that endangers the flight of an aircraft eg. bomb hoaxes.

Additional attempts by other international organisations to combat terrorism including the International Civil Aviation Organisation and the International Airline Pilots Association who undoubtedly lobbied member countries before the Bonn Summit of 1978 and proved that it might be possible to exert some influence on non compliant governments to suspend air services to and from those states if they failed to allow the extradition of hijackers.

The Bonn Economic Summit of 1978²³ produced a useful declaration covering this question which read:

The heads of state and government, concerned about terrorism and the taking of hostages, declare their governments will intensify their joint efforts to combat international terrorism.

To this end, in cases where a country refuses extradition or prosecution of those who have hijacked an aircraft and/or do not return such aircraft, the heads of state and governments are jointly resolved that their governments should take immediate action to cease all flights to that country.

The Regional Level.

Terrorism has an impact in many areas of the world and each has its own specific problems. Although there is evidence that regional initiatives are being taken across the world, the most advanced are those of Western Europe. This is due to the criteria of more advanced regional organisation including the European Community and the Council of Europe. It is also partly because Western Europe has in the past twenty years become the target area for a number of spectacular acts of terrorism which focused world attention on a particular cause. This may not have been the case if such an act took place elsewhere. Dr George Habash, the founder of the PFLP, pointed out that 'one death in London or New York brought more publicity to the cause than one hundred deaths in Israel'. It is also true that in some areas of the world, which are less politically stable than this region, the terrorist is probably viewed much more as a freedom fighter for a 'worthwhile' cause and does not always attract the label of criminal.

One of the major anti-terrorist conventions is the

Council of Europe 1977 European Convention on the Suppression of Terrorism.²⁴ On paper this convention strips many of the offences of the protection afforded by the 'political exception clause' which has dogged the effectiveness of the United Nations proposals. The Council of Europe Convention declares a number of offences which are immune to the effect of the exception clause including the hijack of aircraft, the use of bombs, grenades, rockets and automatic weapons, kidnapping, hostage taking amongst other areas. The Convention allows the detaining state to either extradite the offender or to prosecute him/her and on the face of it is a useful contribution to combatting terrorism. The major flaws are:

- (1) The question of ratification by the member states.
- (2) The fact that there are no enforcement provisions if a state fails to comply with it.

There are examples of member states who have put national self interest before international treaty obligations, no more clearly demonstrated than in Eire and the United States of America, the frequent refuges for the Irish Republican terrorists, where the judiciary consistently refuse to hand over those who have committed offences of murder on the ground of their act being 'a political offence'.

Paul Wilkinson has pointed out that 'the European Convention represents the optimal mechanism for European co-operation in the fight against terrorism, given the present condition of international relations'.²⁵ Clutterbuck however points out²⁶ that the Council had to insert two additional clauses to encourage member countries to sign the convention. These additional clauses can completely defeat the original laudable intention by allowing countries to refuse to extradite or deal with a terrorist. Article 5 states that 'there is no obligation to extradite if there are substantial grounds for believing that the accused person might be prosecuted on account

of race, religion, nationality, or political opinion' and article 13 allows a state, notwithstanding Article 1, to reserve the right to refuse to extradite for any offence which it considers to be political. The effect of these exceptions is that, in practice a state has no need to take notice of Article 1 if it considers that it is not in its national interest to do so. Article 14 of the Convention even allows a state to withdraw from it without notice. Finally, as an alternative, a country only has to go through the motions of prosecuting and acquitting to have complied with it.

Another area where there was some measure of agreement is the problem of hostage taking. During consideration by the ad hoc committee established to examine this area the Western nations sought to include the principle of aut dedere aut punire (extradite or punish) with no allowance being made for the question of political motivation in hostage taking. The eventual draft convention was adopted by the General Assembly in December 1979 but once again there are many nations who have still to ratify this convention. The dichotomy between terrorist and national liberation movements was long insisted upon by the Soviet and Third World Blocs and this was the main stumbling block during the considerations of the Ad Hoc Committee which prepared the Draft Convention. In any case there is a direct conflict between the provisions of this convention and Article 12(1) of the Geneva Convention of 1949 which recognises hostage taking as a legitimate part of the struggle of national liberation movements.

In other regional organisations there has been some measure of success in attempts to formulate agreements to combat terrorism. In 1971, the Organisation of American States (OAS) agreed the Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes Against the Person and Related Extortion That Are of International Significance. This convention concentrates on the murder of public figures and kidnapping for ransom. The convention allows the country having jurisdiction

over a particular incident to decide whether the convention applies or not. Once again the problem of ratification exists.

There are two major problems preventing countries coming to a common agreement in relation to the suppression of terrorist acts. Firstly the inability to agree on the ambiguous nature of the struggles of self determination and secondly, the unwillingness of some countries to give up the right to offer asylum to those who they accept have committed politically motivated offences.

The European Community Response.

The Treaty of Rome which established the modern European Community contains no obligations on its signatories to combat terrorism, or indeed, any other criminal acts which are outside the jurisdiction of the EEC's institutions. However it is the Council of Europe, whose membership is wider than that of the European Community, together with the Community, who are the two principle organisations who have attempted to address this area. Sevenster²⁷ in considering the impact of the EC legislation on national criminal legal systems, points to Article 5 EEC which she says, provides for a higher level of obligations and responsibilities amongst member states by requiring the duty of loyal co-operation between member states and the Community.

The Council of Europe Convention has been mentioned earlier in this chapter and is the basis on which impetus in the European Community became established through the European Parliament. The fact that all members of the European Community are also members of the Council of Europe ensured that the Convention was the basis of the work which needed to be developed further. The European Community first began to consider action against terrorism in 1976 but providing a common agreement on combatting terrorism has run into similar problems as were experienced by the U.N. Probably the most effective move by the

Community Ministers has been the establishment of the Trevi organisation which has in practical terms achieved a great deal in the combatting of terrorism in Europe. Best described as a forum rather than a committee, it was initially established in December 1975, when the Council of Ministers identified the need to provide a basis for greater European co-operation to combat terrorism.²⁸ The real question is how much effect terrorism has on a particular member country. Only certain member countries may suffer anything other than minor problems in these areas and therefore there may not be the enthusiasm to work on common measures in these areas. One of the problems for the community in dealing with this area is the different bases of legal systems across the Community. The establishment of a community policy would also cut across the already established principle of subsidiarity which is firmly established within the Community. The merits of this and other proposals failed to produce agreement on the way forward.

The Community considered six main elements in its 1976 deliberation:

the approval and acceptance of measures to apply to the EEC as a whole, similar to and adapted from the Council of Europe's Convention on the Suppression of Terrorism;

the adoption in the EEC, of a common system for the extradition of terrorists;

the consideration of the creation of a common EEC judicial area to assist the EEC's members in combatting criminal offences;

the encouragement of the study of problems associated with terrorism, including the abuse of diplomatic bags;

the need to impress upon countries, notably in the Arab or Third World, that have given havens to terrorists perpetrating offences on EEC member's 'territory', that trade and political relations with the EEC are, thereby likely to be endangered;

the need to act to promote more adequate firearm's control in furtherance of the European Convention on the Acquisition and Possession of Firearms

The member states adopted a cautious approach to the proposals, but were spurred on by pressure from members of the European Parliament who, after the freeing of the Entebbe hostages in 1976 adopted a resolution to combat international terrorism. In it they called upon the Foreign Ministers of member states, the Council and the Commission to coordinate energetically and without delay measures to combat international terrorism. Pressure within the European Parliament continued throughout the latter part of the 1970s. The failure of a number of member states to ratify the Council of Europe Convention because they were unwilling to compromise their national provisions further fuelled that pressure. Although the political arguments continue to rage over concerted action to combat terrorism by the European Community such as the recent French action which resulted in the 'extradition' of Carlos by the French authorities, a more practical co-operative mechanism in the form of Trevi and its successor, the K4 group had been established to sit alongside the European Community.

Because of increased terrorist activity in Western Europe in the early 1980s a number of preparatory discussions were held at the inter - departmental meeting of the EC on European co-operation on combatting terrorism in September 1972. In the Council of Ministers resolutions of 1/2 December 1975 the interior ministers of the nine members of the community decided

to hold joint consultations on public order issues.²⁹ This group became known as the Trevi group and its establishment was approved in Luxembourg in June 1976 where it established five working parties who were charged to meet at regular intervals and to submit proposals to the Council of Ministers. Working Party Number 1 was concerned with the drawing up of measures to combat terrorism.

This group set up a permanent computer/telex link including encrypted facilities, together with an Aroflex system. Much information on terrorists, group analyses and other information is passed through this network to the governments of the member states. The membership consists representatives of the Ministries of the Interior, police forces and security services and is answerable to those ministers in member states who are responsible for countering terrorism. The working groups meet at various levels including ministerial, civil service, and operational sub groups. Though outside the control of the Commission, its leadership changes in line with the twice annual changes in the Council of Ministers so that every country which has the presidency also has the Trevi Presidency. It is considered to be a success story³⁰ and a number of non EC member states have requested admission to Trevi. There are however, two major problems which inhibit the effectiveness of the organisation.

The first is the divergence of national interests which is common throughout all Community activity. One example is Britain's failure to convince other member states of the serious threat posed by Libya. The vested interests in that country by France, Italy and Greece has led to considerable reticence on their part to proposals to shut down all Libyan missions in Europe.

The second area is the lack of a proper common policy on counter - terrorism within the Community. This would require judicial integration of the kind that is some years away from

realisation and can be illustrated by two country case studies.

The West German Approach.

The problems relating to the definition of terrorism encountered by the international organisations in their attempts to provide solutions to this problem are equally evident on a national scale. If a government is able to possess sufficient consensual agreement it will be able to provide a legislative framework to allow its security agencies to combat terrorism within that state.

In the late 1960s the Federal Republic of Germany suffered from the activities of extremist groups including the Baader-Meinhof group. Changes in the Basic Law led to changes to the power of the Federal Parliament, court organisation, the assignment of judicial competencies, the control of the Federal Border Guard and the power of the Federal Government to issue instructions to the state (Land) authorities on the question of freedom of movement etc.³¹

One of the most severely criticised changes in the law known as the Berufsverbot was that established as a process for judging the suitability of individuals for employment in the German civil service. The regulations, designed to prevent subversive elements becoming part of the government structure could says Wardlaw 'contribute to a social climate in which terrorism flourishes'³²

Between 1974 and 1978 a number of amendments were made to the Criminal Code which significantly increased the powers of the security services in the area of counter - terrorism and resulted in West Germany having the most comprehensive counter terrorist legislation in Western Europe. Section 129 of the Criminal Code provided for up to five years imprisonment for anyone forming an association whose aims and activities are

directed towards the commission of an offence, or who participates in, recruits for or aids such a criminal association. An associated section of the same legislation also provides for imprisonment for anyone forming an association whose aims are specific crimes. These crimes are subsequently listed as murder, homicide, genocide, offences against personal freedom or offences constituting a public danger. Another section penalises the distribution of placards or texts that support an unlawful act. The German government also altered the Criminal Procedure codes in respect of the detention and trial of terrorist suspects allowing trial without the accused being present. This was aimed at preventing delaying tactics used by some of the accused by disrupting court proceedings and going on hunger strikes. The legislation also allowed the exclusion and surveillance of defence lawyers in certain circumstances. A contact ban between lawyers and their clients could be enforced for period of thirty days. The change in legislation also permitted searches, by the police, of entire buildings and the establishment of roadblocks to check identities

The danger became that the legislation coupled with police powers could be used to cover acts of political opposition short of terrorism and according to Clutterbuck³³ the German government 'have had to steer a course between popular demand for firm action and political and intellectual concern for civil liberties'. There is a need for balancing checks when such extensive legislation is enacted and it is true to say that it should be regularly reviewed to ensure that the need still exists. An analysis of the laws of other European countries revealed that similar provisions exist in many of them. Although the level of terrorist action within the German state diminished in this period there is no direct evidence that the legal measures were a major contributor to this reduction.

The United Kingdom Approach.

The United Kingdom, on the other hand was traditionally seen as being more tolerant to political dissent. Whilst much of the criminal law enacted in the United Kingdom dealt with a number of acts which could be terrorist by nature it enacted one major piece of anti terrorist Legislation, The Prevention of Terrorism (Temporary Provisions) Acts of 1974 and 1976. The 1974 Act was brought onto the statute book as a result of the Birmingham pub bombings in November 1974.³⁴ It was a hastily implemented piece of legislation which arose from the public outcry over this incident and the Bill was subject to only twelve hours debate in one single night in the Commons and the following morning in the Lords. Although it was subsequently criticised on a number of fronts, not least that it was passed with indecent haste, it had in fact been in preparation for some considerable time.³⁵ Its provisions were similar to an earlier piece of legislation, the Prevention of Violence (Temporary Provisions) Act of 1939 which had been introduced to combat an earlier IRA bombing campaign.

The major features of the Act were that it;

- (a) Proscribed the IRA and made display of support for it illegal. It also gave power to the Secretary of State to exclude from Great Britain, Northern Ireland or the United Kingdom persons suspected in connection with terrorism.
- (b) It gave the police powers to arrest suspected terrorists and detain them for 48 hours in the first instance with the possibility of an extension for a further five days authorised by the Secretary of State. At a port or airport, the police were empowered to detain suspected terrorists for up to seven days in the first instance, with the possibility of an extension authorised by the Secretary of State.

- (c) It gave the police powers to carry out checks on travellers entering or leaving the United Kingdom.

The Act came in for a good deal of criticism from the civil liberties lobby. The 1976 Act which replaced its predecessor made little change to the legislation but introduced additional powers to prevent the soliciting of funds for terrorism and the withholding of information about such acts. Because of the criticism levelled at this legislation the Government asked Lord Shackleton to review its operation. In his 1978 report he recommended that the legislation should continue in its present form.³⁶ In 1979 an additional Order was introduced to restrict the time limit a person could be held at a port or airport to 48 hours in the first instance, bringing it into line with the other locations catered for by the Act. Additional legislation added the Irish National Liberation Army to the category of proscribed organisations. Although the legislation is still in place and subject to regular parliamentary review, despite criticisms from such organisations as Liberty concerning the rights of the detainee, many writers including Clutterbuck and Wilkinson argue that the legislation is justified in the circumstances and that British legislation is suggested as a model for other countries experiencing similar problems.³⁷

Viscount Colville of Culross QC carried out the annual enquiry into the effectiveness of the Prevention of Terrorism (Temporary Provisions) Act 1989 for the year 1992 concluding that there was a general case for retaining a police presence at borders whatever the outcome of EC negotiations over frontier controls. He further concluded that in addition to the POT function 'the prevention of crime and the safety of passengers and crew in airports and ships are matters to which the police should attend and which all travellers demand'.³⁸

The 1994 Parliamentary Session saw perhaps the most fierce attack yet on some of the provisions of the legislation

with the opposition calling for a review³⁹. In the debate on the 8th March 1994, Tony Blair, the leader of the opposition, said that the opposition objected on two grounds, firstly they objected to the provisions for making exclusion orders. Secondly, he sought assurance from the Home Secretary that the section relating to judicial intervention in relation to detention was in accordance with the European Court ruling. The Home Secretary, Michael Howard, said that the 'powers are necessary for the fight against terrorism, the police think so, I think so'. Mr Blair queried why the provisions were entitled 'temporary' when they did not appear to be so. He highlighted the fact that Lord Jellicoe, in his review in 1983 had been critical of the exclusion orders. He also noted the findings of the last review held in 1987 when Lord Colville repeated the earlier view of the 1985 review which also criticised the same area.

Others will maintain that the legislation violates the traditions of British law and has been used as "fishing expeditions" by the police for the purposes of intelligence gathering and question whether the situation cannot be dealt with in some other way without the need for legislation which departs from long held common law principles.

This legislation is subject to an annual review by an independant assessor before being placed before parliament for renewal. The chairman of the Bar Council John Rowe, carried out the review of the legislation and its effect before the 1994 parliamentary review. The opposition are currently expressing the view, that whilst not being opposed to the necessity for and general principles of such legislation, the power of the Home Secretary to authorise the holding in custody of a person for longer than is permitted in other cases should be handed over to a judge.

Conclusions on the Effectiveness of the Various Legal Measures.

The necessity for a departure from long established legal principles , in the name of countering the threat of terrorism brings criticism from the civil liberties lobby due mainly to the removal of rights accorded within both legal systems in respect of consultation with and representation by a lawyer. There is no doubt that strong legislative measures are needed in order to boost public confidence in order to combat terrorism.

The question as to whether such legislation is really effective is a different issue. The annual figures⁴⁰ relating to the detention under the POT powers in respect of Irish Terrorism at Ports and Airports in this country over the past three years has not exceeded fifty three cases annually and appears to be falling. Of those figures only 10-15% of those held are detained beyond 48 hours. Whilst the use of POT powers in respect of other suspected international terrorists amounts usually to less than ten detentions per annum. The number of exclusion orders made at ports and airports annually also remains in single figures. Although this shows that the number of times that the powers are used in anger are very small, it is more difficult to measure the deterrent effect of such measures. The recently agreed ceasefire in Northern Ireland will, no doubt, lead to calls for the Prevention of Terrorism powers to be modified in the future. The need for continuous review of such emergency legislation is beyond doubt. In the United Kingdom the legislation is subject to annual parliamentary review, which provides a necessary safeguard against the unwarranted continuation of such legal measures.

One of the major obstacles to the creation of an effective international legislative mechanism against terrorism is the self interest of a number of states who would wish to pick and choose which individual acts they would define as terrorism and which as legitimate fight for the right of self

determination. The failure to agree wholeheartedly on a common definition of a terrorist act has been the major stumbling block to such measures.

The fact that internal frontier controls have been removed as a result of the European Community measures has undoubtedly alarmed those law enforcement agencies responsible for combatting terrorism within member states. In the Home Affairs Committee evidence on Practical Police Co-operation in the European Community⁴¹ ACPO said, 'It is anticipated that organised major crime and the numbers of travelling criminals will increase, with terrorism an illegal drug trafficking being major concerns.' Many countries look to the Schengen Agreement and the Maastricht Agreement to give them the necessary legislative and practical tools to allow them effectively to compensate for the freedom of movement of persons within the Community.

Policing Systems to Combat International Terrorism.

The various types of co-operative mechanisms were investigated by Benyon et al⁴² who suggested that co-operation exists at several levels. They thought that operational structures of police and co-operation over practice, procedures and technology existed at a 'meso' level whilst co-operation concerning the prevention and detection of particular crime problems exists at the 'micro' level. Benyon⁴³ clearly shows that a important feature of police co-operation at the 'meso' level is face to face contact between middle-ranking officers from different countries. At the micro level, he identifies the 'liaison officers who are seconded from one country to work with their counterparts in another country, especially in the field(s) of terrorism.....'.

He goes on to say that there are considerable opportunities for micro level initiatives, but that these depend

on successful networks which tend to exist at the 'meso' level. In relation to Trevi he cites the work of that forum as establishing, at the meso level, co-operation between police forces. He also rightly highlights the fact that through the Trevi meetings, the development of personal relationships enhances the chance of co-operation.

Robertson also examines police co-operation from an intelligence point of view. He argues that an 'intelligence approach', the strategic analysis of information, requires that communication takes place through a central body.⁴⁴ He also recognises that different forms of criminal activity may require different approaches, some more strategic and others more tactical. He identifies the main forms of police co-operation between European countries as being Interpol, Trevi, the Schengen System and Europol. He concludes that the challenge to European co-operation is to create an intelligence system, a central analytical agency which can take a more strategic view of crime.⁴⁵

A view echoed at the political level by President Mitterand during a state visit to Madrid on the 10th March 1987 said in a communique, 'Since terrorism is international, investigation, prevention, repression and sanctions should also be international.'⁴⁶

Trevi provides an effective forum and communications system on a governmental level providing communication channels between governments on the common problems of international terrorism. The formal co-operation channels established by nationally based police forces and security organisations within the Trevi group is well advanced. The creation of a Europol intelligence organisation has just begun to gather pace with first efforts being made in the exchange of drug related intelligence and one can see the possibility of the establishment of an operational pan european arm for the future with some responsibility for the co-ordination of anti-terrorist

operations.

However if one scratches the surface of cooperation in anti terrorist matters all is not well. As D Bigo points out, 'Behind the monolithic surface, only slightly marred by an occasional British or Danish outburst, there are serious struggles between countries and institutions to dominate the process'.⁴⁷ He says that each state is satisfying its own self interest in the process, which operates within a 'moving framework of alliances'.⁴⁸

Operating the TREVI Anti-Terrorist system in Britain

The Metropolitan Police Special Branch has historically been the lead agency to counter Irish Republican terrorism since it began in the early part of this century. Responsibility for some of this area has recently been handed over to the security service. Since 1977, the international co-operation in police terms has been carried out through the European Liaison Section of the Metropolitan Police Special Branch. This unit, with only a modest staff complement maintains daily contact with its European counterparts and is the co-ordinating body for an encrypted facsimile network which serves not only the European Community Countries but also others in the greater Europe including Austria, Gibraltar, Finland, Iceland, Malta, Norway, Sweden and Switzerland. The office also maintains contact with the British Security Services and is an integral part of the Trevi mechanism in the United Kingdom. It provides through the facsimile system a more operationally based intelligence system than that of the Trevi network. It also is the hub of the associated organisation known as the Police Working Group on Terrorism (PWGOT) which provides a operational officers forum for officers in those member states who are concerned in the combat of international terrorism.

Contact between the various member organisations has

traditionally been on a personal basis, however since 1989, an exchange scheme has been in operation with the French Anti terrorist Force (UCLAT) whereby a British officer is based in Paris and a French officer in London at New Scotland Yard. Additionally, an officer from the German Federal Police (Bundeskriminalamt [BKA]) has been based in London. Other exchanges are now beginning to take place across Europe allowing the facility of direct personal contact in London and other capitals between officers of different countries all working in the field of counter terrorism.

The tandem growth of the Schengen Group with its accompanying Information System, from which the United Kingdom currently stands excluded, will allow the rapid exchange and sharing of information between members and this will have decided benefits for their police services, especially at frontiers. The system allows for the exchange of information about criminal matters including wanted persons and stolen cars, it also contains information on prohibited immigrants. This system is complemented by Sirene which facilitates calls for immediate operational assistance. This system operates from national offices staffed by lawyers as well as police officers to allow a check on the legality of the action requested. The progress of the implementation system has been held up by various individual concerns. Malcolm Anderson reports that 'France was the only country to ratify without delay However, the new 1993 right wing government in France caused considerable dismay in the Schengen countries and in the European Commission by adjourning sine die the abolition of frontier controls (because) of lack of confidence in Italian immigration controls and objections to the drugs policy of the Netherlands which facilitated the import of drugs into France'.⁴⁹ This put the process on hold for some considerable time and to this day there is still a delay in the final implementation.

The Maastricht intergovernmental conference was hailed as resolving a number of areas of disagreement amongst community

members but on the related subjects of home affairs and police cooperation according to Anderson 'the text.....was virtually a blank page on which a text would have to be written subsequently'.⁵⁰ The declaration confirmed the agreement reached at the Luxembourg European Council Meeting of the 28-29 June 1991 and affirmed support under the following headings:

- support for national criminal investigation and security authorities, in particular in the coordination of investigation and search operations.
- creation of data bases
- central analysis and assessment of information in order to take stock of the situation and identify investigative approaches
- collection and analysis of national programmes for forwarding to member states and for drawing up Europe wide prevention strategies;
- measures relating to further training, research, forensic matters and criminal records departments;

This approach served only to raise the issue of police cooperation higher on the agenda.

Interpol and its role in Counter - Terrorism.

On a truly international level, the International Criminal Police Organisation (Interpol) has traditionally removed itself from involvement in the area of Terrorism. Since its virtual inception and despite the fact that it does not have a truly operational arm, it distances itself from the need to become involved in assisting its members in the prevention and investigation of this area of crime.

Article 3 of the Interpol Constitution forbids the organisation's intervention in cases of a political, religious or racial character. This caused it, for many years to consider that it was unable to assist in cases of politically inspired terrorism. However the growth of aircraft hijacking in the 1960s caused the 1970 General Assembly in Brussels to pass a resolution accepting that it had a role to play in this area relating to the circulation of information on such activities.

Interpol continued to try to develop its competency in the 1971 Vienna Assembly by a resolution in relation to letter bombs, terrorist murders, hostage taking and bombings and appeared to suggest regarding them as ordinary criminal offences. However the Executive Committee of the organisation failed to motivate the implementation of this proposal. Despite the fact that Interpol, on the face of it, appeared not to take this matter further, it became clear during the early 1980s that its communications network was used to channel information concerning terrorism and every six months issued circulars concerning hijackers and wanted terrorists. By 1985 the total number of persons circulated in this manner came to in excess of four hundred names. This was increased to over five hundred after the 1984 Luxembourg General Assembly said that the organisation should deal with a number of terrorist offences.

A major change in the organisation's position occurred at the 1984 Luxembourg General Assembly with a resolution entitled 'Violent Crime Commonly Known as Terrorism'. One of the principles of Article 3 of the statutes of the organisation was a requirement that acts must have a preponderant political, religious or racial character to fall within Article 3. The 1984 found that it was impossible to define preponderance and that a case by case approach needed to be adopted. Certain cases which were labelled as crimes by national legal systems were found to fall under Article 3, however political motivation itself was not regarded as sufficient to bring the matter within the ambit of that article. The resolution also recognised that actions having

no direct link with the country or cause of the perpetrators did not fall within the article. Examples of the latter include killing police officers, taking hostages outside the "conflict zone" and when bombs injure innocent bystanders. In the final analysis, when a dispute exists between an NCB and the Secretary General his decision is final. The diffusion of information aimed at preventing terrorist acts also comes within this principle.

The result of this resolution was the establishment of an international Terrorist Unit within the General Secretariat in 1986. This unit were responsible for drafting a guide setting out the basis for sharing terrorist related information amongst member countries and was approved by the 1986 Belgrade General Assembly.

Many of the Western member states including the United Kingdom have reservations about the use of the Interpol communications network for the dissemination of message concerning terrorism, whilst other are happy to use this system. Those that have concerns about this means of passing sensitive information across the world cite two main reasons. The first concerns the variety of nationalities within the organisation, some of whom , in the past have supported and provided safe haven for terrorist groups eg Libya, Syria and Iran. This can be in part countered by the fact that the modern Interpol communications system allows for the selective dissemination of information to particular individual or groups of countries. The second concerns the fact that members of staff within Interpol National Central Bureaux do not have the same level of security clearance as those working within the counter-terrorism field. This however can be resolved by providing that level of vetting for those in the NCB who would handle this type of information. However the NCB systems are not fully utilised, especially in the United Kingdom where the alternative PWGOT or Trevi communications systems are preferred.

Conclusion

One can see from the previous attempts by international bodies that there is a great deal of difficulty arriving at a common policy in relation to terrorism. The major sticking point is to reach agreement on the definition of a terrorist and to differentiate that from a freedom fighter. Generally speaking, the western nations have a greater degree of accord on this matter than the developing countries where perhaps armed struggle by various factions within their own borders is a feature of everyday life. Even when there is some common ground to be reached, such as in the area of aircraft hijacking, once agreement has been reached and a Convention produced, many countries who are members of the organisation remain reticent about ratification of such agreements thereby reducing their effectiveness.

Within Europe, where perhaps there is less of a problem over the definition of terrorism, greater progress has been made through the Trevi network than probably anywhere else in the world on the practical front. Add to this the advances in practical co-operation between police and security agencies in Europe, made through the PWGOT, the Schengen accord and the future Europol and one can see the emergence of the possible practical advantages of international co-operation in this area.

Much of the enthusiasm for both Trevi and the PWGOT comes from the United Kingdom government, probably motivated by the constant threat that this country experiences from Irish terrorism over a number of years. Helped on by the range of terrorist activity in the mid 1970s across Europe, this undoubtedly spurred the European partners into agreement over common action in this area.

The reservations held about the use of the Interpol communications network as expressed above, where a number of alternative methods of communication of counter-terrorist

intelligence are used can lead to confusion. The reservations expressed about the integrity of the Interpol system appear not to be as well founded as they appear, but probably influenced the establishment of the current Western European networks which are specific to this area of work.

Assessment

The international, regional and national legislation treaties and agreements, together with established and emerging co-operative law enforcement structures which have developed in the various countries and across varying organisations have had differing levels of effectiveness in combatting terrorism on an international scale. Those countries who are most concerned and most affected by acts of terrorism have, in the past, enacted some fairly draconian measures to combat the threat. These measures have been criticised on civil liberties grounds but one has to measure the need for such measures and their effect against the severe effects of a terrorist campaign in a particular community. There is no real way of measuring the effectiveness apart from the number of terrorists intercepted or terrorist acts thwarted by the various police and security agencies through exchanges of intelligence and joint operations. As has been shown earlier, UK figures show that the use of such measures is relatively rare. The measures that are currently in place, such the Prevention of Terrorism legislation, might be more for the purposes of satisfying the symbolic level of policy rather than being of any practical use to police and other organisations whose responsibility is to combat the terrorist threat.

Regional and international efforts have however not been as successful as national measures because of the lack of support from some members of the various organisations. There is however, an established need to pursue the goal of international action in order to protect communities from terrorist attack. The establishment of an international criminal

court is one way forward to ensure that effective measures can be taken against terrorists showing the international abhorrence of such acts. New proposals by the International Law Commission appear to be moving toward suggesting that not only should there be established an international criminal court or tribunal to deal with war crimes but also have jurisdiction to deal with a wider range of issues such as the trial of General Noriega.

In terms of practical police cooperation there has been more progress than in the legislative area. The various operational and intelligence networks such as Trevi, PWGOT, Schengen and Europol need to be assessed and developed to allow the building up of confidence amongst the participants, which will allow the intelligence flow to increase.

The need for international legislation to combat terrorism has been on the agenda of many international and regional organisations over the years without much success. The greater success levels have been achieved on the inter agency law enforcement front, through the recognition of the need to have rapid responses to requests for assistance in terrorist cases. These include cooperation in the identification of those responsible for the Lockerbie bombing and the murder of the Australian nationals at Roermond. Cooperation through the PWGOT and Trevi networks taking place on a daily basis with each member sharing intelligence as well as offering practical support where appropriate. The success in this area has been developed mainly as a result of the high priority of terrorism on the political agenda.

The intergovernmental Trevi communications system which links police and security services across the Community is one of those specific areas which may not be made available for other types of international cross frontier crime. However, the practical liaison initiatives and personal communication channels which have undoubtedly grown up alongside the Trevi initiative could be tested in those other areas.

The support for that development into other areas needs to be present on the political level. Although there has recently been a more open attitude within the various parts of the police service, the Special Branch units which deal with terrorism have, in the past, tended to stand back from the majority of their colleagues because of the perceived need to guard details of their intelligence and operational methods from other members of the service.⁵¹ It is because of this self imposed isolation that there could be a problem in the sharing of co-operative techniques which have been developed over recent years. These principles will however, be carried forwarded to be tested against the developing case study areas.

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CHAPTER FOUR

The Other Established Area of International Cross Frontier Crime -Drug Trafficking.

'.....national and international action to combat drug abuse and illicit trafficking requires not only continuing enhancement of the efforts to reduce the illicit production, supply and distribution of narcotic drugs and psychotropic substances, but also calls for urgent measures at the national and international level, to reduce the illicit demand for drugs.' Declaration of the World Drugs Summit April 1990¹

Certain factors ensure that drug trafficking has all the characteristics of an international crime problem. These include:

Most of the drugs that are in common use today cannot be produced in a temperate climate such as that which exists in the United Kingdom or Western Europe. Many such as cannabis, the coca plant (source of cocaine) and the genus of poppy which through the production of opium becomes heroin, require a tropical environment for their successful cultivation.

However, the majority of the 'customers' for these products live in more temperate climates and there naturally follows a process of export and import of the drugs in order to satisfy the market. In addition to the import and export of these products there also needs to exist, an international network which ensures that the necessary payment, whether in goods or cash reaches all levels of the chain in order to ensure its smooth operation.

The Growth of the Drug Abuse Problem.

The first realisation of the existence of a drugs problem in the western world began to emerge at the close of the nineteenth century. Reaction to providing a solution to the problem was slow in the first half of the twentieth century. For example in Britain, it was not until the 1960s that the government appeared to acknowledge the full impact that the use of drugs was beginning to have on certain sections of the community. Dorn South and Murji² clearly identify the development of drug markets from the 1960s to the 1980s. Between 1959 and 1960 the number of registered drug addicts increased seven fold to 437. In the next five years it jumped dramatically to 8,089³ which was almost a twenty fold increase.

In the United Kingdom in the early 1960s there was a rapid increase in general awareness of drug misuse, especially by the young who were encouraged to follow examples in this area by various cult figures including pop stars. In one year, between 1959/60 the number of registered addicts rose alarmingly by approximately 600% and changes in the pattern of drug misuse prompted the introduction of the Dangerous Drugs Act 1964 and the Drugs (Prevention of Misuse) Act 1964. The prevalent drugs changed to cannabis and amphetamines which were widely used by the young in discos and clubs. Additional drugs were added to the lists covered by the Act as the profile of the drug abuser became more and more overt.

Official statistics in the annual HM Customs and Excise Drugs Brief show that the number of drug trafficking offences dealt with in this country, has risen substantially in the last fifteen years, 2,000 in 1977 rising to 5,200 in 1987⁴ and this rise is continuing into the 1990s, reaching 13,809 by 1992⁵. However this rise appears to be mirrored in countries across the world. The development of supply routes from producer countries to consumer locations has undoubtedly had an effect on the availability of many drugs. Because larger quantities of certain

drugs including heroin and cocaine have reached the market place, they have become more freely available to the consumer and in some instances the price has been forced to drop. One example of this was in the late 1970s when the Iran began to use heroin as a currency to obtain foreign capital for its new regime, following the fall from power of the Shah.

Additionally, the import into western nations of South East Asian heroin in a form which did not require it to be injected into the body undoubtedly caused an upsurge in the use of this drug. During the late 1970s, the use of heroin showed a rapid increase across Europe and Asia and this forced governments to consider, as a matter of priority, the question of international co-operation in many areas including enforcement.

Cocaine use is another area which has shown a marked increase in recent years, originally a drug used only by the rich it has become much more widely used across the whole spectrum of social classes, partly due to its increased availability. Clutterbuck⁶ points out that 'the Colombian drug cartels, of whom the most powerful is based in Medellin, have distribution centres in London, Amsterdam and other cities.' There are enormous profits to be made from the production of drugs for the market. This especially true in the case of cocaine where the raw materials cost somewhere in the region of £140 to produce 1kg of cocaine, which when sold on the open market will be worth in the region of £70,000.

The problems encountered from drug addiction which reach their tentacles into many areas of life including health, other areas of crime including corruption, murder, theft etc, have caused the governments of many countries together with their law enforcement agencies to recognise that the traffic in illicit drugs is an important social problem. Many political fora have considered the drug trafficking problem.

In this country the most recent in depth consideration by parliament was the 1989 Home Affairs Committee work on Drug Trafficking and Related Serious Crime⁷, which included consideration of a report submitted by the Metropolitan Police which stated 'There is ample evidence to show links between drug trafficking and related serious crime'⁸. The Drugs Squads are readily identifying individuals and groups of criminals who have considerable expertise in other areas of crime such as armed robbery who are involved in drug trafficking. There is also evidence that will be expanded upon later that there are linkages between drug trafficking and fine art theft, where stolen art is often used as currency for the purchase of drug supplies. Additionally there are linkages between drug trafficking and the theft of motor vehicles, which often results in a 'rung' stolen motor vehicle being used in the transportation of drug supplies.

In the same enquiry, Deputy Assistant Commissioner Crawshaw, the head of Specialist Operations (Crime) in the Metropolitan Police, told the Committee that he thought 'we should first of all be looking at Europe, because in policing terms, Europe is the problem'.⁹ He went on to tell the Committee that the vast majority of drugs coming into this country, other than those coming direct from America, come from Europe, specifically Holland and Spain.

Drugs supply has, because of the enormous profits to be made, a powerful corrupting influence. This has been seen in a number of South American producer countries, where the government has in the past turned a blind eye. According to Clutterbuck, 'The Colombian drug multinationals are likely always to be able to find some who will succumb to the threat of death or the lure of bribes in the ranks of politicians, officials, police officers, bankers, business people and judges.'¹⁰ Because of this corrupting influence, the delivery of an international agreement to fight the supply of such drugs has proved very difficult.

Often, the supply of drugs reaches its tentacles into what is otherwise legitimate business through the money laundering process. In the past banks and businesses have, perhaps unwittingly, laundered the profits of drug trafficking into property and other areas. In the case of the collapse of the Bank of Credit and Commerce International there seems to be indications that it was operating, perhaps without real knowledge, in this area. In the evidence of the Association of Chief Police Officers to the Home Affairs Committee in a letter to the Clerk of the Committee from the Staff Officer to the Crime Committee states, 'It is known that many criminals are recycling the profits from drug trafficking into other high profit enterprises, such as the purchasing of night clubs, public houses and private properties, and thus not only laundering their ill gotten profits but invariably doubling them in the process. Background enquiries have resulted in establishing that certain drug dealers have, in fact registered their own limited companies with themselves named as directors.....'¹¹ It is for this very reason that the most recent legislation concentrates on attacking the profits of drug trafficking which is seen as the most effective way to combat the problem.

Drug trafficking appears, at first sight, to be an area which is capable of at least unanimous 'prohibition' approaches. It differs from terrorism in that drugs trafficking is not subject to the same type of philosophical debate as that experienced over the definition of terrorism. The other factor is that drug trafficking is rarely carried out for any sort of ideological reason. It is a profit motive which drives the many of the participants.

The Development of Legislative and Conventional Initiatives

The International Level

The first real international agreement to combat drug

misuse was the Hague Convention of 1912 which encouraged all participating nations to co-operate in international measures against drugs distribution and to take steps to curb the non medical use of drugs in their own countries. Three years later, only China and the Netherlands had ratified the Convention. The principles of this Convention became enshrined in the Paris Peace treaties in 1918 which meant that the signatories of the latter treaty also ratified the terms of the Convention.

The United Nations encouraged member states to stem the flow of drugs and attempted to co-ordinate international effort. As early as 1971, the Convention on Psychotropic Substances contained an Article which sought to create programmes to deal with demand reduction. Many countries, especially in Asia and South America, had a substantial dependence on the production of drugs in agro economic terms and through the United Nations Fund for Drug Abuse Control (UNFDAC) it sought to create schemes which would allow the farmers to substitute other crops for drug products. It also produced schemes for the rehabilitation of drug abusers and maintained close contact with the drug producing countries.

The United Nations body UNFDAC was established in 1971 and is funded by government and private contributions to assist in combatting the areas of production, trafficking and misuse of drugs. The International Narcotics Control Board was established in 1991 as a result of the United Nations Single Convention on Narcotic Drugs. It seeks to control the various aspects of opium and its derivatives.

In December 1984 the United Nations General Assembly instructed its Economic and Social Council (ECOSOC) to request the Commission on Narcotic Drugs to prepare a new draft convention to include a broad consideration of the drugs problem as it existed at that time, together with particular measures to cover those aspects which had been omitted from the 1961 and 1971 conventions. Thirteen of the fourteen elements of the proposals

were concerned with law enforcement. These included a proposal to allow 'controlled delivery' as a valid investigative technique together with the 'identification, tracing, freezing and seizure of the proceeds of drug trafficking'. Controlled delivery is where a consignment of drugs has been discovered in transit and it is allowed to continue, under surveillance, in order to identify its final destination and as many of the principals involved as is possible. Many countries, for a variety of reasons commented negatively about the proposals, considering the provisions to be unenforceable. In order to maintain the interest among member states in this proposed convention, the Secretary General convened a ministerial conference in Vienna where delegates from 138 of those states attended. Despite the objections raised previously, at this meeting a number of wide ranging measures were agreed. These were listed under thirty five targets which covered four main areas:

- prevention and reduction of the demand for drugs.
- control of supply.
- suppression of trafficking.
- treatment and rehabilitation of addicts.

Also included, was a political commitment to the strengthening of law enforcement.

The Vienna Convention was signed in December of the following year. This was probably an important turning point in the area of international cooperation. It requires the signatories who have ratified it to impose more rigorous controls to catch drug traffickers, to seize their assets and to mutual judicial cooperation in prosecuting them. The success of this convention is dependant on, amongst other things, the willingness of the twelve central banks to carry out the spirit of this convention.

The Economic and Social Council (ECOSOC) of the United Nations is responsible for the formulation of overall policy of

that organisation in respect of drugs misuse and is assisted in this capacity by the Commission on Narcotic Drugs (CND). One of the functions of the Commission is to vary the list of drugs under international control. together with advising other UN bodies on drug related matters. Through subsidiary bodies the Commission coordinates the UN fight against drug matters at a regional level.

At the G7 Summit in Houston, Texas in 1990 the heads of government present agreed to the creation of a Chemical Action Task Force with a mandate based on Article 12 of the Vienna Convention. This sought to prepare measures to limit the availability of chemical precursor to drug production.

The United Nations sought to rationalise the drug policy in 1991 by the creation of the United Nations International Drug Control Programme (UNDCP). With the increasing number of treaties emerging across the world, this new body is intended to co-ordinate international effort and avoid duplication of effort. Its three main tasks are treaty implementation, policy implementation and operational matters. Waymont suggests that ".....it should not be in a hurry to produce new treaties as those that already exist have, as yet, not been fully implemented and supported by member nations." ¹²

The Regional Level

In 1971 the Council of Europe established the European Group to Combat Drug Abuse and Illicit Traffic in Drugs, which is usually called the Pompidou Group. Its purpose is to co-ordinate work on drugs including drug related crime. Britain has had an involvement in this group. The group's membership included those countries who are member of the European Community together with Austria, Cyprus, Czechoslovakia, Finland, Hungary, Malta, Norway, Poland, San Marino, Sweden, Switzerland and Yugoslavia. Since 1986, the European Commission has also become

involved in this group which forms part of the Council of Europe. It has no executive function, merely providing a forum for the exchange of ideas. However, one of its earliest achievements was that following discussion on the tracing and seizing of the assets of drug traffickers, member states began to introduce national legislation to combat this area and the principles pre date but were later incorporated into the Vienna Convention in 1988.

Also in December 1988, the Central Banks of twelve countries including Canada, France, Germany, Italy Japan, United Kingdom and signed the 'Declaration of Basle', which commits them to identifying the sources of clients funds and those clients, refusing suspicious transactions and cooperating with judicial enquiries.

Trevi has branched out from its original purpose of anti terrorist measures and now considers drug trafficking through its third committee which is also charged with considering serious crime. Membership of Trevi which has now been superseded by the K4 group after Maastricht, is currently limited to members of the European Community but other states have, in the past, been invited to attend the meeting and these include the United States of America, Canada and the Nordic Countries. It is through this organisation that plans for the establishment of the European Drugs Intelligence Unit (EDIU) have been planned. This Unit now exists at the Hague and although not subject to a Convention at this stage it is being run under the auspices of an inter ministerial agreement during its developmental stage although the signing of the convention is expected to take place in the next twelve months.

The European Community became a party to the Vienna Convention on the 30th December 1990. It recognised its competence regarding chemicals crossing frontiers as a matter for itself. The Council of the European Community adopted measures to implement Article 12 of the Convention in December 1990, in

respect of trade with countries outside the Community and the Regulation came into effect in July 1991 and is binding on all member states.

There has been, therefore, some duplication of effort between the various intergovernmental organisations involved in combatting drug trafficking and it is difficult to identify a single drug strategy.

The United States is in forefront of the establishment of bilateral agreements in the drug trafficking field, however the United Kingdom has also taken action to combat this problem. The success of such British efforts is particularly apparent in the money laundering area. Agreements have now been signed with nine countries with a further thirteen which have been signed but awaiting an Order in Council to make them effective. Additionally some twenty eight countries have been designated by the United Kingdom as a result of ratifying the Vienna Convention of 1988. The treaties allow each country to assist the other in respect of investigations and proceedings in respect of drug trafficking including the tracing, restraining and confiscation of the proceeds of such activities.

The European Ministers of Justice were responsible, under the auspices of the Council of Europe, for the setting up of the Select Committee of Experts on International Co-operation (PC-R-SC). This group is composed of experts from the majority of European countries together with observers from Australia, Canada and the United States. They considered the applicability of European Penal Law Conventions to search seizure and confiscation of the proceeds of crime, with particular reference to drug trafficking. In 1990, as a result of their work, the Council of Ministers approved the text of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

On an international level therefore, it can be seen

there is more of a consensus about the need for legal agreements relating to drugs than there is for terrorism. This is probably because the perception of the threat from drugs is common across the European states and does not involve the same considerations about the legitimacy of certain types of 'terrorist activity'.

The international and regional legislative measures have given the signal to most western governments of the need to enact domestic legislation in a number of key areas in the fight against drug trafficking. These are:

in relation to the confiscation of assets believed to be connected with drug trafficking.

In respect of the monitoring and control of chemicals and precursors which are used in the production of drugs.

These are the areas which have created the greatest impact on the police fight against drug trafficking.

National Legislative Measures

The British Government was slow to implement the practical aspects of the Hague Convention as it believed that the misuse of drugs in this country was only on a very small scale. They began however, to legislate to control the supply of certain types of drug including cocaine and opium. Subsequently, morphine was also included and the resulting 'strict controls of the dispensing and prescribing of controlled drugs was regarded by the medical profession as bureaucratic, trifling and unnecessary'.¹³ The established principle of self regulation by the experts began to be challenged in this country and resulted in the Dangerous Drugs (Amendment) Act of 1923 which extended the search powers of the police and the penalties for dealing in drugs. The medical profession was still of the opinion that it was the best control of the problem and saw legislation as

unnecessary.

All the legislation concerning misuse of drugs in this country was, up until 1964, motivated by international conventions and not as a result of any real initiatives taken by the British Government. One example is the decision in 1955, to ban the manufacture of heroin in Great Britain which resulted from pressure by the United Nations.

The problem grew throughout the decade and additional legislation was introduced in an attempt to control the problem. The government began publicly, to acknowledge the scale of the problem. The progress of the Labour Government Bill in 1970 to introduce more comprehensive legislation to control drug misuse was thwarted by the General Election. However, the incoming Tory Government obviously recognised the need and introduced its own Bill which was almost the same as that of the previous Labour proposals. The new Bill sought to achieve a number of objectives including:

The identification of drug trafficking as a separate issue from possession.

The power to allow the Home Secretary to add additional substances to the list of those controlled by the Act without having to consult. .

The control of over prescription by doctors which was seen as a cause of addiction in some areas.

The power to allow the Home Secretary to demand information from pharmacists and medical practitioners.

The establishment of an Advisory Council to give guidance to the Home Secretary on the control of the misuse of drugs.

The resulting Misuse of Drugs Act 1971 remains the main anti drugs legislation in the United Kingdom today providing powers for the police and HM customs which allow both organisations to control the supply and use of drugs within this country.

A need to identify the substantial profits which were being made by importers and dealers of controlled drugs resulted in:

The Drugs Trafficking Offences Act 1986.

Designed to track, freeze and enable the confiscation of the proceeds of drug trafficking which is the major motive for most criminals involved in such activities, this legislative measure was unique in allowing the freezing of assets believed to have their origins in drug trafficking prior to the commencement of any proceeding. The Act also requires a Crown Court to issue a confiscation order in respect of each conviction for drug trafficking and permits the presumption that property transferred by a convicted person up to six years before the date of such a conviction is the proceeds of drug trafficking. Offences were also created to cater for persons, other than the principal in a drug trafficking case, who have dealt in any way with proceeds of drug trafficking by laundering them. The jurisdiction is extended to cover proceeds which are currently held abroad. It also prevents any person prejudicing an investigation.

The Act also included powers for Orders in Council to be made which would designate countries with whom mutual agreements relating to enforcement of restraint and confiscation orders had been made.

Under Section 24(3) of the Drug Trafficking Offences Act, banks and other financial institutions are required to

notify the National Drugs Intelligence Unit at the National Criminal Intelligence Service (NCIS) if they believe that transactions in a particular account are suspicious and the account holder may be involved in drug trafficking. This section relies on a voluntary system of profiling which is regularly presented to the finance houses at seminars involving all the interested parties. The information received from the banking houses is passed, for investigation, by the NDIU to a police or customs Assets Confiscation Unit for investigation. A comprehensive guide to identifying money laundering has been made available to every bank and building society since December 1990. This guide having been drawn up by a working group of all interested parties chaired by the Bank of England.

The Government did not consider it necessary to introduce measures to make such reporting mandatory, however the European Community Finance Ministers agreed on a directive which applied to anyone depositing more than 15,000 ECUs in cash, where there was a suspicion that the depositor was involved in a crime related activity. Finally the Criminal Justice (International Co-operation) Act of 1990 inserted an additional sub section into Section 25 of the Drug Trafficking Amendment Act to allow police and customs officers to detain cash about which there are reasonable ground for suspecting that it represents the proceeds of drug trafficking, or intended for use in drug trafficking. The lower limit for such seizures currently stands at £10,000 or its foreign currency equivalent.

In Britain, a Central Authority for Mutual Assistance in Criminal Matters was established within the Home Office to speed up the processing and transmission of requests for action of international enquiries. This authority is intended for use across the whole spectrum of international crime, but has particular use in the investigation of drug trafficking.

The enforcement agencies set up specific units to deal

with the asset confiscation side of the drug trafficking. The destination of such seized assets was originally the Treasury and they initially failed to consider, as a viable proposition, the system used in the United States of America where the seized assets were used for the financing of enforcement. However in 1989 the Government announced the establishment of a £1 million fund to meet some of the additional costs of drug investigation. Strict guidelines were established to enable money from the fund to be used in any future drug operation. In 1991 a Seized Assets Fund was announced by the Home Secretary, which is funded from assets seized under international agreements of which there were by this time seventeen such bilateral agreements. Other countries have adopted similar legislation in respect of money laundering so that virtually the whole of western Europe has complementary measures in this area.

However, the internal legislation to control the supply and use of drugs often varies widely as evidenced by the Netherlands which has a very lax attitude to the use of certain types of drugs, notably cannabis, which is freely available. This situation looks like it may well change in the near future with the Dutch proposing that there will be laws enacted to help to stem the tide of foreigners who are currently swamping the Netherlands because of their liberal policy. There appears to be almost unanimous agreement across the world that the trafficking and use of so called 'hard' drugs is something worthy of tackling whilst 'soft' drugs appear to be treated differently. This is, in some way, a similar situation to that of terrorism in that there are important differences in the definition of the threat depending on which country is concerned.

The major difference between terrorism and drug trafficking is the part played by profit in each activity. Drug trafficking is an activity which is almost entirely motivated by profit, in fact huge fortunes have been made for individuals and groups as a result of this. In the case of terrorism, profit is as a motive is usually absent.

The Development of Mechanisms to Control Drug Abuse.

The actions of DEA and growing evidence that the American market was becoming saturated with imported drugs, especially from the South American states caused concern in Europe, as evidence began to grow that new supply routes were being developed through Spain. This caused governments in Western Europe to begin to take notice of representations for legislative activity to prevent the movement of drugs in this particular area of the world. In this country the government introduced the Drug Trafficking Offences Act 1986 which had far reaching powers to combat the problem. Despite this major legislative improvement, its effect was minimal against the rising tide of drug importation and misuse. The number and quantities of drug seizures rose dramatically during the early 1980s and there was a similar dramatic increase in the number of registered addicts in the same period.

The Government and the Police both began to give serious consideration to the problem, the former producing a strategy document¹⁴ containing a five point plan for tackling drug misuse, whilst the latter conducted its own research through the Association of Chief Police Officers and produced the Broome Report 1986 which prompted the establishment of the National Drugs Intelligence Unit (NDIU), which sought to draw together the intelligence needed to tackle the drug traffickers. Additional assistance was provided by the existing Drug Trafficking Offences Act 1986 which allowed the seizure of assets of drug traffickers.

The NDIU was established to coordinate the efforts of the two major organisations, the HM Customs and the Police. Each organisation had its role defined in the first and second editions of the government's Strategy Document. The HM Customs were seen to be:

.....responsible for preventing and detecting the illegal import and export of controlled drugs, the investigation of

organisations and individuals engaged in international drug smuggling, and their prosecution..... In addition they follow up drugs which have evaded Customs controls and where there is a clear link with importation.

Whilst the Police were seen to be:

.....responsible for investigating offences of unlawful supply, manufacture and possession of controlled drugs.....

The third edition of the document added additional sentences to cover the spill over police responsibilities which then read:

.....Because of their general responsibility for law enforcement the police are involved in drugs trafficking offences linked to organised and other crimes which require investigation both in this country and abroad.....They work closely with foreign law enforcement agencies both in the conduct of operations and intelligence.¹⁵

The NDIU sought to increase the flow of information from producer and transit countries in order to be able to track consignments of drugs to their destination, by placing Drugs Liaison Officers (DLOs) in each of those countries which were seen as being of concern to the United Kingdom. The general rule was that the producer countries are the locations of DLOs who are customs officers whilst the transit countries are the responsibility of police DLOs.

Generally speaking, the DLOs are accommodated within the British Embassy of that country and have limited diplomatic status. The route for all intelligence was supposed to be direct to the NDIU in London, however experience showed that whilst police DLOs kept to this system there were a number of occasions when the customs DLOs provided information to their own intelligence network and it was some time before the NDIU became aware of the contents of that piece of intelligence. This

undoubtedly has caused friction within the NDIU where the ethos was certainly that all intelligence from DLOs should be shared equally.

The effectiveness of this network is now established and those DLOs spoken to by the author during fieldwork, do not see the location of the DLO in the Embassy as being particularly restrictive on their operations. Similarly, other nations have sought to become a part of this network and there are now a considerable number of DLOs from foreign states based in London, Some housed in their respective embassies whilst other are based at the NDIU. There is a general sharing of information by these officers within the NDIU.

In 1992 the NDIU became a part of the National Criminal Intelligence Service and moved its base from New Scotland Yard to a new location which gave it an identity which was quite separate from New Scotland Yard. 1993 saw the extension of this system with a move towards the establishment by the European Union of the European Drugs Intelligence Unit (EDIU) within the Europol organisation. Although there has been substantial hold ups in the process of establishing that organisation in the past year, the project has recently started to move forward again.

The Drugs Wings of the Regional Crime Squads in this country were established in 1987 as a result of the Broome Report¹⁶. They are responsible for targeting organised criminal groups who are involved in activities related to drugs. The intelligence for which , should come from the NCIS source. A number of their investigations have led to enquiries in other countries. These enquiries have been carried out with the full co-operation of law enforcement agencies of those other countries allowing for the successful tracking of controlled deliveries of drugs and the arrest of members high up within the drug dealing chains. A problem has existed in the past about the different objectives of the organisations, police and customs, working in this arena.

Another problem, although not directly associated with the NDIU, but involving an area of disagreement which has existed between the police and HM Customs is the facilitation of a controlled delivery. The aim of the police is undoubtedly the identification of the whole network of the distribution of a particular drugs consignment and this is facilitated by the tracking of that consignment from its origin or point of identification to the eventual supplier in this country. There have been problems in the past with obtaining the agreement of HM Customs to allow the consignment to continue from the port or airport in the form of a 'controlled delivery'. Undoubtedly, one of the concerns of HM Customs is the security of the consignment but in some areas that there seems to be an unnecessary lack of trust between the two services. The police have traditionally sought to identify the criminal network convict those persons, whilst HM Customs objective has been to effect the seizure of drugs and to remove them from availability to the public. However, according to Neil Dickens, the Executive Co-ordinator, Regional Crime Squads, speaking to the Home Affairs Committee enquiry into Drug Trafficking and Related Serious Crime¹⁷ 'the present management of the Customs just recently have announced that they are interested in quality rather than quantity'.

Every year the statistics relating to drugs seizures show a substantial increase eg. between 1986 and 1989 the figures relating to the total weight of drugs seized increased by over 100% from 25545kgs to 55872kgs¹⁸. Between 1988 and 1993 the customs authorities in the UK seized over 200,000kgs of controlled drugs with a street value of over £1 billion.¹⁹ There are two interpretations of these figures. Either the authorities are becoming more effective in preventing the importation of drugs or the problem is getting worse. The information on the streets indicates that the supply of drugs to the customer has not diminished, as evidenced by the constancy or fall in prices in some areas which suggests that the second presumption is probably more true. The United Nations Division of Narcotic Drugs (UNDND) estimated in 1987 that the

international traffic in controlled drugs was worth in the region of \$300 billion which is more than the combined external debt of Mexico, Brazil and Argentina.

Proportions of Total Drug Seizures Originating from or via EC states.²⁰

	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>
% of					
Heroin	13.3	24.4	58.3	91.0	92.0
Cocaine	35.7	65.2	3.4	6.1	15.5
Cannabis Resin	45.5	40.0	59.9	62.9	68.9
Cannabis Herbal	3.6	49.9	67.2	18.8	38.3
Synthetic Drugs	78.4	80.8	95.0	98.0	71.7

As can be seen from the above table, a large proportion of all illegal drug imports either passed through or originated from the EC states.

Many supply lines have been identified over recent years including the fact that:

Cocaine arrives from South America through Spain and Holland.

Cannabis resin arrives from North Africa across Europe
Heroin travels overland from Iran, Pakistan, Afghanistan and the Lebanon.

The Netherlands has long been seen as the drug centre of Europe due to its liberal attitudes in this area, but has, because of public pressure, begun to alter its position, although still not to the total satisfaction of its neighbours. A changed attitude has also taken place in Spain where since 1987 there has been a considerable crackdown in the coastal provinces which previously were known for being the transit location for the importation of drugs into greater Europe. European policy makers, whilst acknowledging the place of education and

rehabilitation have concentrated their efforts on identifying and pursuing every link in the supply chain from financing through manufacturing and growing to wholesaling and retailing.

Some of the third world producer countries are now beginning to adopt similar attitudes because they are seeing the emergence of a serious drug problem amongst their own people. In Thailand and certain other Far Eastern states draconian punishments, including the death penalty, have been introduced in order to stop the production and export of drugs from that area. In Colombia, once the mecca of cocaine production, the government in conjunction with the United States of America and others, has begun a campaign to eliminate the growing areas and production laboratories due to the corrupting effect the organisations involved were having on the state and the country as a whole.

The United Nations continues to involve itself in the fight against drug trafficking through the UNDND, the Heads of Narcotics Law Enforcement Agencies meetings which in some ways duplicates the efforts of Interpol through the European Drugs Conferences and the Customs Cooperation Council in the form of the Pompidou Group. Europe is perhaps over served by organisations connected with drug trafficking with overlaps between Interpol, the Trevi Group, the Pompidou Group and the UNDND. In other areas of the world similar duplication takes place.

The police and the customs service are not the only organisations involved in the combating of international drug trafficking. Many other state organisations across the world play their part including the use of the military eg. US military advisors in South America who have advised governments on operations aimed at the destruction of the coca crop. The United States Navy, Coastguard Service and the Drugs Enforcement Agency have often combined with an element of the Royal Navy to provide an interception capability in the Caribbean to prevent the

traffic in drugs reaching North America. In many other parts of the world this multi agency approach is used to combat what most governments agree is a very serious problem.

Interpol and its Role in the Combat of International Drug Trafficking.

Interpol claims²¹ to provide the only true international co-operative arena for operational police officers in the area of drugs. Drug trafficking is regularly included as an item on the agenda of General Assembly meetings. Interpol headquarters now contains a drugs sub division which is a part of the Police Division, staffed by about thirty officers from various countries worldwide. They are the focus of a world wide reporting system for drug seizures and they also analyse data collected from message traffic and other sources, producing circulars and modus operandi reports for use by NCBs.

The European members are the heaviest users of the sub division which is the most active of the three sub divisions within the Police Division. For this privilege those countries pay additional subscriptions. The sub division is divided into two major parts, the Intelligence Group, which as the name suggests is responsible for the collation and dissemination of intelligence and the Operations Group which is divided into six geographic regions and contains an officer who is responsible for liaising with countries in that region.

The sub division works in close co-operation with the Customs Co-operation Council organising joint conferences. Most of the activity of Interpol in the drugs field is in the routine circulation of case related information. It has, in the past, been criticised as being slow and being insecure. However, the improved technology, should raise its profile in this area. Many other networks and agreements exist because Interpol has failed effectively to fill a need. The organisation has suggested that its European Secretariat at Lyon would be the natural location

for the European Drugs Intelligence Unit which is currently in the process of being established in Strasbourg as part of the Trevi backed Europol initiative. Only time will tell whether the improvements in technology and performance which Interpol claims to have made will be sufficient to attract such a new organisation.

Conclusion

During the latter half of the twentieth century, there is little doubt that international drug trafficking has come to be considered as a serious threat to the general well being of most of the states in the Western world. A great deal of effort has been expended to prevent the international movement which feeds the habits of the users. The general trend is that the drugs are produced in third world countries and transported, often by circuitous routes to their eventual destination.

It has therefore become, in everybody's interest, to tackle the dealer and importer who bring death and misery to many, through the supply of these substances. The effort on the international legislative front has been to encourage countries to put in place, legislation to detect the dealing in drugs, through the identification and confiscation of assets created by this activity. Encouraged by the terms of the Vienna Convention of 1988, most European nations now have a similar piece of legislation in place, requiring banks and other financial institutions, to alert the authorities if they suspect that the profits of drug dealing are being deposited in their establishments. This legislative push has come through United Nations and European Community pressure to tackle this problem on a joint front. The acknowledgement of a commonality of approach by western nations targeted to hit the profit area in drug trafficking is the most substantial step forward in recent years. National legislation, in this country also seeks to combat the importation, supply and possession of controlled substances and it is mirrored in many other states.

The cooperative mechanisms, established in many countries in recent years, have grown from initiatives begun within inter governmental groups such as the United Nations, the European Community , Trevi and the Pompidou Group. The exchange of intelligence, the posting of officers in other countries and other joint efforts, with police and customs agencies, has begun to pay dividends in the control of the importation and transit of controlled substances. The improvement in Britain of the strained relationship between HM Customs and the Police over the primacy issue in this area is one that needs to be addressed urgently, if the problem is to be successfully tackled. However, this problem is by no means peculiar to the United Kingdom, and evidence has been found, of similar disagreements between various agencies in other European countries during this research.

Both the terrorism question and the international trafficking in drugs have become, in the past twenty years, high on the agenda of concerns in the political arena because both illegal activities threaten areas of political and social stability. This is the case, not only in the producer countries of South America and the Far East, but also in the receiving countries where the levels of drug addiction have placed additional burdens on medical, social security and other areas under government control. In the case of terrorism, considerable effort has been expended in attempting to draft and agree, international legal measures, be they law or convention, to combat specific areas of this problem. They have met with some degree of success in the small sector of aerial hijacking, but in other more general areas there has been an inability to agree on the definition of a terrorist act, which has caused the measures to fail to be ratified.

The need for legislation at the national level has been most intense, in areas where they have suffered most from terrorist attacks, but the need for some form of measures which transcend international frontiers is clear. In the drugs area, the consensus appears to have been arrived at much more easily.

The value of having a common set of legal measures is illustrated by the complementary measures in existence to capture the drug profits, thereby making an attempt to have an impact on the high profitability of this area of crime.

One of the driving forces behind the will to arrive at the common measures is because of the perceived need to protect the young people of today from what parents and others see as the greatest threat to their well being. The public are well aware of the fact that drug trafficking and addiction have serious side effects including the need to commit other forms of crime including burglary, robbery and theft in order to gain profit to invest in satisfying what becomes an uncontrollable need for drugs. Many examples exist where the reason for committing a series of burglaries by a juvenile offender is given as the funding of a serious drug habit. Secondly they see evidence of the fact that drug trafficking profits are often directed towards financing other areas of crime. Often stolen property such as high value motor vehicles and works of art are used as currency or investment by traffickers. An example of this is the recent theft of paintings from the Beit collection in the Republic of Ireland, some of which have been recovered during raids on drug dealers in Scotland and Holland recently. Additionally there were reports in the Times that the IRA had benefited from the theft of two grave stones from Ireland by an American by the name of Kenny.²²

In terms of law enforcement cooperative mechanisms, the prime need was for the establishment of successful means of exchanging intelligence and the mutual cooperation in joint operations. The Trevi and PWGOT intelligence network is very successful in Western Europe, allowing for the prompt exchange of information, which allows the agencies to combat terrorism. Building on the basis of the existing networks of Drugs Liaison Officers which have shown themselves, on many occasions, to be an effective system, the drugs intelligence network in Europe is about to move forward with the establishment of the Europol and

Schengen initiatives which are due to come on line in the near future. The exchange of officers in both fields has helped to establish better lines of communication and this needs to be developed, especially where problems relating to ownership of the intelligence have existed in the past.

The position of Interpol in both these areas is underdeveloped. In the case of terrorism, this has been due in part, to the constitutional restrictions, it has placed on itself in the past. It needs to be able to demonstrate its intelligence gathering and analyzing capabilities in both areas and to dispel some of the myths which surround some of its members.

Whilst the position in both areas is far from ideal, considerable progress has been achieved, through the impetus provided by governments and law enforcement agencies, both in the legislative and practical cooperation arenas. There is still room for substantial progress in both areas.

When moving into the areas of case study which follow, it will be necessary to consider whether legislative and law enforcement co-operative measures in place for terrorism and drugs could be equally applied to those areas. The need to develop topic specific legislation is an important issue. The anti terrorist legislation has run into serious problems because of the failure to agree on the definition of a terrorist and a terrorist act, each country having its own agenda on this subject. Whilst all countries would probably agree on the need for common action against terrorism, each appears at the same time to want to reserve its own position on legislative action.

In the drug trafficking arena, more progress has been made on the legislative front by western nations because they are all potential markets for the drug importer/dealer. It is also true to say that the activity to be proscribed can be more precisely defined, thereby making it easier for those legislators to identify. The most successful area of legislative action is

in tackling the profit issue, where the capital gained from such activities can be seized. This is one area which appears at first glance, to have potential for application into the case study areas. They are also areas where financial profit is probably the main incentive.

In terms of law enforcement cooperative mechanisms, both terrorism and drugs are illustrations of the need for both the development of effective intelligence systems, a coordinated approach between the various agencies involved and an effective personal contact framework to allow the acquisition of confidence in the integrity and intentions of officers from other agencies and nations to cooperate in the achievement of a common purpose despite differing procedures, legal systems and other hurdles. These areas are some which will bear serious examination in the consideration of the case study areas to examine whether the established mechanisms are applicable to the new areas.

The major differences between the terrorist and the drug dealer are:

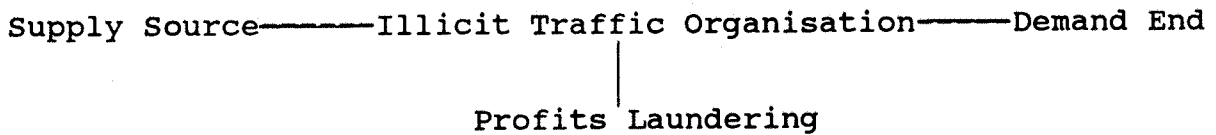
- (a) The terrorist seeks maximum publicity for his/her cause through his/her activities. Although their preparatory acts for an explosion are necessarily secret, the act itself is likely to be high profile and carried out by a group who all know each others identity.
- (b) In the case of a drug trafficking organisation, it is likely that the whole operation will be secret. Individual members of the team will probably not know the identity of other members of the group.

Terrorism is not easily identifiable in that it consists of a series of offences which, until the motive is identified, often by the terrorist organisation claiming

responsibility, cannot be easily identified as terrorism. However, drug trafficking is an offence within the statute book which is easily identified.

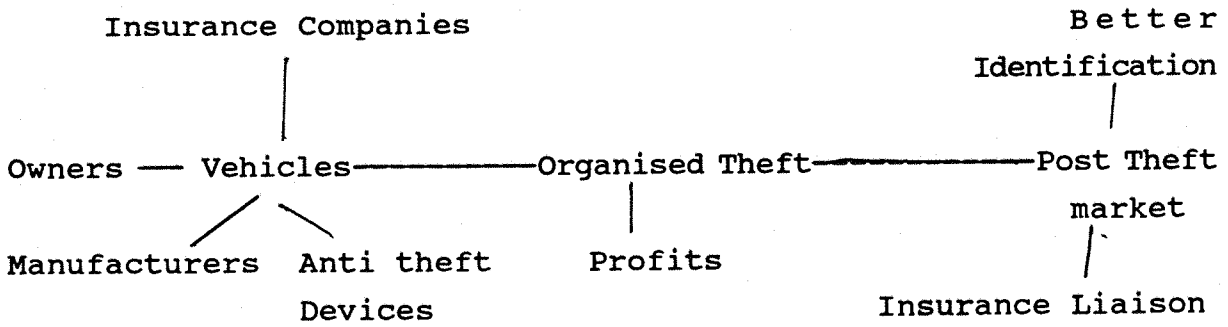
Rationale to be applied to case study areas

The preceding examination of the established areas of international cross frontier crime ie. terrorism and drug trafficking, has served to highlight a number of features which could be carried forward into the three case study areas which follow. Whilst the terrorism legislation and co-operative mechanisms are very specific to that area by reason of the ill defined nature of the subject, there is a distinct possibility that a whole problem approach may enable some comparison to be made between drug trafficking and the case study areas. In drug trafficking there are four elements which may describe the process.

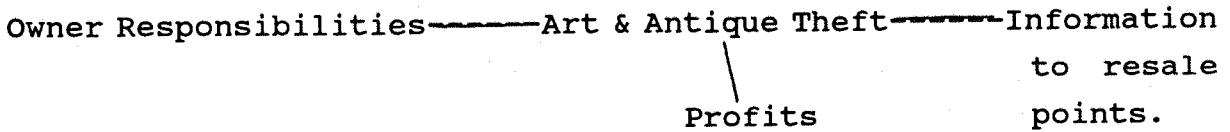


All the above are subject to Preventive and Punitive Policies.

This model may be transferable to Vehicle Theft



Likewise in the area of Art Theft.



It is more difficult to determine a similar relationship in respect of credit card fraud but the above illustrates that there are transferable areas which can be moved from drug trafficking to vehicle and art theft, which may assist in identifying areas suitable for transfer of some of the principles of legal and police co-operation. Before this study begins to consider these issues it is essential that the subject of international cross frontier crime is clearly understood. Often poorly defined, it is sometimes linked with organised crime and in this next chapter those definitions and linkages will be examined.

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CHAPTER FIVE

Introduction: What is International Crime?

The two previous chapters considered the areas of Terrorism and Drugs, which have received the majority of attention of researchers into international crime. In that chapter I have sought to examine the characteristics of those two areas and attempted to determine whether any lessons both in the legislative and the police co-operational area could be carried forward to be used in the case study areas.

Firstly, terrorism can be carried out by nationals within their own country with the purpose of overthrowing their own government of the day. An example of this are the freedom fighters (RPF) in Rwanda. They can take their actions across international frontiers, either to achieve greater publicity, as in the case of the Palestinians and the Achille Lauro hijacking, or they may see another country as the aggressor, as in the case of the IRA, who have brought their terror campaign to the UK mainland and Europe in order to gain the maximum publicity for their cause. The terrorist crime often has a political goal, either the overthrow of a particular government or the gaining or regaining of territory by a particular faction. In terrorism there is no clearly identifiable offence which bears that name although legislation does exist which prohibits membership of organisations which carry the label 'terrorist'. There is also no clearly identifiable physical product which crosses the frontier.

Drug smuggling or trafficking has, by its own definition, an international element. The majority of the drugs in use in this country are either cultivated eg cannabis, heroin, cocaine or synthetic drugs manufactured abroad. There is an identifiable product which passes across international frontiers

from the producer to the consumer via the dealer. Drug smuggling is identified by clearly defined offences designed specifically to deal with that particular action and in this way it differs considerably from terrorism.

Before this examination moves on to consider the case studies it is essential to consider the literature which has attempted to define the term 'international crime'. Benyon in his recent paper¹ notes that the debate about the existence of international crime falls into two factions. The first focuses on the arguments by various politicians and police officers who feared that the relaxation of frontier controls, post 1992, would cause a massive increase in crime rates throughout Europe. The second group will argue that international crime has existed for many years and the removal of frontiers will have little effect on the activities of those criminals who are international in their activities. He goes on to say that there is a lack of any detailed studies and a lack of hard evidence. Heidensohn (1991) also says that there is a paucity of information on which to construct a view about the extent of crime in Europe when he points out that although specific wider threats such as terrorism and drug abuse have been translated into international action, '.....there has been so far a relatively modest response to the crime possibilities offered by 'Europe' itself'.²

International Crime, a new development?

The debate as to whether international crime is something which has existed since man first crossed an inter-tribal frontier is one worth considering in the search for some sort of definition. Fooner, in his 1989 study of Interpol states that the idea of Transnational Criminality is not new.³ He cites the work of Plutarch a Greek historian of the first century AD as evidence that transnational crime existed even in those days. He postulates that the modern concept of international crime was only discovered in the late nineteenth

century.

Fooner identifies Franz von Liszt of Berlin University as one of the first academics of the modern age to recognise the importance of international crime. In his introduction to his textbook in 1893, Liszt stated that his was a time when:-

the professional thief or swindler felt equally at home in Paris, Vienna or London, when counterfeit roubles were produced in France or England and passed in Germany, when gangs of criminals operate continuously over several countries.

In the 19th century there were a number of changes to the lives of people in Europe which could be said to have influenced the growth of international crime. Firstly, travel both inside countries but also between countries became much easier with the rapid development of faster and more generally available forms of public transport. Secondly there was a noticeable change of political ideologies causing long established political principles to be challenged on a number of issues.

During the 1870s and 1880s the Austro Hungarian Empire is reported to have 'diligently continued to foster professional contacts between the police authorities of different countries'.⁴ Fijnaut points out that in 1898 an official, though secret, conference was set up in Rome, initiated by the Italian government, 'to put an end to assaults committed by the adherents of certain anarchist theories.....The importance of this conference for the internationalization of crime investigation naturally and above all lies in the fact that for the very first time in European history police co-operation in the sphere of investigation into crimes and criminals had been recognised to be a problem, a major problem, by people at the highest political levels.'⁵ By 1899 a 'Bureau international pour la suppression de la traite des blanches' had been set up

in London. This was closely followed by a conference to discuss measures against white slavery which was held in Paris in 1902 leading to the first convention in this area being signed in 1910. Most of the early work such as the Rome Conference of 1898 were working to the idea of international police co-operation to combat the growing instances of anarchy which were sweeping across Europe at this time.

The Interpol View of International Crime.

Some of the main sources of reference in the twentieth century are naturally enough from those who have been associated with the International Criminal Police Organisation (Interpol). In 1914, the development of international crime was recognised by Henri Simard the director of Security in the Principality of Monaco when he declared in a speech which was the precursor to the setting up of the International Criminal Police Commission, the forerunner of Interpol. In it he said

present international legislation is inadequate and despite their courage and highly developed sense of duty, police officers are constantly hampered by the restrictions imposed on them by the laws of their respective countries.⁶

However, Interpol the one organisation which on the face of it concerns itself with international crime has avoided for many years, the thorny issue of defining it, perhaps because the existence of such a thing was intrinsic in the setting up of the organisation in the first place. However, by examining Interpol papers and documents many references appear which mention international crime and it will be useful to consider these.

The aims of Interpol are stated in Article 2 of its Constitution which has as its aims:-

- (i) to ensure and promote the widest possible assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the "Universal Declaration of Human Rights".
- (ii) to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes.

Interpol does not appear to acknowledge that international crime exists in that constitution. This may have been on the basis that little or no international criminal law existed therefore there could not be international crime. That recognition although perhaps implicit in its very existence was only openly acknowledged some years later. One of the first real attempts to define international crime came as the organisation celebrated its fiftieth anniversary. In a monograph published on that occasion it observed that:-

there is no international penal code or law defining specific acts as international crimes and providing sanctions for them.....In practice the term international offence means any criminal activity concerning more than one country either because of the nature of the crime committed or because the identity or behaviour of the criminal or his accomplices.⁷

In a 1974 interview for TVI Journal, John Simpson the President of the General Assembly of Interpol, recognised that international crime existed when he said that the most significant international crimes were the narcotics trade, white collar crime and terrorism. His opinion was that this definition of the most significant categories would remain the same for the foreseeable future.⁸

Simpson, a former head of the US Secret Service, was

probably making his statement based entirely on the Interpol perception of international crime at the time. One of the objectives of this research will be to show that the pattern of international crime is dynamic and can depend on many influences including changes in government policy eg relaxing of border controls.

Interpol often appears to be unable to distinguish between 'international' crime and 'organised' crime which it appears to see as being inextricably linked. Raymond Kendall, the Secretary General of Interpol links the two in an article in the International Criminal Police Review. In that article⁹ he said that 'Mobility provided by twentieth century transport, language barriers, modern banking facilities and technological advances in communications all create substantial difficulties for law enforcement in countering the activities of organised criminal gangs.....Powerful and more penetrating legislation on a national basis and mutual assistance and co-operation on an international basis are essential tools in the fight against international organised crime.' The examination of whether there is a connection between 'international' and organised crime will be considered later in this chapter but it may be of some significance that an organisation which is seen as the centre for international police co-operation is not calling for an 'international criminal law'.

Quite recently, international law writers have begun to call once again for the establishment of an International Criminal Tribunal. Crawford¹⁰ reports that the International Law Commission has drafted a statute which would establish such a body which would have a wider remit than war crimes and would be able to resolve such problems as the recent case of Noriega. This would be carried out under the provisions which would be the second strand of the International Law Commission's Draft Statute for an International Criminal Court¹¹ which includes within the jurisdiction of such a court those crimes which are included in suppression treaties such as the 1988 United Nations Convention

against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This subject has received a much fuller treatment in the previous chapter and does not need to be recited again in its entirety.

Recent Developments in Identifying International Crime.

It was not until the late 1980s that the interest in trying to define international crime became more popular. Before that era the academic interest in policing as a subject was mainly confined to historical accounts and to issues relating to police organisation, functions and role in criminal justice systems. The development of the interest of European writers in the area of international crime was brought about to a great extent, by the proposals contained within the European Community's 1986 Single European Act and subsequent agreements to lower, or indeed abolish the internal frontiers of Europe. American academics had focused since the 1970s on drug trafficking but post 1989, also began to take an interest in transnational crime. One example of the growing American interest is Williams who clearly identifies the increased mobility of populations and the growth of international trade as being areas which have contributed to the growth of Transnational Criminal Organisations.¹² The concern which began to be expressed in the political and law enforcement arena focused the attention of the academic world and others on this emerging area of research. A number of universities and policing training units in this country and elsewhere in Europe began to take an interest and research began within those organisations. Principle amongst the academics was Anderson at Edinburgh University, who began a major piece of research into European police co-operation funded in part by the ESRC. Bill Tupman and John Alderson at Exeter also became a focus for European policing issues, holding a University conference in 1989 to explore this area. John Benyon at Leicester University (CSPO) began a major piece of research which was in part funded by the European Commission which focused

on European police co-operation. Frank Gregory at Southampton University also became heavily involved in the debate, acting as advisor to the Home Affairs Committee in its deliberations on 'Practical Police Co-operation in the European Community'. It has subsequently been discovered that this document was highly influential in 'setting the police agenda on international matters.'¹³

Abroad there was Fijnaut at the University of Leuven in Holland, who had been writing for a number of years on this subject. Bruggemann,¹⁴ Bigo,¹⁵ and Sevenster¹⁶ amongst others based in Europe also began to focus on this issue. The Police Staff College at Bramshill began to focus on issues beyond the Channel and in particular the Senior Command Course began to focus some attention on this aspect of work.

In Holland, through the personal interest of Piet Van Reenan who was the Director of the Police Academy at Apeldoorn, an appreciation of the Dutch point of view, also began to develop.¹⁷ This was developed into the European Police Summer Courses, now held every year at Warnsweld, which allows middle ranking officers from across Europe to meet together and discuss topics of mutual interest, some of which concern international crime. The BKA, the national German Criminal Police Agency, also began to be concerned about international crime, perhaps due to the changing structure of Eastern Europe and the potential threat to law and order posed by these changes.

The Institut des Hautes Etudes de Securite Interieure in Paris had also been active in this field since the turn of the decade. This organisation had considered a wide range of subjects within this area.¹⁸ But why was there such a marked increase in studies on this subject in the late 1980s? Undoubtedly, a large part of the impetus was provided by the proposed abolition of frontier controls which was due to take place across Europe in 1992. Additionally, the changes in Eastern Europe began to concern both government and law

enforcement agencies.

W Bruggeman¹⁹ in a 1987 paper said, 'International Crime has increased considerably in recent years and is better organised, to such an extent that it is no longer feasible for a state to combat this kind of crime on its own'. He also came, in the same paper, to the conclusion that international crime had increased but that it was difficult to identify because 'criminal statistics kept by each country make no distinction between cases which are purely national in character and those which have international aspects.' He said that the only way to identify international crime was to study the figures of cases which required international co-operation.²⁰

In 1988 at the EC Rhodes Summit meeting the United Kingdom government together with other member states committed themselves to appointing a special official to take charge of inter-governmental negotiations on the control of international crime, thereby apparently acknowledging its existence without defining it.

Many writers have acknowledged the existence of international crime whilst recognising that it is difficult to define. Heidensohn states that 'there is a considerable congruence in definitions of what constitutes crime problems and issues between different nation-states in Europe'²¹ She points to the fact that one of the distinctive trends which has aided this development is 'the 'internationalising' of certain crimes which are not confined to any one nation or even continent'. Heidensohn also argues in the same paper, that until the 1980s, crime in Europe was not a conceptual framework which would have had meaning, except for the select participants in the regular Council of Europe Colloquia.

Only Professor Anderson in his book Policing the World, first published in 1989²² appears to question the very existence of international crime. He took the view that international

crime is something of a misnomer(p.26). He stated that 'except for "crimes against humanity" and war crimes, which were not the objects of international police co-operation there were no [specific] international crimes'. These are what some international lawyers would call crimes in concurrent jurisdictions. He went on to say that despite the highly specific nature of each state's criminal law and the very wide range of acts defined as crimes there was a broad agreement across the world as to what constituted serious crime - murder, kidnapping, traffic in human beings, traffic in drugs, theft and fraud. Anderson also pointed out that normally, only the serious crimes are recognised as international crime because they are important enough to merit international police co-operation. However there are exceptions where petty crime has, in the past merited consideration by Interpol. An example of this is during the 1970s when gangs of international shoplifters ie. foreign nationals staying in the capital, made a healthy living and were wreaking havoc in London stores.²³

Although to a number of operational police officers, international crime had become a virtual everyday occurrence, through anecdotal evidence, there was still no satisfactory definition,²⁴ nor any quantification in relation to national crime figures. Jean Paul Milland, a Commissaire Divisionnaire in the French Judicial Police, when speaking at an international seminar at the University of Exeter in April 1989, told his audience that despite the fact that he tried to find a definition of what we generally call International Crime or Transnational Criminality he did not find anything in the specialized works he consulted.²⁵

Others, at the same conference were using the term 'international crime' without defining it to any extent. R. Rupprecht an official from the Ministry of the Interior of the Federal German Republic after pointing to the rise in domestic crime figures, both in the United Kingdom and elsewhere, said 'there has been an increase in international crime, crime across

borders'.²⁶ He went on to point to examples of international crime citing international gangs who target Western European countries some of which train young children to commit burglaries.

This reinforces the view that many writers and speakers seem to acknowledge the existence of international crime without seeing the need to define or quantify it, using it as means to justify international co-operation. The fact that police officers fit into this category may well suggest that they see it as means of securing further badly needed resources.

Y.Chaigne, a Commissaire in the Interpol National Central Bureau in Paris, speaking at the 1989 IPEC Conference in London, took as his first proposal that 'Crime is becoming more international'.²⁷ He maintained that the number of cases of international crime in every field had increased since the second world war, drug trafficking being the most dramatic example of this trend. He said that a great many crimes are committed at a regional level, where criminals operate between two neighbouring countries. He thought that it was particularly evident in the case of luxury stolen cars stolen in Europe which are shipped to African and Middle Eastern countries.

He also stated that organised crime is becoming more 'multidisciplinary' in nature. He said that Interpol had found that criminals or groups of criminals will carry out at the same time or in sequence various different types of crime. It was found that a great many international criminals, members of burglary gangs and specialists in marketing stolen property, begin their careers as pimps. This once again illustrates the existence of groups of international criminals, drawn together to achieve a particular objective or group of objectives and further confirms the inter relationship of international crime and organised crime.

ACPO and Central Government's Interest.

ACPO seem to have acknowledged the existence of international crime without defining it, through the formation of the International Affairs Committee chaired by Roger Birch the Chief Constable of Sussex in the late 1980s. The impetus for the creation of this Committee was the perceived need to focus on the issues of a Europe without internal frontiers which was approaching.

ACPO Crime Committee responding, just prior to the constitutional establishment of the ACPO International Affairs Advisory Committee, to the House of Lords Select Committee on European Communities ²⁸ said ' Increasingly the nature of terrorism, drug trafficking and crime generally has become international.....The Association welcomes any opportunity to improve the capability of dealing more effectively with international criminals'. Clearly they acknowledge the existence of international crime without attempting to define it.

The House of Commons Home Affairs Committee in announcing its intention to hold an enquiry into 'Practical Police Co-operation in the European Community' set as one of the issues it intended to look at, 'the extent of police powers to deal with cross border crimes' acknowledging the existence of this type of offence. The enquiry asked the ACPO International Affairs Advisory Committee, amongst others, to submit responses to a whole range of specific questions aimed at establishing the present and desirable future levels of practical police co-operation in the European Community. One of the first groups of questions was on the extent of Cross Border Crimes, in which they were asked to submit evidence as to:-

1. Which criminal activities are particularly likely to require co-operation between the British police and police elsewhere in the EC?

The response from the British Police service, which represented the views of ACPO, ACPO Scotland, the Superintendents Association and the Police Federation, was that:²⁹

It is reasonable to assume that the relaxation of frontier controls will enable criminals and fugitives to move more freely throughout Europe than has previously been the case and displacement of crime may acquire an international dimension'. They also felt that whilst drug trafficking, all types of fraud and terrorism were readily identified, there were particular activities which would require closer police co-operation and these were:-

(ii) The theft of high value motor vehicles, mobile plant, heavy goods vehicles and parts.

(iv) The laundering of money and the disposal of other proceeds of crime.

In evidence to the same enquiry the Home Office had attempted to define the extent of international crime. In their response they said:³⁰

it is very difficult, if not impossible, to identify a specific category of "international" or "cross border" crime. There may be a need for international co-operation on almost any type of crime, ranging from car theft to murder. That is because stolen items may be taken to other countries where the profit is higher, or the criminal may seek to avoid capture by travelling to another country to commit his crime or hide when it has been committed.

They also went on to recognise:-

...there are some crimes which are themselves more

international in character. Terrorism and drug trafficking are perhaps the two most obvious examples. But there are other crimes in which there is either an international market for goods (eg counterfeit currency, cars, antiques) or where modern technology means that crimes can more easily cross international frontiers(eg extortion or large-scale fraud particularly where computers may be used).

Sir John Dellow, the President of ACPO, during questioning about the written submission by the Police Service appeared to acknowledge that international crime was not a new phenomena, stating that '... the growth in crime which has international repercussions has grown like any other crime ...I see no particular decline in that.'³¹

The Home Affairs Committee had, the previous year, carried out an enquiry into Drug Trafficking and Related Serious Crime³² in which they had recognised that drug trafficking was 'a major international criminal activity'. The report on Practical Police Co-operation recognised that, as the Home Office had reminded them, there may be need for international co-operation on almost any type of crime. They acknowledged that their attention had been drawn to a number of areas of crime which could have a particular international dimension including, counterfeiting currency, antique and art theft, extortion, kidnapping, theft of high value vehicles and mobile plant, trafficking in pornography, the movement of weapons and money laundering.³³

At the same time as the results of the deliberations of the Home Affairs Committee were being reported, ACPO and the Home Office were working on the setting up of the National Criminal Intelligence Service. The ACPO Working Group report, published at about the same time, in setting out the terms of reference of that organisation suggested that they should be:-

To collect, evaluate, collate, analyse, develop and disseminate intelligence and information about crime and criminals of a regional, national and international nature.....³⁴

The European Community had recognised for some time that the abolition of internal frontiers was a matter of serious concern for all the member states. At the Maastricht conference in 1991 part of the Maastricht agreement devoted itself to the question of combatting international crime when it stated:-

For the purposes of achieving the objectives of the Union, in particular the free movement of persons..., Member States shall regard the following areas as matters of common interest:....

9. police co-operation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime.....³⁵

Frank Gregory,³⁶ states that 'whilst.... the term "white collar crime" is comprehensible, the term international crime is less easily understood. In fact many UK police forces have no statistical record category for "international crime" '.

Finally Levi pointed to a clear deficit of data relating to the extent of cross border crime in Europe when he said 'There is very little hard information available about the number of cross border crimes for gain in Europe, nor about their economic costs to individual nations or to the EC as a whole'.³⁷

International Cross Frontier Crime or Comparative National Crime Statistics?

A number of sources, more notably in the statistical

area, which use the term international crime, in fact focus on comparative national crime statistics. An example is Patricia Mayhew's Experiences of Crime Across The World in 1988, The International Crime Survey,³⁸ where the term is used to describe the comparative crime levels of the various countries of the world. Interpol produces the bi-annual document which is entitled 'International Crime Statistics' which facilitates comparison of various categories of offences against ordinary criminal law on a country by country basis. Effective comparisons of these statistical areas could be unreliable due to differing definitions of criminal offences across the world. For example under a heading of theft of motor vehicles a country could include theft of vehicle parts and plant whilst another may not include figures relating to that type of theft in their statistical return to the General Secretariat at Lyon.

Monica Den Boer, a member of the Edinburgh University ESRC project team which recently examined Police Co-operation in Europe 1992 points to the fact that although Interpol was seen originally as the organisation to fight 'international crime' the target became compartmentalised due to the creation of specific bodies each of whom specialised in a particular form of international crime. However, her view is that today there is a movement back towards 'generalism' and to concentration of effort. She also points to the fact that senior police officers and civil servants argue that there are now very strong links between 'fields of crime' For example, more and more evidence points to terrorist groups being involved in illegal drugs or arms trade and subsequent money laundering enterprises.³⁹

In examining the link between international crime and European policing institutions Den Boer identifies three justifications for international police organisations. The first identified is the perceived increase of international crime. She cites the fact that the mobility of the criminal has increased as a reason for this perception, together with the belief among law enforcement officers that the abolition of border controls

has caused criminal individuals and groups to widen their interests beyond national borders. She also cites Wilkitzki (1991) who said that 'the internationalisation of economic activity and of transport goes hand in hand with a dramatic internationalisation of crime'.⁴⁰

Although there is substantial discussion within the literature which shows a consideration of international crime, very few try to identify what international crime is by defining it. A number also appear to consider it as a relatively new phenomena although it may have existed in certain forms for many centuries. In recent years, the rise in interest in the literature on the subject of international crime appears mainly to be based on the need, laudable though it is, of establishing international co-operative measures. These often fail to first test whether the perceived dangers of international crime are real.

As has been highlighted earlier, one of the major stumbling blocks is that the definition of international crime appears to be confused with comparative studies of domestic crime figures from international sources. These definitions of international crime which, whilst undoubtedly being instructive and useful in their own right, fail to show the crime that operates between different nations. A better definition of international crime might be,

Criminal offences known to the criminal law of individual countries, where the commission of that offence either in the form of the transfer of the proceeds of that offence across the international border with another country or countries or, the passage of the perpetrator(s) of such an offence across such borders of one or more nations during or subsequent to the commission of such an offence, is a significant factor.

International Crime and its relationship to Organised Crime

A number of academics and practitioners seem to confuse the issues of 'organised crime' with 'international crime'. Fijnaut⁴¹ identifies that 'a realistic picture of the total phenomenon of organised crime is altogether lacking'. He identifies that over the past twenty years, serious studies of the subject have been limited to specific facets.

A number of the works in this area⁴² concentrate more on the question of the existence of organised crime within a particular country, especially the United States of America and touch on the international aspect of such organisations only as a side issue. Some of these works identify that if organised crime exists then one of its aspects is probably international crime.⁴³ The literature in this area concentrates on both, the Italian Cosa Nostra groups and the American Mafia families, which are both international in activity, but tends to look in the main at their internal operations within their own country.

Initially looking at studies of organised crime in Western Europe, many appear to see it remaining within national boundaries. M. McIntosh, who studied this area in the 1970s only considered those criminal groups which did not stray beyond their national boundaries, although some criminal groups were exported when Italian and other immigrants established themselves elsewhere, providing the services in the form of alcohol, sex, drugs to that section of the community which needed them.⁴⁴

E.H. Sutherland⁴⁵ identifies that 'professional theft is organised crime'. He then goes on to say that 'these professional criminals have inter urban, interstate and sometimes international connections'.

Attempts at Defining Organised Crime.

C.J. Fijnaut in his 1990 article " Organized Crime: A comparison between the United States and Europe",⁴⁶ points out that 'the fact that Sutherland's book dates back to 1937 should not tempt us to think that the definition of organised crime is out of date'. Fijnaut also commented in the same article that 'it was perhaps fortunate that the organised crime problem that exists in the United States does not appear to exist in the United Kingdom'. Donald Cressey examined the Mafia aspect of organized crime in his book⁴⁷ in which he quotes from President Johnson's 1967 Crime Commission on Confederated Crime, which found that 'In the United States of America the Mafia are the principal wholesalers and exporters of stolen goods, with profits estimated to be in excess of \$9 billion per annum'. John Dellow, the then Assistant Commissioner (Crime) of the Metropolitan Police examined the use of the term Organized Crime in July 1987. He identified six usages of the term from different sources:

1. Organized crime can involve any group of individuals organized to profit from the community by illegal means on a continuing basis.
2. Society that seeks to operate outside the control of the American people and their governments.... It involves thousands of criminals, complex structures who behave not in an impulsive fashion but by means of intricate conspiracies over many years with the aim of gaining control of whole areas of activity in order to amass huge profits. (Short (1984) p.13)
3. A self perpetuating criminal conspiracy for profit and power using fear and corruption and seeking immunity from law. (Short(1984) p.13)
4. A group of persons structured for the purpose of engaging in a continuing course of criminal activity

wherein the desired goal is a change in the political and/or socio/economic structure of society for the purpose of destroying, modifying or weakening the structure itself. (Social political organized crime, New Jersey State Police(1976)).

- 5 Any formally structured group with the primary objective of obtaining money through violence, threats, graft, bribery, extortion, corruption and having a significantly adverse effect on the people in its locale, region, or country. (FBI(1985)).
6. A highly sophisticated, diversified and widespread activity that annually drains vast sums of money from the economy by unlawful conduct.⁴⁸

He went on to examine the basic concepts which arose from these usages and identified them as, an element of organisation, which must be criminal and rational in the sense of acting for reasons, having a formal structure and an element of continuity and shared purpose. He identified that the American model required the utilization of fear and violence in the pursuit of the goals of the organisation and the suggestion, again in the American model, of linkage between groups.

He then examines the London version of organised crime where the organisers do not restrict themselves to one type of crime but concentrate on a number of lucrative activities. The proceeds of one type of crime are frequently used to fund another. He sees the aim of such organisations as profit and identifies their 'structure and methods as very similar to legitimate business organisations with market research, planning, operations, investment and legal departments.

He states that the intelligence that he had about organized crime had influenced a change of strategy and a redeployment of resources. This change of strategy involved the

attack on the profit of crime thus removing the incentive. He also cautioned that the Colombian criminals had utilized Mafia connections to establish a distribution network in the United States. Once the networks had been established 'they took them over for themselves in the most violent and evil way possible'.

Dellow went on to say that he saw signs that the same thing was about to happen in the United Kingdom. At least one enquiry had, at that time, a Colombian connection and the intelligence available led him to believe that the connection was continuing to develop. The fact therefore that international crime and organized crime are often linked is established in the majority of works on the latter subject. It is important to recognize that the growth in awareness of the connection between the two areas could be an important factor in raising the profile of international cross frontier crime in the political arena and elsewhere.

In 1986 there was a report by Sir Jack Stewart-Clark on how to handle the drugs problem in the EC⁴⁹ whilst in the same year a report by Piet Stoffelen on international crime in the EC countries was presented to the Council of Europe⁵⁰. Fijnaut, points to the fact that organised crime appears to have become a forgotten problem by 1986 because neither of these reports pays even the slightest attention to the extent and content of organised crime, the effectiveness of the existing forms of police co-operation and the lack of legal protection for suspects.⁵¹ He states that a consideration of these problems would have been appropriate in view of the fact that both reports were recommending:

The setting up of a European Police Information Office.

The establishment of a European framework agreement to set in motion a practical executive police co-operation between individual member states on a bilateral or multilateral basis.

The accommodation of legislation covering the issue of 'controlled delivery' of drugs and the adjudication of police powers with respect to the monitoring of financial transactions and the seizure of illegally obtained money.

However, Burg Van Baarle the Deputy Commissioner of the Utrecht Police said in 1991⁵² in trying to define organized crime, that the rise and growth of organized crime has paralleled the speedy development of the trafficking in both soft and hard drugs. He defines organized crime by defining criminal organization which he says is ' a number of criminals who with changing compositions and hence changing structures and hierarchies, organize criminal activities, particularly aimed at acquiring money and, consequently power/influence in their economic surroundings and as a result in society' He further suggests that 'In the course of their activities, they organize themselves in relatively small closed cells, which are able to adjust quickly to changing conditions. They belong to dense criminal networks. Increasingly it is apparent that there are international branches and interests.'

In defining the Characteristics of and Conduct within Criminal Organizations, Baarle says that 'There are many international criminal contacts, perhaps constituting a network; although money flows are hard to track down, it has been found that there are international banks and routes along which criminally gained assets can be laundered'.⁵³

Many of the more high profile international crimes committed recently have of necessity been performed by crime syndicates. This is particularly true in the case of importation of controlled drugs where quite complex organisations exist to enable the production, transport and distribution of such substances to be carried out successfully. The extended network of such organisations has been exposed in a number of recent trials in the Crown Courts, many using surveillance evidence carried out across a number of countries in Europe by the Drugs

Wings of the Regional Crime Squads.

Apart from the chemically produced drugs which can be manufactured and distributed within the same country, the majority of known illicit drugs are produced outside of the United Kingdom and therefore have to be imported. Many recent cases where success in combatting such importation has been achieved have shown that elaborate organisations exist to facilitate the manufacture, transport and sale and disposal of the proceeds of this type of operation. Often, complex security systems are built into such organisations, so that the financing, manufacture, transport, distribution and recycling of profits exist as entirely separate cells, thus preventing the authorities being able to trace the principals involved in such organisations through the lower echelons of the organisation.

Fijnaut, on the other hand, reports in the 1990 paper that McIntosh in her 1978 paper rejects the idea of an underworld organized in hierarchical structures existing in Western Europe, similar to the one in the United States. He points out that there is no way to verify the provocative view of McIntosh, because of the lack of research on this subject area which has been carried out in Europe.

Mack in his examination of the possibility of the existence of 'criminal networks' in British cities, voices strong opposition to the premise that crime syndicates similar to those that exist in North America existed at the time of that paper.⁵⁴ Kerner, is especially noted for his collaboration in a survey with Mack at the request of the Council of Europe. He examines the traditional German police literature and makes an observation that there is an increasing degree of contact between criminals nationally and internationally. He goes even further, claiming that in Western Europe, a single world of professional criminals is evolving, headed at the top by a few hundred major receivers and consisting at the roots of countless more or less specialized small gangs. This does not, as one may think, mean

that Kerner concurs with the Americanistic view of organised crime held by Mack. He is in fact more inclined towards the functionalist approach.⁵⁵

In their subsequent joint paper they seem to have moderated their polar views. They fail seriously to question the proposal that criminal organizations in Western Europe are usually short lived by comparison with their American equivalents.⁵⁶

Sielaff, a high ranking police officer in Hamburg examined the trend towards organised groups of criminals in his city in 1983.⁵⁷ He formed the conclusion that, using similar parameters to those used in America by the Kaufmann Committee, there were certain areas of crime including receiving, the illegal drugs trade and the theft of high value motor cars amongst others where such criminal organisations existed. Sielaff's findings have been confirmed by a 1989 survey by two Bundeskriminalamt researchers in Wiesbaden who found that there exist mainly networks of professional criminals in which a single person or group of persons sometimes fill key roles on a permanent basis.

Modern Attempts to Define Organised Crime.

Finally, the most recent definition of Organised Crime appears in the submission by ACPO to the Home Affairs Committee Enquiry into Organised Crime where they adopt the NCIS definition which is:-

Organised Crime constitutes any enterprise, or group of persons, engaged in continuing illegal activities, which has as its primary purpose the generation of profits, irrespective of national boundaries.⁵⁸

At Key Observation No.2 they observe that:-

It is recognised that the absence of an agreed national/international definition inevitably leads to a paucity of statistical data on the incidence of activity to form discussion and plan policy. In conjunction with the Police Service, the Home Office should consider how meaningful statistics can be compiled.

They also recognise that whilst the expression organised crime is used frequently in the UK, it is usually applied to career criminals involved in serious or major crime rather than the usual definition of organised crime groups. They identify that the networking occurs to service a particular criminal enterprise by providing key component parts or skills and the groupings may not be permanent. At 3.13 in the same report they identify the fact that groups of gypsies or travelling people exist who are extremely well organised for the theft and disposal of high value motor vehicles and plant. They highlight a recent survey by Strathclyde Police as evidence of this fact. Further on in the same submission are references to the existence of Chinese Triad groups within the United Kingdom.

The Home Office in their evidence to the same enquiry⁵⁹ acknowledge that there is no available definition for organised crime. They admit that in practice organised criminal groups become involved in a range of illegal activities none of which are exclusive to them but include drug trafficking, arms dealing, disposal of art objects, organised vehicle theft, smuggling of immigrants, environmental and financial crime. They see that it is more important to recognise how these groups operate than to define organised crime. They also focus on the NCIS definition highlighting the factors that it must be large scale, generates proceeds which are available for licit use and are carried out by groups with some form of discipline and structure. They note that freer trade within the European Community could lead to the expansion of organised crime operations in Europe.

Within the Home office Annex B are included the definitions of organised crime used in Germany and the Netherlands. The German definition as used by the Bundeskriminalamt (BKA) is:

the planned commission of criminal offences, determined by the pursuit of profit and power which, individually or as whole, are of considerable importance, whenever two or more persons collaborate for a prolonged or indefinite period of time, each with their own appointed tasks:

- by using commercial or business-like structures;
- by using violence or other suitable means of intimidation;
- by exerting influence on politics, the media, public administration, judicial authorities or the economy.

The definition used by the CRI, the Dutch Criminal Intelligence Service to identify the degree of organisation of criminal groups is as follows:

- the group is characterised by a hierarchy of its own, with a more or less fixed division of duties and responsibilities;
- the group applies an internal system of sanctions;
- the group engages in money laundering;
- the group is involved in the bribery of government officials or employees of enterprises which are not associated with any criminal activity;
- the group engages in a variety of criminal activities;
- the group uses fronting corporations;
- the activities of the group cover a prolonged period of time;
- the group is guilty of using violence against individuals in the criminal environment;

Other groups are also working towards the

identification of organised crime and these include the European Ad Hoc Working Group on Organised Crime. This group particularly supported further measures in relation to legislation against money laundering in their final report. The group is, at the insistence of the EC Justice and Interior Ministers, continuing its work.

The Regional Crime Squads, in their memorandum laid before the Committee are seeking additional legislation to combat organised crime. They highlight the Racketeer Influenced Criminal Organisation (RICO) Statute of the United States which brings together civil and criminal law in the fight against organised crime and invites the British government to research the advantages of the American approach. The Committee has not yet produced the report on its enquiry but when it does so it will undoubtedly advance the recognition of organised crime in the United Kingdom.

Conclusion

The definition of international crime has been shown to be difficult to discover. A number of academics and practitioners have attempted to define the subject, some with more success than others. A number of these writers appear to confuse the issue of international crime with organised crime and seem to believe, in particular that an international crime must also be organised. It is clear however, that each can exist independently from the other, so that a crime can be international without being truly organised ie it can be committed, by a lone criminal without the aid of others. Similarly, an organised crime operation can exist within national boundaries, eg the operation of the Mafia within Italy. There are of course notable cases where the two aspects are inextricably bound together but it is important to realise that they are not truly symbiotic.

Dellow indicates that the majority of criminal organisations within the United Kingdom come together to commit a crime or series of crimes in this country and then separate. Their existence is solely for the commission of that crime or those crimes over a relatively short time span. It is interesting to note that although there is very little attempt to define international or organised crime satisfactorily, the areas of crime which are subject of the case studies within this paper are beginning to be recognised as being international in nature.

One of the reasons for the emergence of literature on international crime and organised crime has been the issue of the Single Market within the European Community which has brought into sharp focus the threat to crime levels within member countries and elsewhere. It is important to recognise the differences between the two areas and the fact that they do not in fact, always co exist. The further need for a clear definition of each area is evidenced by the confusion between comparative national crime figures and the figures which represent international cross frontier crime both of which have been labelled 'international crime'.

It is worthwhile considering what advantages a focus on drugs and terrorism can bring to police policy planning.

- (1) In relation to these two areas there is a high degree of understanding of the components of these criminal activities - parts of which clearly cross international frontiers.
- (2) There are quite clearly well established national, regional and international legal, inter executive and inter agency co-operative frameworks in existence.
- (3) There is also a clear Police and Public awareness of the existence of these areas.

All these factors have led to an acknowledged area of international crime requiring specialised law enforcement with accompanying resource implications. This is clearly shown in the Wright, Waymont, Gregory study of Drug Squads and Drug Law enforcement. (1993)

When attempts are made to extend co-operation into other areas of inter-state crime several problem areas begin to emerge:

- (a) Firstly there are problems of definition, as already outlined.
- (b) There are also a mixture of helpful and unhelpful linkages to organised crime which is another rather imprecise area.
- (c) A search for data reveals that any which is available is vague.

However, political, public and police awareness is rising in the areas of:

- auto theft
- credit card and other types of fraud
- vanishing art and antiques.

The question that needs to be asked is how can parameters be constructed for a police response in these areas both internally within the United Kingdom and also in Europe. It may well be that some of the features which at first sight appear to be suitable for transfer are not in fact so. One of the characteristics of some of those organisations within the police service who specialise in tackling terrorism and drugs is that they tend to exist in isolation from mainstream policing. They may not wish readily to share their experiences and co-operative procedures and systems with other police officers.

These and other factors will be considered in detail in the ensuing three chapters. Prior to this, it is worth considering how aware the policy makers and practitioners of the police service were of international crime at the time this research began in 1990 and what policies were being developed to combat it.

International Crime - Results of the 1991 UK Police Survey.

During the course of the research project, a questionnaire survey of the Police Forces of England and Wales was used, in an attempt to determine what policy was developing in connection with the measurement of international cross frontier crime. A questionnaire together with a covering letter from the Chief Constable of Hampshire, J HODDINOTT Esq. QPM., MA. was forwarded to all 43 Forces.

Responses were subsequently received from 36 forces a response rate of almost 84%. The following represents a summary of the results of the survey. The questionnaire together with the accompanying correspondence can be found at Appendix B. The following are the results of the survey including relevant comment concerning the data where appropriate.

Question 1. Do you currently collect data from crime reporting information which would allow you to measure the number and total values, of the types of cross frontier crime which are the subject of this research?

	YES	NO
Theft of motor vehicles	4	32
Theft of works of art and antiques	4	32
The fraudulent use of stolen credit cards	4	32

Comment.

Four of the forces responding to the questionnaire, whilst not being able to provide any historical data at the time of the survey, included information that they were currently installing or had installed computerised crime reporting systems. These systems were reported to be capable, in the future, with varying degrees of sophistication, of providing some, if not all of the data sought. Three of the 32 forces remaining forces initially responded that they had the ability to gather such data and provided examples of it. However when these examples were analysed and further enquiries were made

it was obvious that these forces had misread the definition of "cross frontier crime", contained in the accompanying letter and had provided information on cross border crime between themselves and adjoining forces in the United Kingdom. It was particularly satisfying to see, in the response of one of the forces who currently are unable to collect such data, an accompanying memo suggesting that the matter would be raised for consideration during the current planning stages of a new computerised crime reporting system.

Question 2. Do you have any other methods to assess the proportions of cross frontier crime as compared with the total number of crimes in the above three areas?

	YES	NO
Other Methods.	2	34

Comment.

The other methods mentioned in the responses to this questioning were small indices maintained by specialist squads. This especially related to stolen vehicles

Question 3. Within the force accounting system, is there any method available to enable you to accurately assess the annual cost to the force, of operational international enquiries?

	YES	NO
Accounting System Capability?	4	31

Comment.

One force failed to answer this question. The ability of the four forces able to currently identify these costs varied according to the way in which the system functioned. One of the four was only able to identify costs of operational international enquiries by their Fraud Squad.

Question 4. If this data is not currently available, does the senior management of the force see the need to be able to measure the above areas in the future?

	YES	NO
Perceived Future Need?	10	20

Comment.

Two forces failed to answer this question. Another three forces felt that they would monitor the situation and whilst not wishing to commit themselves to any detailed analysis at the moment, they could see a possible need in the future. One force responded that they expected the RCIO and the NDIU to be the agencies to carry out any analysis in this area.

Question 5. Apart from via Interpol, does this force maintain operational links with other European Police Agencies?

	YES	NO
International Operational Links?	20	16

Comment.

Over 50% of the forces who responded allowed direct communication with other European Police Agencies. A small percentage of the responses indicated that the facility was only used by specialist departments such as drugs or fraud squads.

Question 5.i. If Yes please indicate whether these are.

Regular	5
Occasional	15
Formal	13
Informal	17
Personal Contact	13
Telephone/Telex Fax	19

Comment.

Unfortunately one of the forces failed to indicate answers beyond the second section. However, a number of forces had both formal and informal contact with other European police agencies. It is interesting to note that all those forces who allowed alternative contact to Interpol, permitted contact via telephone /telex/fax whilst over 50% went further and allowed personal contact with such agencies.

(ii) At what level are these contacts made?

Senior Officer Only	3
Any Level	17

Comment.

85% of all forces in this category allowed contact at any level. This is essential to ensuring that the investigation/ enquiry is carried out by the officer who has the greatest knowledge of the circumstances/has language skills.

(iii) At which level are contacts authorised?

ACPO Only	0
Senior Detective Officer	7
Some Other Level (Specify)	5
Dependant On Type Of Enquiry	16

Comment.

No force answered that the authorisation level was solely restricted to ACPO officers, in fact, five forces indicated that in some circumstances the contact could be authorised at any level.

- (iv) Please state below the European countries with which operational contact has been made over the past year.

None	9
One	4
Two	3
Three	5
Four	5
Five	5
Six	2
Seven	8
Eight	0
Nine	2

Comment.

One force had been in contact, through motor vehicle enquiries, with twenty three countries worldwide

- (v) Are there any regular, formal or informal operational contact mechanisms which it would be helpful to describe for the benefit of other forces? Please describe them briefly below.

Comment

A number of forces identified the National Drugs Intelligence Unit and the National Football Intelligence Unit as good lines of communication. Also mentioned were the Cross Channel Intelligence Conferences and the associated conferences in Rotterdam. One force recommended contact with America via the FBI section based at the American Embassy. Another force mentioned the American Express company as a good source of contact through their representatives in various countries.

Question 6. Does this force have any police objectives in place or planned?

(a) To enable a data analysis of cross frontier crime as it affects the force to take place?

	YES	NO
Future Data Analysis?	7	29

If yes to (a) above please give brief details below

Comment.

The forces that responded positively to this question had a variety of methods for capturing this data including new computerised crime reporting systems, crime pattern analysts and groups looking at the impact of Europe on the force.

(b) To establish or improve co-operation with other European Police Agencies?

	YES	NO
Improved Co-operation	13	23

If Yes to (b) above, please give brief details below.

Comment.

Over 36% of the responding forces had some means in mind of improving contact with Europe. These ranged from simply appointing officers as European Liaison Officers to encouraging the learning of relevant languages and the setting up of working groups to consider the impact of Europe on the force.

Question 7.

Has the force identified officers within its structure with

(a) European Language skills?

	YES	NO
European Language Skills	33	3

If Yes to 7(a) above, are they located

In Specialist Departments?	0
Generally within the force?	29
Both?	10

Comment.

10 of the forces who identified that they had officers skilled in European Languages indicated that, as well as having those officers located in specialist departments, there would also be some spread generally across the force.

(b) Specialist knowledge of police and criminal justice systems within Europe?

	YES	NO
Knowledge of foreign systems	6	28

If Yes to 7(b) above, are they located

In specialist departments?	2
Generally within the force?	2
Both?	2

Comment.

One force identified the Detective Superintendent as having specialist knowledge, whilst another mentioned the Detective Inspector, Fraud Squad, who had gained his knowledge through enquiries the squad had carried out abroad. A third identified a Staff Officer as being able to provide some input in this area.

(c) Is there a force policy which requires an international enquiry to be referred to an officer having European Language skills and/or specialist knowledge of police and criminal justice systems in Europe?

	YES	NO
Referral of international enquiries?	2	31

Comment.

Three forces failed to complete this part of the question. One force identified a policy of all enquiries being channelled through the Force Intelligence Bureau to Interpol. The other identified that advice in this area could be obtained from the Crime Support Unit. Finally one force, which answered in the negative to this question, identified that its Euro Study Group was considering the need to establish such units in the future

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CHAPTER SIX

Case Study - Theft of Motor Vehicles.

The one constituent that is common to all three case study areas and drug trafficking is the possibility of transfer of a physical object or objects across international frontiers. This common factor may form a link which will allow comparisons to be drawn in each area with drug trafficking which are not as easy to draw with terrorism which does not necessarily have that physical transfer aspect.

Whilst the proportion of crime that can be identified as theft of motor vehicles has always been high as compared with many other areas, until the beginning of the 1990s this area of crime has not figured high on the list of priorities of the police or central government. Much of this may be due to the fact that owners of motor vehicles have traditionally insured their vehicles against theft at the same time as paying for cover to satisfy the requirements of the Road Traffic Acts. Therefore there is very often no financial impact on a motorist when he has his car stolen. In recent years, the practice of 'joy riding' especially amongst young offenders has grown dramatically, with stolen cars often being driven at high speed around housing estates in front of large numbers of their peers.¹ The showing of such incidents on television together with a number of reports in the media of the loss of innocent lives during pursuits of stolen vehicle by the police prompted the government to take measures to try to make an impact on this area of crime.²

These measures included new legislation to create a new offence of 'aggravated vehicle taking' which allowed for more severe penalties where the taking of a motor vehicle was accompanied by acts of reckless driving.³ The other major measures were in the crime prevention arena where the government

sought to encourage better car security by a television campaign, encouraging manufacturers to build in security devices to new models of car⁴ and to encourage a move to make car parks and other areas where vehicles are parked less prone to this type of offence. Measures in the latter area include the encouragement of better lighting and design of car parks and the installation of CCTV systems in areas where there is a high incidence of this type of crime.

Although national legislation exists to allow the matter to be dealt with effectively within this country, no attempt can be detected to establish regional or international legislation, treaties or conventions to deal with the wider issues of export of stolen vehicles. The legislation relating to the prevention of the laundering of the proceeds of drug trafficking is one area which has achieved considerable support in Europe and elsewhere and could possibly be extended to cover money laundering in respect of all proceeds of crime. Whilst the magnitude of profits made from stolen motor vehicles may not equal that from drug trafficking there are substantial profit margins in this area.

Problems of Definition and Measurement

Auto theft is only partly identified in the annual Home Office Crime Statistics under the category thefts of motor vehicles. This figure includes the theft of motor cars, motor cycles and heavy goods vehicles. However, the theft of contractors plant is not included in the same category, although each year the construction industry loses plant worth in the region of four hundred million pounds. Nor does it include the theft of vehicle parts which is included in the category of theft from motor vehicles. Both of these areas are important when considering the subject of cross frontier crime as will be illustrated later in this chapter.

Whilst statistics of the total U.K. crime in this area are available, the figures for cross frontier crime, i.e. where the stolen property crosses an international frontier for realisation and/or disposal are not identifiable within the official statistics. The identification of cross frontier crime in this category relies entirely on the accurate recording of the location of recovery of that vehicle, vehicle part, or piece of contractors plant. The current position is that all vehicles stolen in this country are recorded on the Police National Computer (PNC). When they are recovered it is possible to show their location by use of the standard Force/Station Code when entry of the recovery report takes place. However there are currently no codes to identify locations of vehicles recovered abroad and even the locations of vehicles recovered in this country are difficult to analyse because to do so requires a time consuming run of the computer records at Hendon. This is because, once a found report is entered on a PNC terminal, it causes the complete record relating to the theft of that vehicle to be removed from the active memory. The new generation of PNC, which has recently come on line, will improve the capabilities of the current system. However, it will not go far enough to allow the easy identification of the size of cross frontier auto theft. However, it is fair to say that domestic motor vehicle crime is easier to identify than terrorism.

The survey in Chapter 5 of this thesis, of police forces in England and Wales showed that the vast majority are currently unable, within their crime reporting systems, to identify the recovery location of stolen vehicles or other forms of property. However some of the new generation of computerised systems currently being planned or installed within forces will allow for this type of identification and analysis to take place. Neither the Home Office, nor the Inspectorate of Constabulary currently make any requests for information about cross frontier crime. Perhaps they should be actively encouraging forces planning such systems, to have the capability to identify this area of crime statistics. If those that are responsible for

monitoring the performance of police forces were to ask the questions, Chief Constables would require that information to be produced. Unfortunately, if these questions are not asked, even though the new generation of computerised crime reporting systems will have the capability of producing the necessary data, they may not do so.

Under the provisions of the Police and Criminal Evidence Act 1994, the Home Secretary has the right to set Key National Objectives for the Police Service of England and Wales. He has already taken advantage of this new power by setting objectives in relation to burglaries of dwellings and offences of violence against the person. In the Home Office Circular⁵ which describes the preparation of the Annual Plans for each force, another provision contained in the same Act, there is a requirement for each force to include those key objectives within that plan. There is no reason why he should not, in the future identify vehicle theft as one of his key objective areas. He also attaches to each Objective a series of performance indicators in order to test whether a force is achieving those objectives. Much of the evidence to satisfy such performance indicators is statistical. The need to develop performance indicators which relate to international motor vehicle crime would be the first step towards effectively recognising and tackling the problem.

This is one way in which the Home Secretary could raise the profile of car crime and more specifically international cross frontier auto theft, ie. by asking for performance indicators to show the proportion of vehicles which are recovered abroad, for example. The Audit Commission and Her Majesty's Inspectors of Constabulary (HMIC) are also influencing the way in which forces identify particular problems by requiring, in the case of the Audit Commission, an additional range of performance indicators to be gathered. The HMIC influence the particular foci of forces by concentrating attention on specific areas in their questionnaires, sent out prior to an Inspection.

Currently Available Statistics.

To identify the current statistical evidence to determine whether cross frontier auto crime is a large or small problem in this country is difficult to say the least. As mentioned above, the national system for reporting stolen motor vehicles, the PNC, is of little help at the moment. The new generation of crime reporting systems should provide a better indication of the levels of cross frontier auto crime, but until the Home Office and others demand the level of statistics that will disclose the size of this problem, there will be little incentive to produce the necessary data on a national scale. This could result in a patchy picture being generated from the data available. Two other systems receive data relating to stolen vehicles. These are the Driver and Vehicle Licencing Agency (DVLA) and the HPI Information database. The DVLA database is established as the central registration authority for all vehicles within the UK. It receives information from the PNC in the form of confirmed stolen motor vehicle markers and will show these markers when attempts are made to re register a stolen vehicle or when other enquiries are made concerning that vehicle. The HPI database also receives confirmed stolen motor vehicle markers from the PNC and stores them together with information received from the finance houses. A number of forces have terminals of this database within their stolen vehicle units or crime intelligence offices.⁶ Neither is set up to provide statistical information which is of use to the police

Because there is no easily obtainable statistical evidence in this area, one has to rely on the small samples which are currently available, to give some indication of the size of the problem. In terms of UK. police statistics there are currently only three sources available.

- (1) Specialist Auto Crime Units

(2) Interpol

(3) Specially Conducted Surveys

Specialist Auto Crime Units

Whilst a number of forces within this country have squads dedicated to the detection of auto crime, few maintain details of cross frontier auto crime. During the fieldwork of this research project visits were made to specialist auto crime units at Hampshire, Sussex, Kent, Metropolitan Police, Essex, Suffolk, Greater Manchester, Paris, Rotterdam, The Hague and Scheveningen. Many forces in the UK have dedicated auto crime units but the size varies widely across the country. The two major units operating in this area are the Metropolitan Police Stolen Vehicle Squad (SO1(6)) and the Kent Police Autocrime Unit, based within the Port Unit at Dover.

The Metropolitan Police Unit has for a number of years acted as an unofficial national stolen vehicle intelligence unit collating information from the CRO 150 national stolen vehicle reporting forms filled in respect of every vehicle stolen in this country. They also collate reports on British stolen vehicles recovered in port areas and abroad and also foreign registered stolen vehicles recovered in this country. However this latter reporting system is an entirely voluntary system which was left over from a previous survey. This cannot be said to give a definitive picture because of its voluntary nature but may assist in the identification of trends. The Squad is also maintaining a record for the purposes of performance indicators within the Unit, from which the number of stolen vehicles recovered abroad by the squad can be identified. However this can only be taken as a picture of the activities of the squad and does not include those stolen vehicles which are dealt with entirely on division, within the Metropolitan Police.

The Port Unit at Dover currently maintains an Auto Crime Unit which consists of a Detective Sergeant and four Detective Constables who are primarily, Special Branch Port Officers, but specialise in dealing with motor vehicles passing through the Port. Over 2 million cars and motor cycles and 1 million lorries passed through the Port of Dover last year. Their success in dealing with this area of crime is not shown solely by their own figures, which indicate that they recovered only 36 stolen vehicles in the port in 1990. Many other stolen vehicles, some of which were already abroad, have been detected as a result of confessions by those arrested at the port. These additional stolen vehicles, which can in each case be up to 40 in number, are only shown in the statistics of the interviewing officer who is often from another force area. In addition, many hire vehicles are turned back at the Port Controls by these officers because the hirer does not have the necessary documentation from the hire company to allow him/her to take the vehicle out of the country. These vehicles would undoubtedly be reported stolen by the hire company if they were not returned at the end of the hire period. Major vehicle hire companies report enormous problems in recovering their vehicles which have been abandoned or illegally disposed of abroad. In 1991 the Auto Crime Unit at Dover recovered vehicles to the value of £1,250,000.

Auto theft information available to the police from Interpol and sources in other EU States.

Interpol is the organisation which has as one of its functions, the transmission of messages between law enforcement agencies of its member countries. Each country has a National Central Bureau (NCB) which is the focus of all transmissions into and out of the country and the London NCB housed within the offices of the National Criminal Intelligence Service (NCIS), handles thousands of messages every year. A manual analysis of these messages would take far too long to be economical but the

office maintains its own in house system which allows the recording of messages and tasks under the general headings which are used at Interpol Headquarters at Lyon. However an interrogation of this system has its limitations as there may be multiple entries in respect of one stolen vehicle. It also has to be recognised that the direct informal contact by officers that exists between both sides of the Channel may bypass this system in the same way as recovery by loss adjusters and private enquiry agents operating in other countries may do.

Another existing measurement of cross frontier vehicle enquiries exists with the telex link to the Bundeskriminalamt (BKA) computer of the German Federal Criminal Police at Wiesbaden and a fax to the Belgian Police. These links, which are currently under utilised (1990 - 277 enquiries of the BKA system and 31 enquiries to Belgium) have recently come under the direct control of Interpol NCB London. These systems, which give almost immediate replies, can identify data on all types of stolen property held in the BKA system and stolen vehicle checks in Belgium. Although still in existence these systems have been largely superseded by the X400 computerised communications system. Before their relocation it was apparent from the records kept, that the facilities were used almost entirely by the Metropolitan Police Stolen Vehicle Squad, a small number of vehicle specialists from other forces, and one officer based in the control room of a police force in the South East of England.

Specially Conducted Surveys

A specially conducted survey within the British Police Service, by ACPO Crime Committee,⁷ identified in the region of 360 stolen vehicles which had been exported from or imported into this country in a twelve month period in 1988/89. At a very conservative estimate this amounted to a value of those vehicles in the region of 4.5 million pounds.

In Hampshire a comparison of vehicle registration marks shown on the manifests of ferries operating out of Portsmouth, compared 99,566 entries with the PNC Stolen Vehicle Index⁸. Sixty eight stolen vehicles were identified as a result of these checks but most of the stolen vehicles came from outside that coastal force's area. The main problem with this type of check is that the checks were carried out retrospectively from the ships' manifests and a number of the positive results were thought to have been those vehicles which had been recovered but had not been cancelled on the PNC.

Plenty of anecdotal evidence exists to show that the international traffic in stolen vehicles, plant and vehicle parts is a thriving business.⁹ However there is currently very little statistical evidence available to measure the size of the problem. What little there is does not give a clear and reliable picture because it is incomplete.

Non Police Measurements and Estimates

The Comite European des Assurances, a European consortium of national motor insurance organisations, estimated in a press release in November 1990 that out of a total pool of 130 million vehicles in eight major European countries approximately 260,000 of them are stolen every year. They calculate that approximately one third of these stolen vehicles are fraudulently exported. This amounts to 90,000 vehicles per annum valued at something in the region of nine hundred million pounds. At the same time the Association of British Insurers (ABI) estimate that 600 stolen vehicles a month (30,000 a year) leave this country (Source, The Times).¹⁰ Some of these vehicles may not be stolen vehicles in the true sense of the word, but will be fraudulent claims against insurers. Some of these figures are based on projections made on the basis of data held within the insurance industry's own anti fraud computer system MIAFTA based at the ABI. The Comite has been set up by the Insurers in an effort to combat what they see as rising tide

of cross frontier auto theft by assisting each other in the identification and recovery of these vehicles.

The car hire companies and others who are involved in the recovery of stolen vehicles from abroad, as a commercial venture, testify to the growing numbers of stolen vehicles which are exported from this country¹¹. A number of individuals and companies make a comfortable living out of the identification and recovery of stolen vehicles abroad. Many companies employ ex police officers to carry out their enquiries for them. In France ARGOS, which is an association of more than seventy four insurance companies has established a similar index to that of the ABI. This organisation has recovered more than 200 stolen vehicles a year from Spain alone, thanks to comparisons of details of abandoned vehicles with its data base.

Examples of Cross Frontier Auto Theft

Many anecdotal examples of cross frontier auto theft exist and have been developing from a trickle into a flood over recent years.¹² The main markets for stolen motor vehicles are the Middle East and the Indian sub continent, with Africa following closely behind¹³. It should be realised that there are actually more countries in the world which drive on the left hand side of the road than those who drive on the right. True the majority of countries in Europe drive on the right and therefore do not favour the export of stolen right hand drive vehicles, but current indications illustrated above are that stolen vehicles are going beyond Europe.

Many stolen vehicles leave this country amongst the millions of vehicles that cross the Channel on the roll on/roll off ferries every year. Little opportunity exists to carry out detailed checks on vehicles that exit in this way and now that the virtual abolition of internal border controls across Europe

has taken place it is an even simpler matter to drive a stolen vehicle across the continent without fear of being checked. Some forces are making efforts to improve the detection of stolen vehicles travelling through their cross channel ports, by giving Special Branch Port Unit officers additional training in the identification of such vehicles¹⁴.

Other stolen vehicles are known to have left the country using the facilities of the bulk car carriers which import new cars into this country from the Far East and return carrying an assorted cargo of new and second hand vehicles and plant to the Mediterranean, the Middle and Far East. Many of these vehicles leave the country without being checked and are eagerly consumed by Middle Eastern countries where second hand European cars are saleable items. Recently, stolen four wheel drive vehicles have been shipped to the Eastern Mediterranean in this manner and then driven to the Indian sub continent.¹⁵ One only has to visit a major port such as Southampton to realise the magnitude of the problem of providing an effective check on vehicles waiting to be exported.

Additionally, examples of cars being exported in sealed containers are becoming more common place. In Rotterdam it has been discovered that six sports cars were concealed within the largest size of container by welding a false floor into it.¹⁶ Another recent example involved the theft of high value cars from Italy. These vehicles were driven across Europe into neighbouring countries and across the Channel where they were containerised and shipped out to their eventual destinations.¹⁷ Containers which are often loaded outside the port area are seldom examined because of the cost of off loading the container to examine it and the resultant delay to the sailing of the container vessel.

It is also known that large quantities of stolen vehicle parts have been exported in this way to the Middle East and Australia. The cross frontier theft of vehicle parts is one

of the most difficult areas to detect, especially when they may be placed at the back of a container which also contains legitimate goods. Often vehicles are stolen from car parks and other similar locations, dismantled, the parts containerised and on their way for export before the vehicle is reported stolen. A flourishing market for parts exists especially in the developing countries. This is particularly true in the case of parts for goods vehicles.¹⁸

Stolen contractors plant also finds a ready market around the fringes of the Mediterranean and beyond.¹⁹ Recently twenty eight pieces of road making plant were stolen from London and the Home Counties within a very short period of time.²⁰ Eleven of these items were subsequently recovered from Greece.

The matter has been regularly discussed at the South East Cross Channel Intelligence Conference since 1969. In that year the Kent Police highlighted that 1,119 vehicles were stolen in a five year period in Kent which remained unrecovered. They identified the fact that the relaxation of customs regulations during that period may have encouraged attempts to take stolen vehicles out of the country.²¹ They asked delegates to ensure that any intelligence concerning car thieves in France was passed to their Headquarters. Later on in October of the same year in the same forum Detective Superintendent Doogan²² identified that theft and unauthorised takings of motor vehicles in the UK was a growing problem. He said that there was a feeling that a considerable organisation was behind the theft of Mercedes and Jaguars and that some of the vehicles had been traced to Germany by officers from the Metropolitan Police.

By the April 1971 meeting, Assistant Chief Constable Ellis of Hampshire was identifying that there was a trafficking of stolen vehicles in both directions across the Channel. He highlighted to delegates, the value of co-operation in respect of the import of vehicles and suggested that there may be some way in which continental colleagues could warn the British fores

of the export of such vehicles to the UK.²³ By the 1973 Conference Mr Lavelle, of the Sussex Police Legal Branch was suggesting that close co-operation in respect of drugs, antiques and immigration could be extended to motor vehicles. He highlighted the fact that Sussex officers had already recognised the value of close co-operation in relation to particular cases of vehicles stolen in mainland Europe and imported into the UK.

At the 1981 Conference ACC Boothby of Hampshire referred to the difficulties of establishing the registered owner of a vehicle if the vehicle was registered in mainland Europe. He highlighted the availability at New Scotland Yard of a facility to gain access to the German national stolen vehicle database. They identified that many European countries had computer based indices of registered owners of vehicles but that the likelihood that there would be a linking of such systems together to allow common access was somewhat remote.²⁴

A relatively new threat is that posed by the former eastern bloc countries. Two particular types of cross border crime are confirmed by discussions with western police and customs officials, the traffic in illicit drugs and stolen motor vehicles.²⁵ In Germany and Holland there is a steady daily stream of people from the old eastern bloc countries who are buying up the majority of the second hand car market and returning home to resell them in their own country or use them themselves.²⁶ It is estimated that over 15% of all cars moving to the East from Germany are stolen cars. The number of unrecovered stolen vehicles in Germany used to stand at an annual figure of around 17,000 but in 1989 -90 the figure rose by about 40% to 23,000. Poland is known to have imported 110,000 vehicles in 1989, of which 95% came from Germany. In 1990 that figure had dropped to only 30,000.²⁷ Perhaps the market is now saturated or perhaps the stolen vehicle market has replaced the legitimate export market. The European said²⁸ that the Poland had become 'a clearing house for Europe's rapidly growing trade in stolen luxury saloons' going the other way is a criminal epidemic which

turned Poland into the world's leading clearing house for stolen luxury cars....'. There is evidence that the Polish car market is now filled with stolen cars and the market is moving further east to the USSR, Czechoslovakia and Rumania. When the second hand car markets of Germany and Holland are exhausted where will the locusts like appetite of the new 'market economies' turn to?²⁹ Will the North Sea save this country from the Polish problem? Recent reports indicate that the Hamburg Police have arrested Polish car thieves with a specially designed key that can beat the sophisticated security system of the top of the range Mercedes.³⁰

Functional Co-operation between Law Enforcement Agencies and the Future

In the field of Auto Theft, the need to develop a channel for speedy exchange of information between countries, especially in Europe, is of paramount importance. Perhaps the Schengen Information System (SIS) or the proposed wider European Police Information System of the Trevi Group will provide the answers.

Currently there are two levels of co-operation. Firstly the formal system through Interpol which currently lacks the ability to provide the speed of service required by the user. This could have improved marginally with the acquisition of the BKA and Belgium contact system mentioned earlier in this chapter. The NCB in London was also the lead office in an experimental system, The European Hot Line, which allowed immediate contact between four NCBs in London, Copenhagen, Oslo, and the Hague and had the capability to provide the type of instant response sought in the area of auto theft. However the terminal was not supported by Lyon, was not currently manned at night and carried out enquiries which were mainly generated from within the Interpol office.³¹ The availability of this system was not currently well known outside NCB London because it was

experimental. The system has been overtaken by the X400 communications system which has been introduced, Some thought that the 'Hot Line' was effective in bringing a speedier reply to the urgent enquiry,³² although recent conversations indicate that X400 is providing a more complete service.

Interpol can also make use of the new computer system at Lyon to provide an analysis of cross frontier auto theft. For this it relies on the submission of a small form when a stolen motor vehicle is recovered outside this country or one from abroad is recovered here. The form is submitted to the NCB for entry into the system. This form was originally proposed at the Working Group on Stolen Motor Vehicles held at Saint Cloud in 1988 but has only been utilised so far by the Metropolitan Police Stolen Vehicle Squad. If it was more widely used it would provide a clearer picture of emerging patterns in this type of crime which could be made available to all the countries in Europe. I understand that NCB London was intending to publicise this facility but it appears to be about to be overtaken by other developments and therefore is currently stagnating.

At Lyon a British Detective Chief Inspector has taken overall responsibility recently for tackling vehicle crime. He has recently produced a Motor Vehicle Crime Action Plan which was recently considered at the 23rd European Regional Conference at Interpol at Sinaia in May of 1994.³³ In it he calls for:

the exchange of information between national registration authorities prior to re registration;

the development of crime analysis functions;

the standardisation of Interpol Car Crime Statistics;

the exploration of the feasibility of establishing a centralised database of stolen vehicles;

other measures relating to registration procedures, crime prevention measures legislation and training.

Amongst the measures called for under the crime prevention heading are, development of security measures by manufacturers, collaboration with insurance companies to develop crime prevention initiatives and stricter control by hire companies of potential clients. Recently an officer has been seconded to NCIS in London to develop a data base which would deal with stolen cars. A decision to establish a permanent international stolen vehicle desk within NCIS is awaiting ACPO approval.

Many excellent examples of informal co-operation have been discovered during this research which fill the gaps in speed of response to requests for information, not currently satisfied by the formal channels. The majority of these contacts, with the exception probably of the cross channel liaison unit in Kent, rely entirely on personal contacts established by the individual officer on a port unit or vehicle squad. Leaving aside the language difficulty that may or may not exist, these informal contacts rely on the confidence that each officer has in his opposite number and the tenure of the post he currently holds. A contact built up over a considerable period of time by an officer, may disappear if he/she is moved to another post. The establishment of an officially recognised network of liaison officers, where the post rather than the individual officer is the point of contact, is one way forward.

The development of police co-operation should not neglect the wealth of contacts which exist in the commercial world amongst loss adjusters, insurance companies and vehicle recovery organisations, who can assist in the identification and recovery of stolen vehicles abroad. In particular, the Comité Européen des Assurances can provide assistance through its member organisations, particularly in the recovery of stolen vehicles where problems are encountered.³⁴

The exchange of details of vehicle ownership between the licensing authorities of the various countries would prevent the re-registration of a stolen vehicle in its destination country. There is currently little or no exchange of such information between the authorities, allowing the easy acquisition of a new identity by a stolen vehicle. The only attempt to combat this type of problem is a commercial organisation called European Car Register based in Rotterdam, which plans to make its records available to all licensing authorities and law enforcement agencies in Europe.

In this country the various forces' attempts to combat vehicle theft are carried out with a great degree of isolation from their neighbours. An annual conference organised by the Metropolitan Police Stolen Vehicle Branch is almost the only way that there can be an interchange of information and ideas. There is also a quarterly meeting led by Essex Police, of officers in the South East of England, involved in vehicle crime. The recommendation of the report on the National Criminal Intelligence Service is that the intelligence part of the Metropolitan Police Stolen Vehicle Branch should come within the new organisation. This would hopefully formalise and extend the role which they have been performing for some time at Chalk Farm. In terms of international police co-operation this would make an ideal contact point for foreign police forces. Hopefully the truly national nature of NCIS will encourage development of the analysis of the problem of auto theft.

European Initiatives

Similar national organisations are already in place in both the Netherlands and France providing the necessary national overview and contact point. Neither is able to provide good data on the international cross frontier crime aspect although statistics for recovery rates of different types of cars are available in France, Netherlands and Belgium for the year

1990.³⁵ In the Netherlands the body with the central; responsibility for car crime is the Centrale Recherche Informatiedienst (CRI). A non-operational body which is involved in providing an intelligence service to all organisations within the Dutch police, it possesses a department which is solely concerned with the examination of vehicle theft.³⁶

Over the last few years, in co-operation with other elements of the Dutch Police, especially the Riverpolice at Rotterdam, it has sought to widen the appreciation of the problems of cross frontier vehicle crime through its contact with other European police agencies. They attempt to monitor the pattern and detail of cross frontier car crime through an in-house computer system. Additionally, the car export system, operated by the River Police, seeks to identify those stolen vehicles which are exported through the port of Rotterdam. The Dutch police have been assisted in the design of this system and that of a system PAT which attempts to prevent the reintroduction of the identities of written off vehicles on to the market, by expertise from the national Dutch insurance organisation CIS. A useful combination of police and commerce using their resources to solve a common problem.

Since 1985 the Dutch Police had tended to decentralise and generalise their operations and as a result many specialist divisions were discontinued. As time went by, the number of intelligence reports of stolen vehicles passing through the Port of Rotterdam began to grow. By this time the expertise in the area of stolen vehicle investigation had been seriously eroded. Reports began to be received that there was a steady flow of stolen cars from France passing through Rotterdam. The River Police began to re-educate their officers in this area, providing expert training on the means of identifying stolen vehicles. At the same time, the officers in the River Police made contact with their German colleagues and discovered that they had been developing a computer software package to combat vehicle

insurance fraud.³⁷ What the German police had identified was that vehicles were being misappropriated with the knowledge of the owners and immediately exported through Bremerhaven to a foreign state, where the vehicle was sold. Once the vehicle arrived in the foreign country, the owner reported his vehicle stolen and thereby received the proceeds of an insurance claim together with the sale value of his car abroad. The Bremerhaven police were recording the details of all vehicles exported through the port on the database and this was compared with the index of stolen vehicles on a monthly basis.

The Rotterdam River Police, who are responsible for policing the port of Rotterdam which is the largest port in Europe, if not in the world, decided to use this database to record not only details of all vehicles exported through the port, but also the vehicles in the port seen by patrolling officers.

Like the Bremerhaven system, the database was regularly compared with the stolen vehicle index. One problem they came up against was that the Bremerhaven software would not run on their system. They carried out some modifications to the programme assisted by members of the insurance industry, who had a vested interest in reducing this type of theft and fraud. The Dutch readily acknowledge that this system is by no means foolproof, identifying that the more expensive stolen models tended to be exported by container, which would probably have a false bill of lading indicating that the container held a fairly innocuous cargo eg educational material. Eventually data from the German, Dutch and a similar system at Antwerp was exchanged in order to develop the picture along the North Sea coast.

One of the problems with this type of system, as with the manual check of manifests in Hampshire mentioned above is that the system operates retrospectively and although it may be identified that a stolen vehicle or vehicles have been exported it may be a much more difficult task to recover those vehicles

from their destination. The Dutch cite the case of two Mercedes 560 cars which were identified as having been exported in a container to the Lebanon. Despite urgent contact with Interpol Beirut and the shipping company which owned the vessel carrying the vehicles, the stolen cars were handed over to the person who had possession of the Bill of Lading.

Another problem area identified was the inaccuracy, deliberate or otherwise, of the information contained in the Bill of Lading or manifest. There is therefore no substitute for a physical check of a vehicle or a container in the port where possible. The Export Control system is by no means foolproof but goes a considerable way towards identifying stolen vehicles which are exported through Rotterdam. Finally, the sharing of details of stolen vehicles with the neighbouring countries of Belgium and Germany has proved to be very successful in an area of Europe where some of the frontiers have been without controls for a number of years.

The other system developed by the Dutch, which does not directly have an impact on the international cross frontier traffic in stolen vehicles is the PAT system.³⁸ This is database, operated by the Stolen Vehicle Department of the CRI, the National Criminal Intelligence Service at the Hague. The system seeks to prevent the 'ringing' ie changing the identifying features of a stolen vehicle. What was happening was that a thief would go to a scrap yard and acquire the papers of a vehicle that had been written off in an accident. He would then steal an identical model of vehicle to that of the scrap car and alter the stolen car's identity to that contained in the registration documents of the damaged vehicle. The PAT system seeks to identify potentially 'written off' vehicles at the scene of an accident or when an insurance company subsequently 'writes off' a vehicle. The scheme has the total support of the insurance companies and the police who will take possession of the relevant registration papers and forward them to the CRI. The details are entered on the database and the papers are then forwarded to the

relevant licencing authority for cancellation. If a vehicle is submitted for re registration or subsequent amendment it will trigger a stolen vehicle report on the Dutch stolen vehicle database. Again, the Dutch admit that this system is not foolproof but has substantially cut down the number of 'rung' vehicles detected in that country.

In France the National Stolen Vehicle Unit of the Judicial Police based at Nanterre provides a central service available to all police officers throughout France. It attempts through its own, in house computer system to identify patterns of vehicle crime, both within France and across the borders with its neighbours. The system relies on reports of stolen vehicles which fall into this category being received from officers involved in the investigation of vehicle theft throughout France. The national office also provides advice to French police officers on the subject of forged vehicle documents. They maintain a large collection of such documents from other countries and are able to assist operational officers in the identification of relevant details from these documents.

The official co-operative mechanisms are in their infancy in this area but as a result the research exposed a highly developed network in some areas to facilitate co-operation in the field of auto crime. The Europol organisation is only in its earliest developmental stages and member states are keen to ensure that it does not run before it can walk. It is for this reason that its competence has been limited to drug trafficking and money laundering. It is currently discussing the convention of this organisation within the Ad Hoc Working Group on Europol and information suggests that the convention will include auto crime amongst areas which it may wish to look at in the future.

The support of technology in the battle against cross frontier auto theft should be encouraged. The technical ability to recognise an identifiable number on a vehicle has already been developed to facilitate the road pricing of vehicles which use

toll roads and bridges. Toll bridges are already present in this country and the toll road is a transport system of the near future. If the prevention of auto theft and in particular, the identification of stolen vehicles leaving the country by roll on/roll off ferry and bulk car carrier can be linked to the question of road pricing, the capabilities of the Police Service to detect cross frontier auto theft will be greatly improved. A similar system called 'Volback' is already in the pilot stage in France. This system is based on the toll booths which are common on French autoroutes. The one obstacle that currently stands in the way of Automatic Vehicle Identification (AVI) is the civil liberties question, which has already brought a scheme in Hong Kong to a halt ³⁹. (Prof Peter Hills and Philip Blythe)

One of the most recent innovations which could help to track stolen vehicles is the Datatrak system and other similar systems which are currently being developed. Originating from the need to monitor closely the position of cash in transit and bullion transit vehicles in case of attack, the systems are now being offered for fitting to ordinary motor cars. The system is covertly fitted to a vehicle and remains inactive until the vehicle is stolen. Once the owner discovers the vehicle has been stolen he activates the system which emits a signal allowing the tracking of the vehicle by police vehicles fitted with a receiving device. The system is in its relative infancy in this application and relies on the vehicle being in range to allow the initial activation together with the need for sufficient receiving stations in the area to which it is taken, to allow its location to be determined accurately.⁴⁰

Conclusion

Before resources are allocated to tackling this problem in respect both of legal measures and the establishment of co-operative mechanisms, the policy makers will need to be convinced that the problem of international cross frontier vehicle theft

exists and is of a sufficient magnitude to justify measures being developed.

Measurement of cross frontier vehicle theft could be achieved through the accurate use of the stolen vehicle records held on the Vehicle Index of the Police National Computer. The allocation of identifier codes to locations outside the United Kingdom would allow the analysis of this problem to take place. However this would rely on the information being fed onto the computer correctly and more easy access to back records.

On a force basis, many of the new generation of computerised crime reporting systems have the capability to identify cross border crime. The motivation to include this capability within the programme must come from the Home Office through the Inspectorate of Constabulary.

On the preventative front, the use of an electronic vehicle identifier tag must be one of most effective answers to solving the problem of the export of stolen and overdue hire vehicles by roll on/roll off and bulk carriers. The introduction of such a tag during the manufacture of a vehicle would have untold benefits to the whole area of stolen vehicles and other areas of vehicle related crime. The use of such a system would have to be strictly controlled to satisfy the objections of the civil liberties lobby.

In the case of stolen vehicles exported by container, the only solution would appear to a more effective means to examine the contents of such containers to verify the contents listed on any shipping note. The only method currently in use to carry out such an inspection is the X ray device used on the continent.

More training for officers involved in port policing in the identification of stolen vehicles is required. Kent Police already have a small stolen vehicle squad within its

Special Branch Ports Unit at Dover which is trained in such techniques and other forces are beginning to give additional training in this area to their port officers.

The most effective level of international police co-operation in the area of stolen vehicles has been that of the personal contact variety. Very effective in obtaining results, this serves to highlight the need for speed of response to any enquiry. The problem with this type of co-operation is that it relies very heavily on the level of trust of one officer to another. This is very dependant on the personality involved and may cease if that officer is moved from the post. It would be far better to identify the post in both countries through which the information would pass.

Any effort to have information on a common data base has so far failed. There are problems relating to data protection but they are not insurmountable. The Schengen Information System offers the best opportunity to date to have a Community wide stolen vehicle information system. However this country has not been involved in the planning stages of this system which could have a serious effect if we were to join at a later stage. Unfortunately, the other systems which currently operate including the Interpol systems fail to provide the speed of service essential to this type of crime, although recent developments in Lyon and London seem to be moving in the right direction. Richards⁴¹ concludes ' New international information systems need to be developed to meet these new (Eastern European) circumstances in addition to developing systems in countries to eliminate present deficiencies'. There are merits in further investigating the Export Control system and the PAT system in use in Holland.

Finally, the police need to have an even closer relationship with the commercial world of insurers and loss adjusters in particular who have a wealth of information and contacts from which we could benefit. The maintenance of such

close contacts between all the key players in this area could help in the recovery of more stolen motor vehicles. The owners of motor vehicles need to be made more aware of their responsibilities in connection with that ownership. The installation of better security measures and the observance of simple security procedures could greatly reduce the level of motor vehicle theft. This could be encouraged by the insurance companies through discounts on insurance premiums for those owners who install additional security measures and penalties for those who fail to use such measures.

The government and other agencies ought to be doing more to encourage manufacturers of motor vehicles to fit security devices to all motor vehicle as standard. Because of the fact that a wide variety of vehicles in this country are manufactured abroad this is an area ripe for international inter governmental co-operation.

Once a vehicle has been stolen there is a need for better co-operation between all those involved in trying to recover it, this would include the insurance companies, loss adjusters, police, licencing authorities and motoring organisations in order to ensure that all information is available to all parties wherever possible.

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CHAPTER SEVEN

Case Study - Art and Antique Theft.

The majority of the most valuable works of art are either owned by museums and galleries or a few extremely wealthy individuals. The theft of a work of art often makes headline news, as in the recent case of the theft of a painting worth in the region of £400,000 from the home of the Earl of Pembroke at Wilton near Salisbury.¹ Measures targeted at the theft of these items have not been high on the list of domestic priorities of the government in recent years. Part of the reason for this view is similar to the reason why motor vehicle crime has not until recently become an important government law and order objective ie. because much of the property is covered by insurance and therefore the owner of the property will receive compensation from the insurers. An indication of the perceived lack of importance of this type of theft in the late 1980s was the demise of the Art and Antiques Squad at New Scotland Yard where resources were diverted for a number of years to deal with other areas of crime. It was eventually only as a result of pressure from the art trade itself and in particular the large London auction houses that the squad was re-established.²

However, it is important to note that Trevi, in the Programme of Action 1990³, began to note under the heading 'Organized Crime' the need for action in this area when they stated:

4.1 With regard to the fight against organized crime, the competent agencies involved shall proceed, within the framework of organized multi lateral co-operation and without prejudice to the exchange of information relating to previously arranged agreements, to regular exchanges and permanent updating of rapidly acquired and detailed information concerning;

- various forms of organized crime.....crimes connected with the traffic of.....valuable pictures, works of art, cultural property.....

The development of the Europol concept from the Maastricht Treaty does not specifically mention the theft of art and antiques. But Article K.1 of the Treaty in defining matters of common interest does cover in

'9. police co-operation for the purposes of preventing and combatting terrorism, unlawful drug trafficking and other serious forms of international crime.....'4

As Maastricht can be seen in some ways as a development of the Trevi organisation which included art theft under its concerns it could be said that the same will be true for Europol once it begins to develop beyond its initial stage. It is understood that similarly to auto crime, the theft of art and antiques will feature in the list of areas which Europol may wish to address in the future.

Problems of Definition and Measurement

One has, first of all, to identify what is a work of art or antiquity. The field is much wider than paintings and the obvious antique furniture. It can include jewellery, silverware, and clocks amongst other things. It also includes garden furniture and fittings such as fireplaces and door frames. Finally it also includes the area called 'cultural property' in which are items ranging from the grave covers of ancient graves in Ireland, to friezes from the ancient temples of Rome and Greece etc. The identification of this type of property often requires a trained person with considerable experience in the field and yet only eight forces in the United Kingdom currently maintain dedicated art and antiques officers, in one form or another, on their establishment.

The majority of the theft of property of this type is classified under the general heading of burglary, although some of it could be recorded under theft or robbery classifications. Currently there are only two forces in this country who are able to produce figures which isolate the theft of property of this type from the general burglary figures.⁵ This may change in the future but once again much may depend on the type of crime reporting system installed in police forces in the future. The main impetus to identify this type of property crime as a separate figure will probably have to come from a Home Office requirement to supply figures annually that are broken down into such categories. Another influence could be the encouragement by the Inspectorate of Constabulary of such an alteration in the current data gathering format. It is less likely than motor theft to become the subject of one of the Home Secretary's Key National Objectives although the 1994/95 and the 1995/96 ranges both include one relating to dwelling house burglary.

Similarly, the calculation of the proportion of cross frontier art and antique theft will rely on the identification of the recovery location of any of this type of property. As with the auto theft situation, the new generation of computerised crime reporting systems may have the capability of providing this type of information, but its actual supply may depend very much on the identified need to produce such statistics. Once again the establishment of a performance indicator relating to international cross frontier art and antique theft is one way of ensuring that the problems in this area begin to be recognised.

Currently Available Statistics

The 1991 survey conducted, of Police Forces in England and Wales, shown at Chapter 4, suggests that they are currently incapable of producing statistics to demonstrate the size of cross frontier art and antiquities thefts. What statistics are available show that no more than 5-10% of all stolen art and

antiquities are recovered. The other 90% moves around the world with apparent ease, according to Judith Hennessee.⁶ Often those items that have been recovered have travelled across international frontiers before they are finally recovered. Even when they are eventually recovered in this country they have often travelled abroad where they enter the antiques trade and eventually return to this country to one of the major salerooms where they are identified.⁷

The best estimates of stolen art and antiquities comes from the commercial world. They estimated that during 1990 a total of over 60,000 works of art, each worth over five thousand pounds, were stolen throughout the European Community according to Philip Saunders of Trace Magazine.⁸ This is estimated to represent 10% of the art thefts perpetrated worldwide. In this country, Colin Reeve, chief security officer of Christies estimates that as many as 5,000 pieces are stolen every month.⁹ The statistics are not wholly accurate because it is estimated that the reporting rate in Europe may be as low as 15% due to the fact that many losers may not wish to alert the authorities to the fact that they possessed such items in the first place.

Examples of Cross Frontier Art and Antiques Theft

The advantages of moving this type of property across international frontiers are; firstly that unless the property is a famous painting or sculpture its transfer to another country may assist in its not being recognised at the time of disposal. Secondly, the laws of certain other countries favour the disposal of stolen property by virtue of the their statutes of limitations of proceedings. Basically the countries fall into two categories, those which favour the victim of a theft and those which favour the claims of a good faith purchaser. For example, the Japanese statute of limitations is particularly short term in its application and claims to stolen goods which have been honestly bought are extinguished after two years. The French

Police in particular are concerned that a lot of stolen art appears to be heading towards Japan. Under British law the innocent purchaser of stolen property cannot normally acquire full legal title to that property. One of the major exceptions to the rule in this country is the rule relating to 'market overte'. Where goods are sold in a public market during the hours of daylight the title of possession goes with those goods even if they were stolen. This legal principle, which applies only to a specific number of markets, goes back over several hundreds of years. Bermondsey in London is one such market and 'police talk about break ins timed for Thursday afternoons; a quick get away down the motorway and goods can be shifted at Bermondsey on Friday morning with little chance of comeback against the thieves'.¹⁰

Another area of concern to the police are the large number of car boot sales held around the country most weekends where the sale of goods is virtually unrestricted and many such locations are known to be thieves kitchens where stolen property can be disposed of either over or under the counter. This is undoubtedly a channel for the sale of stolen art and antiques which needs close monitoring.

Efforts are currently being made to standardise the statutes of limitations across Europe by Unidroit, the International Institute for the Unification of Private Law.¹¹ The proposals have currently run into some difficulty over the distinction between stolen and illegally exported property and secondly over a common definition of 'cultural heritage' property.¹² The Unidroit document seeks to establish a draft Convention on stolen or illegally exported cultural objects entitled 'The International Protection of Cultural Property'¹³

It appears to use the French model in respect of restitution where under Article 4 the possessor of a stolen cultural object who is required to return it shall be entitled to payment at the time of restitution of fair and reasonable

compensation by the claimant provided the possessor can prove that it exercised the necessary diligence when acquiring the object.

The Legal Measures in Existence

Over the past forty years efforts have been made to protect some areas of this type of property with conventions. One of the main organisations to attempt to solve the problem has been the United Nations Educational, Scientific and Cultural Organisation (UNESCO). In 1954 UNESCO's Convention for the Protection of Cultural Property in the Event of Armed Conflict sought to protect such property which had been displaced in time of war or its immediate aftermath and the associated Protocol related specifically to the return of cultural property so displaced. There are more than seventy five parties to this Convention and sixty three to the Protocol. The Convention on the means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 applies in war and peace time and has more than sixty one signatories. More specific is the San Salvador Convention (Convention on the Protection of the Archaeological, Historical and Artistic Heritage of the American Nations 1976) which applies to countries of northern South America.

The Council of Europe has also concerned itself with the protection of moveable property in two Conventions. Firstly, The European Convention on the Protection of the Architectural Heritage 1969 which is in force for seventeen states and the European Convention of Offences Relating to Cultural Property 1985. In 1986, at Plovdiv in Bulgaria the socialist group of countries concluded an Agreement between the Socialist States on Co-operation and Mutual Aid Concerning the Means of Detention and Return of Cultural Property , Illicitly Transported Across State Borders. At least three states have ratified this treaty.

The United Kingdom has not been a signatory of any of these conventions and in particular has not ratified the 1970 UNESCO Convention although officially it supports it and in fact initialled it. The government declines to ratify for three reasons.

(i) The Convention's definition of cultural property is extremely wide and open to numerous interpretations by different countries;

(ii) The requirements of the Convention regarding exported goods would impose a heavy administrative burden on both Government and the art trade;

(iii) The implementation of the provisions concerning restitution and prohibition of imports would almost certainly require new legislation and allocation of substantial additional administrative resources. The identification and verification of claims made against items imported into the United Kingdom would be difficult and create an additional burden on HM Customs and Excise and the police;

(iv) The requirement for all dealers to keep registers of origins of material bought and sold would cause serious difficulties of implementation and enforcement;¹⁴

The government claims that many of the principles within the Convention already are part and parcel of their approach. They also point out that UK museums and art trade interests have already subscribed to the voluntary codes of practice on the handling of items of doubtful provenance which support the spirit of the 1970 Convention. They state they the government takes the codes very seriously and enquire about cases which appear to breach them.

In addition the Import, Export and Customs Powers

(Defence) Act 1939 as implemented by the Export of Goods (Control) Order 1985 as amended, provides for the control of the export of cultural property which is in excess of 50 years old without a licence. This includes photographic positives and negatives which are more than 60 years old and any album valued at more than £400 per item. It also includes the following items if more than fifty years old:

Postage stamps or other articles of philatelic interest;

Birth, marriage or death certificates or other documents relating to the personal affairs of the exporter or spouse;

letters or other writings written by or to the exporter or his spouse;

Any goods exported by and being the personal property of the manufacturer or producer thereof, or the spouse, widow or widower of that person.

(First Schedule, Part I, Group B)

An 'Open Export Licence' permits the export of most items manufactured or produced more than 50 years before the date of exportation, if the value per article or matching set of articles is less than £16,000. Additionally certain categories are expressly excluded, notably: documents and manuscripts, archaeological material and representations of British historical personages worth more than £4,000. Other items have to be exported by specific export licences which are scrutinised to see if they are of national importance. Any refusal to grant a licence is referred to the Reviewing Committee on the Export of Works of Art who, in coming to their decision, would consider the following:

(i) is the object so closely connected with British history

and national life that its departure would be a misfortune?

(ii) is it of outstanding aesthetic importance?

(iii) is it of some outstanding significance for the study of some particular branch of art, learning or history.

The only additional measure is the European Archaeological Convention of 1969, which came into force on the 9th March 1973. The measures, which have been agreed by the British government, are limited to some extent in their application. The main problem has been a failure to agree with other states on the definition of 'cultural heritage property'¹⁵ and that some countries, notably Greece, wish to make the effect of the convention retrospective.¹⁶

The need to deal with the profits which are made through the international trafficking in stolen art and antiques prompts a similar question to that raised in the previous chapter concerning the transferability of the money laundering legislation created to tackle drug trafficking to this area. The possibility of the jurisdiction of the International Criminal Court's jurisdiction being extended to include art and antique theft appears to be remote at this stage unless the wider definition of the Court's jurisdiction favoured by the American Bar Association is accepted.

Samples of Case Data.

In 1988, the head of the French Art Theft Squad, Commissaire Principale Mireille Balestrazzi was successful in recovering four Corot paintings in Japan which had been stolen from the Saumur en Auxois museum in 1985.¹⁷ In 1991 the North Yorkshire Police were successful in recovering over £1 million worth of stolen antiques which had been traced to Italy in a joint operation between the British and Italian Police. Over 500

items of furniture, paintings, silverware, ceramics, bronze casts, ivory and jewellery were recovered.¹⁸

In a sale by an Irishman in the United States of two stolen gravestones, a link was suggested with the American fund raising arm of the IRA, Noraid. The Irishman who sailed across the Atlantic in his yacht with the stolen gravestones on board offered them for sale for one million pounds sterling and said that he was going to donate the proceeds to Noraid.¹⁹ The link which may connect art theft to other areas of crime including terrorism and drug trafficking has been debated at some length. Philip Saunders states that²⁰ 'Fine art and antiques are also used to launder the proceeds from drug dealing and in some cases, works of art are used as a payment for drug consignments. It is suspected that certain drug barons in South America and the Far East have amassed great collections of fine art, antiques and antiquities, some of which may have dubious provenance or have been stolen'. He also points to the fact that 'In the last ten years there have been instances of paintings held to ransom by terrorist and anarchist groups.....'

Some thefts are thought to be carried out to order. The theft of nine Impressionist paintings from the Marmottan Museum in Paris five years ago was thought to have been carried out by a gang who had links with international criminals based in Japan. Subsequently the paintings were recovered from a villa in southern Corsica.²¹ Others are carried out without any obvious buyer in mind. Police sources believe that the remains of the £30 million plus theft from the collection of Sir Alfred Beit in County Wicklow may be still in Dublin. Six of the seventeen paintings stolen were recovered soon afterwards and the seventh was found in Turkey in 1990. This may support the idea discussed in Chapter Four of some organised groups of criminals carrying out operations which are international in their nature.

In 1985 eight Scottish landscape paintings were stolen from the London office of Seagrams, the distillers. At the

beginning of 1990 two of the paintings were traced to Amsterdam during a raid on the premises of some Algerian nationals who were drug dealers. In the Autumn of 1990 two other paintings were seized in a drugs raid in Glasgow. In both cases, the stolen paintings had been used as part payment for drugs.

Philip Saunders of Trace Publications points to the effect that changes in Eastern Europe in the last five years have had on the area, where politicians from those countries have seen the opportunity to line their own pockets as a result of the rise in value of fine art and antiques. He cites the fact that a department of a national government sold part of its national heritage to the West, breaking its own laws in the process.²²

Functional Co-operation Between Law Enforcement Agencies and the Future

As has already been mentioned above, the number of units in police forces in England and Wales who are dedicated to dealing with stolen art and antiques full time are thought to less than ten. Often the units consist of one or two detective officers who have no real formal training in this area. Even the Metropolitan Police only have eight members of their Art and Antiques Squad and this squad was only reinstated in the early 1990s after a great deal of pressure from the London Auction houses and other interested parties, after an absence of a number of years. The acquisition of knowledge comes through conferences organised by the commercial world²³ and a small number by police sources.²⁴ Other sources are the trade magazines such as Trace, The Antique Gazette etc and through personal contacts established with the auction houses and experts in particular fields. The co-operative mechanisms exist on an informal basis at this stage in contrast to those concerned with drugs and terrorism. However the Europol of the future may see formalised mechanisms being introduced in line with the model being developed for the European Drugs Unit.

Apart from the traditional support offered by Interpol which has in the past, held International Symposia on this subject, there is little formal co-operation that takes place between law enforcement agencies. As with the auto theft there are informal co-operation channels which exist on the same basis as has already been described in the previous section.

The Symposia have provided the opportunity for exchanges of ideas from representatives of member states on how the problem could be tackled. Often the focus of the Symposia is towards the protection of 'cultural heritage' property with calls for the strengthening of the various conventions outlined earlier.²⁵ At the 1989 Symposium, Mr Konare, the President of the International Council of Museums (ICOM) emphasised the scientific implications of thefts of cultural property whilst Mr Makambila of the Congo addressed members on the illicit traffic in cultural property and works of art in Africa, emphasising the risk of theft from museums and archaeological digs. Whilst this a good forum for the exchange of experiences and information, on that occasion the group were unable to agree to a recommendation concerning those areas which had been raised during the symposium, even failing to agree on a common definition of those objects whose theft would constitute an irreparable loss to the national heritage.²⁶

There is currently no national property index available to store this type of information. Many forces still only maintain a manual index system of property which it is very time consuming to search. In an effort to fill a need in this area Interpol have established an Art and Antique Index on the Lyon computer system. Items can be placed on the system by completing a descriptive form which consists of four sides of A4 and forwarding it to NCB London. The system carries a laser disc which will allow images to accompany the data. Once on the system it will be available for searching by any law enforcement agency of any member country. Some officers²⁷ say that the form is too complicated and laborious as a separate one has to be

filled out for each item, but when it is realised that it covers the description of all types of art and antiques, it is relatively simple to identify those areas which apply to the particular type of property which the officer wishes to circulate. An instruction document on how the form should be completed exists and copies should be with every force in the United Kingdom.²⁸

One of the major problems has been that this facility has not been well publicised among the Police Forces of this country. The way in which information is distributed by Interpol requires urgent examination to enable operational officers to become aware of the facilities the organisation offers. Interpol also publishes circulations on this subject which are selected from this database. To date, there has been little growth in the use of such forms even though they have been highlighted in the Interpol newsletter.²⁹ The establishment of the Interpol Liaison Officer in all forces should have resulted in better communications between NCB London and the British forces. Enquiries suggest that some information which is currently being sent to those individuals for dissemination is up to two years old.³⁰

Commercial Indices

The gap in the market for a database acting as a property index for stolen art and antiques in this country has been filled in a number of ways, some more successful than others. As has already been mentioned there are a wide range of periodicals which contain details of stolen items of this type. However, whilst the majority have included stolen property as a side issue, one magazine 'Trace' is mainly concerned with the return of stolen property. Its owner and editor Philip Saunders, built up a tremendous rapport with police officers, insurance loss investigators and others over the years and has been instrumental in the recovery of a substantial quantity of stolen

art.

The interest in the provision of a computerised database for the service emerged at the end of the 1980s with the emergence of two competing commercial systems Lasernet and the International Art Loss Register. Although the former has failed the latter is still in existence backed by Lloyds, Christies and Sothebys. Whilst it has undoubtedly assisted in the recovery of such property, it does not cater for items valued at less than £500 and although the service is provided free to the police it has proved to be quite expensive for the injured party wishing to have an item recorded on the system. Two new systems have come onto the market recently, the first the Article Classification and Identification System (ACIS), based at Itchen Abbas in Hampshire, is an image database for personal computers. It stores printed and photographic images and is designed specifically to record art and antiques. The Antiques Squad at New Scotland Yard has adopted the system as have the Avon and Somerset Police. The two systems are now linked together to allow each force to search the other's database. There is also a terminal of this system installed at NCIS. Other forces are looking to buy in this information where possible. The Thesaurus Auction Search Service also provides a data base which records stolen art and antiques and compares its database with those maintained by the auction houses but this has not received such wide recognition as ACIS which is a system managed by the police.

The police service should not underestimate the contribution that the commercial world can make to resolving the theft of property of this type. There are many untapped lines of communication which exist in this country and to mainland Europe which are utilised by commercial loss adjusters and those involved in the sale of art and antiques.

European Co-operation

In the same way as was identified in the previous chapter, the South East Cross Channel Intelligence Conference has discussed the subject of Art and Antique Theft on a number of occasions. As far back as 1968 there was an exchange of intelligence taking place at the conference highlighting details of foreign nationals who had come to notice in the South East Region who were suspected of being involved in the theft of or trafficking in stolen art. There was also a major feature at the 1972 Rouen conference where Kent gave a paper highlighting the various ways in which stolen antiques could be moved from one country to another. The following year this subject again appeared on the agenda and provoked considerable discussion amongst the delegates. On this occasion the Sussex representative drew the conference's attention to the fact that beneath the level of the very valuable items stolen was a whole mass of art and antiques which although not of any great monetary value were of considerable sentimental value to the losers. This lengthy discussion also served to indicate that the problem was of common concern to all the member countries of this forum.

At the 1977 Conference at Maidstone chaired by the Kent Constabulary's Assistant Chief Constable, during a discussion on art and antique theft, the chairman identified that whilst the normal channels for any enquiry would be via Interpol he could envisage occasions when information may need to be passed direct from one force to another. The subject of art and antique theft has continued to be raised on a regular basis in this forum³¹

The European View

The Dutch, through the CRI maintain a small office of specialists working in this field. At the time of my visit in 1991 they were in the process of converting a card index of stolen art and antiques onto a computerised database. The office

provides a advisory service to museums and art galleries within the country on security. They also provide advice to all the police forces in the Netherlands on the specialised area of art and antiques. They regularly publish a bulletin of stolen art and antiques which is also circulated throughout the country. This office provides a national reference point for stolen art and antiques.

The French, maintain a much larger organisation, within the Police Judiciaire (PJ), which through the national office and regional offices throughout France, provides many facilities to assist in the investigation of this area of crime. The Office Centrale Pour La Repression du Vol des Objets et des Oeuvres d'Art (OCPRVOOA) which has been established for nearly twenty years forms a part of the 5th division of the national headquarters of the PJ at Nanterre on the outskirts of Paris. It would be useful to examine this service in detail because it represents one of the largest specialist units in Europe concerned with art theft which has a considerable reputation of being successful in recovering stolen art . The analysis is based on the contents of documents kindly supplied by that office together with additional information gained during interviews and observations in that office during the research period.³²

This sub division of the PJ performs many roles within its remit. The national office, was established by an enactment signed jointly by the Ministers of State, Interior, Defence, Justice, Economic Affairs and Culture in 1975. Its remit is to study, in conjunction with the other government bodies, the proper measures to ensure the protection of works and objects of art and the prevention of their theft. It is further directed, by an inter ministerial instruction of 1978, to encourage, co-ordinate and assist any actions which try to eliminate the disappearance of the works and objects of art, which form part of the national artistic heritage of France and the necessary research and enquiries to assist in their recovery.

Prevention.

The measures in relation to the prevention of theft are facilitated by the central office by the holding of various meetings which are described below. They have developed a strategy to ensure the better understanding of the methods of prevention of theft. They also strive to achieve this objective by having regular contact with the following:

The relevant departments of the Ministry of Culture (Museums of France, Management of Cultural Heritage).

The diocese of the church, in particular, the members of the clergy with particular responsibility for the management of the fabric of the Church.

Their prevention policy can be further categorised into:

A Policy of Communication

In the Public Sector, by the preparation of information for and discussion with the museum conservators.

In the Private Sector, by the preparation of information for and by discussion with organisations, including the Association of the Proprietors of Historic Homes and the Insurance Companies.

A Role of Consultant.

Under this heading the office:

Participates in the work of the Council of Europe.

Participates in security planning meetings for artistic exhibitions.

Works with I.C.O.M.

It has since 1988, established a security procedure for the national and international transport of works of art under the protection of the Headquarters of the Police Nationale (P.N.) and the Ministry of Culture. It has also been involved in the planning of new legislative action and regulations concerning the receiving of stolen goods and the control of the activities of the second hand dealer.

Education

A policy of education has been developed since 1987, with the agreement of the Minister of Culture and the co-operation of the professionals of the art market, the educationalists of the art world, and various specialists, artists and technicians. The objective of this policy is to develop an optimum quality of investigation thanks to:

- (1) A better definition of the works of art.
- (2) A better understanding of the elements of the enquiry.

The training programme is directed towards:

The Headquarters staff, who have the benefit of evening and other courses with private specialist organisations.

The Commissaires, heads of section in the regional offices of the P.J., who are responsible for enquiries in the area of the theft of art.

The specialist Inspectors of the regional services of the P.J., who are specially designated to investigate cases of the theft of works of art.

Investigatory and instructional magistrates.

Repression.

As well as its traditional mission of specialist documentation and co-ordination of enquiries, the office is developing an operational strategy, which includes the operational groups of the central office actively participating in the repression of the national and international traffic in stolen works of art. Under a national competence, the specialist investigators of the office are also always available to intervene in any matter which takes place on French territory. They can also act in support of the regional service of the P.J. Finally, they have a responsibility to follow abroad, an enquiry which began in France, in which the office has a direct interest.

The Communication Policy in Respect of Operational Intelligence.

The circulation of information relating to stolen works of art, is truly effective, if it makes the public pay attention. In each case the Office selects the correct level of communication for the particular case. These can range from:

The circulation of stolen property in France

The circulation of stolen property via Interpol.

The national specialist circulations.

The use of ATHENA (A urgent circulation method for museums).

The Battle against the Receiver.

This is a permanent task for the office, which was consulted before the publication of the law of 30th November 1987 and assisted in the preparation of accompanying legislation. To achieve this objective, the office works in the following areas:

Centralisation of the information concerning the theft of works of art committed in France and the creation of a photographic file of that stolen property.

Movement towards a publication aimed at the professional art world.

The increase of knowledge of the cultural heritage of France and its security through identification, including quality photographs and marking amongst others.

The Importance of the Problem in France.

The quantitative appreciation of this problem is difficult in the absence of a method of obtaining true figures on the theft of works and objects of art. The main cause of the problem is the definition of the work of art itself because of the variety of materials and methods used which may include, paint, sculpture, woodcarving and gold leaf work. The artistic value, (a truly subjective idea), the age, the rarity are all important criteria to consider individually and cumulatively. But above all, that works of art have the label, 'artistic', is not in doubt. Can one ignore the other mass of objects which are part of the cultural heritage, (letters, archives, seals, personal and scientific objects), which one needs to protect?

One also needs to consider the numerous objects which over the centuries have been gathered together, including

prehistoric stones and collections of butterflies for example. These ideas, inspired by the daily experiences of working in this field, serve to show how difficult it is to dissociate intellectual ideas of art with the more pragmatic view of the cultural heritage.

The Reinforcement of Police Co-operation and the Fight against Organised Crime.

In the area of the traffic in works and objects of art the sub division operates in a number of fields:

The Operational Field.

It organises regular meetings of the specialist services at least annually, to identify the current tasks and future objectives. It is involved in the establishment of combined teams to combat the international traffic of works of art.

The Documentation Field.

It holds meetings to establish a unity of descriptive codes and methods in the traffic of objects of art, with the aim of ultimately facilitating an exchange of such information by computer. It holds discussions on the ethics of using a common document for the specialist services of several countries. It also facilitates the study and development of common systems in relation to computerised photographic documentation.

The Education Field.

It encourages the development of open courses for

specialist officers from foreign police forces for the universal education this subject. This is already established in France. It holds thematic training courses to develop the knowledge of the important subject areas for each exporting country.

The Prevention Field.

Conferences are held to highlight the past experiences of each country, eg. the security marking methods available in the field of art. Meetings are organised to communicate the development of methods of security in museums.

Legislative Aids in France in the Fight against Receiving.

With the law of the 30th November 1987, completed by a decree of the 14th November 1988 and a Ministerial Instruction of the 29th December 1988 two series of measures have been adopted, one intended to enable better control of the sale of moveable objects to be carried out, the other to curb with greater severity the handling of stolen goods. In the first case, the legislator has assisted the actions of the police and gendarmerie in allowing them fight back against the network of receivers and thieves. It is important to note that as a result of this legislative package the offences of not keeping a register and deliberately making a false entry in a register, which were previously minor offences are now considered to be more serious.

The other part of the new legislation imposes a duty on those persons who organise in a public place or a place which is open to the public, a display for the sale of moveable secondhand objects, to keep a permanent register to identify the sellers. Non compliance is subject to legal sanction. These measures seek to ensure a better control of second hand sales which have tended to flourish and form a channel for the disposal

of stolen property.

Legal Means for the Protection of Cultural Property in France
and Proposals to Improve International Relations.

The appropriation of items of moveable cultural property which is not classified, is controlled by the rules contained in Articles 2279 and 2280 of the Code Civil, articles relating to the general area of moveable property. The objects of art stolen from France and recovered abroad and those discovered in France can be returned to the dispossessed owners within in the limits allowed by the Common Law. The conditions for the recovery of such stolen property by the dispossessed owner, rest on whether there has been a good or bad faith purchase by the last possessor.

The cultural goods which belong to the state are protected by measures based on the theory of public ownership. Therefore the objects are inalienable and the recovery by the state is not able to be prevented.

In the international field, the sub division would like to see:

(1) At least a quality of police enquiry and the determination of investigators to establish the reality of a good or bad title, which would ensure the return of stolen objects to their rightful owners.

(2) The ability to consider a close harmonisation of private international law. It is considered to be vital to develop a European extension of the French principles of public ownership, with the aim of the better protection of artistic objects stolen from the member states.

The Identification of Works of Art.

The biggest problem in the area of the recovery of stolen objects of art is the above, because it rests with the police service to prove that the holder is not the legitimate owner and that the object has been acquired fraudulently. To help the work of the police service the O.C.R.V.O.O.A. encourages the following action.

- (1) The taking of photographs of good quality works of art.
- (2) The marking by the owners, either by the cold or warm method, with the aid of a personalised punch, of all the portable parts of their property.
- (3) The preparation of a personal file of each object that they possess, including a photograph, the identifying marks and the accurate dimensions of the objects.

The Technical Information regarding the Principle Processes for Identity Marking of Works of Art.

The Insert

An invisible mark developed by a Swiss organisation. The implant is in the form of a coded insert into the support of the object. The detection and reading of this insert relies on X Rays together with a computer and database.

Fluorescent Resins.

Marking developed by a professor at a Swiss University . A fluorescent resin is applied to the support which penetrates into its interior.

Detection and reading is by virtue of a small portable 'WOOD' lamp. The information is recorded on a database.

Electronic Printed
Circuit

An invisible method of marking with a European patent. Implanted on the support are the inactive printed circuits. These are activated by aerials placed at strategic points. Detection and deciphering of the code by the aerials linked to a database.

Chemical Marking.

Invisible marking. Winner of the First Prize for Industrial Creativity 1988. Patent obtained by two researchers of the CNRS and CEA. Detection by specifically trained animals, (Customs or Police dogs). This was still experimental at the time of my last contact with the sub division.

The office maintains a record of all paintings stolen within France which are part of the 'National Heritage'. They have compiled another index which will contain all the details of stolen religious statuary within France.

The national office consists of 30 officers of various ranks, all of whom have a national competence and are the contact point for all international enquiries. They are also the contact point in the area of stolen art and antiques, with the Gendarmerie Nationale and the Customs service via the Ministry of Economic Affairs. A comparison with a similar body in Italy reveals that a similar organisation in Italy is a part of the Carabinieri and is controlled by two ministries, Interior and Culture.

If the crime reported involves the theft of art which

is important, (the theft of articles which form part of the cultural heritage of France are always considered important), the report will be passed to Brigade level in the case of the Gendarmerie. If they have the need for a national or international circulation or enquiry they will pass the information to the OCRVOOA who will be responsible for such circulation.

The Office also maintains information on thefts of works of art and the perpetrators of this type of crime on a national and international basis whether it is dealt by the Police Nationale, Gendarmerie or the Customs service. The Office is only able to produce statistics based on the intelligence provided to it. This does not form the complete picture of the theft of this type of property within France. To discover the total statistical picture in this area it is necessary to refer to the Central Registry of the Gendarmerie Nationale and the Central Service for the Recording of Information of the Police Judiciaire. (Service Centrale de Traitement de l'Information Judiciaire de la Direction Centrale de la Police Judiciaire).

A function of the Office is to coordinate or personally carry out enquiries which have common factors suggesting that the crimes are connected. Sometimes the judge may choose the National Office, in preference to the SRPJ or the Brigade de Recherche of the Gendarmerie. The reason for the selection of the National Office is often because they have specialists within specific areas of art who are contained within the Office. The national office also maintains excellent contacts with other specialists in the art world.

The mission of the Office is also to carry out any international enquiries on behalf of the French Police services. In a recent enquiry, a religious relic was recovered from a receiver in New Zealand, by the Office, ten years after it was stolen from a town in central France. This was thanks to co-operation with the American authorities. The Office also

recently recovered paintings stolen from France with the co-operation of the Japanese Police service.

The head of the Office at the time of my visits was Madame Mireille BALLASTRAZZI who is a Commissaire Divisionnaire. Her second in command is Monsieur Guy BERNARD, a Commissaire Principal. There are three operational groups of officers together with a secretariat and a documentation team consisting of six officers. In 1990 it was decided to create a museum security coordinator, who is a retired senior police officer. He is responsible for museum security on behalf of the French Museum Service. He carries out security reviews of all museums and highlights gaps in the security.

Two Inspecteurs Principals are seconded to work within this organisation. One is attached to the Minister of Culture and is concerned with the national cultural heritage. He is concerned with all the Patrimoine (Cultural Heritage) including that which is housed within churches, public buildings and encourages the classification of all objects of historic and cultural importance. It is almost impossible to carry out these tasks in relation to all items of moveable property which fall into this group because much of it is distributed throughout isolated communities in France. The other is attached to the Head of Security mentioned in the previous paragraph. The Inspecteur at the Ministry of Culture is also currently concerned with the theft of art in Europe within a group established within the office of the Prime Minister. He also prepared papers on the subject for the international conferences which she attended.

A comparison should be made between the northern and southern European countries in this area. The French viewpoint is that the southern European nations seem to be much more concerned for the safety of their national cultural heritage than do those countries from the north. The competence of the Police Nationale is throughout French territory and they therefore do not require judicial authority to operate in any particular area.

On the European front, the office was only too well aware of the problems that would arise in 1993, with the abolition of external frontier controls in Europe. To be successful in the battle against the illegal exportation of stolen art they thought that there would need to be full cooperation between countries, each having to rely on the other members maintaining the expected standards of control at those external frontiers. But what should be protected? Some countries have clearly defined those objects which cannot legitimately be removed from their territory. Others have defined them less well, which could cause enormous problems in the future. Spain and other countries have or will in the future, clearly define this area, but the northern countries of Europe appear to lack enthusiasm for the task. The need for a data base which would involve all the countries of the Community, together with the appropriate records is of paramount importance. The lack of finance and willingness to provide such a system in recent years could cause problems in the future. The Office acknowledges the establishment of the Interpol database on stolen art and recognises that it is still in its infancy. It also does not cover all those articles which would fall within the definition of the Patrimoine. It will however, undoubtedly provide a useful international database for the more obvious articles of stolen art. The need to individualise the description of each stolen item is paramount.

The need to provide identifying marks on all works of art in order to identify them when they are stolen is a matter of controversy in the art world. The curators and conservators of the museums and art galleries see this activity as a breach of the integrity of the item. This is a particular problem in the area of glass and other translucent items. The public have resisted the suggestion that, before an item can be insured, a photograph and a experts certificate will have to be produced. This resistance may due to the owners unwillingness to disclose his possession publicly for fear of the taxation authorities and others becoming aware of his valuable possessions.

A number of types of circulation are generated from the Office. One is the circulation of information to the twenty regional offices of the Police Judiciaire, for the information of the Specialist officers. These specialist officers also attend the twice annual conference/training courses which are held at the national Office. In recent years the conference/training courses have focused on areas which included glass objects, religious objects, lithography, and bronzes. For those officers who are in contact with the directors of museums and other similar organisations, the office organises a more specific course to discuss for example, the problems of art theft in Europe. They also invited the officials from the Ministry of Culture who advise at a ministerial level on European policy. Finally, the national office holds courses for its own staff who are specialists in particular areas of art. They receive instruction from international and national experts in specific areas of art. Each member of the national office has voluntarily attended these evening courses to improve their specialist knowledge. This specialist knowledge allows the officer to obtain more accurate information from those whose daily work is within the art world. The Office would still use the experts from the art world to provide expert evidence for use in court.

The Office acknowledges the difference in legislation but hopes for an increase in contact with England in particular, because of its position as a world market place for art. The destinations for stolen property of this type appears to depend very much on the type of art stolen. A lot of the paintings from the Impressionist school seem to move towards Japan, whilst those from the modern school seem to go to America. There is also the problem with imitation paintings and other types of art.

It is possible within the Office to separate statistically those figures for the theft of art which are totally domestic in nature, from those which are international. However, the reservations applied earlier apply also here, in that not all the reports of theft of this type of property are

reported in France. Furthermore, not all stolen art is reported to the police for various reasons. The identification of the true size of the problem is made more difficult by the property categorisation used. In France the number of reported thefts of art dealt with by the Office remains fairly static in the region of 2,000 per year. In 1990 1,836 cases were dealt with by the Office. During each year the office attends approximately 25 conferences, 12 meetings with the Museum Security Committee, 4 meetings with the Secretary General of the Inter-ministerial Committee on European Affairs, 20 meetings a year at their own office on the subject of security marking, information and the records which the art dealers of France have been obliged to keep by law since 1987.

A further break down of the 1,836 figure quoted previously reveals that the locations of the theft were as follows. 39 from museums, 36 from the state owned chateaus, 75 from places of culture which are essentially churches, 39 from art galleries, 51 from the antique shops and salerooms, 987 from private houses, 376 from apartments, 232 from other unclassified locations. 85% of this type of theft take place at private premises. We have to analyse the theft of art with the information from the regions. The theft accompanied by violence in the museums for example, has decreased over the years after reaching a peak in 1989 before the appointment of the Head of Museum Security. The figures have been dramatically reduced, perhaps due to the increased security levels adopted within these establishments. The thefts with violence in the chateaus have grown over the years. Likewise, the thefts from churches and other places of culture were on the increase between 1983 and 1986, but are now considerably decreased. This is because the officials of the Ministries of Culture and Interior have recognised that the small churches in the countryside, which often contained articles of great value needed to be locked. The articles of great value were often removed to large centres where better supervision can be given. The art galleries do not often suffer from theft because the galleries are often well protected.

The theft from private premises has grown dramatically to almost 1,000 reported cases.

The difficulty of identifying unsigned paintings is highlighted by the fact that during the recovery of paintings stolen from the Marmottan Museum which were found in Corsica, one picture at that time remained unidentified. This is because the painting is unsigned and all one can say about it is that it is Italian in origin. There was no record of a similar painting having been reported as stolen. Often the identification is carried out by telephone contact with the Office. The problem is exacerbated by a lack of specialist knowledge on the part of the officer who takes the original report. One runs into further problems if you move away from the paintings to items of furniture. The description of three dimensional objects has its own particular problems. Attempts have been made to provide the detailed vocabulary required for a good description

It is very difficult to calculate the value of recovered property in this field because property values vary widely over the years. When a particular work of art is stolen, the value may be moderate. However, by the time it is recovered paintings by that particular artist or school may be in great demand thereby inflating the price at that time. It is also impossible to estimate accurately the proportion of stolen art from France recovered abroad. However it is possible to say that only between five and ten per cent of all stolen art is ever recovered.

The circulation of stolen art is co-ordinated by the Office, and all matters which require international circulation are passed to BCN Interpol, Paris for circulation. Internally, within France the Office co-ordinates circulation to the various police services, the curators of museums and the commercial world of art dealers.

The Association for the Combat Against Insurance Fraud

is a group formed by the major insurers of France. Attached to this organisation is a Commissaire of the Police Judiciaire. There is another organisation, ARGOS which is an organisation of insurers which concerns itself mainly with the recovery of motor vehicles. Another Commissaire is seconded to this organisation. Although the former organisation assists in the fight against art theft, it is important to remember that the national collections of art in France are not insured and therefore do not concern this organisation.

A similar exportation licencing system exists in France as does in Great Britain. This system has existed since 1983. However concerns were expressed over the lowering of frontier controls on 1.1.93. The articles for export are sent to certain customs centres which are sometimes visited by officials from the national Museum Service. They are able to prevent the exportation of articles if they wish or declare the items to be part of the cultural heritage. The Spanish legislation also allows for the appropriation to state ownership of any item which has been or is attempted to be illegally exported. No similar legislation in that area currently exists in France.

When you consider the areas of concern of this office, which performs a variety of functions you can see that the fragmented way in which this area is dealt within the United Kingdom is far from effective.

Finally, the latest development comes from France where an annual publication of stolen art and antiquities is published by an organisation called IRDIMA. This is in the form of an almanac containing details of all works of art stolen during a particular year.

Conclusion.

The major conventions in existence described earlier

in the chapter deal mainly with 'cultural heritage property' a matter on which the British government have a great deal of difficulty in reaching a common definition even with EU partners. It does not address the bulk of the area of stolen property which finds its way into Europe and beyond. Domestically the police generally have sufficient legal powers to deal with such thefts. It is when the property travels across international frontiers that the problems start.

Internally there is a need to examine the UK approach as a nation to the existing international conventions to try to find some common ground which will enable some movement towards a more general legal principle to allow the recovery of property from the thief, the receiver or the 'innocent' purchaser both within this country and abroad. There is plenty of evidence which suggests that measures should be taken to help resolve the 'market overte' situation and to control the car boot sales and second hand dealers by requiring the registration of all transactions.

The piecemeal way in which the police service in this country approaches this problem is at the root of the problem. With a very small recovery rate for this type of property the need for either a national stolen property index or compatible local indices within each force is a priority. This country does not put the same emphasis on items of national heritage as do our neighbours in mainland Europe.

Even if a national property index did exist, the biggest problem experienced by the police service is the identification of such property. The necessity to establish a national art and antiques unit with policies similar to that of the French unit is of vital importance if the necessary expertise is to be made available to all forces in this country. This office could easily sit within the National Criminal Intelligence Service providing expertise and a central reference point for police forces within this country. This type of organisation

would also serve as a point of contact for similar specialist groups in Europe and further afield.

Once again the current developments in new crime reporting computers may provide the answer to the problem of measuring this type of crime. However additional data will need to be entered, concentrating on where and how the property was recovered, together with the route it took to its destination before a true picture of this type of offence will emerge. However this will need central pressure to be brought to bear to ensure that systems are compatible and that the data is captured.

The current indices of stolen works of art run by the Metropolitan Police Art and Antiques Squad cannot cope with the entire national records. What is needed is either a national index held centrally at NCIS or compatible local indices which can be searched nationally by a police enquirer. A number of commercial organisations have tried to fill the gap left by this lack of a national index. Many are very useful to the Police and provide valuable assistance to officers investigating this type of theft. However, the only record that the police officer feels that he can accurately rely on is one kept by the police and therefore there is a desperate need for one to be established. It is conceivable that such a record could "buy in" commercial data.

There needs to be joint action to develop the personal responsibilities of owners and guardians of such property, including the enforced keeping of inventories by such organisations or individuals, the marking of such property or alternatively the keeping of a proper photographic and descriptive records of the property. This could be achieved by developing a joint strategy between police and insurance companies which would deny insurance cover to those who failed to comply with this requirement.

There also needs to be a great deal of liaison between

the police and the auction houses, insurance companies and loss adjusters to ensure that the best information is available to all parties to assist in the recovery of such property.

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24. eg The Annual Hampshire Constabulary Art and Antiques Conferences run since the early 90s.
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26. International Symposium on Theft and illegal Trafficking of Cultural Property and Works of Art. Interpol, Lyons. 5th - 8th December 1989 at p.12.
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CHAPTER EIGHT

Case Study - Fraud.

As Tricia Howe the Assistant Director of the Serious Fraud Office, London, rightly pointed out 'there are in reality two distinct problem areas [in Europe]; fraud ON the Community and fraud IN the Community'.¹ The former which is a matter which is of major concern to the British Government and the European Court of Auditors at this particular time, is dealt with by the community itself through its own unit the (Unite de Co-ordination de la lutte anti-fraude) UCLAF the function of which will be explored in some detail later in this chapter. The latter is an area sometimes known as 'white collar crime', a phrase first used by Sutherland in his work² which is a type of crime which is experienced by all states with more or less sophisticated economies and banking arrangements. Fraud is also a crime which sits in two areas of the Maastricht Treaty. Under the first pillar of the Treaty reference is made to fraud against the Community, whilst under the third or K.4 pillar mention is made of fraud across international borders.

Closely associated with fraud is the question of money laundering which has already received considerable attention earlier in this thesis. The measures that have been developed in respect of drug trafficking could be transferable to deal with money laundering under the fraud heading. Large amounts of money can be made through fraudulent transactions as will be seen later in this chapter and the major incentive for committing fraud could be curtailed if those profits were confiscated in a similar way to that used to remove the profits made during drug trafficking.

Problems of Definition and Measurement

The term 'Financial Crime', which covers a wide area of criminal activity including 'swindles by professional criminals against suppliers of goods on credit, banks and credit card companies, mail order purchasers and people willing to pay money up front for a promised job or loan; by "criminal professionals" against their clients' accounts held in trust or against building societies and banks supplying mortgages for their imaginary clients; and by business people against consumers and employees'.³

Many frauds go unreported by companies and individuals for a variety of reasons, and even those that are, are not always fully investigated so that the true value of the fraud is exposed. The changes in case handling techniques has resulted in the practice that all avenues of a particular fraud are not investigated and all possible creditors are not always contacted by the Police.

Therefore the figures which appear annually in the Home Office Crime Statistics under the heading Fraud and Forgery are not always totally reliable indicators of the true size of the problem. However, even these figures have shown a steady rise over the past years to a point where they stood at over 134,000 reported offences for 1989⁴, compared with 105,000 reported offences in the statistical tables for 1980.⁵ Proportionally this is a very small part of the total number of crimes reported in a year, somewhere in the region of 3.7 per cent of the total.

The picture changes when the total loss to the victim is examined. Levi⁶ points to the fact that whilst the cost of burglaries in dwellings in England and Wales in 1986 was £257,000,000, in 1985 the total amount of fraud dealt with by Fraud Squads of England and Wales amounted to £2,163,000,000, ie. it cost victims of fraud over twice as much as it did those who suffered burglaries in dwellings. What is even more outstanding

is that the fraud figures shown above are only part of the total cost of fraud due to the fact that frauds dealt with by officers other than those belonging to fraud squads together with those dealt with by the revenue and the Department of Trade and Industry are not included in these figures.

The impact on the individual or organisation is often much greater than that of burglary for instance because there is little insurance protection on offer to cover against fraud whilst it is readily available to cover those risks which result in a burglary of a dwelling.

Fraud against the European Union

The European Court of Auditors in its 1994 report to the European Parliament highlighted the high level of fraud in connection with European Union Funds which it has uncovered during its examination of the accounts. It is open to the Parliament to ask the Commissioners who are responsible for each area where fraud has been uncovered to account for the reasons why the fraud has taken place and ultimately to require their resignation, either as a group or individually. The failure to bring to account those individuals and countries who allow such fraudulent activity to take place is of concern to many of the member states, not least the British government. Whilst each member government is charged with acting 'against fraud and irregularities which result in the illegal diversion of EC "own resources"'.⁷ In the United Kingdom the Serious Fraud Office leads in responsibility for dealing with this type of enquiry.

This serious drain on European Community funds was first clearly identified in 1986 by the European Court of Auditors and was subsequently investigated in the UK by the House of Lords Select Committee on the European Communities in 1988 when it reported to the House in that year. Because the Communities budget is one which mainly finances subsidies it is

open to abuse. The largest part of the budget, over 65% is handed out under the Common Agricultural Policy (CAP) as subsidies. Not surprisingly this is the area which has the most notable identified fraud examples within it, which include the manipulation of information to provide extra subsidies in the areas of meat, olives, wine and cereals. The reason such expenditure is open to fraud is firstly that public expenditure lacks certain elements which feature in business relationships including mutual supervision by the parties involved where both parties protect their own interests and monitor the progress of any deal. The other activity which controls fraud is what could be termed 'social monitoring'⁸ where neighbours keep an eye on each other and often report criminal activity. Until recently this aspect has been poorly developed in respect of the distribution of subsidies.

The size of the problem is often difficult to determine because although Council Regulation No 1552/89 requires each member state to report cases of fraud and irregularities to the Commission and the number of cases reported above 10,000 ECU was in the region of 600 this may only form a small part of the picture. The reported frauds form only 0.25% of the total Community budget, press reports indicate that the figure may be closer to 10%. Reinke said that it was difficult to calculate the level of fraud but 'the only certainty is that the financial cost of fraud to the Community far exceeds the sums known to the Commission and the Member States'.⁹ In 1987 the Commission set up a working party to consider proposals for a coherent and effective anti fraud policy which presented a report entitled 'Tougher measures to combat fraud'.

As early as 1975/76 a case of fraud in respect of agricultural levies involving France, Italy and the Netherlands resulted in loss to the Community budget estimated to be in the region of 8.25 million ECU. Another case involved the importation of a consignment of corn from Yugoslavia to Greece. This consignment was subsequently re-exported as an EC (Greek)

product to Belgium without paying the levies which are intended to protect Community products. Forgery of a number of Community documents took place.¹⁰ This case was brought before the Court which found that the Greek government failed to exercise the necessary controls and inspections.

It was as a direct result of this report that the Commission decided to set up the UCLAF office. It is not an operational investigative service and cannot take on all the monitoring and administration of revenue carried out by the 23 separate Directorates General which each have their own anti fraud sections.

The rationale is therefore:

that each Directorate General's anti fraud unit has responsibility for the individual dossiers of that directorate together with the legislation which is a basis for inspection measures.

Centralised responsibility through UCLAF is intended to ensure the:

examination of all information on fraud cases;

reinforcement where necessary of operational departments carrying out inspections;

optimum application and strengthening of regulations by the departments responsible;

UCLAF also holds responsibility for:

co-operating to improve working methods and staff training;

developing joint infrastructures in particular with reference to information technology;

UCLAF has the power to use the Mutual Assistance Regulation 1468/81 which authorises the exchange of intelligence with regard to the export and import of goods and provides for a coordinative mechanism. The information can be exchanged through an electronic mailing system SCENT (System Customs Enforcement Network). The Commission cannot generally investigate criminal offences but seeks through its anti fraud programme to provide assistance in such investigations by member states.

Mendrinou¹¹ points out that the significance of Community Fraud is fourfold:

the direct effects in that it lessens the Community's resources;

the indirect effect that such fraud has on the image of the Community;

the effect of the fraud on the Member States;

the stimulus fraud has provided to the demands of the Commission for the expansion of its administrative capacities;

She concludes that Community fraud shows no sign of diminishing and asks questions about the ability of member states to exercise control and an investigative capability in this area.

Legal Measures which assist the Investigation of International Fraud.

The investigation of international fraud poses special problems in that each country has its own legal system protecting the fundamental rights of the citizens of that state.

Additionally most financial information is kept on a database and access to this is controlled by data protection legislation which varies between states. No one lawyer or investigator could possibly know or understand all the legislation. It is also important properly to identify the correct agency in a country that it is necessary to deal with in order to obtain the evidence required and this requires specialist knowledge even to get to the stage of identifying that agency.

The investigation of fraud against the Community is currently high on the political agenda of the United Kingdom Government and is catered for within the first pillar of the Maastricht Treaty. Equally important is the investigation of international fraud which, as has already been discussed, is included as an area within the remit of the K.4 Committee.

The Size of the International Fraud Problem

No measurement exists of the proportion of offences which are international in their nature because many offences may have both a domestic and an international aspect to them. The Council of Europe made a plea in 1981¹² for detailed collation of data on economic crime which has been largely ignored. Likewise Levi¹³ points to the fact that the Home Office 'Report of the Working Group on the Costs of Crime' and the Special European Edition of the Home Office Research Bulletin 1987 neglect to examine the international aspects of fraud and business crime.

Efforts to control fraud are still to a large extent based on the notion of national sovereignty even in the case of fraud against the Community as evidenced earlier. Arriving at a common definition of business crime causes serious problems even when comparing those countries who are members of the European Union. Steiner makes the point that it will be necessary to consider not only national and international

developments in insider trading and banking fraud but also the specific controls that emanate from Europe through the European Commission's responsibilities in relation to banking and securities regulation, company law and competition policy.¹⁴

In respect of the investigation of fraud in the United Kingdom, the Serious Fraud Office was first established as a result of the Fraud Trials Committee report of 1986. The office was established as a body of lawyers and accountants assisted by police officers on an ad hoc basis who would undertake the investigation of the most serious cases. This office has had a chequered history since its foundation especially to the outside observer who reads newspaper accounts of the massive costs of fraud investigation and trials such as the Guinness and Blue Arrow cases which were not entirely successful in their outcome.

Although the majority of police forces have dedicated Fraud Squads within their structure they have not been able to expand in line with the growth of the number and complexity of fraud cases which have arisen over the recent years. Many serious fraud investigations are now dealt with by local detectives without the specialist support which may be required.

Currently Available Statistics

Whilst numerically, financial crime is not the largest part of the crime statistics, in terms of value it far outweighs any of the other areas being more than twice the value of all the other areas of property crime. In 1989 the two London police forces alone dealt with nearly four billion pounds worth of fraud and nearly one in five large companies reported fraud.¹⁵ A survey carried out by Levi¹⁶ of senior executives in large corporations showed that the most often reported type of fraud had been cheque/credit card fraud (23.8 percent) with embezzlement/expenses fraud (19 per cent) in second place.

Frauds can be divided into two major types, those against individuals and those against businesses and organisations.

Frauds against Individuals

The major frauds against individuals are those in the area of investments. Many of these are uncovered every year where the individual, who some may describe as gullible, invests money in a scheme which is too good to be true. An example is those advertisements which offer an interest rate in the region of 20% when the current building society rate is only in the region of 7%. These frauds are often carried out under a reasonably respectable guise with good quality literature offered in support of the business. Another area which has grown over the past few years is investment in 'timesharing' where the fraudster makes off with the investment without having built any properties or fails to provide an adequate legal title in the property to the investor who subsequently finds his investment is worthless.

Other areas of fraud against the individual include pyramid selling and job provision abroad, where in the latter case the job seeker pays a registration fee in the hope of securing a job abroad to find that the job never existed and the company has disappeared which made the original offer.

Frauds against Businesses and Organisations.

Many discussions about fraud are dominated by discussions about computer fraud because almost every company and organisation uses a database to store details of its financial affairs. Many of these frauds are internal frauds within the organisation which are carried out by those employees who have legitimate access to the database diverting funds into their own

accounts.

Frauds which originate from outside the business or organisation are primarily concerned with the misuse of credit facilities. The 'long firm' fraud which seeks to obtain goods from a company on credit and sell them on without paying the suppliers has become a growing problem in the business world, the fictitious or temporary company first establishes its credit rating with the suppliers by making regular payments of its accounts and then defaulting when a large order has been received. The company then disappears leaving no trace of its existence. Other common frauds include those in relation to mortgage application forms where large sums of money have been advanced in the past to purchase fictitious buildings or to carry out alterations to buildings which are never carried out. Banks have been deceived into making loans to businesses against forged evidence of expected income levels.

Internal fraud often takes the form of the transfer of company funds to an account created by an employee or the payment of monies to a fictitious supplier created by an employee who deals with the accounting system. An area which is not often investigated is the claiming of fictitious expenses by employees. Often frauds against companies involve an element of collusion between an employee and some one outside the organisation for example, purchasing officers may agree to overpriced contracts in exchange for kickbacks in cash or other forms.

Fraud and its international aspects is such a wide subject that it could easily form the basis of a thesis in its own right. As the other case studies concentrated on the movement of a physical object across international frontiers rather than the electronic transfer of funds it was decided to look specifically at the theft and subsequent fraudulent use of credit cards. The problems of fraud are well recognised including the complexities of police investigations in this area and the uncertain success of subsequent prosecutions. It was

however identified that credit card fraud held the possibility of a technical solution. The other areas of fraud all exhibit problems of resources allocation for the investigatory authorities, who constantly have to balance their priorities against what will be achieved by an investigation into a particular fraud case.

Credit Card Fraud

Credit card fraud is one area where the international side of the crime has mushroomed in recent years. The major credit card companies are reticent about disclosing their figures for fraud but it is known that they currently run into hundreds of millions of pounds. Between 1988 and 1992 Plastic card fraud rose by 126 per cent and grew to £165.6 million.¹⁷ The cross frontier aspect of this type of fraud is said by the fraud department manager of one of the larger credit card companies, to run at about 20%- 25% of the total figure.¹⁸ This large proportion is due to the fact that most major credit cards are readily acceptable anywhere in the world.

Plastic cards were first introduced by the National Provincial Bank in 1965 when they introduced a cheque guarantee card. This move was followed by many other banks. In 1966 Barclaycard was introduced as the first widely available credit card in the United Kingdom. This was followed by Access in 1972. The most recent addition to the field of plastic cards is the debit card which first appeared in 1988. Both debit and credit cards have floor limits set which allow the holder to make a purchase up to a certain value without need for authorisation by the bank supplying the card. The new Electronic Point of Sale Systems (EPOS) allow the store to check a randomly selected number of cards operating in the case of transactions below the floor limit to guard against fraudulent use. These checks are carried out against computerised records of files which besides detecting fraudulent use also check that the user has not gone

past his/her own personal spending limit.

In 1990 there were 32.5 million credit cards issued by banks and building societies, together with 36 million cheque guarantee cards, 11 million storecards and 1.5 million charge cards. During that year there were over 700 million credit and charge card transactions and 75 million retailer card transactions or an average of 2 million card transactions every day of the year. UK issued credit cards can be used worldwide at over 8.4 million outlets.¹⁹

The rise in the cost of fraud against the major retail banks was over 97 per cent over a two year period at the beginning of this decade whilst plastic fraud accelerated even faster with a growth of 126% over the same period. Barclaycard experienced a growth in fraud of a factor of ten over the period of 1980 -1990 to a figure of £25 million. These figures are a conservative estimate and do not take account of credit write offs where issuers terminate an account which has been misconducted.

An interesting statistic shows that whilst the number of credit cards issued between 1988 and 1990 rose by only 30% the number of fraud losses rose by 99 per cent. Levi et al says that police and banking sources identify a definite growth in organised criminal interest in plastic and cheque fraud though there is no evidence that drug traffickers finance their drugs purchases by use of credit card fraud. There are however local networks where stolen credit cards are exchanged for drugs.

The British Mastercard credit card fraud statistics contribute 18 per cent towards the world totals of that card. Plastic fraud is seen as growth crime industry. The ways in which these frauds come about are due to false applications, theft in transit, misuse by genuine card holders and the recycling of lost or stolen cards through criminal markets. Frauds also occur where merchants avoid electronic controls by

using a manual override on the tills.

Over recent years the credit card industry has undertaken a number of sophisticated modifications to defeat the fraudster including the refinement of the signature panel and changes of the printing type amongst others. The modification to the signature panel makes the practice of washing off the signature almost impossible because the signature panel will exhibit a void notice if any such action is attempted.

An area which requires further attention is the magnetic stripe which appears on the majority of UK credit cards. It is a simple matter to make a magnetic stripe on a card or to change the information contained within it. Whilst carrying out this research project in Holland I was shown a device which could be built from components purchased from an electronic shop for less than £20. which would enable the copying and manufacture of a magnetic stripe.²⁰ There are ways in which such a stripe could be improved including the introduction of a watermark in the stripe during production but this would increase the manufacturing costs of the card and require modification to the swipe machines which read the cards in retail outlets. The cost put on such an upgrade was estimated to be in the region of £4 million.

The Development of the Smart Card

This type of card has a chip implanted within the card instead of the magnetic stripe. The chip contains a memory which is controlled by a chip processor. Each card is considerably more expensive to produce, being in the region of £2 - £5. In France where the development of smart card is well advanced there are estimated to be over 4 million smart cards in use. The decision to switch over to this type of card was taken in 1990 by the national organisation Groupement des Cartes Bancaires and means that the magnetic stripe will eventually be phased out in

France.

Levi et al.²¹ examine another method of identifying the card with the cardholder, that of Biometric Techniques. This involves the comparison of records held in the system with the retina or fingerprints of the person presenting the card. It is considered that on data storage and cost implications alone these techniques are unlikely to move forward.

Prevention of Credit Card Fraud

One of the major areas of fraud in respect of credit cards is that of fraudulent applications. It was reported by one card issuer that 30% of all card applications in a month were fraudulent. Applications are often in false names or give false details such as addresses or personal details. Multiple fraudulent applications are a regular feature. A number of initiatives have been established in an attempt to combat fraud including the Credit Industry Fraud Avoidance Scheme (CIFAS) which was conceived by the Consumer Credit Trade Association. This organisation allows the exchange of details of fraudsters by credit reference agencies and its dissemination to all the member credit reference agencies within CIFAS. This system has already shown substantial savings to the credit agencies which is estimated to be in excess of £10.5 million. The cost of membership is extremely small when compared with the savings that can be achieved. It has proved that data sharing can achieve positive results in respect of fraudulent applications.

Where credit cards are lost or stolen the location of their loss/theft does not appear to be greatly significant. As a result of two studies by Levi et al in Gloucester and at Barclaycard it was concluded that the best method of card theft protection was a heightening of awareness of the card holder. Another way in which a card falls into the hands of thieves is by postal interception. The level of this problem varies from

issuer to issuer, from 8 per cent to 67 percent, depending on the changing methods of customer delivery. One issuer lost in the region of 12,400 credit cards in the post in 1990. One way in which this problem can be tackled is to change to the method of issue already in use on the continent ie by making the customer collect them from a bank. There may be a need for banks to open longer hours as they do in Europe to allow this to be a possibility. There are cost implications in moving to this method but it may be justified if it solves the problem of theft in the post. When Levi et al surveyed customers of Barclaycard they found that over 84% of all customers favoured such a move.

Finally, another avenue to solving the problem could be to issue cards which are only live when the customer has validated his/her card by going to the bank/store before the first use. This system is already in use in respect of Marks and Spencer and Abbey National Cards.

Other areas which need to be tackled include merchant collusive fraud where the merchant A allows merchant B to pass credit card vouchers through his account. A may agree to this knowing that it is for criminal purposes or innocently. The bank signing up the merchant can remove him from the authorised list or reduce the floor limit to zero. There is a need for a collective 'terminated merchant' file to be developed between all the issuing banks.

In the case of card misuse it is often the case that a stolen card can be used several times before the card is blocked. This is so even in the case of apparent on line facilities where many are loaded up during the night allowing the thief a whole day in which to operate the account prior to it being blocked.

One way in which it is hoped to detect more stolen credit cards in use is the Cardcast system, which through a card swipe system checks whether the credit card, cheque card or any

of the other types of card are reported stolen. The system of notification is in many cases inadequate and update only irregularly. This system is currently not in wide use. Another way of reducing fraudulent use of cards is the inclusion of a photograph of the bearer on the card. This practice has not yet received wide acceptance amongst the card issuers. There are massive problems in the implementation of such a system not least of which is the cost. Experiments in other countries including New Zealand, have tended to indicate that it is not a cost effective measure although Denmark, Sweden and Norway have implemented systems.

The Size of Cross Frontier Financial Crime

No statistics are currently kept within the Police Service of the size and value of cross frontier financial crime and therefore its size as a proportion of the total domestic figure is difficult to calculate accurately. Even if those statistics were available from police sources they would be incomplete as only a small proportion of credit card fraud is ever reported to the police.

It is accepted by many practitioners that the proportion of offences where assets are moved or part of the offence takes place outside this country have increased dramatically²². Even a detailed examination of the cases handled by a fraud squad will not give a true picture of this problem because some international frauds may be dealt with by a divisional detective.²³

Examples of Cross Frontier Financial Crime.

Once again there are numerous anecdotal examples of this type of fraud. One experienced fraud squad officer summed up the situation as, whilst ten years ago only the top

class fraudster was operating across international frontiers, now with the greater availability of credit and the ability to electronically transfer assets around the world in seconds, a much larger proportion of financial crime is international.²⁴ Many of the major fraud investigations including Guinness and Polly Peck have involved the movement of assets across the world and have required the Serious Fraud Office to make protracted enquiries in many other countries.

Frequent examples of 'long firm' fraud are appearing connected to the international trade exhibitions which are flourishing all over Europe. The fraudster visits the stand of a supplier at one of these exhibitions and orders goods to be delivered on credit to an address in this country. By the time that the payment has become due, the goods have been delivered to premises in this country and then moved on, leaving an empty factory unit behind.

In the credit card fraud area, stolen credit cards have been given to young, out of work people with instructions to take a trip to the continent and make purchases of specified goods which are handed over to a receiver on the continent. These youngsters are then allowed to make one purchase for themselves and then they return to this country having left the card with the contact in Europe. Often these cards remain in mainland Europe, being used on other occasions and never returning to this country. These young operators are well briefed on the floor limits operated in connection with cards so that they do not require authorisation from the credit card company for purchases to be made.

Functional Co-operation between Law Enforcement Agencies and the Future

In the area of financial crime, most of the co-operation is carried out on formal basis because it involves the

gathering of evidence in the form of statements and exhibits from within the jurisdiction of other countries. Financial institutions are notably reluctant to disclose details of their activities for fear of discouraging future investment by clients in their organisations. This is particularly apparent in the so called 'off shore' locations dotted around the world. Competition between these locations is extremely fierce and if one were seen to be becoming more open about the details of its customers accounts, another would step into its place.

It is therefore important to operate with the full support of the judicial and law enforcement agencies when obtaining evidence within foreign jurisdictions. One of the major problems in this area is the amount of time it has taken, to prepare and execute a Commission Rogatoire in a foreign jurisdiction. Some countries have been reluctant to assist because Britain had failed to sign the European Convention on Mutual Assistance in Criminal Matters until recently. Many cases have foundered through the improper preparation and presentation of the Commission Rogatoire which is required before a foreign state will co-operate in the interview of a citizen of their state who is a potential witness or defendant. The Criminal Justice (International Co-operation) Act 1990 has gone some way towards simplifying the procedure by allowing the United Kingdom to become a signatory of the European Convention on Mutual Legal Assistance which in turn establishes an international framework for the requesting and provision of information and evidence in the course of criminal investigations.

This has substantially speeded up the requests for evidence from a foreign state. Another device which has come into existence in the smaller jurisdictions such as the Channel Islands and the Isle of Man is specialised local legislation which allows local law officers to obtain information more or less compulsorily at the request of an overseas law officer or investigator. Even the Regulators now have the 1989 Companies Act which allows the Secretary of State for Trade and Industry

to obtain, on behalf of overseas supervisory agencies and commercial regulators, a great deal of confidential information about UK companies, commercial activity and individual transactions in non crime cases. Even the British Bankers Association have been showing their members how conformity with money laundering legislation can actually benefit banks by reducing their exposure to fraud.

The operational side of the international enquiry still needs to be focused via Interpol but past delays in obtaining the evidence should be considerably shortened. The creation of an identifiable officer in each police force in this country as Interpol Liaison Officers to facilitate this type of co-operation²⁵ will help to smooth the passage of such requests through the system.

At the same time the major credit card companies, because they themselves are international operate their own internal intelligence system with regular circulations to their members warning them of the latest fraudulent activity. A large proportion of this type of fraud would be preventable if the banks improved the security of the credit card. Competing interests of customer relations and fraud prevention have until now prevented this from happening. However, recent agreement at a meeting between government, the financial institutions and the Police will hopefully result in a tightening of card security which should reduce the size of the problem.

Conclusion

The expertise which exists in the Serious Fraud Office and the development of its ability to carry out international enquiries has paid dividends in the investigation of the most serious types of fraud. The size of this group together with financial constraints, severely restricts the caseload which can be accepted by it. Therefore the majority of fraud cases are

investigated by individual forces. The more serious ones generally receive attention from their own fraud squads but the sheer weight of the caseload means that many cases are investigated on divisions and sub-divisions. A number of these cases have an international angle and whilst advice is readily given by force fraud squads and the Serious Fraud Office an international enquiry may require a special type of expertise which could be lacking locally. The cost of an international investigation, undoubtedly has an impact on how long it can be allowed to continue, especially where there are other competing demands.

The investigation of fraud is a specialised area requiring a high degree of expertise including specialist assistance in the analysis of financial documents. Add to this, the need to understand the intricacies of foreign language, differing financial structures and legal systems and there is a problem which is very difficult to surmount. The only answer is the injection of more resources into this area if we are properly to tackle this problem.

Credit card fraud is only one part of the whole spectrum of fraud but it is an area where little attention is currently given by the police. The credit card holders are the losers because the losses are undoubtedly passed on in the form of increased charges. The credit card companies must be persuaded to make their cards much more secure. Discussions have been held recently between the credit card companies, the Home Office and the police which resulted in recommendations for the tighter control of delivery of new cards and a redesign of the card to provide a picture of the holder within the card. So far, only the Bank of Scotland has included such a photograph which has, it is claimed virtually eliminated credit card fraud with this bank's cards.

The success of the change from magnetic strip to microchip technology currently taking place in France needs to

be assessed because those who support the latter are claiming that the system is much more secure against forgery or alteration than the magnetic strip technology. Although there are substantial cost implications involved in such a switch, it could be paid for by any savings made in preventing fraudulent use.

The awareness of the size of credit card fraud needs to be addressed. The credit card companies currently are very protective about disclosing the size of the problem. The non-referral rate to the police of such fraud does not allow a true figure to be known. Whilst undoubtedly the police could not and probably would not, wish deal with every case of credit card fraud it is an area which requires closer liaison between the police and the credit card companies who would be able to produce the statistical figures of both total and cross frontier credit card fraud quite easily. It is also an area which is fairly capable of technical resolution.

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CHAPTER NINE

Conclusion

Policy Development.

At the beginning of this research it was proposed to try to follow the methodology of the recent thesis by Alan Waymont, where he attempted to examine the development of drug related strategies in the context of public policy making. Chapter Two sought to identify whether the policy making in the area of terrorism and drugs and subsequently in the areas of the case studies on motor vehicle crime, art and antique theft and fraud, could be identified with any particular theory. As Waymont found, policy making in relation to law and order and in particular to that of drug trafficking measures does not fit readily into any particular policy-making theory. In extending this methodology the research identified similar problems in respect of the new research areas.

As was outlined earlier, the policy relating to anti terrorist co-operation has come to a large extent from central government although considerable influence has been exerted by civil servants during the establishment of the Trevi forum and by the Metropolitan Police Special Branch. In terms of the case study areas, policy formation is only in its infancy with the very recent acceptance by the Council of Ministers at Essen of the area of vehicle trafficking within the future remit of the Europol organisation. The research recognises the considerable influence that is being exerted in respect of policy formation by external agencies such as the insurance industry and the banks in these areas. It is therefore more correct to say that policy formation is a not comfortably defined by any particular model.

International Crime v Organised Crime.

International Crime and Organised Crime are often linked together in the popular literature but the research shows that the two areas are not necessarily inter related. The research shows that it is sometimes the case that organised groups of criminals are involved in international crime but often these associations are not permanent with particular teams of criminals coming together to carry out a particular international criminal operation where specific skills are required. International crime has received some attention by academic and police sources and its growth is recognised in the literature. One indicator of the recognition of its existence by the police could be the recent reorganisation of the National Criminal Intelligence Service to include an international division. The research shows that in the areas of terrorism and drugs, there is a clear understanding that there are elements of both types of crime which cross international frontiers and there are established national, regional and international co-operative frameworks in existence. It also finds that an extension of the principles to other areas of inter-state crime highlights problems of definition, mixtures of helpful and unhelpful linkages to organised crime and an extremely poor database on which to base any assumptions.

Is the Problem Really Recognised within the United Kingdom?

The questionnaire survey conducted during this research project in 1991 clearly indicated that the police service was at that time not taking the problem seriously enough to make any impact on the case study areas. Even in terms of terrorism and drug trafficking, no data collection was in place to capture the information to indicate clearly what the size of the problem was. Benyon in 1994¹ recognises that 'the extent and types of serious cross border crimes are poorly understood. There exists side by side an array of different police and other law enforcement

organisations; a complex, interconnected lattice of groups, associations and networks which exist to promote co-operation in different specialist fields of law enforcement; and a small number of major structures to facilitate various forms of collaboration between police organisations in Europe'. The development of legislative and practical co-operative mechanisms has been moving forward for a number of years, particularly in the area of terrorism. The reasons for the development of policing in these areas are driven by the high profile they achieved with the policy makers, both nationally and internationally, which has provided the impetus for such development.

Policy making takes place on a number of levels within the British system. On the national level the government will exercise more control than ever before on the individual forces. In financial terms, the government will control 90% of the budgets of individual forces through the new funding arrangements brought about by the Police and Magistrates' Courts Act and the breaking away of the police authorities from the local government set up. The Home Secretary has given himself the power to set national key objectives with their associated performance indicators. This means that he is beginning to focus quite closely on the inputs and outputs of the police and through this means and via the influences he has traditionally exerted by way of Her Majesty's Inspectorate of Constabulary he will have the ability to steer the attention of Chief Constables into areas which he considers to be important. He could, as has already been explained, focus attention on an aspect of international crime by using the Key Objectives. He has also given himself the means, within the same legislation, to amalgamate forces within Wales and in England, changes in police areas could follow the recommendations on local government areas proposed by the Local Government Commission. The concept of larger forces has the benefit of economies of scale and this could be especially important when international crime is on the agenda. One only has to look at the Police Judiciaire in France for example, to

see some of the benefits of having a national view in this area. The creation of the National Criminal Intelligence Service together with its regional and local networks has begun to show some benefits of a co-ordinated approach to collecting and dealing with intelligence and its further development is probably an essential element to the fight against international crime.

The new ethos of policing plans could support the development of the identification of priorities at both national and local level. The Home Office Circular which describes the structure of the plans asks for consultation with the community through the Section 106 (Police and Criminal Evidence Act) Police Liaison Committees to identify local priorities which in a coastal area and elsewhere could conceivably be about the threat of international crime of one sort or another.

On the international front the European Union is widening its remit, both in respect of the increase in the number of member states and also in beginning to be concerned about law enforcement and justice through the Maastricht Treat provisions. This development is not without its problems in reaching agreement amongst member states about the terms of reference of Europol. The research shows that although the problem of international crime is recognised by the majority of member states, each has its own personal agenda as to the priority of the individual areas of crime. For example the illegal movement and sale of nuclear material is a high priority for Germany. Before the successful development of a European co-operative mechanism such as Europol can take place the member states need to be committed to the free flow of intelligence to the European Liaison Officers within that organisation's structure.

Research also shows that many of the member states are keen to ensure that Europol should not 'attempt to run before it can walk'. It for this reason that the Ad Hoc Working Group on Europol is in the process of creating a list of crime areas that

are expected to be included in the Annex to the Europol Convention. The Annex will act as a shopping list for those charged with managing the organisation from which they can select new areas for Europol's attention in the future. The question of whether Europol needs an operational arm is one which cannot be immediately answered. However, there are circumstances where the value of such an organisation, along the lines envisaged by Chancellor Kohl, can be recognised. Europol could be one of the most promising ways forward as it will not suffer from the disadvantages which have been experienced by Interpol and Schengen in particular because it has the tangible support, both in terms of funding and support from the European Commission and the European Parliament.

International Crime, Areas of Transferability.

The five areas of crime which have been considered within this research all have common factors running through them. There is evidence of recognition in each crime area that an international cross frontier aspect exists although the level of that recognition differs between the various areas. One of the problems that affects such recognition is the lack of data collection which exists in each area of international cross frontier crime. The legislative and practical co-operative mechanisms also run through them like a common thread, but are more developed in some areas than in others. It is the examination of the possibility of the transferring of mechanisms from the more developed areas to the lesser that is the thrust of this research. A fact that quickly becomes apparent when looking at the more developed areas of drug trafficking and terrorism is that the latter may not have as many transferable aspects as the former.

Terrorism

It is very difficult in any area of crime to measure the effect of preventative legislative measures. The number of times that a piece of legislation has been used can be measured but this is only a part of the picture. Some of the legislative and conventional tools developed in this area are extremely specialised in the way they operate and probably have limited application in other areas of international cross frontier crime. There has also been considerable difficulty in arriving at a consensus about the definition of the problem being tackled in the international arena. Additionally, the practical co-operative mechanisms which have been developed are very effective for the area in which they operate, ie. the prevention and detection of terrorist offences. The need for anti-terrorist operations to be conducted away from the normal arena of policing has long been recognised.

Examination of this area shows that anti-terrorist operations within the police service tend to be isolated from the main thrust of policing. The units have traditionally guarded their intelligence networks jealously. These networks have tended to be highly specialised in their operations and will probably remain so even though the security services have recently taken over lead responsibility in this area. Additionally, the indications are that anti terrorism will be excluded from the remit of Europol because of the effective networks which are already in existence. The majority of EU states, with the exception of Spain, are in favour of such an exclusion.

Drug Trafficking

The research highlights that a major difference between terrorism and drugs has developed. A well recognised principle of international drug trafficking an object or objects is often

transferred across an international frontier. This premise also applies to the three case study areas; for in each case there will probably be a similar illegal transfer of property across a frontier. It is this similarity which causes the view that the transferability of drug trafficking legislation and co-operative mechanisms is much more of a reality than in the case of anti terrorism measures.

Legislation and conventions used to combat drug trafficking and its associated activity of money laundering has produced considerable consensus amongst the major countries of the world. The research has shown that a number of successful legislative measures have been agreed which allow common action to be taken to try to stem the tide of drugs arriving from the producer countries. It is also clearly recognised that the profits which are to be made from this criminal act are enormous and are the main incentive to most groups involved in this field. The drug trafficking legislation has therefore focused on trying and to remove the profit incentive by preventing such monies entering legitimate bank accounts and therefore acquiring the status of legitimacy. The common agreement in this area, in Europe in particular, has been one of the major areas of progress that have been achieved over recent years. It is now the case that all member countries of the European Union together with a large number of others across the world, have domestic legislation in place to enable the tracing and confiscation of assets that have been achieved through drug trafficking.

The concept of asset seizure and confiscation is one area which the research suggests could be transferred to the other three areas of auto crime, art and antique theft and credit card fraud. One of the motives in each case is probably profit and if that aspect can be negated there will not be an incentive to carry out such acts. In the same way as exists for money laundering legislation in respect of drug trafficking, a commonality of concern over profits to be made from criminal actions in the three developing crime areas needs to be developed

amongst states. This could lead to the development, under the overarching umbrella of international conventions, of domestic legislation to enable the seizure and confiscation of assets.

The research shows that the development of the DLO system which is described in detail in Chapter Three is a model which has benefits which could be transferred to the other three areas. The DLOs and their colleagues within Europol, the ELOs, act as focuses for the gathering, analysis and exchange of intelligence in respect of drug trafficking activities. The Annex to the Draft Convention illustrates a recognition of the fact that an extension of the concept of liaison officers could succeed in other areas of crime. One advantage of any such extension of the development of the Europol model into the three case study areas is that it should not suffer from the partisanism which exists still between the Police and HM. Customs in the drug trafficking area, which was identified earlier in the research. This is because the latter organisation has only a secondary legal jurisdiction in the case study areas.

One of the reasons for the success of DLOs is the personal contact made by police officers and customs officers working in the same field and to the same ends. In the United Kingdom, the rationalisation of the whole area of intelligence gathering together with the development of the National Drugs Intelligence Unit into an arm of the National Criminal Intelligence Service demonstrates the increased commitment of government and police sources to tackling the problems relating to drug trafficking. The full development of the long awaited European Drugs Intelligence Unit within Europol at the Hague should if properly developed, provide another link in the intelligence chain, providing an overview facility in respect of the combat of drug trafficking in Europe.

Auto Crime

The research seeks to examine the transferability of the legal and co-operative mechanisms to the case study areas. As has already been stated the transferability of the asset seizure/confiscation legislation to this area is worthy of consideration and could remove one of the incentives which currently drive this area of criminal activity.

Another area which has been considered in this work is the development of an international criminal court. This could solve some of the problems of jurisdiction which may arise in respect of any offence where the property is transferred across international frontiers. However, the proposals relating to this area are currently only just moving toward including large scale drug trafficking. The extension of the principle into auto crime is therefore in the far future but the benefits of such an extension should not be lost from recognition. The Unidroit proposals relating to a harmonisation of the law relating to restitution of property, which is a particularly difficult area, currently focuses on the recovery of stolen art and antiques but may also have applicability to this area.

The recent decision by the Council of Ministers mentioned earlier to include vehicle trafficking within the remit of Europol in the future,² will facilitate the exchange of intelligence on auto crime between member states via their ELOs. This could bring benefits to the combatting of cross frontier crime in this area. The identification of the magnitude of the problem of cross frontier auto crime is a necessary precursor to giving priority to the need for additional resources to combat this area of crime. This fact has been clearly identified within the research and additional research could be carried out to establish ways in which such a data recording process could be established. The new initiative by Interpol appears to fail fully to address this issue although the movement towards setting up an international database could eventually provide some quantitative data.

Using the models outlined at the end of Chapter Four one can see they there are also distinct differences between drug trafficking and auto theft. In the case of drug trafficking, the two key players are the police and HM Customs, whilst in Auto Crime there are key players who originate from outside the law enforcement arena. These include, the registration authorities, the vehicle insurers, the vehicle manufacturers and vehicle owners. The research highlights the contributory role each might play in this area and clearly identifies the need for closer liaison between the police and other interested parties.

One area which the government and the police have identified, which could have an impact on international cross frontier vehicle theft, is the need to persuade vehicle manufacturers to design crime prevention measures into their new models. Considerable improvements have already taken place including the installation of alarm systems as standard in a number of new models. Another area worthy of consideration is the possibility of including a remotely recognisable identifier which ideally would be built in to the structure of the car. This could allow the identification of the vehicle and its comparison with a stolen vehicle database. Such measures could run parallel with government proposals for the introduction of toll charging on some major routes. As already mentioned, the vehicle insurers may have a role to play by encouraging their clients to become more security conscious by giving premium discounts for those policy holders adopting their own crime prevention measures.

The research identifies the need to eliminate the international market for stolen motor vehicles. This could be achieved by an examination of the possibility of the sharing of database information between countries as proposed by Interpol and others. The need for a sharing of information on stolen vehicles between all databases is identified. The proposals recently raised by Interpol and those included in the recently approved Schengen Agreement ought to be taken forward and be

included in any Europol database of the future. Any sharing of information held on computerised databases can bring with it problems relating to data protection but enquiries seem to indicate that such perceived problems are not insurmountable.

The need for a rapid response in respect of information requested by police officers who are dealing with suspected stolen vehicles may eventually be dealt with from within the Europol and other organisations. Until auto crime achieves the status currently accorded to drug trafficking intelligence within the Europol convention there is a need to maintain and strengthen the current links which exist internationally between officers who are working in this area. Eventually there could be a need to rationalise the databases held in Europe to ensure that duplication of effort does not exist.

One of the areas identified early in the research was the multi functional role of the Port Special Branch Officer. The need to ensure that the necessary skills to deal with that role are available is an important issue which is only being addressed piecemeal currently. This includes the skills of those that work within port areas in relation to the recognition of stolen vehicles. Finally, the research identifies a need for national vehicle registration authorities to keep in touch with their international neighbours, especially in the area of applications for re registration.

Art and Antique Theft

In a similar way to auto crime, the research shows that art and antique theft exhibits many characteristics that would benefit from the model described above. In the area of legislation there is a need on a national and an international level to develop asset seizure and confiscation measures similar to those developed for drug trafficking and proposed earlier in this chapter for auto crime. Art and antique theft has been

shown to be one area of crime where high profits can be made from the proceeds. It is also the one area out of the three case study areas which shows some of the characteristics of organised crime described in Chapter Four. Strong links with other areas of crime such as drug smuggling and terrorism have already been described in Chapter Seven.

The applicability of the International Criminal Court proposals to art and antique theft suffers from the same problems as auto crime, ie. that it is too far down the list of concerns of the International Law Commission at this time. However, concerns at international level over art and antique theft are much stronger than auto crime, probably due to the 'cultural heritage' issue which is much stronger in many other European states than it is in the United Kingdom. This strong concern is evidenced by the work carried out in the preparations for the United Nations and Council of Europe Conventions. The research shows that this problem needs to be resolved before any real legislative progress can be made at the international level.

The Unidroit proposals over harmonisation of restitution of property legislation mentioned in Chapter Seven are of primary importance. The difficulties in recovering the stolen property once it has been located have been examined during the research and such proposals would help to facilitate the fair deal for the original loser and the innocent purchaser in each case.

The subject of international art and antique theft has been recited within the Trevi proposals and is continued within the Maastricht Treaty and Europol discussions. It is high on the agenda of a number of European states to be included within the remit of Europol at the earliest possible opportunity.

On a more practical level, the research has highlighted the need to develop owners' appreciation of their responsibilities to prevent the theft of their own property. One

way in which this might be achieved is by police and insurers encouraging the proper cataloguing, photographing and marking of such property to aid its speedier recovery. Many practitioners during the research suggested that such measures could be made a pre-condition of the acceptance of an insurance risk. Once again the research highlights the need for the gathering of reliable quantitative data about cross frontier art and antique theft.

It has already been recognised that specialist skills are required to deal effectively with this area and there is need to train officers properly to carry out investigations. There is also a need to encourage liaison between the police and the commercial world which possesses a great deal of expertise in this area. A considerable amount of liaison between individuals does already take place but there is a need to extend this in the future. The same need also applies between police officers operating in this area in the UK and in other countries. The research, in examining the experience of neighbouring countries who have a national approach to the problem, appears to indicate that it is more effective than the fragmentary approach in this country. One option is to move the major responsibility for intelligence gathering in this area to NCIS especially if it acquires its operational arm.

One difference between auto crime and art and antique theft is that the former has a specific police database, the PNC, whereas the latter has no such national facility and where such a local system exists it is either only rudimentary or is driven by commercial interests. There is an identified need within the research for a nationally available database or linked databases which record stolen high value property. Because of the fragmentary nature of policing in the UK the research shows that the majority of initiatives concerning a database are coming from the commercial sector. The police service should choose either overtly to support the commercial initiatives or urgently to develop its own system.

Finally, the research highlights another area which requires attention. This the way in which information is transmitted to resale points or points from which such property leaves the country. Whilst circulations of stolen property are passed to auction houses and others on a regular basis, evidence of the speed and quality of such transmission sometimes leaves a lot to be desired. One way forward could be the development of computer transmitted images.

Credit Card Fraud

Credit card fraud is different from the two preceding areas and some difficulty has been found in discovering areas of transferability in this case. Asset seizure and confiscation measures are the exception to the rule because massive profits can be made in this area. Likewise the International Criminal Court's jurisdiction could be extended to cover really serious international cases which fall in this area. One advantage this area has over the other two case studies is that measurement is marginally easier and does already take place in some areas. The research shows that some banks and credit card companies have a reasonably clear picture of the size of the problem but they are not always willing to discuss the details. In the days of high interest rates being charged on credit card accounts the level of profit from this area of business may have caused a lack of concern on behalf of the banks. This may change with the lowering of interest rates and the poor business being conducted by banks in other areas making it a matter of greater concern in the future.

It would appear from the research that the only area where a substantial impact could be made is in the design of the card. One option which is currently being considered concerns the use of the smart card. Whilst these are more expensive to produce and require modification of tills and other equipment to accommodate them, first indications are that such cards are less

open to abuse.

The research has proved that there are areas of established international cross frontier crime which are transferable to the developing areas. This is noticeably more true for drug trafficking than it is for terrorism which tends to exist in isolation. Legislative and practical police co-operative mechanisms in each area of crime could be developed and exist in isolation however there are proven established areas which could be transferred to benefit the case study areas.

The Future.

This research covers a small part of the developing subject of international cross frontier crime which needs continued examination in the future. Further areas worthy of attention might include trying to establish if there are any other emerging areas of international cross frontier crime which could benefit from the principles of transferability developed in this research. Another area which would benefit from research is the development of the concept of Europol and its relationship with Interpol and other emerging organisations. Other areas of concern for the future will be the developing role of the international criminal court and the proposals relating to asset seizure and the development of restitution of property legislation. Finally, the United Nations at a conference in Naples in November 1994, sought to examine the issue of organised crime, attempting to define and prohibit transnational crime.³ The proposed convention, if agreed, would widen the areas of concern to include video and music cassette piracy, illegal immigration and trafficking in cars. The development of this initiative is also worthy of further examination.

Notes.

1. J. Benyon. 'Policing the European Union: the changing basis of co-operation on law enforcement.' International Affairs. vol.70. 1994. p.497.
2. European Commission. Weekly Newsletter. 12th December 1994.
3. The Times, 21st/22nd November 1994

APPENDIX A Semi Structured Interview Questionnaire.

Within these forces, the following are personnel whom it would appear to be essential to question during the interview phase of this project.

Force.....	
N a m e	
Rank.....	
Position.....	Contact
No.....	

(1) Senior Policy Maker

- (a) What mechanisms are planned to assess the scope of inter-state crime in the force area

- (b) What is the perceived impact on the force of the proposed lowering of frontiers in 1992.

- (c) What practical steps, including any force organisational response, are being taken to combat any increase in interstate crime

- (d) Has any review process been started to assess the needs of the force in connection with the proposals to lower border controls in 1992. Does this follow the lines of the Constabulary European Audit produced by the Devon and Cornwall Constabulary.

- (e) Has there, or is there planned to be, an appraisal of the size of the Port Unit as a result of the proposals to change the roles of the other frontier authorities in the U.K.

- (f) What, if any, bid is planned for increase in budget to cope with the problems

- (g) How does this force carry out co-operation with European counterparts. Are there any plans for change.
 - (i) Formally
 - (ii) Informally

- (h) Have any targets/objectives been set in the force, to cope with the proposed lowering of frontier controls in 1992

- (i) Are any methods of evaluating or monitoring the above targets or objectives in use.

- (j) What provisions for the training of officers in foreign European languages are made by the force.

Force.....
Name.....
Rank.....
Position..... Contact
No.....

(2) Stolen Vehicle Squads

- (a) How does the control of motor vehicles, leaving and entering the U.K. through your Channel Ports operate.

- (b) What reporting system exists for stolen foreign vehicles found in your area or stopped at the Port Controls.

- (c) What reporting system exists for stolen U.K. vehicles stopped at the Port Control

- (d) What reporting system exists to notify the recovery of your forces stolen vehicles abroad.

- (e) Is there any requirement for details of imported or exported stolen vehicles recovery to be reported to Metropolitan Police Stolen Vehicle Squad (SO.16).

- (f) How is liaison carried out with European counterparts

- (g) What use is made of Interpol channels.

- (h) Are you aware that you can supply details of stolen vehicles recovered abroad to Interpol via the CRIGEN/AUTO/REC form. This system exists to analyse the patterns of stolen vehicle in this area.

- (i) What other channels exist in this field

- (j) What use is made of the BKA and Belgian enquiry facilities at New Scotland Yard.

- (k) What checks are carried out to detect stolen vehicles being exported by container.

- (l) Are there formal co-operation channels between the shippers and carriers and the Police

- (m) Is there any method in use in this force eg the scrutiny of ships manifests to detect the insurance fraud element in vehicle theft reports.

- (n) Are any statistics available to calculate the number of stolen vehicles exported through your ports.

- (o) What level of liaison is maintained with the ABI/MIAFTR index.

- (p) What level of authorisation is required to carry out personal enquiries abroad.

- (q) What level of delay exists between the application for a Commission Rogatoire and the actual enquiries being carried out abroad to gather evidence

- (r) What levels of liaison exist between yourselves, H.M. Customs and other port users to identify the export of stolen vehicles, particularly by container.

- (s) What is the current establishment of your squad.

Force.....
Name
Rank.....
Position..... Contact
No.....

(3). Art and Antiques

(a) What is the statistical availability to discover crime patterns in the following areas.

(i) The number and value of offences of burglary which involved art and antiques.

(ii) The number and value of recoveries of stolen works of art and antiques outside the United Kingdom.

(iii) The types of property stolen

(iv) Is it possible to carry out offender profiling from the data available.

(b) What methods of communication are used to trace stolen property in countries outside the United Kingdom.

(i) Official Channels

(ii) Unofficial Channels

- (c) Which commercial organisations are of use to you in facilitating the recovery of works of art and antiques from outside the United Kingdom

- (d) Are there any mechanisms to allow you to receive reports of stolen art and antiques recovery within your force area particularly at the port(s).

- (e) Are problems encountered abroad with the differing laws of restitution, when attempts are made to recover this type of stolen property.

- (f) What levels of liaison exist between yourselves and H.M. Customs, to detect the export of stolen works of art and antiques, particularly by container.

- (g) How many officers in your force are involved full time in the investigation of the theft of art and antiques.

Force.....
Name.....
Rank.....
Position..... Contact
No.....

(4). Fraud

- (a) What statistical evidence is available to discover the effect of interstate criminal activity in the area of fraud.

- (b) Are all cases of fraud which involve the transfer of assets outside the United Kingdom dealt with by your unit.

- (c) If not, are there any reporting procedures for dealing with the notification to yourself of frauds which have an international aspect.

- (d) Within the fraud squad are foreign enquiries allocated to particular officers with specialist knowledge of foreign languages and judicial systems or does the officer in the case follow through the enquiry to its conclusion.

- (e) What specialist advice is available to enable officers to satisfactorily complete enquiries abroad

- (f) If no statistics are available what percentage of fraud enquiries during 1990 have necessitated enquiries outside the United Kingdom.

- (g) In your opinion could some picture be gained by an examination of the number of Commissions Rogatoires which have been obtained in the area of Fraud over the past year.
- (h) What methods of co-operation exist, with European counterparts, which assist in the successful investigation of fraud which has crossed international frontiers.
- (i) Are any statistical analyses carried out to link offences with offenders

Force.....
Name.....
Rank.....
Position..... Contact
No.....

(5) Officer in charge of Port Controls (Special Branch)

(a) Are any statistics kept to identify stolen motor vehicles

(i) From the U.K.

(i) From Europe

detected in port areas.

(b) Are any statistics kept to identify stolen works of art and antiques detected in the port areas.

(c) How often are stolen vehicle checks carried out on vehicles passing through the port.

(d) How are checks carried out on foreign vehicles travelling through the port.

(e) What levels of liaison exist between the Port Unit and

(i) Other official bodies at the port control. Customs, Immigration, Port Health etc.

- (ii) Shippers and other commercial organisations.

- (f) How much information is forthcoming from H.M. Customs and Shippers relating to the contents of containers exported through the port.

- (g) How much attention is paid to the contents of heavy goods vehicles passing through the port controls.

- (h) Are any mechanisms in place to facilitate liaison between Port Units, specialist vehicle squads and art and antiques officers.

- (i) What methods of liaison are used to maintain contact with police forces on the opposite side of the channel. Is it purely by telephone or is regular personal contact maintained.

- (j) What staffing levels are established within the Port Unit. Does the level alter depending on the season. Do you see a need for an change in establishment levels as a result of the proposed change in emphasis of border controls on 1.1.93.

Force.....
 Name.....
 Rank.....
 Position..... Contact
 No.....

(6). Finance Officers.

- (a) What financial statistics are available which can assist in assessing the size of the problem of inter-state crime.

- (b) If they exist can they be easily subdivided into headings of
 - (i) Stolen vehicles
 - (ii) Art and Antiques
 - (iii) Fraud

- (c) If they can be subdivided, is it possible to define them by country of enquiry.

- (d) Is there any anticipated increase in expenditure due to changes to cope with the effects of the lowering of border controls by 1.1.93

- (e) Have any cost benefit analyses been done or are they expected to be done, into assigning officers to deal with anticipated problems.

Force.....
 Name.....
 Rank.....
 Position..... Contact
 No.....

(6). Crime Statistics Department.

- (a) Can the location of recovery in property crime be exposed, in statistical form, from the general crime data held.
- (b) Can the recovery of stolen property from outside the United Kingdom be identified in statistical form.
- (c) In the crime figures, can the theft of a motor vehicle be distinguished from the figures for theft from a motor vehicle.
- (d) Can the art and antiques burglaries be separated from the others
- (e) Are there any plans in hand to modify the way in which crime data is stored to facilitate to allow the production of management information to assess the effect of the planned lowering of border controls by 1.1.93

5th June 1991

Dear Sir

This questionnaire has been prepared as a part of a Bramshill Fellowship research project, currently being undertaken at the Police Research Unit of the Mountbatten Centre for International Studies within the University of Southampton. The purposes of the research is to seek to identify problems of measuring cross frontier criminal activity. It specifically focuses on three areas of crime, namely, the theft of motor vehicles, the theft of art and antiques, and the fraudulent use of stolen credit cards, attempting to identify those offences which originate in one country but the stolen goods or assets eventually end up in another.

The questionnaire has been designed to be as short as possible and your co-operation in completing it is very much appreciated. Please feel free to expand on the answers to any of the following questions on separate sheets of paper. Any queries regarding the questionnaire should be directed to the above address.

A COLLIER
INSPECTOR

1. Do you currently collect data from crime reporting information which would enable you to measure the number and total values, of the types of cross frontier crime which are the subject of this research.

- (a) Theft of motor vehicles Yes/No
- (b) Theft of works of art and antiques. Yes/No
- (c) The fraudulent use of stolen credit cards Yes/No

If this data is easily accessible in your crime reporting data system, can you please supply the past five years figures?

(i) Theft of Motor Vehicles

<u>Number</u>	<u>Value</u>
1986.....
1987.....
1988.....
1989.....
1990.....

(ii) Theft of Works of Art and Antiques

<u>Number</u>	<u>Value</u>
1986.....
1987.....
1988.....
1989.....
1990.....

(iii) The Fraudulent Use of Stolen Credit Cards

<u>Number</u>	<u>Value</u>
1986.....
1987.....
1988.....
1989.....
1990.....

2. Do you have any other methods to assess the proportions of cross frontier crime as compared with the total number of crimes in the above three areas?
Yes/No

If Yes please give brief details below.

.....
.....
.....
.....

3. Within the Force accounting system, is there any method available to enable you to accurately assess the annual cost to the force, of operational international enquiries?

Yes/No

(a) If Yes can you please give the annual cost to the force over the past five years.

1986.....

1987.....

1988.....

1989.....

1990.....

(b) If these costs are available, is it possible to easily subdivide them into the following categories?

(i) Type of offence. Yes/No

(ii) Country (countries) visited. Yes/No

4. If this data is not currently available, does the senior management of the force see the need to be able to measure the above areas in the future?

Yes/No

5. Apart from via Interpol, does this force maintain operational links with other European Police Agencies?

Yes/No

(i) If Yes please indicate whether these are.

(a) Regular Yes/No

(b) Occasional Yes/No

(c) Formal Yes/No

(d) Informal Yes/No

(e) Personal Contact Yes/No

(f) Telephone/Telex/Fax Yes/No

(ii) At what level are these contacts made?

Senior Officer only / Any level

(iii) At which level are contacts authorised?

(a) ACPO only Yes/No

(b) Senior Detective Officer Yes/No

(c) Some other level. Please state level.

.....

(d) Dependant on the type of enquiry
Yes/No

(iv) Please state below the European countries with which operational contact has been made over the past year.

.....
.....
.....
.....
.....
.....

(v) Are there any regular, formal or informal operational contact mechanisms which it would be helpful to describe for the benefit of other forces? Please describe them briefly below.

.....
.....
.....
.....
.....

6. Does this force have any policy objectives in place or planned?

(a) To enable a data analysis of cross frontier crime, as it affects the force, to take place.

Yes/No

If Yes to (a) above, please give brief details below.

.....
.....
.....
.....
.....

(b) To establish or improve co-operation with other European Police agencies.

Yes/No

If Yes to (b) above, please give brief details below.

.....
.....
.....
.....

7. Has the force identified officers within its structure with

(a) European Language skills? Yes/No

If Yes to 7(a) above, are they located

(i) In specialist departments? Yes/No

If Yes please give details below.

.....
.....
.....
.....

(ii) Generally within the force? Yes/No

(iii) Both? Yes/No

(b) Specialist knowledge of police and criminal justice systems within Europe? Yes/No

If Yes to 7(b) above, are they located

(i) In specialist departments Yes/No

If Yes please give brief details of locations below.

.....
.....
.....
.....

(ii) Generally within the force? Yes/No

(ii) Both? Yes/No

(c) Is there a force policy which requires an international enquiry to be referred an officer having European Language skills and/or specialist knowledge of police and criminal justice systems in Europe

APPENDIX C

1992 AND CROSS FRONTIER CRIME

CONFERENCE

TUESDAY 16TH AND WEDNESDAY 17TH JULY 1991

CONNAUGHT HALL, WESSEX LANE, SOUTHAMPTON

PROGRAMME

Tuesday 16th July 1991.

- 10.30 Arrival and Coffee
- 11.00 **Inter-state Police Co-operation - The General
Issues.**

Mr Frank GREGORY, Head of Department of Politics,
University of Southampton
- 12.00 **Interpol - The Challenge of the 1990's**

Detective Superintendent W. WOODING. N.C.B.
Interpol, London
- 13.00 Lunch
- 14.30 **Insurers Action Against Auto Crime**

Mr A.W. GREENOUFF, Motor Manager, Association of
British Insurers, London
- 15.30 Tea
- 15.45 **Fine Art Theft in Europe**

Mr P. SAUNDERS, Sales Director, Trace Magazine,
Plymouth
- 17.00 **Plenary Session**
- 19.00 Dinner

Wednesday 17th July 1991.

- 09.15 **The Problems of Measuring Cross - Frontier Crime**

 Inspector Alan COLLIER, Bramshill Fellow,
 Department of Politics, University of
 Southampton.
- 10.30 **The German Perspective**

 Oberkommisar D. NONNINGER, Bundeskriminalamt.
 Germany
- 11.45 **The Internationalisation of Fraud**

 Detective Chief Inspector M. FOX, Fraud
 Investigation Department, City of London Police.
- 13.00 Lunch
- 14.00 **Plenary Session**
- 15.00 Tea and Conference Closes

CONFERENCE DELEGATES

D.N. ARNOLD Esq.
Davies and Co.
10, Cumberland Place
SOUTHAMPTON
SO1 2BH

Superintendent C.J. BENTHAM
Staff Officer (ACPO)
Sussex Police
Police Headquarters
Malling House
LEWES
Sussex
BN7 2DZ

Detective Chief Superintendent J. BRANSCOMBE
Regional Coordinator
No.5 Regional Crime Squad

Dr J. BROWN
Research Manager
Hampshire Constabulary
Police Headquarters
West Hill
WINCHESTER
SO22 5DB

Sergeant Mary BUSBRIDGE
Police Requirements Support Unit
Horseferry House
Dean Ryle Street
LONDON
SW1P 2AW

Detective Inspector Andy BUTCHER
New Scotland Yard

Detective Chief Superintendent G. CLARKE
No 7 Regional Crime Squad

Detective Sergeant CROOK
No.3 Regional Crime Squad

Dr M. DEN BOER
Project Group: European Police Cooperation in 1992
Department of Politics
University of Edinburgh
31, Buccleuch Place
EDINBURGH
EH8 9JT

Detective Chief Superintendent A.J. ELSEY
Suffolk Constabulary
Police Headquarters
Martlesham Heath
IPSWICH
IP5 7QS

Detective Sergeant D. FISHER
European Liaison Unit
Kent Police Office
Staff Buildings
Eastern Docks
DOVER
CT16 1JA

Detective Inspector Frank GALLAGHER
European Liaison Unit
Kent Police Office
Staff Buildings
Eastern Docks
DOVER
CT16 1JA
Kent

Detective Chief Inspector J. HARVEY
No.6 Regional Crime Squad Office

Dr R.Graham HINE
The Art Loss Register
13, Grosvenor Place
LONDON
SW1X 7HH

Mr D. HISLOP
Art Sales Index Ltd
1, Thames Street
WEYBRIDGE
Surrey
Detective Chief Inspector T. JAMES
No. 4 Regional Crime Squad

J.A. LINFIELD Esq.
Davies and Co.
10, Cumberland Place
SOUTHAMPTON
SO1 2BH

D. Mc GREGOR
H.P. Information
New Street
SALISBURY

W.P.C. I. MARSH
Channel Tunnel Planning Team
Kent County Constabulary
Police Headquarters
Sutton Road
MAIDSTONE
ME15 9BZ

Chief Inspector D. PARSONS
Metropolitan Police International Unit
Room 1232
New Scotland Yard
Broadway
LONDON
SW1H OBG

Detective Chief Inspector D. QUADE
C1
Hampshire Constabulary
Police Headquarters
West Hill
WINCHESTER
SO22 5DB

Julian RADCLIFFE
The Art Loss Register
13, Grosvenor Place
LONDON
SW1X 7HH

A.J. SUTER Esq.
Davies and Co.
10, Cumberland Place
SOUTHAMPTON
SO1 2BH

Detective Superintendent D.TAYLOR
No 7 Regional Crime Squad

Detective Inspector B. TEMKE
No.2 Regional Crime Squad

SPEAKERS AND OTHERS FOR CONFERENCE

- (1) A.W. GREENOUFF Esq
Association of British Insurers
Aldermay House
10-15 Queen Street
LONDON
EC4N 1TT
- (2) P. SAUNDERS Esq.
Trace Publications
163, Citadel Road,
The Hoe
PLYMOUTH
PL1 2HU
- (3) Detective Chief Inspector M. FOX
Fraud Investigation Department
City of London Police
- (4) Oberkommisar D. NONNINGER
European Liaison
New Scotland Yard
SW1H OBG

- (5) Frank GREGORY
c/o Department of Politics
University of Southampton
- (6) Alan COLLIER
c/o Department of Politics
University of Southampton
- (7) Detective Superintendent W WOODING
International Criminal Police Organization
National Office
New Scotland Yard
Broadway
LONDON
SW1H OBG
- (8) Rapporteur
Inspector P. BRIGGS
Research and Development Department
Hampshire Constabulary
Police Headquarters
West Hill
WINCHESTER

APPENDIX D.

List of Interviewees.

The following is a list of persons interviewed during the research for this thesis. In some cases full details are not given below. A complete list of interviewees is in the possession of the supervisor.

R. ADKINS, Assistant Collector, HM Customs and Excise, Southampton.

H. ASHTON, International Association of Auto Theft Investigators. Superintendent K. BENTHAM, Staff Officer to ACPO International Affairs Advisory Committee, Sussex Police.

A. BIBAUT, Inspecteur Divisionnaire, Police de l'Air et Des Frontieres, Le Havre, France.

Detective Chief Superintendent M. BLACKBURN, National Drugs Intelligence Unit, London.

R. BOTWOOD, Chartered Institute of Transport.

P. BROEDERS, CRI, The Hague, Netherlands.

Detective Chief Inspector P. BROWN, Art and Antiques Squad Metropolitan Police, New Scotland Yard.

Sergeant M. BUSBRIDGE, Police Research Group, The Home Office, London.

Chief Inspector S. CAMERON-WALLER, European Secretariat, Interpol Lyon, France.

Chief Inspector D. CANNINGS, Devon and Cornwall Constabulary. Commissaire Divisionnaire B COUVIGNOU, Police Judiciaire, Nanterre, Paris

Detective Chief Inspector C. CRAIG, Metropolitan Police.

D. CRAVEN, Art and Antiques Officer, West Yorkshire Police.

A. CRESPO, Police Judiciaire, Nanterre, Paris.

P. DAVIES, CSPO, University of Leicester.

P. DEBAURE, Division Internationale, Direction de la Police Judiciaire, Nanterre, Paris.

J.C. DEKKER, Rotterdam Police.

N. DICKENS, Executive Co-ordinator, Regional Crime Squads, London.

D. DOMIN, c/o American Embassy, London.
Detective Inspector T. DORANTT, Interpol, London
Chief Superintendent K. EMMERSON, Staff Officer to the Assistant
HMI Crime, London.
Detective Chief Inspector M. FOX. Fraud Squad, City of London
Police.
Detective Inspector F. GALLAGHER, European Liaison Unit, Kent
County Constabulary.
A. GREENHOUF, Association of British Insurers, London
Superintendent D. HARDING, Channel Tunnel Group, Kent County
Constabulary
Detective Chief Inspector A HARRISON, Interpol, London
Detective Chief Inspector G. HENLEY, Interpol, Lyon, France.
Inspecteur Principal G. HEYMES, Police Judiciaire, Nanterre,
Paris.
G. HINE, Art Loss Register, London.
A. HORSFALL, TSB Card Services, Brighton.
Detective Sergeant D. JONES, Stolen Vehicle Squad, Hampshire
Constabulary.
J. JUURSEMA, Auto Crime Unit, Scheveningen, Netherlands.
G. KEYS, American Express, Brighton.
M. LEVI, University of Wales, Cardiff.
R. LITTAS, Visa International, London.
H. MACHIN, London School of Economics.
Commander A. Mc INTOSH, National Co-ordinator, Ports Policing,
London
Chief Inspector A. Mc QUEEN, British Transport Police, London.
F. MULSCHLEGEL, Police Study Centre, Warmsweld, Netherlands.
Commissaire Principal J. NERET, Direction Centrale de la Police
Judiciaire, Nanterre, Paris.
Oberkommissar D. NONNINGER, Bundeskriminalamt, Wiesbaden,
Germany. Chief Inspector D. PARSONS, ACPO European Unit, New
Scotland Yard.
W. PARSONS, TSB. Card Services, Brighton.
G. POPE, Hertz Rental, London.
J. POTTS, F.4 Division, Home Office, London.
A. RAYER, Rotterdam River Police, Netherlands.

M. LE RESTE, Attache Des Douanes, French Embassy, London.
D. ROSE, HM. Immigration, Dover.
Commissaire Divisionnaire A ROSSION, 10eme Division, Police
Judiciaire, Nanterre, Paris.
S. SCHELLER, Max Planck Institute, Fribourg, Germany.
C. SHERLOCK, British Vehicle Rental and Leasing Association.
Inspecteur Divisionnaire A. SOLAR, Office Central Pour La
Repression Du Vol Des Oeuvres Et Objets D'Art, Police Judiciaire,
Nanterre, Paris.
J. SOUTER, Davies and Co. Southampton.
R. SPRINGVLOED, CRI, The Hague, Netherlands.
Detective Superintendent B. TAYLOR, Interpol, London
J. TROON, Lloyds Bank, London.
P. VAN REENAN, Apeldoorn Police Academy, Netherlands.
F. VERDELMAN, Interpol, The Hague, Netherlands.
L. WEEDA, CRI, The Hague, Netherlands.
Detective Superintendent W. WOODING, Interpol, London.
A Senior Police Officer from ELS Metropolitan Police Special
Branch, New Scotland Yard.
An official of the Arts and Museums Section of the Cabinet
Office.

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