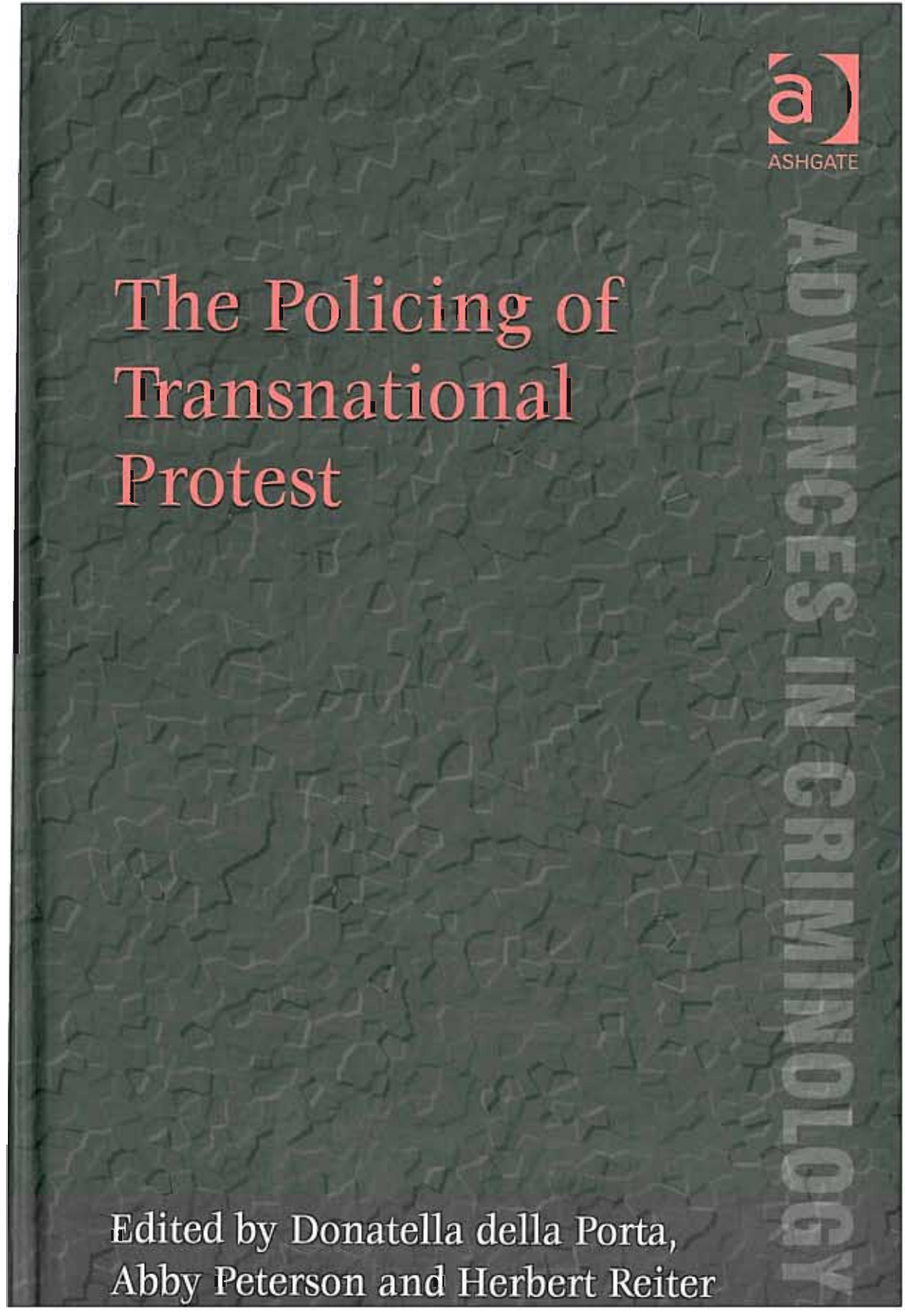
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The Policing of Transnational Protest
Edited by Donatella della Porta, Abby Peterson and Herbert Reiter

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Chapter 7

Formalizing the Informal: The EU Approach to Transnational Protest Policing

Herbert Reiter and Olivier Fillieule

Introduction

The increasing number of global justice protests, their explosive growth, their reliance on direct action repertoires, and the frequent clashes between demonstrators and police have raised among sociologists the issue of mass demonstrations and the maintenance of law and order. Other chapters of this volume were dedicated to the question of whether we are witnessing a profound transformation in forms of political participation and/or methods of management of public order within democratic states – or, as partisans of the movement affirm, a 'criminalization of social movements' (e.g. George 2001; Palidda 2001; Petrella 2001). The present contribution is inspired by the observation that not only at the national but also at the transnational level, in particular within the European Union, the global justice movement is perceived as one of the 'new threats' alongside terrorism: the European Police College (CEPOL), established by the Council Decision of 22 December 2000, affirms in the welcoming section of its website its aim to reflect, along with the priorities specified within the Council Decision, those emerging in light of the summits at Gothenburg and Genoa and the events in New York on 11 September 2001.

The history of political protest has been characterized by a dual opposition: on the one hand, between condemning violent troublemakers in the name of the rule of law and denouncing repression in the name of the freedom of expression, freedom of assembly and the right to civil disobedience; and on the other hand, between the legitimacy of elected representatives and the legitimacy of the street. In this connection, it should be readily apparent that the indigenous categories contributing to the collective production of a discourse concerning the 'transformations in the forms of political participation' should be constructed by the researcher as a subject of study rather than taken at face value. In other words, as Pierre Bourdieu has suggested in relation to the legitimacy of strikes, the struggles over classification correspond to 'a strategy reflecting biases that cannot be adopted by science without danger. There is a political manipulation of the definition of the political. *The issue at stake is itself an issue at stake*' (1980, 258).

This symbolic battle over meaning seems all the more important for the transnational aspects of protest policing, characterized by a lack of transparency and a weakness of public (and even scientific) debate. This holds true also for those aspects attributable to the EU, one of the more structured and regulated IGOs, in fact often described as a postmodern attempt at statebuilding. The very police powers coming to play in EU protest policing are ill defined and there are few, if any, public fora of debate on these issues. A similar picture emerges if we look at the *transnational* protest rights of the citizens of the EU: protest rights are formalized in the European Convention on Human Rights and in the EU Charter of Fundamental Rights.[1] However, until recently the concrete forms and boundaries of protest rights were rarely tested beyond the national level. Consequently, the declarations contained in the Convention and the Charter are not supported by a consolidated *practice of transnational protest rights*. In an interview with the German weekly *Die Zeit* (5/2005), Ralf Dahrendorf observed that the institutions of freedom dear to him were not transferable to the larger spaces we are really living in. The construction of a democratic EU is certainly a conflictual process, as had been the construction of the nation-state: citizens' rights are the result of social struggles (Bendix 1964; Marshall 1950).

In the following, we shall concentrate on the specific scenario of transnational protest policing represented by the conflict between the EU and the GJM. A first part of our contribution will be dedicated to the characteristics of justice and home affairs within the EU, in particular police cooperation, and to the development of an EU approach to public order policing. In the second part, we will discuss the characteristics of the GJM and their specific impact at the transnational level; the EU protest policing measures taken in reaction to the incidents in Gothenburg and Genoa; and the impact of 9/11 on EU protest policing and on EU justice and home affairs in general. In the concluding section, we will attempt to sum up the emerging tendencies in EU transnational protest policing.

The development of EU transnational policing

Police cooperation and justice and home affairs

The origins of transnational policing have been located in the aftermath of the 1848 revolutions, in particular in the *Polizeiverein* of the German states directed against democratic aspirations (Deflem 2002, chapter 1). Cooperation, however, was not restricted to the boundaries of the German Confederation or to the informal exchange

1 The right to protest in Europe is protected by Article 11 of the European Convention on Human Rights, which accords such practice an 'eminent' 'fundamental place' (CEDH, 26 April 1991, Ezelin, Series A, No. 202, pp. 23, 51; Com. EDH, 10 October 1979, *Rassemblement jurassien contre Suisse*, DR, vol. 17, p. 105). Article 12 of the EU Charter of Fundamental Rights (proclaimed in December 2000 in Nice) protects the freedom of peaceful assembly and of association 'at all levels', i.e. also at the EU level, 'in particular in political, trade union and civic matters'.

of information between European governments: France and Prussia, for instance, collaborated in 'liberating' Switzerland from refugees by organizing transportation to Great Britain and the United States, routing French revolutionaries through German territory and Germans through French territory (Reiter 1992). While subsequent developments in international policing, most notably Interpol, have excluded the political element of 'high policing', the beginning of closer police collaboration among the EU Member States in the TREVI-groups since 1976 was caused by the threat of terrorism, not by the emergence of transnational 'common' crime. It was, in fact, the exclusion of 'political' crime from Interpol's operational brief (in 1992, 80 per cent of Interpol messages were generated within European countries and 40 per cent within EU countries) that led to the TREVI-groups (Sheptycki 1995, 620).

Police cooperation among EU Member States developed as a form of intergovernmental collaboration outside the EU institutions, in fora like TREVI or (since 1985) Schengen (the agreement between a group of Member States gradually to abolish internal border controls). The intergovernmental character of this collaboration brought about deficient public debate, opaque decision making, and a lack of democratic accountability. These shortcomings were pointed out in a December 1989 resolution of the EU parliament stating that:

> The secret discussions, without democratic control by parliamentary supervision, on matters of police action, internal and external security and immigration, namely those effecting refugees, by member states acting outside the competence of the European institutions, within fora such as Schengen, TREVI and the Ad Hoc Immigration Group, violate the aforementioned conventions [on legal rights] and democratic principles. (McLaughlin 1992, 483)

However, this and subsequent resolutions were ignored by the above-mentioned groups.

Moreover, there has been a tendency to delegate decisions to expert committees, providing the police with opportunities to expand its professional autonomy and playing the nation-state off against the EU (McLaughlin 1992). This tendency contributes to a downplaying of the political implications of transnational police collaboration within the EU: 'Harmonization', for instance, has been likened to Habermas' notion of 'the scientization of politics' whereby issues become a technical problem examined and managed by restricted groups of bureaucrats, experts and professional lobbyists (Sheptycki 1995, 630).

Three sets of forces (and discourses) have contributed to a more distinct EU dynamic in this area (Walker 2003a, 123ff.): First, a new internal security discourse has conceived of the EU as a self-standing 'security community'. Second, as the EU broadened its competencies, functional spillover into the police sector could be observed, an obvious example being the measures against counterfeiting that were connected with the introduction of the euro. More specifically, one of the first studies on EU police cooperation had already advanced the hypothesis that the increased legislative and social policy profile of the EU would encourage protest directed against European institutions and policies, which in turn would enhance the law

enforcement capacity of the Union in the long term (Anderson et al. 1995, 110). Third, the extent of self-conscious polity-building should not be underestimated: the fundamental measures for the construction of an EU area of freedom, security and justice were planned and implemented at the high point of institutional confidence in the early 1990s, revealing not only authority claims but also identity claims.

With the Maastricht Treaty (1993), cooperation among the police forces of the Member States became part of the EU's 'third pillar', retaining, however, its intergovernmental characteristics even after the Amsterdam Treaty (1999). Criticism underlining deficiencies in democratic accountability therefore continued, although the Amsterdam Treaty did transfer certain topics to the first pillar. The remaining third pillar issues, in particular police cooperation, were recognized as legitimate EU policy objectives; but with a Council on Justice and Home Affairs required to decide unanimously, a reduced role of the Commission, the European Parliament confined to a consultative role, and the uncertain ability of the European Court of Justice to fulfil a controlling function, effective power in this policy area rests with the individual Member States.[2]

Justice and home affairs remained a critical area also because most of the measures entered EU legislation as an *acquis*, that is, via the incorporation of decisions taken by groups like TREVI or Schengen into the EU framework. Concerning this body of measures, 'there was virtually no meaningful parliamentary scrutiny, let alone the chance for civil society to have any say or influence' (Bunyan 2002). The full *acquis* (over 700 measures) must be adopted by applicant countries *in toto*, without the possibility of any changes whatsoever. Moreover, the existing institutional structure opens up the possibility for Member States to jump scale, proposing measures at the European level that would face parliamentary scrutiny at the national level and realizing their objectives with soft law instruments, thus eluding national and European parliamentary scrutiny (De Hert 2004).

The objective of EU policy in constructing the 'area of freedom, security and justice' is defined in Article 29 of the Amsterdam Treaty as 'to provide citizens with a high level of safety'; the dominance of the security aspect in this regard has been repeatedly underlined (Twomey 1999). Articles 29 and 30 (on police cooperation) do not specifically mention public order. In fact, as underlined by Commissioner Vitorino and the representative of the European Council during the European Parliament debate (5 September 2001) on the events at the 2001Genoa G8 summit, the maintenance of public order is the responsibility of the individual Member States, although a (not better defined) European dimension does exist. Article 30 of the Amsterdam Treaty does, however, mention that common action shall include the collection, storage, processing, analysis and exchange of relevant information, that is, characteristic instruments of transnational policing, dominated by 'knowledge work' (Sheptycki 2002).[3]

2 Cf. Peers 2000, Denza 2002, Walker 2003b, 2004. On the role of the national parliaments and the European parliament, see Jurgens 2001; Peers 2001.

3 The draft Treaty establishing a Constitution for Europe, which aims to replace all the existing treaties with a single text, in Article III-275 allows for European laws or framework laws establishing measures concerning the collection, storage, processing, analysis and exchange of relevant information.

The case of the EU, where we witness the shift of traditional competences of the national state to the supranational level, is not the only pattern in transnational policing. The case of the US, in fact, is characterized by the internationalization of American law enforcement activity, which saw a sharp rise after 11 September but in its importance had already been underlined (Nadelmann 1993).[4] Finally, a more general transcendence of traditional forms of polity-based 'security sovereignty' – state or supranational – has been observed in the case of the privatization of transnational policing (Walker 2003a, 131).

For all forms of transnational policing, evident problems of individual and institutional accountability emerge. The internationalization of US law enforcement activities affects groups increasingly distinct from the sovereign US citizenry who, at least formally, possess the constitutional capacity to hold US policing to democratic account. As far as transnational private policing is concerned, there is no available forum of public accountability. In the European case, the primarily national forms of control seem inadequate for increasingly supranational arrangements (Walker 2003a, 131f.).

For the emerging EU approach to public order policing, we can speak of a process of formalizing informal practices of international police cooperation and 'unionizing' pre-existing intergovernmental arrangements – a process that is unaccompanied by the establishment of a system of controls, checks and balances comparable to the ones existing on the national level (imperfect as they may be), or even for other EU policy areas. It has been repeatedly noted that justice and home affairs is one of the areas where Member States disagree on the extent to which integration should be pursued. It has also been asserted that little integration has been accomplished in this field, by the late 1990s the busiest area of policy making, according to indices such as Council meetings held and measures proposed (Den Boer and Wallace 2000, 503). As Steve Peers (2000, 2) noted, this misunderstands the nature of justice and home affairs cooperation: 'JHA integration does not depend as much upon drawing up legislative texts as does the "traditional" economic and social integration pursued by the EC. Rather, it weighted far more towards the exchange of information and joint or coordinated operations of national administration.'

The development of an EU approach to public order policing

Research on 'Europrotest' has underlined that the new opportunities created by growing European integration seem to have been used timidly by European citizens so far. Various practical obstacles have been described as hindering international protests: lack of resources for protest organizations (for example, unions);

4 An extensive cooperation agreement between the EU and the US was signed in Copenhagen in 2002, and US officials are participating in Europol and in Eurojust. In the following we will not discuss this particular aspect.

geographical distance; psychological barriers (lack of individual attachment to the EU, lack of a transnational European public sphere, lack of personal interaction between activists); and political opportunities less favourable at the European level than on most national levels. Although transnational protest did exist before Seattle – for example, the European marches against unemployment, precarious employment, and exclusion held since 1997 (Chabanet 2002) – only the recent wave of anti-neoliberal globalization protest seems to have at least partially overcome these barriers (Bédoyan, van Aelst and Walgrave 2004; Imig 2004).

Notwithstanding the fact that the number of transnational, EU-related protests in the 1980s and 1990s was surprisingly small (Imig and Tarrow 2002), the EU was already beginning to develop an approach to public order policing in the second half of the 1990s. In part prompted by football hooliganism, this approach was also directed against protests and street demonstrations.[5] Some protest actions (such as blockades of roads or borders) had in fact led to judicial action at the European level, as they had interfered with the free movement of goods (Muylle 1998; Barnard and Hare 1997). The emerging role of transnational European protest policing follows the pattern generally underlined for transnational policing, that is, the virtual absence of directly 'operational' tasks and the almost complete dominance of 'knowledge work' (Sheptycki 2002; 1998, 64). This is not to say, however, that this 'knowledge work' is without very concrete operational consequences. From early on, in fact, the human rights implications on the operational level were pointed out, in particular regarding the closely connected proactive styles of policing; but there were few consequences, as the victims were generally stigmatized groups like drug dealers (Sheptycki 1994) and football hooligans.

Expanding on a 1996 recommendation on football hooliganism (Official Journal 1997 C 193/1), on 26 May 1997 the European Council adopted (without debate) a Joint Action with regard to cooperation on law and order and security. In Article 1, it stipulated: 'Member States shall provide Member States concerned with information, upon request or unsolicited, via central bodies, if sizeable groups which may pose a threat to law and order and security are travelling to another Member State in order to participate in events.' In the preamble, the 'events' were specified as 'sporting events, rock concerts, demonstrations and road-blocking protest campaigns' (Official Journal 1997 L 147/1). The information to be provided was to be supplied in compliance with national law and to include the fullest possible details regarding the group in question, routes to be taken, means of transport, and so on. In addition, the joint action allowed for the posting of liaison officers to other Member States (upon request), with an advice and assistance role. In order to promote cooperation among Member States, the Council also envisaged yearly meetings of heads of the central bodies for law and order and security to discuss matters of common interest.

This Joint Action envisioning case-by-case information exchange should be seen against the background of the Schengen agreement on the gradual abolition of checks

5 For an example of the transnational policing of an international football event, see Adang and Cuvelier 2001.

on the common borders of the signing states: the same territory covered by the 1997 Joint Action is in fact covered by the Schengen manual on police cooperation and public order adopted in November 1996. In addition, a fundamental measure of the developing EU public order policing approach consisted of the use of Article 2(2) of the Schengen Convention, which allows for the temporary reintroduction of border controls 'where public policy or national security so require', creating numerous possible conflicts with the individual right of free movement of persons guaranteed since 1964 by a Community Directive. This provision, of a purely intergovernmental nature, fell completely outside the EU institutional framework, explaining the lack of judicial and parliamentary accountability for its use (Apap and Carrera 2003).[6] The Schengen Borders Code agreed upon between the Council and the EU Parliament in June 2005 – since 1 May 2004 the Parliament has enjoyed co-decision powers for measures concerning the crossing of EU external and internal borders – seems to constitute only limited advances in assuring accountability, transparency, proportionality and information for the public.[7]

The Schengen Agreement, signed in 1985, has been effective since 1995 on an intergovernmental basis and was incorporated into the EU legal framework from May 1999 with the Amsterdam Treaty of 1997.[8] As a compensatory measure for abolishing internal border checks, the Schengen Information System (SIS) was introduced as a union-wide database (Mathiesen 2000; Peers 2000, 209ff.). Its purpose as stated in Article 93 of the Schengen Convention ('to maintain public order and security, including State security') appears very broad and comprehensive. Article 46 of the Convention provides, in fact, for the exchange of information, also without request, 'to combat future crime and to prevent offences against or threats to public policy

6 For a table on the frequent use of Art. 2(2), in particular on the occasion of transnational protest events, by country and event from January 2000 to December 2002, see Apap and Carrera 2003, 4–5.

7 The text of the borders code is available at http://www.statewatch.org/news/2005/jun/9630.05.pdf; an analysis by Steve Peers is available at http://www.statewatch.org/news/2005/jul/eu-border-code-final.pdf (accessed March 2006). Member States retain the right to reintroduce internal border controls (see Articles 20–6) 'when there is a serious threat to public policy or internal security'. In cases requiring urgent action they may do so immediately. The notification and consultation procedure established for foreseeable events (to organize cooperation and examine proportionality) involves only the Member State reintroducing border controls, the Council, and the Commission. The European Parliament shall be informed 'as soon as possible', but the Member State shall report to Parliament, if requested, only after the third consecutive prolongation of the measure. Only after the lifting of controls is a report presented to the European Parliament, the Council and the Commission, outlining, in particular, the operation of the checks and the effectiveness of reintroducing border control.

8 The original signing states in 1985 were the Federal Republic of Germany, France, Belgium, Luxembourg and the Netherlands; by 1995, Spain, Portugal, Italy, Greece, Austria, Denmark, Finland and Sweden had joined. In 1996, an agreement with the non-EU members of the Nordic Passport Union (Norway and Iceland) was signed. For the Nordic countries, Schengen came into force in 2001. The United Kingdom and Ireland did not sign the Schengen agreement, but participate in certain aspects, in particular police cooperation.

and public security'. Concern has been raised in particular with reference to Article 99(3) of the convention allegedly allowing for discreet surveillance of political behaviour, also at the request of secret services. SIS (which stores fairly limited and standardized items of information) and the connected SIRENE system (which contains far-reaching, non-standardized information or 'soft' data) are undergoing continual expansion, and the tendency towards convergence and integration among the various registration and surveillance systems in Europe has been underlined. In connection with the development of a more advanced SIS II, civil rights organizations and the European parliament have pointed out the changed characteristics of SIS, which has developed from a compensatory measure for abolishing border checks into a general police cooperation measure.

A fundamental criticism of EU police cooperation in general and of the Schengen mechanism in particular concerns data protection. The 1995 EU directive on data protection does not cover the third pillar; several draft resolutions in this area were circulated between August 2000 and April 2001, but they never materialized further. Under a reorganization of the Council's working parties from July 2001 (reducing them from 26 to 15), the working party on data protection was abolished without explanation. As far as Schengen is concerned, the defence of individual rights is entrusted to the national and joint supervisory authorities. In its Second Annual Report (1997–8), however, the Schengen Joint Supervisory Authority specified that it had been banned from inspecting the central SIS computer system on conditions it could accept (Peers 2000, 218). In specific papers and reports, for instance concerning the control of football hooliganism, often no indication is given that any data protection rules were being applied, and only vague references are made to national and international data protection rules (Peers 2000, 208f.). The danger has been underlined that, in the absence of any standard or minimum level of EU privacy protection, international human rights treaties serve as 'minimum standards' justifying further negative legal integration. Where these minimum standards fall below the level of protection in the national laws of some Member States, those States will be unable to guarantee a continued high level of protection once they supply the data to a European database.[9]

While the imperfect Schengen rules are preferable to the vague (or non-existent) protection applying to the measures governing case-by-case exchanges for information, they give maximum discretion to law enforcement authorities with no indication of the circumstances under which information must or may be released to an individual (Peers 2000, 218). However, the right to have inaccurate information deleted or corrected depends on an individual knowing what information about him

9 Peers (2000, 219). See Peers (2000, 5 passim) on the effects of positive (via new European law) and negative (via abolition of national law) integration in the field of justice and home affairs, where the second type is dominant (e.g. in the objective of free movement of prosecution), but largely unaccompanied by the first type, establishing union-wide standards (e.g. for defendants' rights). These mechanisms therefore enforce state power and weaken citizens' rights.

or her is held on a database. In the case of two Welsh football fans detained and deported by the Belgian police on the basis of erroneous information supplied by British authorities (who in turn had received their names from Luxembourg), it took a six-year campaign (with the help of Liberty, a British NGO) lobbying a dozen national and international bureaucracies to get their names removed from Belgian, British and Schengen records (Peers 2000, 188). This 1992 experience was not an isolated event, limited to football hooligans. Stephanie Mills, a Greenpeace activist from New Zealand, was denied access to the entire Schengen area on 25 June 1998 because the French government had entered her name into the SIS system – as indeed it had previously entered those of a number of other Greenpeace staff (Peers 2000, 224). After the Gothenburg incidents, about 400 names are said to have been added to the SIS (Hayes and Bunyan 2004, 260).

Images of protesters: Conceptions of public order

The weakness of formal controls and rules in transnational policing gives special importance to the images of protesters and the conceptions of public order circulating on the supranational level. Although little is known about this aspect, the indications emerging allow us to formulate two hypotheses: (1) because of the continuing intergovernmental character of EU police cooperation, we can expect that national characteristics will remain prominent, providing the privileged channels for the diffusion of recent policing developments; and (2) the secluded character of the fora of experts, not exposed to public scrutiny and political debate, will tend to 'technical' and restricted images and conceptions, giving little consideration to political aspects, in particular citizens' rights.

An example of these mechanisms is provided by a paper prepared for an experts' meeting in Brussels on 15 April 1998, following the Joint Action of 26 May 1997.[10] Presented by the British delegation, it does reflect UK trends and terminology, but also general developments common to Western democracies towards the end of the millennium: human rights standards are presented as acquired and undisputed, with reference to international agreements, but remain largely unreflected as to their bearing on the matters discussed; high importance is attributed to managerial accountability, whereas the problem of democratic accountability of policing is neglected.[11] This seems particularly problematic at the transnational level where controls, checks and balances are notoriously lacking, as is public debate. In proposing increased EU police cooperation, the paper in fact does not mention the human rights implications of transnational policing, nor the transnational quality of EU citizens' rights.

10 Available at http://www.statewatch.org/news/2001/aug/7386-98.htm (accessed January 2006).

11 For the narrowing of the discussion about accountability in Great Britain to focus on questions of fiscal and managerial accountability and customer satisfaction, see McLaughlin 1992, 478.

Entitled 'Conflict Management', the paper underlines the need to improve the exchange of information and intelligence and to facilitate a rapid flow of data on all types of crime and disorder, beyond the event-driven practice concerning international football events. Disorder and crime are understood as just different aspects of conflict, which is defined as 'any act that is contrary to the general public's perception of normality or which adversely affects their quality of life'. It is further affirmed that conflict has 'the potential adversely to affect the status quo' and is 'almost always a predictor of future crime and more serious disorder'. A reference to the recent successful use of conflict management in the case of farmers' disputes in the UK indicates that protest is understood as a form of 'conflict'. The absence of a distinction between crime, disorder and protest leads to the attempt to give a common response to all acts 'contrary to the general public's perception of normality or which adversely affects their quality of life', regardless of whether they are perpetrated by criminal intent or are the consequence of the exercise of democratic rights.

The new terminology of 'conflict management' in fact reveals the persistence of a traditional concept of 'public order'. In the Italy of the 1950s, for instance, public order was understood as 'the regular course and the good order of civil life' (*il regolare andamento ed il buon assetto del vivere civile*) (Virga 1954, 53), with the police's task being, in the case of breaches, to restore the status quo ante. In the tension between the regular flow of life, public peace and quiet, and the disruption inevitably caused by street demonstrations, the freedom of expression and assembly would be routinely sacrificed. Similarly, the paper prepared for the 1998 Brussels meeting defines conflict management as the process of identifying tensions in society, outside the norm, and deploying appropriate resources to stop the problem escalating, with the aim of returning 'a community to its former normality'. The objective for the proposed permanent European information system is seen as the capacity for 'pre-empting conflict and informing police tactics to prevent such activity materializing'. From the outset, therefore, there is a visible tendency to minimize the consequences of protest, if not to prevent the protest – that is, an attitude unfriendly towards protest, if unbalanced by specific reflections on the need to guarantee demonstration rights. Similarly negative and above all undifferentiated are the underlying images of the perpetrators of disorder, centred on hooligans connected on the one hand to crime and on the other to political protest.[12]

Alongside these traditional concepts and images draped in new terminology, we find references to a modern conception of police power. The differences between conflict management and a pure law enforcement style are in fact specifically stressed; police are assigned the role to seek to establish, through mediation, what is to be considered as acceptable and unacceptable behaviour throughout a potential conflict

12 As the Brussels paper (see note 10 above) states: 'Hooligans often have criminal records that include offences of violence, damage and dishonesty: moreover they are sometimes associated with political demonstrations and direct action groups that have no sporting connections whatsoever. Accordingly, conflict has impacted on all types of organized events, including music festivals, environmental protests and public holiday celebrations.'

event. However, also in this context, the paper speaks of a status quo to be 'regained' and underlines the need to investigate the circumstances that gave rise to the event in order to ensure that 'the opportunity for a recurrence is prevented or minimized'.

The paper reveals no awareness of the potential tension between the professed aims of police action to 'regain a status quo' (or a 'former normality') or even to 'pre-empt conflict' (the definition of conflict including protest), on the one hand, and the freedom of expression and assembly, that is, to protest, by definition a 'disruptive' activity, on the other. References to this issue are limited to the generic affirmation that communities must be allowed to enjoy the freedoms and rights articulated in the European Convention on Human Rights. In addition, four simple 'ethics' are presented as guidance for police officers, deemed necessary because of the high level of discretion that conflict management allows: to 'Secure and Protect', using 'Minimum Force', being 'Fair and Reasonable' whilst 'Searching for the Truth with the Truth'. To 'Secure and Protect', that is, 'the safety of the public from disorder and crime', is defined as 'the primary ethic and the reason for being of the police'. The four ethics are said to have stood the test of time, and it is affirmed that, providing each member of the police force adheres to them, 'the public need not be suspicious about police activity'.

It is doubtful that this conviction would be shared by civil rights organizations or movement activists. The paper for the 1998 Brussels meeting, in fact, makes no specific reference to the role of the police in the protection of freedom of expression and of assembly, that is, the right to protest. The conception of demonstrations (and demonstrators) that is emerging seems to foreshadow the one we have seen applied to transnational protest in the case studies presented in this volume, variously defined as 'managed control' (Vitale 2005), 'selective incapacitation' (Noakes and Gillham, in this volume) or 'exclusionary fortress-oriented policing' (King and Waddington, in this volume).

The EU policing of GJM protests

Characteristics of the GJM and the EU-opportunity structure

The evolution of an EU approach to protest policing saw a sharp acceleration with the emergence of the GJM. This is certainly not a coincidence: research on the history of the maintenance of public order has consistently pointed out that protest policing evolves as a reaction to the transformations of social conflict (Fillieule and della Porta 2006; Fillieule 1997; Tilly 1986) – thus, the establishment of bodies of knowledge and practices in policing as well as the legal framework of crowd control were for the most part implemented in reaction to changes in the nature of protest. This fact suggests that looking at characteristics specific to the GJM will help us to understand the impact of transnational protest at the level of supranational governance. Relevant factors are the nature of the demands voiced, the characteristics of the protesters, the preferred action repertoires, and the targets of protest.

Recent research has pointed out that the GJM, although critical of existing EU institutions, cannot be described as opposing European integration (della Porta 2006). To the contrary, movement organizations and activists converge on the necessity to build 'another Europe', advancing demands for social justice and 'democracy from below'. Since 2002, attention to the construction of 'another Europe' has developed at the European Social Forums, with the presentation of demands for democratization of European institutions and for a charter of social rights. Surveys of activists have confirmed strong criticism of the existing European institutions, but also indicate a high affective identification with Europe and a medium level of support for a European level of governance.[13] These activists therefore represent a 'social capital' of committed citizens that might provide an important source for the building of a European citizenship. As Thomas Risse (2003, 6) has pointed out, contestation is a crucial pre-condition for the emergence of a European public sphere, and a contested public sphere is the only path towards the creation of a supranational democracy. In this sense, the reaction of European institutions – which (in varying degrees as far as the Parliament, the Commission or the Council are concerned) show many of the aspects of closure typical for supranational institutions – is of crucial importance for the development of a democratic EU.

At the national level, the heterogeneity of the GJM has been pointed out as a particularly delicate point for protest policing. The mainstream press (but also police reports) have drawn a picture of structured organizations outnumbered by unorganized, barely politicized and anomic elements, joined by micro-movements seeking violence for the sake of violence. Yet, surveys conducted through questionnaires in the course of anti-G8 demonstrations as well as social forums have challenged such views of the anomic and unorganized nature of the GJM: participants have very varied past and present organizational experiences.[14] On the other hand, the organizational heterogeneity of the GJM is in fact a specific feature whose implications in terms of public order have been repeatedly stressed in the contributions to this volume. In particular, for transnational protest policing – consisting, as underlined above, in 'knowledge work' – the difficulties in the elaboration, exchange and use of information on a new, emerging movement are further increased by unfamiliarity, not only with the specific national political context, but also with the *modus operandi* of the agency supplying the information.

13 This type of survey has been used increasingly in recent years, especially following an initial study carried out in France in 1994 that set out the methodological rules (see Favre, Fillieule and Mayer 1997). Della Porta was the first to carry out a survey of this kind on the GJM during the counter-summit in Genoa and during the European Social Forum (ESF) in Florence, followed by Fillieule et al. (2004) on anti-G8 demonstrations in Evian and Agrikoliansky and Sommier (2005), on the Paris Saint-Denis ESF.

14 See, for example, Andretta et al. 2002, and della Porta et al. 2006, on the Florence European Social Forum and the anti-G8 demonstrations in Genoa, Fillieule et al. 2004, on the anti-G8 event in Evian, and Fillieule and Blanchard 2005, on the Paris European Social Forum.

In the case of GJM protests, we are confronted with collective transnationalism (Imig 2004) – that is, the apparently growing phenomenon of protests organized across borders against common supranational targets, involving demonstrators from various countries. In the case of the 2001 demonstrations against the EU Summit in Brussels, roughly 40 per cent of the participants were non-Belgians (Bédoyan, van Aelst and Walgrave 2004, 46). However, the practical, psychological and political barriers that foreigners have to overcome in order to participate seem to have a measurable impact on their profile. These protesters are young, organized, and radical compared to their domestic counterparts (Bédoyan, van Aelst and Walgrave 2004, 46ff.). If these characteristics should not pose insurmountable barriers for a policing of protest respectful of demonstration rights, they do all tie in with police images of 'bad demonstrators' (see della Porta and Reiter, in this volume).

The characteristics of the GJM activists acquire additional importance in connection with the action repertoires of the movement. As surveys in Genoa, Florence and Evian have shown, the GJM has a predominantly nonviolent action repertoire that is, however, variegated and shows a significant propensity for direct action (see della Porta et al. 2006; Fillieule et al. 2004). As the most visible protest form, counter-summits are of particular importance at the transnational (including the European) level. As one of the few occasions when supranational governance is discussed in the media, counter-summits have the potential to arouse public opinion. At the same time, the summit sites become the terrain of direct interaction with police forces, in part because of the declared intention to prevent the smooth operation of the official summit (the objective to prevent the holding of such meetings is far less pronounced in the case of the EU than in the case of the G8) – in part because of the specific problem of the presence of domestic and especially foreign dignitaries (Ericson and Doyle 1999).

In the case of European summits, the host nation-state's need to assert its monopoly of force on its own territory before international public opinion is accompanied by similar mechanisms on the part of European institutions, especially since the creation of an 'area of freedom, security and justice' became an official EU policy objective. This is true in particular for the European Council, simultaneously the sole EU depository of competences for police cooperation and the main target of the protest. The Council became the prime target not only because of its decisive role in EU decision making, but because in its structure the democratic deficit of the EU is particularly apparent. In fact, of the EU institutions, the European Council most reflects an intergovernmental character. In the singular position of being at the same time an executive and a legislative body of the EU, it has shown a tendency for secrecy, shielding its decision making from scrutiny by parliament and civic society also when acting as a legislative body.[15]

15 In a recent report (available at http://www.euro-ombudsman.eu.int/special/pdf/en/03295.pdf, accessed March 2006) the EU Ombudsman criticized the Council's continued practice of excluding the public when meeting in its legislative role.

If the heterogeneity of the GJM, the variety in its action repertoires, and the tensions connected with counter-summits do raise particular problems for protest policing at the transnational level, the challenge constituted by the movement is above all a test of European institutions' openness to participation from below. However, the reaction of the European Council, consisting of measures intended to protect its meetings and 'other comparable events', does not point in that direction. In these measures, in fact, the Council puts itself squarely in a purely intergovernmental context: the 'other comparable events' do not refer to meetings of other EU institutions like the Commission or the Parliament, but to meetings of the G8 or of senior politicians from two or more Member States.[16]

EU protest policing measures after Gothenburg and Genoa

The EU institutions, in particular the Council, perceived the GJM as a direct threat: for the first time, the emergence of a movement led to specific measures of European institutions directed against it. Centred on information exchange and geared towards proactive policing, these measures reveal the problems in transparency and democratic accountability, but also in efficiency, connected with the transnational and intergovernmental character of EU police cooperation.

The challenge posed by the violent incidents surrounding the EU Summit in Gothenburg led to swift action by the European Council. At a meeting of the Council for Justice and Home Affairs on 13 July 2001, conclusions on security at meetings of the European Council and other comparable events were adopted, largely centred on greater collaboration among the various national police forces to ensure the peaceful holding of the summits.[17] The targets of the Council measure are defined as extraneous bodies, without a political agenda, using violence for violence's sake, as 'those who abuse these democratic rights by initiating, planning and carrying out acts of violence to coincide with public demonstrations'; as elements who exploit or abuse legitimate demonstrations 'for the sole purpose of committing acts of collective or individual violence'; or simply as 'violent troublemakers'. In no part of the conclusions is reference made to the dynamics of interaction between protesters and police, or to possible errors by the latter.

The conclusions underline the right of citizens to express their opinions freely and to assemble in a peaceful manner, and they recall the importance of a constructive dialogue between the organizers of public demonstrations and the authorities. The aim of the dialogue, however, is not clarified, except in the need to involve 'the

16 According to the answer of the British government to the request of the House of Lords Select Committee on European Union for clarification of 'other comparable events', see House of Lords, 'Select Committee on European Union Twentieth Report. Security at EU Council Meetings', available at http://www.publications.parliament.uk/pa/ld200304/ldselect/ldeucom/119/119.pdf, accessed January 2006.

17 Available at: http:// register.consilium.eu.int/pdf/en/01/st10/10916en1.pdf, accessed January 2006; see also Griebenow and Busch (2001, 64ff).

organizer of an event in internal security measures', and to ensure that legitimate demonstrations are not exploited by groups with a violent agenda. Dialogue, therefore, seems unilaterally driven by security objectives, and the objective to guarantee the freedom of opinion and assembly by acting in a 'demonstration friendly way' (as the German constitutional court had put it in its Brokdorf decision) is not mentioned.[18] In fact, the conclusions concentrate on measures designed to keep activists presumed to be a danger to public order and security away from the country hosting the summit.

Expanding on the recommendations contained in the Joint Action of 1997, the conclusions solicit the activation of national contact points for the collection, analysis and exchange of relevant information; the use of 'spotters', that is, police or intelligence officers able to identify persons or groups from their countries likely to pose a threat to public order and security; and the permanent monitoring of operational procedures by the senior officials working party referred to in Article 3 of the Joint Action. This working group was to meet at the request of the host Member State as a Police Chiefs' Task Force in order to advise and monitor, contributing to effective EU police cooperation in support of the Member State hosting the event. In addition, the Task Force was to prepare a joint analysis of violent disturbances, offences and groups and to organize targeted training by the European Police College.[19] Finally, the Council foresaw an examination of the possibility of increasing the powers of Europol in this area.

Concerning information exchange among law enforcement agencies, direct reference is made to the Joint Action of 1997 and to Article 46 of the Schengen Convention (see above). Following the pattern already mentioned, although the respect of the right to the protection of personal data is explicitly underlined, the only concrete reference is to 'compliance with national law'. The extensiveness of the information exchange foreseen is demonstrated by the call for 'the use of all the legal and technical possibilities for stepping up and promoting rapid, more structured exchanges of data on violent troublemakers on the basis of national files'. The exchange of information is closely connected with the application ('if it proves essential') of Article 2(2) of the Schengen Convention, that is, its temporary suspension. In the same context, implementation of expulsion measures and cooperation in the repatriation of expelled demonstrators were discussed. Finally,

18 The *Brokdorf Urteil* (1985) defines freedom of speech as the noblest human right, fundamental for a democratic order, and characterizes the freedom of assembly as the collective form of freedom of speech, understood as the expression of popular sovereignty and as the right of the citizen to participate actively in the political process. According to this decision, the constitutional protection of the freedom of assembly extends to spontaneous demonstrations and also to peaceful participants in demonstrations for which violent behaviour on the part of individuals or of a minority is foreseen. In addition, the German constitutional court obligated public authorities to act in a 'demonstration-friendly' way and to actively seek out the cooperation of the organizers of public demonstrations (Winter 1998a, 203s; 1998b, 59ss., 281ss.).

19 In 2002 and in 2003, courses on public order and crowd control were conducted by the European Police College (CEPOL) (see the respective annual reports, www.cepol.net).

direct cooperation between judicial authorities was to be facilitated, with the aim of prosecuting and trying 'violent troublemakers ... without undue delay and in conditions guaranteeing a fair trial'.

The Council also took into consideration the proposal of the German interior minister, Schily, to 'unionize' and apply to 'violent troublemakers' a German practice developed to oppose football hooligans and later neo-Nazis, consisting of the *Ausreiseverbot*, a ban on leaving the country.[20] Schily's proposal – providing for the creation of a European database of the 'violent' and the introduction of the *Ausreiseverbot* into all EU countries – met the resistance of the majority of the Council (eight to seven). However, the conclusions contained the recommendation to use 'all the legal possibilities available in the Member States for preventing individuals who have a record of law and order offences from going to the country hosting the event if there are serious reasons to believe that such persons are travelling with the intention of organizing, provoking or participating in serious disturbances of public law and order'.

After Genoa, the difficulties and shortcomings of the EU approach to transnational public order policing became apparent. According to the hearings of the Italian parliamentary investigative commission, problems ranged from difficulties in establishing adequate contacts with police forces in other EU members states to differences in national laws concerning data protection and information exchange.[21] Subsequently, a report of the Belgian delegation to the Police Cooperation Working Party on the actions of European police forces at the EU Summit in Laeken (14 and 15 December 2002) confirmed the difficulties of cooperation.[22] According to this report, many countries did not provide any information; for others it varied from very limited to full and detailed. In addition, there were sometimes problems in interpreting the data because there was no indication of the method of information gathering used. The liaison officers sent by 11 countries had little or no operational information before the event and the liaison function materialized only during the summit. It was also underlined that the various judicial and police frameworks within

20 After the clashes during the 1998 World Cup football matches, German passport law was changed to allow hooligans to be barred from leaving the country. Use of this sanction against neo-Nazis was accepted by the constitutional court, even without final sentences, in the case of offences committed during trips abroad resulting in severe damage to the State. Before the G8, the German police issued injunctions to 79 activists against participation in tumult and violence, and barred another 81 from leaving the country, with an obligation to turn up and sign daily (*Der Spiegel* 31/2001, 24). In some cases these measures were confirmed by the administrative magistracy. After Genoa, this practice and the criteria employed to identify and register violent activists or those presumed to be so (in some cases on the basis of a mere document check during a demonstration), were subject to growing criticism (cf. *Der Spiegel* 31/2001; *Die Zeit* 37/2001, 4ff.; Griebenow and Busch 2001).

21 Italian Parliament, 'Commissione d'indagine conoscitiva sui fatti di Genova', Hearing 28 August 2001, 135ff. (available at www.camera.it).

22 Available at http://www.statewatch.org/news/2003/jul/prot09029en2.pdf (accessed January 2006); see also Busch 2002.

which the liaison officers operated did not facilitate the circulation of information. Coming from a variety of police departments and intelligence units, they had access to different types of information, often less than strategic. For spotting 'anti-globalisation troublemakers' (sic), as for other purposes, various police departments sent their own officers, who used techniques not always in line with public order policing as practised in Belgium. Finally, there was no structured international follow-up to the operation, and therefore no joint analysis of violent disturbances.

Apart from its lack of efficiency, the EU approach to transnational public order policing came under particular attack after Genoa for its lack of respect for civil liberties and individual rights. Unresolved, in fact, remained the problems connected with data protection and the individual quality of the right of free movement within the EU. Above all, the purely intergovernmental character of EU police cooperation greatly complicated the citizens' ability to single out those politically and juridically responsible for restrictive measures and to find redress. In fact, however imperfect, information exchange and transnational 'knowledge work' did have direct consequences for protesters, especially foreign ones, EU citizens or not. On the occasion of the Genoa G8 Summit, for instance, more than 2,000 people were refused entry at the borders, in certain cases on a questionable basis (see della Porta and Reiter, in this volume). In particular, refusal also included whole groups, violating the individual quality of the right of free movement within the EU. Similar instances had already been alleged in occasion of the Gothenburg EU Summit (*Tageszeitung*, 18 June 2001). Arrests seem to have affected foreign protesters disproportionately, including in cases where there were no violent incidents.[23]

Some of the civil rights concerns were subsequently taken up by the European Parliament, which showed, as was to be expected, a higher degree of openness than other European institutions. Based on the Watson Report of the European Parliament committee on civil rights and freedoms, justice and home affairs, the Parliament's recommendation to the Council voted by the plenum on 12 December 2001 stressed 'not a few shortcomings' in Member States' responses to the Nice, Gothenburg and Genoa demonstrations.[24] It recommended *inter alia* against blocking frontiers or denying entrance to individuals or groups seeking to take part peacefully in legitimate demonstrations; against any new type of 'blacklist'; against the use of firearms; and against the disproportionate use of force, with national police forces instead instructed to keep violence under control and safeguard individual rights even in cases of mass confusion where violent criminals mingle with peaceful, law-abiding citizens. Other recommendations – to adopt a joint definition of a 'dangerous individual' and dangerous conduct that might justify preventive measures (which particularly in Genoa struck at people even for legitimate behaviour); to avoid

23 In Laeken, for instance, 45 Belgians and 118 foreigners were arrested (109 EU citizens). See the report of the Belgian delegation (footnote 22).

24 The Watson Report is available at http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//TEXT+REPORT+A5-2001-0396+0+DOC+XML+V0//EN&L=EN&LEVEL=0&NAV=S&LSTDOC=Y (accessed January 2006).

any sort of discrimination between nationals and European citizens in the event of arrest or legal proceedings, guaranteeing defence by an advocate of one's choice even in the event of summary proceedings – bring out the fact that the existence of comparable internal standards is not regarded as sufficient to guarantee the new quality of exercise of the citizens' right to demonstrate and protest Europe-wide.

In this context, however, the limited ability of European institutions to assure democratic accountability in the field of transnational protest policing must be underlined. As already stressed, the maintenance of public order falls under the exclusive competence of the individual Member State. The European Parliament's 2001 annual report on civil rights in the EU deplored 'the violations of fundamental rights such as freedom of expression and movement, the right of due process and the right to physical integrity that have occurred during public demonstrations, particularly at the time of the G8 meeting in Genoa'.[25] The opinion of the committee on petitions on this report, with direct reference to the case of the 'aggressive and violent policing of the anti-WTO [sic.] demonstrations in Genoa', stresses that 'the European Parliament largely lacks the means to do something immediately and effectively when such violations occur, beyond the political condemnation that a resolution allows'.[26]

This weakness is also evident at EU level. The European Parliament's recommendations, in fact, seem not to have been given any great consideration by the Council. The 'Security Handbook for the Use of Police Authorities and Services at International Events Such as Meetings of the European Council' of 12 November 2002 – called for by the Council conclusions of 13 July 2001 – was produced by the Police Cooperation Working Party without reference to the European Parliament recommendations, which had also suggested such a document.[27] The handbook, approved by the Council at its meeting on 28 and 29 November 2002, suggests that future revisions be discussed only by the Police Chiefs Task Force and the committee of experts foreseen in Article 3 of the Joint Action of 1997 and approved by the Article 36 Committee (a coordinating committee of senior officials in the field of police cooperation and judicial cooperation in criminal matters). In this context, it must be underlined that the legal and constitutional status of the Police Chiefs Task Force,

25 Committee on Citizens' Freedoms and Rights, Justice and Home Affairs. 'Report on the Human Rights Situation in the European Union 2001', December 2002, 12. Available at http://www.europarl.eu.int/omk/sipade2?PUBREF=-//EP//NONSGML+REPORT+A5-2002-0451+0+DOC+PDF+V0//EN&L=EN&LEVEL=3&NAV=S&LSTDOC=Y (accessed January 2006).

26 Ibid., 92. The reply of the committee on petitions itself on 6 October 2003 to a petition from a citizens' group on Genoa confines itself to asserting that no further action was possible (Thomas Meyer-Falk, 'Genua 2001 und das EU Parlament', October 2003, available at http://de.indymedia.org/2003/10/63175.shtml). Considering Art. III-377 of the Treaty establishing a Constitution for Europe, the powers of the Court of Justice of the EU in this field will also remain limited.

27 Available at http://www.statewatch.org/news/2003/jul/prothand12637-r3.pdf (accessed January 2006).

established at the Tampere Summit in October 1999, was never resolved. When the civil rights organization Statewatch applied for access to minutes of their meetings, it was told that the PCTF did not come under the Council of the EU and therefore the documents could not be supplied. As to the control and accountability of this and other new agencies in the field of security and intelligence that can be traced to the EU, there is no mechanism in place in any parliament.[28] A known priority of the Task Force is 'defining strategic and operational actions in the field of maintaining public order whenever events occur that are likely to threaten it'.[29]

The 'Security Handbook' is more precise and exhaustive than the Council conclusions from July 2001 in recalling the basic principles of Western European public order policing: proportionality and moderation; preference for a deescalating police approach 'when possible'; actively pursuing dialogue and cooperation with demonstrators and activists; and seeking to ensure respect for the right to freely express opinions and to assemble in a peaceful manner in accordance with the European Convention on Human Rights. As mentioned above, however, European institutions have no competence regarding the translation of these principles into practice. The handbook underlines, in fact, that maintaining law and order and providing security within the territory of a Member State is a national responsibility and prerogative. During the European parliament debate on the Genoa G8 Summit (5 September 2001), members close to the Italian government coalition had stigmatized any criticism of the operational practice of the police forces as an interference in Italian internal affairs.[30] In the sections dedicated to the policy on law enforcement, the handbook therefore limits itself to the phrasing that 'overall policies *can* include policies such as' (emphasis added): respect of the right to demonstrate and to free speech; proportionality of police actions; dialogue and assistance for the organization of demonstrations as characteristics of police action; 'the police should, *at its discretion and when appropriate* [emphasis added], demonstrate a low level of police visibility and a high level of tolerance regarding peaceful demonstrations'; and so on.

28 See Bunyan 2002, who concludes: 'The emerging EU state is indeed different to the national state, not just because it exercises cross-border powers, but rather because even traditional, and often ineffective, liberal democratic means of control, scrutiny and accountability of state agencies and practices are not in place nor is there any political will to introduce them.' For the Police Chiefs Task Force's own conception of their role, see 'Conclusions of the 10th meeting of the Police Chiefs Task Force', 11 and 12 October 2004, available at http://register.consilium.int/pdf/en/04/st14/st14094.en04.pdf (accessed January 2006). In general, see Bunyan 2006.

29 http://www.statewatch.org/news/2001/jun/publicorder.htm.

30 See http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//TEXT+CRE+20010905+ITEM-006+DOC+XML+V0//EN&LEVEL=3&NAV=S&L=EN. MEP Tajani, from Prime Minister Berlusconi's party, Forza Italia, spoke of an exploitation of the incidents also in the European Parliament. 'Parliament must not become the scene of debates on major national issues; it must not become the forum of national debates.'

Another part of the 'Security Handbook' contains a series of recommendations for ensuring collaboration among Member States, in particular in the exchange of information in the tradition of the 1997 Joint Action and the 2001 Council conclusions. Permanent national contact points are supposed to 'provide a permanent risk analysis on known potential demonstrators and other groupings expected to travel to the event and deemed to pose a potential threat to the maintenance of public law and order'. The analysis is to be forwarded at the earliest possible time prior to the international event, and to be updated on a regular basis as the event approaches (at least monthly for the last three months, if necessary weekly or, immediately before the event, daily). This permanent information exchange has to be seen in connection with the recommendation of the handbook to 'utilise the available and appropriate legislative measures to prevent individuals or groups considered to be a threat to the maintenance of public order from travelling to the location of the event. For parties to the Schengen Convention, article 2 (2) of the Schengen Convention can be a useful instrument.'[31]

The model for risk analysis provided in Annex A of the 'Security Handbook' illustrates the broad manner in which the recommendations on information exchange are to be interpreted. Reference is made therein to protesters in general, thus opening the door to surveillance, as a preventive measure, of all demonstrators.[32] Listing the information to be transmitted on the basis of this 'Risk analysis of potential demonstrators and other groupings', the EU Network of Independent Experts in Fundamental Rights (CFR–CDF) in its 'Report on the Situation of Fundamental Rights in the European Union in 2003' comments:

> this enumeration of items already gives an indication as to the risks of discrimination and of chilling the exercise of democratic rights to protest such exchange of information may entail. It would be clearly unacceptable if the exercise of freedom of expression or of peaceful assembly led to the prohibition to travel to other countries of the Schengen zone where European summits are held. (EU Network 2004, 67 note 195)

The reference of the handbook to 'strict compliance with national and international law applicable in each case' with regard to the exchange of information (including personal data) in fact does not seem to resolve the problems of data protection mentioned above. Also unresolved (and not discussed) remains the possible tension

31 Other parts of the handbook cover operational planning and cooperation (by supplying liaison officers, observers and operational support), training (among others at CEPOL), the media strategy to be followed (to be geared towards openness and transparency, but also providing 'a single point of contact ... for the media to ensure a coordinated media coverage'), evaluation and monitoring, logistics, criminal investigation and prosecution (with no mention of assuring defendants' rights as called for by the European Parliament).

32 A checklist regarding possible measures on the occasion of European Councils and other comparable events explicitly states that the risk analysis 'pertains to groups of peaceful demonstrators as well as to groups of potential troublemakers'. Available at http://www.statewatch.org/news/2003/jul/prot11572en1.pdf (accessed January 2006).

between the application of Article 2(2) of the Schengen Convention and the individual quality of the right to free movement within the EU. As far as the latter is concerned, an Italian initiative led to a Council resolution passed on 29 April 2004, aimed at 'limiting inconveniences' in the application of Article 2(2) and at assuring more effective, better coordinated cooperation at European level.[33] It called, among other things, for targeted information exchange, making possible intelligence-led checks on suspects. The Member States are invited to supply:

> the Member State hosting a European Council meeting or another comparable event with any information available to them on movements, in order to be present at that event, by individuals or groups in respect of whom there are substantial grounds for believing that they intend to enter the Member State with the aim of disrupting public order and security at the event or committing offences relating to the event.

This Council resolution apparently shows closer attention than previous resolutions to the individual quality of the right to free movement within the EU: with obvious reference to the 1964 Directive, it underlines that the mere existence of criminal convictions should not automatically justify the adoption of measures concerning public order and security. In addition, there seems to be an attempt to go beyond the mere reference to relevant legislation with the formulation (however dubious in its efficacy): 'Nothing in this Resolution should be interpreted as departing from the principle that the exchange of personal data shall comply with the relevant national and international legislation.' However, the resolution further specifies that personal data should be used and kept only until the end of the event for which they were supplied and only for the purposes laid down in the Resolution, 'unless agreed otherwise with the Member State which supplied the data'.

The resolution does not eliminate data protection concerns, nor the basic problem inherent in similar measures, that is, the lack of a definition accepted by all EU Member States of 'public order and security' or 'substantial grounds'. This concern emerges, for instance, from the Twentieth Report of the House of Lords Select Committee on the European Union.[34] When it was clarified that the events (comparable to European Council meetings) to which the resolution applied included meetings of the G8 or of senior politicians from two or more Member States, the Committee underlined that the scope of the measure was very wide and the potential implications for the free movement of persons within the Union and for the handling of personal data correspondingly large. In response, the British government referred to the 1998 Data Protection Act. The Committee then argued that the level of protection offered by national legislation, already alleged to be insufficient in the domestic state security context, remained unclear for transnational information exchange. In this context,

33 Available at http:// register.consilium.eu.int/pdf/en/03/st13/st13915.en03.pdf (accessed January 2006).

34 Available at http://www.publications.parliament.uk/pa/ld200304/ldselect/ldeucom/119/119.pdf (accessed January 2006).

it recalled that the individual concerned may not know who is holding his or her personal information and to what use it is being put.

As already mentioned, the Council resolution had apparently assured compatibility with the 1964 Directive on free movement. This Directive makes clear that measures like expulsion on the grounds of public policy, public security or public health must be based exclusively on the personal conduct of the individuals concerned. Previous criminal convictions do not qualify in themselves. The Council resolution had, however, specified that information should be exchanged where 'substantial grounds' existed for believing that individuals intended to enter a Member State with the aim of disrupting public order and security at an international event or committing offences related to that event. When the House of Lords Committee asked for clarification of 'substantial grounds', the government answered that information should be passed 'where there is clear evidence that an individual or a group is intent on causing disruption'. Pressed further on what amounted to 'clear evidence', the government replied: 'Whilst it would not be possible to give a definitive criterion of clear evidence, a recent conviction involving violence, incitement or conspiracy at a similar event may show intention to enter with the aim of causing violence once more.' This response was judged 'not very helpful' by the Committee; pressed again, the minister conceded that something more than a recent conviction would be needed in order to establish 'substantial grounds'. This exchange between two British institutions testifies to the difficulties that already exist in a domestic context in defining public order threats connected with public demonstrations.[35]

Data protection concerns are expressed even more forcefully by the EU Network of Independent Experts in Fundamental Rights (CFR–CDF) in its 'Report on the Situation of Fundamental Rights in the European Union in 2003'. Commenting on the draft of the Council resolution, the network argues that it 'provides a striking illustration of the links between the development of a proactive approach to security and the risks that such an approach entails for the protection of privacy, and more particularly the protection of personal data' (EU Network 2004, 66). It further underlines that the information to be shared between national law enforcement authorities may comprise records of criminal conviction, but is not limited to that sensitive information: relevant information may also consist of the identity of individuals 'with a record of having caused disturbances in similar circumstances'.

35 These difficulties, which are political and not 'technical', are certainly not resolved by internal police rules. Initially the government had referred to a nine-point risk assessment plan for the UK police to ensure that the sending of the information is necessary to prevent or detect crime or to enforce the rights or freedoms of others; this plan was also to be enacted when clear evidence of intention to cause disruption existed (see Appendix 3 of the Committee's report). The Committee pointed out that the risk assessment did not address the issue of what amounted to 'substantial grounds' or 'clear evidence' and appeared to be concerned with the balancing of competing interests rather than the criteria for identifying the nature or weight of the evidence on one side of the balance. In a letter of 11 March 2004, the government agreed with this evaluation.

> This may result in severely restricting the freedom of movement of protesters, wishing to voice their concerns at the international summits where they have the best chances of being heard. Such a restriction to the freedom of movement chills or impedes the exercise of a democratic right to peaceful assembly and demonstration, which is a component of freedom of expression. And the exchange of personal data, in the circumstances envisaged by the Draft Resolution, appears incompatible with the requirement that any interference with the right to respect for private life should be circumscribed by legal rules of a sufficient quality. (EU Network 2004, 67)

In conclusion, the network argues for the adoption of an instrument seeking to reinforce the protection of the individual vis-à-vis the processing of personal data for police cooperation and the other activities of the third pillar, excluded (as mentioned above) from the EU data protection directive. Initially, in fact, the House of Lords Select Committee on European Union in its Twentieth Report had expressed the concern 'that the resolution might be misunderstood as an attempt by the Union and its institutions to shield themselves from public comment and dissent'. In this context, it may be also recalled that the European Court of Human Rights recognizes that:

> to preserve national security, Member States ... undeniably need laws that enable the competent domestic authorities to collect and memorise in secret files information on persons.... Nevertheless ... the existence of adequate and sufficient guarantees against abuses [are necessary], for a secret surveillance system intended to protect national security creates the risk of undermining, and even destroying, democracy on the grounds of defending it.[36]

The impact of 9/11 on EU justice and home affairs

To a large extent, the EU approach to protest policing developed in a political situation dramatically changed by the terrorist attacks of 9/11. The emergence of terrorism restricted the room for civil rights advocates on two fronts: the defence of transnational protest rights as well as the demands for greater transparency and democratic accountability as far as EU decisions in the area of justice and home affairs. It also reinforced the security rationale of the EU's 'area of freedom, security and justice'.[37]

It has been observed that, as far as the third pillar of the EU is concerned, we have been going round in circles since the attacks on the Twin Towers: when the TREVI group was created in the mid-1970s, anti-terrorism had in fact been the first and primary concern (Den Boer and Monar 2002). This development seems to have had repercussions for authorities' image of protesters: if in the immediate aftermath of Gothenburg violent incidents at street demonstrations continued to be

36 CEDH, 26 March 1987, *Leander*, A, vol. 116, p. 6, §59 and §60.

37 For an account of the risks the response to international terrorism may present for civil rights (repeatedly emphasized also in the European Parliament's reports on human rights in the EU), see EU Network 2003b.

connected with football hooliganism and with common crime, after 9/11 civil rights advocates denounced attempts to associate the GJM or at least its radical fringes with subversion.[38] Commenting on the climate at the time of the drafting of the EU Council Framework Decision on combating terrorism, 'Statewatch' editor Tony Bunyan (2002) underlined the difficulty of raising any criticism: 'However, we also knew that events in Gothenburg and Genoa ... were still fresh in the minds of Ministers and officials. Whatever the eventual wording we knew that the majority of EU governments viewed protest at least as "quasi-terrorist".'

The draft of the framework decision drawn up by the European Commission was in fact criticized for a definition of terrorist offences said to be too large and imprecise, allowing the inclusion of methods of action not uncommon to mass movements (like 'unlawful seizure' of 'places of public use' or 'state or government facilities'), previously subject only to light penalties.[39] The difficulties of defining terrorist offences remain visible in the (considerably amended) final Council Framework Decision: its tenth recital affirms the respect for human rights and fundamental freedoms and specifies that:

> nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as the right to strike, freedom of assembly, of association or of expression, including the right of everyone to form and to join trade unions with others for the protection of his or her interests and the related right to demonstrate.[40]

Commenting in particular on the declaration attached to the Council decision, which mentions the case of those who worked to maintain or re-establish democratic values during World War II, the EU Network of Independent Experts in Fundamental Rights commented: 'A reference to a subjective assessment at a moment when the regulation endeavoured to define the offence objectively, illustrates the difficulties encountered in defining the offence of terrorism, in order to apply special treatment to the said offence which differs from those applied to common law offences' (EU Network 2003b, 11).[41]

38 At a meeting of specialized prosecutors and members of Pro Eurojust, convened within the framework of the meeting of the European Judicial Network in Stockholm from 18 to 20 June 2001, it was proposed to compare the lists of potential hooligans that the police had exchanged prior to the European football championship in 2000 with the current lists from Gothenburg. In addition, it was affirmed that in most cases criminal organizations were behind such events, as they were so well organized. See Council of the EU, Note General Secretariat, Brussels, 3 July 2001 (10525/01 LIMITE COPEN 34 ENFOPOL 70), available at http://www.statewatch.org/new/2001/aug/10525.pdf (accessed January 2006).

39 Available at http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2001/com2001_0521en01.pdf (accessed January 2006).

40 Available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_164/l_16420020622en00030007.pdf (accessed January 2006).

41 In general, for the debate surrounding the drafting of the Council Framework Decision, see Mathiesen 2002.

In corroboration of their concerns, civil rights advocates could point to a Spanish initiative that in early 2002 made a direct link between incidents at mass demonstrations and terrorist offences as defined in the Framework Decision on combating terrorism. The draft Council Decision presented by the Spanish presidency proposed the introduction of a standard form for exchanging information on incidents caused by violent radical groups with terrorist links. The Working Party on Terrorism had 'noticed a gradual increase, at various EU summits and other events, in violence and criminal damage orchestrated by radical extremist groups, clearly terrorizing society, to which the Union has reacted by including such acts in Article 1 of the Framework Decision on combating terrorism, where the offence is defined'.[42] The perpetrators of these acts are described as a loose network of groups 'taking advantage of their lawful status to aid and abet the achievement of the aims of terrorist organisations recognized as such within the European Union'. The information gathered was to be used for prevention and, where appropriate, for the prosecution of 'violent urban youthful radicalism increasingly used by terrorist organisations to achieve their criminal aims, at summits and other events arranged by various Community and international organisations'. The proposal met the opposition of other Member States arguing that the incidents at counter-summits should not be confused with terrorism. The Spanish initiative therefore led only to a non-binding resolution in November 2002, which did allow governments wishing to do so to exchange information on movement activists in the name of the fight against terrorism. As a simple recommendation, it was not necessary to consult the European Parliament or the national parliaments.[43]

In addition to provoking concern about a possible erosion of protest rights, the EU response to terrorism led observers to wonder whether to some extent the clock had been turned back regarding democratic and judicial scrutiny of justice and home affairs business (Den Boer and Monar 2002, 19). The EU Network of Independent Experts in Fundamental Rights, in its thematic comment on the Union's response to terrorism (EU Network 2003b, 9), commented: 'In the European Union, the risk to fundamental rights posed by the adoption of measures to fight terrorism are all the greater since democratic and juridical controls are still very inadequate in the current institutional balance.' The lack of democratic legitimacy was judged all the greater since a large part of the measures consisted of implementations of international commitments and positions decided within the UN, further reducing the option of parliamentary control over intergovernmental options. In addition, according to the experts, the deliberate choice of instruments for an important part of the Union's response deprived 'parliamentary institution of all sources of information and possibility of action'.

42 Available at http://register.consilium.eu.int/pdf/fr/02/st05/05712-r1f2.pdf (accessed January 2006).

43 Hayes and Bunyan 2004, 263. The adopted text referred to the 'risk that terrorist organizations will use larger international events for carrying out terrorist offences as defined in Article 1 of the Frameworks Decision on combating terrorism'.

In fact, a report of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (29 September 2004; Final A6-0010/2004) sharply criticized shortcomings in democratic legitimacy and legal certainty in the 'area of freedom, security and justice', underlining a series of problems connected not only with the EU institutional framework, but also more generally with the international character of the response to terrorism. In particular, the report pointed out that the EU intervened in ways which, while formally compatible with the letter of the European treaties, would be considered unlawful in each of the Member States under their own legal systems: adopting legislative acts affecting personal freedom 'without the full involvement of the European Parliament, under derisively restrictive time constraints and without reliable, accurate and complete information'; concluding 'international agreements on extradition and cooperation in criminal matters ... without any form of ratification by the European Parliament or by national parliaments'; taking measures without their being monitored by the European Court of Justice nor at the national level; adopting administrative acts falling within the executive powers of the Commission, effectively bypassing the national legislation of the 25 Member States, for example in the area of data protection.[44]

Looking more generally at the impact of the terrorist emergency on EU justice and home affairs policies, the predominance of the security rationale traditionally present has clearly been reinforced (Den Boer and Monar 2002, 26). In its above-mentioned report, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs had asked not simply to respect fundamental rights, but to promote them, developing a culture of fundamental rights common to the EU institutions and Member States. A similar perspective seems missing from the 'Hague Programme' on freedom, security and justice adopted at the EU Summit on 4–5 November 2004: the section on 'Strengthening Freedom' is devoted almost exclusively to themes like asylum and the control of migration flows, with security-driven restrictive objectives.

As far as information exchange is concerned, the European Council in September 2001, in the repeatedly mentioned absence of clear data protection rules for the third pillar, committed itself to a particular effort to strike a balance between the protection of personal data and law enforcement authorities' need to gain access to data for criminal investigation purposes (Den Boer and Monar 2002, 27). In fact, the Hague Programme embraces the approach of the 'principle of availability', stating that 'The mere fact that information crosses borders should no longer be relevant.' An unpublished overview report on this principle states that EU citizens want 'freedom, security and justice' and that 'It is not relevant to them [citizens] how the competencies are divided (and information distributed) between the different

44 Available at http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//NONSGML+REPORT+A6-2004-0010+0+DOC+PDF+V0//EN&L=EN&LEVEL=2&NAV=S&LSTDOC=Y (accessed January 2006).

authorities to achieve that result'.[45] This overview report suggests that not only should all EU law enforcement agencies have access to personal data regarding law and order, but they should also have access to the national administrative systems of all Member States (for example, registrations including legal persons, vehicles, firearms, identity documents and drivers licences as well as aviation and maritime records). This scenario makes even more pressing the need for a specific set of EU data protection rules for police and intelligence authorities.[46] Recently the Commission has presented a proposal for a Council framework decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, the final outcome, however, is still uncertain.[47]

Concluding, it has been underlined that the EU should probably worry more about the longer-term implications of 11 September, in particular about the risk of a complete domination of EU justice and home affairs by an all-encompassing security rationale.

> If left unchecked, this tendency could ultimately reduce one of the most ambitious political projects of the EU of recent years, the 'area of freedom, security and justice', to that of a mere integrated law enforcement zone. This would leave rather little for European citizens to identify with and add to the Union's 'fortress' character towards the outside world. (Den Boer and Monar 2002, 27)

The above-mentioned Hague Programme seems to show little awareness of these risks, devoting attention to the need for building mutual trust and confidence among the various national law enforcement agencies, but not, as far as justice and home affairs are concerned, between EU institutions and agencies and EU citizens.

45 'Statewatch Bulletin', March–April 2005 15(2), available at http://www.statewatch.org/news/2005/jul/06eu-data-prot.htm (accessed March 2006).

46 According to the Opinion of the Europol, Eurojust, Schengen and Customs Joint Supervisory Authorities (presented in September 2004 to the House of Lords Select Committee on the European Union Sub-Committee F for their inquiry into EU counter-terrorism activities), a 'new legal framework for the Third Pillar, as advocated by the Commission, could provide for this but only if that legal framework provides for a tailor-made set of rules applicable to law enforcement activities. Simply reaffirming general principles of data protection shall not be sufficient.' Available at http//www.cbpwebnl/downloads_overig/okt2004_opinies_gcas.pdf (accessed January 2006).

47 The text of the proposal is available at http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0476en01.pdf (accessed July 2006). For the critical observations of the European Parliament committee on civil rights and freedoms, justice and home affairs see its report dates 18 May 2006, available at www.europarl.eu/omk/sipade3?PUBREF=/EP/NONSGML+REPORT+A6-2006-0192+0+DOC+PDF+VO//EN&L=EN&LEVEL=0&NAV=S&OSTDOC=Y (accessed July 2006).

Conclusion

The turn taken by the policing of GJM demonstrations seems to challenge the overly smooth image of the evolution of political protest that has been portrayed by public order policing studies in recent years. However, one should not too quickly conclude that policing has entered a new era. In fact, many studies had already stressed that notwithstanding a general trend toward pacification, the possibility of reversals, of political radicalization or increased repression, had hardly disappeared (Fillieule and Jobard 1998; Fillieule 1997; D. Waddington 1992).

As a matter of fact, everything indicates that protest, from the decision to engage in it to the forms that it may take in practice, is influenced by factors that do not show a clear trend of institutionalization or routinization. Moreover, the literature has constantly stressed the *selectivity* of protest policing, with different policing styles being implemented in different situations and towards different actors (Fillieule and della Porta 2006; della Porta and Reiter 1998a; Fillieule 1997; P.A.J. Waddington 1994). The recent return of more militarized styles of policing with a growing use of escalated force, especially in the control of demonstrations by the GJM, can be considered as just one more piece of evidence of this selectivity. Still, things seem to have changed at least in one respect. The analysis we conducted here of the practice of EU police cooperation shows that at this level, more than the gap between recognized legal norms and actual practice noted in the area of law enforcement elsewhere (Fillieule 1997; Favre 1993), it is the vagueness or absence of norms, checks and balances that enables the restriction of protester rights.

Leading European police officers see the EU approach to protest policing as increasingly successful and public order policing as one of the key fields for the furthering of EU police cooperation. In his opening address at the tenth meeting of the PCTF (11–12 October 2004), the chairman in fact underlined that organized crime and terrorism were increasingly being fought jointly and that the joint approach was also used 'increasingly and successfully at sports events and demonstrations of anti-globalists'.[48]

The numerous problematic aspects of transnational protest policing, however, possibly infringing upon protesters' rights, remain largely unresolved. In part, these consist in the technical, legal and conceptual problems that the police themselves have to overcome and which can cause faulty input or elaboration of information. The principal problems that we have underlined in our analysis, however, are connected with the lack of transparency and democratic accountability in EU justice and home affairs, evident, for example, in the very existence and institutional position of a group like the PCTF. To all evidence, these problems are even more pronounced for forms and arenas of transnational policing other than the EU.

The problems of transparency and democratic accountability are not alleviated by the fact that the EU protest policing measures we discussed concentrate on

48 Available at http://register.consilium.eu.int/pdf/en/04st14/st14094.en04.pdf (accessed March 2006).

information exchange: as underlined above, 'knowledge work' also has concrete and direct operational consequences, especially when connected with proactive policing approaches geared more at 'pre-empting conflict' than at protecting the exercise of the right to peaceful assembly and demonstration.

In addition, the future development of an operational level in EU protest policing seems likely. Already after the incidents in Genoa, German Interior Minister Schily, together with his Italian colleague Scajola, had called for European riot police units. The 2004 Hague Programme refers to Article III-261 of the draft treaty establishing a Constitution for Europe, which sets out the need to 'ensure that operational co-operation on internal security is promoted and strengthened within the Union'. Article III-275 of the same treaty opens the possibility for European laws or framework laws establishing measures concerning operational cooperation.[49]

For the development of a democratic EU, it seems of fundamental importance to overcome the limits in transparency and democratic accountability in justice and home affairs, in particular concerning police cooperation, facilitating public debate and establishing clear rules for full parliamentary and judiciary oversight on all levels. Closely connected is the need to assure respect for transnational protest rights. Recent developments indicate that these processes will probably be long and difficult. The Schengen Borders Code, the first legal instrument in this policy area fully involving the European Parliament in the decision making process, constituted only limited and not substantial progress (see note 7). Also in the future, integration in justice and home affairs will in all probability continue to be driven by the formalizing of informal arrangements and the 'unionizing' of intergovernmental agreements: in May 2005, seven Member States signed the Prüm Treaty, soon re-baptized Schengen III, agreeing to a broadening of cross-border police cooperation, including information exchange and assistance (also through the sending of agents, specialists and advisors) in the case of large events with a cross-border significance, particularly sports events or meetings of the European Council.[50] Considering the institutional structure of the EU and the weakness of the European public sphere, the risk seems high that the shaping of the concrete form of transnational protest rights will be both state and executive driven.

49 Some of the practical problems connected with operational transnational police cooperation became evident at the Evian G8, when (on the basis of an intergovernmental agreement) German police units were deployed in Geneva. See 'Rapport de la Commission d'enquête extraparlementaire/G8', available at http://www.etat-ge.ch/grandconseil/data/texte/RD00532.pdf (accessed March 2006).

50 See http://www.statewatch.org/news/2005/jul/17schengen-III.htm (accessed March 2006). The full text of the convention signed (see in particular Articles 13-15, 26) is available at http://www.statewatch.otg/news/2005/aug/Pr%FCm-Convention.pdf (accessed March 2006).

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