

# Law Enforcement Without a State?

Synnøve Ugelvik

<b>1</b>	<b>Introduction</b> .....	230
<b>2</b>	<b>Nation States and Their Police</b> .....	231
<b>3</b>	<b>Norway and EU Police Cooperation</b> .....	233
<b>4</b>	<b>New Police Tasks</b> .....	237
<b>5</b>	<b>The Bond Between Police and Public: Police Legitimacy</b> .....	239
<b>5</b>	<b>Conclusion</b> .....	241

## 1 Introduction

The police are often referred to as the prolonged arm of the government, and policing is generally seen as a central part of the functions of sovereign nation states. One might even say, depending on the definition, that a state without a functioning police force is not a proper state at all. The last 20 years or so, however, have seen crime and mobility trends that have contributed to changes across nation state borders that have resulted in European national police forces facing new crime and disorder trends, as well as an unprecedented number of non-citizens on their territories.

A range of cross-border police cooperation instruments has been established to target these new challenges. The early regional European Community treaties of the 1950s had the creation of European stability and peace through strengthened trade relations as their main ambition. These early initiatives did not contain measures on police or crime control; the police remained a national concern. Terrorist attacks in the 1970s and -80s, however, spurred increased border-crossing police cooperation. Today, European states and their police forces are connected through an intricate web of systems and measures of cooperation. From the point of view of European national police forces, the legal context has changed rapidly. The legal development is arguably connected to a general shift in the notion of what sort of phenomenon 'the police' is, who they work for and represent, and at which level their organisation may be found.

The link between the police force and the particular community the police work for and on behalf of is seen as important for several reasons. One is the need for intimate knowledge of the particular community's features in order to grasp where the police resources are needed. Another is the fact that the police's attitudes and practices should be shaped by cultural values shared with the population they control and serve. A third and interconnected reason concerns the legitimacy of the police role: The police force is perceived as responsible for citizens' needs and is accountable to law.<sup>1</sup>

This article takes as a point of departure that transnational police cooperation agreements and practices change what we might call the police worldview. This may further impact on the way nation state police forces deploy their resources, the bond between police forces and nation state citizens, and the legitimacy they enjoy in the general public. There might be other, less explicit, more informal, consequences of the legal development of police cooperation measures and regulations, than those you can find in black letter law. This article will discuss some of these consequences. Through a discussion of some particulars of the Norwegian case, this article will explore whether it is possible to say that we are moving toward a European law enforcement without a state, and what something like that might look like. More specifically, I will ask two related questions: First, has globalisation and international cooperation changed the way the Norwegian police conceptualise

---

1 Bayley, David H. and Clifford D. Shearing, *The New Structure of Policing: Description, Conceptualization, and Research Agenda*, National Institute of Justice, Washington DC 2001.

main police tasks and allocate their resources? And second, has the bond between the Norwegian police force and the general public changed? If yes, how have these changes impacted on the perceived legitimacy of the police? The aim is not a comprehensive discussion of these complex empirical questions. The discussion of the more or less informal consequences of a range of decisions and changes of direction will ask more questions than it answers. Hopefully, readers will at least agree that asking these questions is worthwhile.

## 2 Nation States and Their Police

There are many different definitions of a 'state'. Is a 'state' first and foremost a set of rules, policies and regulations, an ideal system made up of different agencies, or is it the various practices of state agents in 'the real world'? In this article, the term 'state' is used to describe a central government. But it also includes a people that have constituted the power over a certain territory (as in the term nation state). The state administration is ruled by a government. It has at its disposal a large public administrative organisation to administer the laws and regulations as set out by the government itself, and checked by the courts and the parliament. The nation state includes all these features.

A state, then, is made up of its citizens, of a specific population.<sup>2</sup> At the same time, a state is the administrative body governing this population. Citizens need security, and are willing to give up certain aspects of freedom in order to achieve this; this is the core of classic social contract theory.<sup>3</sup> There is, thus, in a democratic state, a clear link between this public administration and the people.

The meaning of 'police' is often taken for granted, a common understanding that is simply presupposed. The term 'police' pre-dates the modern state. It has existed as one of the meanings ascribed to the Greek *politeia*, meaning, among other things, good order and welfare within the internal life of a community.<sup>4</sup> The 'invention' of the modern police is often seen to coincide with the birth of the modern state around mid-18<sup>th</sup> century.<sup>5</sup> In this paper, the term 'police' is

---

2 Neocleous, Mark, *Imagining the state*, Maidenhead, Berkshire: Open University Press, 2003.

3 Such as Hobbes, Thomas, *Leviathan*, ed. J. C. A. Gaskin, Oxford: Oxford University Press, 1998 [1651]; Rousseau, Jean-Jacques, *Om samfunnspakten, eller Statsrettens grunnsetninger*, trans. Haakon H. Halvorsen, Oslo: Dreyer, 1958 [1762].

4 E.g. Bayley, David H., *Patterns of policing: a comparative international analysis*, New Brunswick, N. J.: Rutgers University Press, 1985, p. 28; Anners, Erik, *Brottet, straffet och polisen i den europeiska rättsutvecklingen*, Stockholm: Norstedts juridik, 1997; Dubber, Markus Dirk, *The police power : patriarchy and the foundations of American government*, New York: Columbia University Press, 2005 ch.3; Neocleous, Mark, *The fabrication of social order : a critical theory of police power*, London: Pluto Press, 2000, p. 1.

5 Walker, Neil, *Policing in a changing constitutional order*, London: Sweet & Maxwell, 2000, p. 228.

functional. It refers to the police *force*, i.e. the persons employed by the state to perform the policing activities the state finds necessary and relevant.<sup>6</sup>

‘International/transnational police cooperation’ refers here to practical cooperation across borders, e.g. in the form of investigative cooperation. This includes such as the exchange of information and knowledge in various fora, to upholding general public order and assisting in developing another country’s police authorities.<sup>7</sup> A general division is made between the overarching and the operational police cooperation. The former refers to the political and administrative agreements and negotiations, whereas the latter happens more or less directly between the police or public prosecution services.

The histories of the state and of the police are intertwined. A significant characteristic of the modern nation state is ‘sovereignty’. This concept has a dual meaning. It refers both to the fact that a sovereign state has its territorial boundaries respected by other states and that it has ultimate responsibility for protecting its subjects on that territory.<sup>8</sup> Outside of the territory, e.g. to protect its borders, the armed forces are the legitimate enforcers of violent state power. A point of departure here is the Weberian notion of the police as the state’s ‘tool’ of coercion within its territory, *Within* the territory the police force is the single legitimate enforcer of violence against persons.<sup>9</sup> Thus, the limitation of territorial boundaries is essential. The state’s legitimate force is made operational by and through the police. This is a defining feature of a ‘state’ in the tradition after Weber. According to Manning, the police are “the institution formally charged by states to lawfully execute the monopoly over means of coercion.”<sup>10</sup> Following this logic, the police force constitutes the state, because a state that fails to get anything done, is no state. What happens, then, when a state’s police wields power outside of a certain territory such as in the case of some forms of international police cooperation? The recent development of police cooperation systems and measure challenges the traditional understanding of the citizen-territory-state nexus.

---

6 The ‘organisational’ police definition, Auglend, Ragnar L., Knut Røsandhaug, and Henry John Mæland, *Politirett*, 2 ed., Oslo: Gyldendal akademisk, 2004.

7 St.prp. nr. 42 (1996-1997) *Om samtykke til ratifikasjon av samarbeidsavtale av 19 desember 1996 mellom partene i Schengenavtalen og Schengenkonvensjonen, og Island og Norge om avskaffelse av personkontroll på de felles grenser*; Larsson, Paul, *International police co-operation: a Norwegian perspective*, *Journal of Financial Crime* 13, no. 4, 2006, p. 457.

8 In line with Hobbes, *Leviathan*. p. 114, no.13, see also Walker, Neil, *The accountability of European police institutions*, *European Journal on Criminal Policy and Research* 1, no. 4, 1993 p. 37-38.

9 Weber, Max, *Politics as vocation*, in *From Max Weber: essays in sociology*, ed. Hans H. Gerth and C. Wright Mills, New York: Oxford University Press, 1958; Marenin, Otwin, *Parking tickets and class repression: The concept of policing in critical theories of criminal justice*, *Contemporary Crises* 6, 1982.

10 Manning, Peter K., *Police work: the social organization of policing* (Cambridge, Mass.: MIT Press, 1977, p. 105. See also e.g. Hobbes 1998 [1651] *Leviathan*, p. 7, Neocleous, *Imagining the state*.

### 3 Norway and EU Police Cooperation

Prior to the Schengen cooperation, there was no formal connection between Norway and the EU cooperation on justice and home affairs.<sup>11</sup> According to the Norwegian Ministry of Justice, several negative developments in the mid-1990s made a stronger focus on international, cross-border police measures necessary. Reported crime increased six fold in Norway from 1960 to 1990.<sup>12</sup> International crimes were reported to have become increasingly serious. Their numbers were also growing.<sup>13</sup> Cross-border crimes that were emphasized were drug trafficking, the export of stolen vehicles, human trafficking, certain types of economic crimes and crimes related to prostitution.<sup>14</sup>

The Schengen cooperation entered into force in 1995, and the Schengen *Acquis*<sup>15</sup> was incorporated into the EU legal framework in 1997. The implementation implied that Schengen membership now became compulsory for all EU member states, although opt-outs were permitted. Norway became 'partner' in the Schengen cooperation in 2001. The 2009 Lisbon Treaty's removal of the pillar system dissolved the differing legislation procedures in the EU in the Area of Justice and Home Affairs. This at least to some extent made the Union activity also on the law enforcement area more supranational.<sup>16</sup>

Several EU Decisions have been developed through the Schengen *Acquis*, evolving the cooperation mechanisms and standards of various police work since the Schengen implementation. The Schengen cooperation is partly centralized and partly decentralized, meaning in short that the former are coordinated from the EU or a supranational level, whilst the latter are bi- or multilateral, performed or initiated currently from each member state. Among the most important of these developments are police and prosecutorial cooperation regulations regarding policing *within* the Schengen Area, including

---

11 St.prp.nr.42 (1996-1997) *Om samtykke til ratifikasjon av samarbeidsavtale av 19 desember 1996 mellom partene i Schengenvatalen og Schengenkonvensjonen, og Island og Norge om avskaffelse av personkontroll på de felles grenser.* ch. 6.7.

12 NOU 1997:15 *Etterforsningsmetoder for bekjempelse av kriminalitet Delinnstilling II*, pp.24; 28-9.

13 NOU 1997:15 *ibid.* pp. 28-29.

14 St.meld.nr.18 (1999-2000) "Om Norges deltakelse i internasjonalt politisamarbeid,". Justis- og politidepartementet, pp. 8-9; *Etterforsningsmetoder for bekjempelse av kriminalitet Delinnstilling II.* ch.3.

15 The Schengen *Acquis* (OJL 239, 22.9.2000) consists of the Schengen Agreement of 1985, the Schengen Implementation Convention of 1990, the protocols and agreements on accession of Italy (1990), Spain and Portugal (1991), Austria (1995) and Denmark, Finland and Sweden (1996), the association agreements with Norway Iceland and Switzerland, and the decisions and declarations of the Schengen Executive Committee.

16 See for more detailed overview e.g. Ugelvik, Synnøve, *Inside on the Outside: Norway and the EU Police Cooperation*, Oslo: University of Oslo, 2014, ch. 6.3.

Schengen I and II,<sup>17</sup> the Prüm,<sup>18</sup> Europol<sup>19</sup> and Eurojust<sup>20</sup> regulations. Meanwhile, the cooperation agency Frontex<sup>21</sup> facilitates cooperation in order to protect the EU from police and security issues at the *external* Schengen borders.<sup>22</sup>

From a Norwegian perspective, EU is today the single most significant actor in terms of international and transnational police cooperation agreements and measures. While not a member of the EU, Norway has entered into, or is in the process of entering into, several EU police cooperation and other crime control agreements. Controlled deliveries across borders, covert investigations abroad, joint investigation teams consisting of police from several countries and joint patrols of police in other territories than their home state are examples of important available cooperation measures. There are a number of available operational and information-related police cooperation instruments, with purposes both to prevent and stop crime and to uphold more public order more generally. I will not go in depth or full breadth here; the point is merely to superficially show the forms and numbers of available instruments and measures.<sup>23</sup>

Following the Schengen cooperation states have a general obligation to cooperate (Convention Implementing the Schengen Convention,<sup>24</sup> hereinafter

17 OJ [2008] L 210/12, For reference to legal documents and development of the Schengen cooperation, *see* “europa.eu/legislation\_summaries/justice\_freedom\_security/free\_movement\_of\_persons\_asylum\_immigration/133020\_en.htm”\_2016.04.03.

18 OJ [2008] L 210/12 Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime”.

19 Europol is the centralized police cooperation body of the EU (OJ L [2009] 121/37 “Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol)”.

20 Eurojust is the centralized prosecutorial cooperation body of the EU. (OJ L [2008] 138/14 “Council Decision 2002/187/JHA on the strengthening of Eurojust and amending Decision setting up Eurojust with a view to reinforcing the fight against serious crime.” : OJ L [2009] 138/14 “Council Decision 2009/426/JHA on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime”.

21 The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L [2004] 349/25 “Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union”).

22 Franko, Katja & Gundhus, Helene Ingebrigtsen, *Policing humanitarian borderlands: Frontex, human rights and the precariousness of life*, *British Journal of Criminology*, 55(1), p. 1- 18.

23 I have attempted to give a comprehensive overview in Ugelvik, *Inside on the Outside: Norway and the EU Police Cooperation* part II.

24 OJ L 239 Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

CISA, art. 39). The cooperation is limited to “preventing and detecting criminal offences”. The Schengen parties are not as a general point of departure obliged to accommodate if a request involves coercive measures, such as arrest or communication control. In general, the contact points in the member states are specific central bodies; in Norway, this is the responsibility of the National Investigation Service *Kripos*. The obligation applies, however, to the police on the whole, and an increasing number of measures may involve direct cooperation between police districts. In addition to the duty to cooperate in the CISA the perhaps most significant measure is the information exchange between the member states, primarily through the Schengen Information System (SIS). In addition to the SIS, the member state police agencies have access to databases such as the Visa Information System (VIS)<sup>25</sup> the Eurodac,<sup>26</sup> and the information systems of Europol. Seen in total, these systems include vast numbers of various different kinds of data on individuals and objects, taken and/or given concerning suspects, missing people, immigration cases, analysis and investigative information, photos, etc. In other words: data from both criminal and civilian cases. The police may, to various degrees, search and register in these databases. They may also request that foreign police take certain actions on the basis of registrations. Typical examples are arrest or searches<sup>27</sup> While information exchange seems to be the most prominent type of police cooperation, operational police actions may, in other words, be the *result* of the information collaboration.

Only some of the police cooperation measures actually involve the practical enforcement of national police powers abroad. I argue that far more *de facto* constitute such enforcement, when national police act within their territory based on the more or less compulsory requests by other state’s police. With this in mind, the Norwegian influence on how these measures are developed in various regulations and agreements, is important.

EU police cooperation *outside* the remit of the Schengen cooperation does not automatically include Norwegian participation. In the late 1990s, the Norwegian government clearly expressed that Norway wanted to participate not only in the development of the Schengen cooperation, but also police and judicial crime control cooperation outside of this framework.<sup>28</sup> The Europol accession may serve as an example of the negotiations outside the Schengen remit – and even outside the ordinary EU remit.

The objective of Europol is to “support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating organised crime, terrorism and other forms of serious crime affecting two or more Member States” (Europol Decision [ED])<sup>29</sup>

---

25 OJ L [2008] 218/129.

26 OJ L [2008] 35/60.

27 See Ugelvik, Synnøve, *Inside on the Outside: Norway and the EU Police Cooperation*, Oslo: University of Oslo, 2014, ch. 12 for a thorough account.

28 St.meld.nr.18 (1999-2000 "Om Norges deltakelse i internasjonalt politisamarbeid.") p. 61-63.

29 See note 19.

art. 2). As of 2009, the Europol police agency is assigned more of a partnership role vis-à-vis national police authorities, instead of a role of merely supporting, facilitating and requesting action from the members.<sup>30</sup> Following this, Europol is a quite influential player in the European crime control field. The member states are largely obliged to comply with Europol's requests for information from the various national police authorities. Although still without coercive powers on its own *per se*, this obligation towards national police to give data of sufficient quality, within certain time limits, provides an impression that Europol has powers (albeit implicit) to – to some extent – decide over member state police forces' activities.

Only EU members may be members of Europol (ED art.1). The agency can, however, establish and maintain relations with third countries and third bodies when the Management Board and the Council agree (art.23). After Europol and Eurojust became autonomous legal agencies within the EU system, the agreements with third parties are made directly between that party and Europol and Eurojust, not, as before, with the EU as a whole. This means that although these EU agencies have their legal basis in Council Decisions, which must be subjected to a majority vote in the Council, the agencies' activity is autonomous within the legal framework. The role of Norway in the Schengen cooperation, then, is different than its relationship with Europol. In contrast to the Schengen cooperation, there is no Norwegian participation in the financing of Europol or influencing Europol's decisions.<sup>31</sup> Norway is a third country, but it is less of a 'third country' in the Schengen cooperation than it is vis-à-vis Europol.

In general, EU police cooperation instruments have been successively increasing in numbers and also 'deepening'. From measures comprising e.g. hot pursuit across nation state borders after a person fleeing from a murder scene, and undercover policing into foreign territories concerning serious crimes, newer legal amendments have been made where police cooperation also encompass cooperation on lower levels and includes also more ordinary policing. The Norwegian police force currently has access to a large number of cross-border measures in pursuit of their home state purposes in their day-to-day work. In 1999, a new section (20a) was added to the Norwegian Police Act (in force from 2001), giving foreign police under certain conditions legal basis to enforce their jurisdictional competences on Norwegian soil. This would, as a general rule, be in breach of the Police Act, apart from the limitations of the Act in sect. 3 on applicable international law and agreement. Up until the amendment, the only derivation from the general rules was in the delegation of temporary police competences in sect. 20 (3) – including such as the 'reindeer police' of Norwegian wilderness supervision authorities.<sup>32</sup> The consultative notes underlined the fact that non-police personnel may be given temporary police powers when they perform tasks that, to a significant extent, involve the

---

30 Peers 2011:873.

31 Kvam, Bjarne, *Norge og Schengen: et svekket samarbeid mot kriminalitet*, Oslo: Cappelen akademisk, 2008., p. 36 note 326.

32 Ot.prp. nr. 22 (1994-1995) ch. 6.4.1.

prevention or investigation of crimes.<sup>33</sup> This extraordinary police competence is termed “*begrenset*,” i.e. limited. Nevertheless; Myhrer emphasises that this does not imply that the competence is less than complete, but that it is limited in time and functionality.<sup>34</sup> A 2012 amendment specified that foreign police officers may be given *Norwegian* police competence, similar to and in accordance with that of sect.20 (3). With this in mind, the joint operations such as joint investigation teams or patrolling, that may take place in Norway following several European collaboration instruments<sup>35</sup>, implies that non-Norwegian police officers, patrolling or executing other types of police authority on behalf of their home state, may be delegated Norwegian police competence for a certain period of time.

As these scattered examples have shown, Norwegian police officers today work together with other state’s police forces and they have, in various ways, access to their information, intelligence and territories – and vice versa. The Norwegian political and practical influence on the development of the foreign regulations and subsequent association or affiliation agreements is varying. How does this situation correspond with traditional conceptualisations of phenomena like ‘states’, ‘citizens’ and ‘territories’? Are we moving toward law enforcement without a state? The paper will proceed through a discussion of the two questions raised in the introduction.

#### 4 New Police Tasks

The characteristics of the Norwegian police force have repeatedly been considered to be inherent in ten foundational principles<sup>36</sup>; *inter alia* that the police force reflects the ideals of society, that it is unitary, civilian, and prevention oriented, that it interacts with the public, that the police officers are generalists, and that the force is decentralised and integrated in the local communities. It is also stated explicitly in the ten foundational principles that the Norwegian police are a proximity police. Has globalisation and international cooperation instruments changed the way the main police tasks

---

33 Ot.prp. nr. 64 (1998-1999) *Om lov om endringer i straffeprosessloven og straffeloven m v (etterforskningsmetoder m v)*, note to sect. 20.

34 Myhrer, Tor-Geir, *Begrenset politimyndighet*, in *Polisiær virksomhet : hva er det - hvem gjør det?: Forskningskonferansen 2007*, ed. Helene I. Gundhus, Paul Larsson, and Tor-Geir Myhrer, Oslo: Politihøgskolen, 2007, p. 3.

35 1959 Convention (ETS 30 (1959) and ETS 182 (2001)) 2nd additional protocol (ETS 182) art.20; and the EU Convention on Mutual Assistance in Criminal Matters art.13 (OJ C [2001] 197/01, with OJ C [2001] 326/1) with the related Framework Decision on Joint Investigation Teams (OJ L [2002] 162/1). In 2003, Norway and Iceland negotiated an association agreement to the EU on the Convention with the later amendments (OJ C [2000] 197/01).

36 NOU 1981:35 *Politiets rolle i samfunnet, Delutredning I*; NOU 1987:27 *Politiets rolle i samfunnet, Delutredning II*, Ot.prp. nr. 22 (1994-1995) *Om lov om politiet (politiloven)*, p. 13, etc.

are conceptualised and the way the Norwegian police deploy their resources? The way crime is explained and defined has, naturally, a major impact on everyday police work. Organised, transnational crime has become a great concern of our time. Organised crime has been and still is a key EU target area. A general strategy for fighting organized crime was issued in 2005,<sup>37</sup> and a contemporary Joint Action established an inventory of competences concerning organized crime.<sup>38</sup> Furthermore, a resolution has been adopted regarding the policing of international crime routes<sup>39</sup> and another has established a model protocol on public/private partnership against organized crime.<sup>40</sup> There have also been Council conclusions on the administrative approach to target organized crime by ‘mobile groups’.<sup>41</sup> Norway and the Norwegian police are undoubtedly influenced by these developments.

Trafficking in human beings and illegal migration has received more attention from the police after they were made aware that organised crime groups often were behind such crimes.<sup>42</sup> And it seems fair to assume that trafficking increased as a result both of the abolition of border controls between the Schengen/EU member states, and perhaps also of the more thorough control of the borders surrounding the Schengen Area. Trafficking becomes more and more profitable as the risks of punishment and the difficulty of ‘getting in’ increases. Recently, the sentencing frame for breaching an Immigration Act entry prohibition into Norway – i.e. returning to the country after prior expulsion – was increased from a maximum of six months in prison to up to two years, with a political instruction to not, in ordinary cases, give verdicts of less than one year imprisonment for a first time breach.<sup>43</sup> The general sentence given before the amendment was 35 days. By way of comparison, it is worth noting that a case of drunken violence needs to be fairly serious (e.g. kicking someone prone on the ground in the head, using a knife, etc.) to warrant a full year in prison. In cases of repeated breaches, the maximum increases to four years imprisonment (Criminal Procedure Act sect.61).

The reason for this radically increased sanction was, according to the Ministry, that illegal entry and residence undermines the goal of a regulated and controlled immigration to the country. Control of foreigners’ identity and

---

37 COM (2005) 232 2 June 2005.

38 OJ L [1996] 342/2.

39 OJ C 1[1999] 62/1.

40 OJ C [2004] 116/20.

41 Council Press Release 02.12.2010 (Council conclusions on the fight against crimes committed by mobile [itinerant] criminal groups).

42 St.prp.nr.50 (1998-1999 *Om samtykke til inngåelse av en avtale mellom Rådet for Den europeiske union og Republikken Island og Kongeriket Norge om de sistnevnte statenes tilknytning til gjennomføringen, anvendelsen og videreutviklingen av Schengen-regelverket*, p. 16.

43 Innst. 48 L (2013–2014) *Innstilling fra kommunal- og forvaltningskomiteen om endringer i utlendingsloven mv. (heving av strafferammen ved brudd på innreiseforbud)*, on amending the Immigration Act sect. 108.

residence in Norway has also been seen as very important for security reasons, given the Norwegian authorities' diminished control post-Schengen. Because of the growth in 'entry crime,' which was in fact expected to increase due to globalisation and increased general mobility, the general and individual deterrence effects of harsher punishment are seen as necessary.<sup>44</sup>

These are examples of the increased emphasis put on the 'international aspects' of social problems. The general justification is that more and more police resources and efforts are spent on foreign criminals without permanent connections to Norway, and the Immigration Act breaches are often committed in addition to other crimes. One might call it crime control through migration control.<sup>45</sup> Changes in the purpose, manner and function of the police may be necessary to meet dynamic technical and social developments. The general question is whether the specific changes are the kind that are wanted or expected by the citizens of the society in question, or whether there (perhaps in addition) are other forces that contribute to the development.

## 5 The Bond Between Police and Public: Police Legitimacy

Has the bond between the police force and the public changed? The level of trust in the police is very high in Norway today.<sup>46</sup> Næshagen argues that one of the reasons for the long-standing idea and tradition of democratic and proximate policing in Norway has been the absence of internal conflicts and violence within Norway. According to Næshagen, there have been extremely few violent clashes between citizens and authorities throughout Norwegian history since the 14<sup>th</sup> century, and those few examples that may be quoted (three instances between the early 19<sup>th</sup> century and the early 20<sup>th</sup> century) hardly resulted in physical injuries.<sup>47</sup> One interpretation of the general lack of conflicts is the lack of important insider/outsider divisions. The pressing question in this paper, then, is whether a novel focus on external security threats may disrupt this tradition of strong mutual trust between police and citizens and a relatively peaceful community. – if the police actions are

---

44 Op.cit. ch.1.2.1 p. 3.

45 Op.cit. ch.1.2.1 p. 3. The Police Act (sect. 14 1) was recently amended, allowing the municipalities to prohibit begging in local bylaws. Aggressive begging could already be dealt with by the police according to PA sect. 7 (1) nos.1 and 3 when considered in breach of public order (Fredriksen, Steinar, *Ro, orden og frihet: en fremstilling av politiets adgang til å gripe inn i den personlige frihet ved utførelse av ordenstjeneste*, Bergen, Universitetet i Bergen, 2014, p. 398-403). The 2013 new restriction may also serve as an example of restricting the activities of poor people taking advantage of the mobility within the Schengen area (Prop. 152 L (2012–2013) *Endringer i politiloven*).

46 For example Runhovde, Siv, *Tillit til politiet*, vol. 2010:4, Oslo: Politihøgskolen, 2010. Thomassen, Gunnar, Jon Strype, and Egge. Marit, *Trust no Matter What? Citizens' Perception of the Police 1 Year after the Terror Attacks in Norway*, Policing 8 no. 1 2014.

47 Næshagen, Ferdinand Linthoe, *Norway's Democratic and Conservative Tradition in Policing*, Scandinavian journal of history 25, no. 3, 2000; Johansen, Per Ole, *Menstadkonflikten 1931*, Oslo: Tiden, 1977.

performed by or on behalf of foreign police, as a result of the police cooperation measures.

Norwegian police officers have to be Norwegian citizens. This citizenship requirement is presupposed *in itself* to ensure the trustworthiness made necessary by the wide range of discretionary powers Norwegian police officers enjoy.<sup>48</sup> In addition to the idea that citizenship status in itself is a safeguard because Norwegian citizens are assumed to share 'Norwegian values,' the requirement is also meant to satisfy the Norwegian principle of proximity policing.<sup>49</sup> The Schengen cooperation and other international police cooperation instruments are exceptions to the clear point of departure that only Norwegian state employed police enforce powers on the national territory. Even if it is an exception to the general rule of police work, with clear limitations, the development of international influence may be argued to challenge the proximity policing model. The mere presence of foreign officers may have effects in *inter alia* the perception of the Norwegian police among citizens, or even among the police themselves. In addition to being individual members of the Norwegian society, and thus impacted in the same ways as any other citizen by, e.g. political statements and media coverage of international crime, police officers may also be influenced in work-specific ways. This may happen through changes in the police personnel's perception of what they are supposed to do, which role they should fill, whether or not e.g. they should expect their work to be dangerous, if so, in what ways, and finally who the 'risky persons' are and what they look like. Public order police cooperation is one of the cores of the Schengen cooperation, and the SIS regulations do indeed also focus on prevention of threats to public order and security (CISA art. 93). Research has suggested that the gathering and sharing of information concerning the policing of events like major sporting events or top summit political meetings, was precisely what the Schengen regime was intended for.<sup>50</sup> Europol has also been involved in what may be termed 'transnational public order policing' e.g. in the cases of the policing of protests and street demonstrations related to the G8 meetings of Gothenburg in 2001 and Genoa in 2010.<sup>51</sup> It is noteworthy that it is not possible to lodge a complaint regarding a police decision in connection with the execution of measures with a general peace and order purpose, nor does a police officer need to justify his decision to the subject in such cases, in contrast to other public administration activity.<sup>52</sup> In general, the possibilities for control and legal oversight are fewer when it

---

48 NOU 1981:35 p. 85.

49 The model is characterised by *inter alia* small police units, close cooperation with the audience, integration in the local community, representativity and a small degree of division of tasks St.meld.nr.42 (2004-2005) "Politiets rolle og oppgaver" p. 10.

50 De Moor, Alexandra and Gert Vermeulen, *The "new" principal task for Europol to support Member States in connection with major international events. The blurring of boundaries between law enforcement and public order?*, *Journal of Police Studies* 3, no. 16, 2010.

51 Op.cit.

52 The Public Administration Act sects. 24 and 28 cf. its Directive (Forvaltningslovsforskriften) sects. 21 (b) and 30 (b).

comes to this area of police work; a type of policing that may have quite significant impact on the public life on many individuals. We could easily imagine e.g. a Latvian police officer approaching and arresting a Latvian citizen one sunny afternoon in downtown Oslo, without that person or any random bystander being given the right to demand an explanation or lodge a complaint about the decision. As Mitsilegas points out, having police officers from foreign states operating on state territory constitutes a clear challenge to traditional ideas of state sovereignty, especially when the operational powers go further than the limited Schengen provisions on hot pursuit and surveillance.<sup>53</sup> A way of understanding the involvement of foreign police authorities in the more mundane, ordinary order policing is to see it as an application of ‘high policing’ measures (international police work) on a *low* level. Today, even less serious crimes such as burglaries and car thefts are often seen as local manifestations of cross-border, international criminal networks that may necessitate a “concerted European action.”<sup>54</sup>

Societies, technologies and mobility patterns are changing and require a change of mechanisms and measures of policing. What this means is that a better understanding of whose interests are actually promoted, and which should be regarded as more and less relevant for Norway as a community in particular, may give a more informed policing situation. One can take the point of departure that proximity policing is “the Norwegian way”, and an important value for the policing situation in Norway to be successful. The question is whether international cross-border crime developments simply cannot be dealt with within the frame of traditional national police structures and policies, however much desired they are.

## 6 Conclusion

Norway has a varying degree of influence on the police and crime control developments at the EU level.<sup>55</sup> As such, the procedural legitimacy may be seen as weak, from the Norwegian point of view, given its varying member or affiliated member position in the international entities or cooperation instruments. The citizens do not have the same more direct influence election as citizens of the EU member states. One could, however, suggest that output legitimacy may be present, meaning that the results of the police cooperation, or the state/government’s justifications for implementing them, are so good that they outweigh the lack of direct influence by the Norwegian people. This

---

53 Mitsilegas, Valsamis, *EU criminal law*, Oxford: Hart, 2009, p. 170.

54 COM(2010) 673 final:4, see also Den Boer and Bruggeman, *Policing and internal security in the Post-lisbon era: new challenges ahead*. p. 144-9.

55 See Ugelvik, *Inside on the Outside: Norway and the EU Police Cooperation*, chapters 6.5, 8.1.3 and 9.

underscores the importance of justifications, and, for that matter, also the effects of the various measures.<sup>56</sup>

Bowling and Sheptycki argue that the nation state system has turned into a transnational state system.<sup>57</sup> One may argue that the global neo-liberal market – including the ‘regionally global’ market within the Schengen Area, is more complex than the context that was relevant for Weber when he came up with his classic state definition, both concerning the wide array of crimes and the variety of governance and crime control measures. It is challenging to consider the legitimacy of *anything* when the notions that traditionally are used in the assessment, are old and to some extent can be said to be under siege.

Either way: The Weberian notion of state monopoly on legitimate violence is challenged in our times. One might suggest a related, but slightly different alternative notion: a state is a state only when it is capable of monopolizing legitimate violence within a certain area, i.e. is not contested in too great a degree by other security providers (private, other states, other entities). This is clearly a controversial suggestion. The international police cooperation instruments are described and defended on political and practical levels and are within the ultimate control of the Norwegian laws, thus within sovereign rule. It is the *violent force* that is supposed to be monopolised, not any other part of the field of policing. In many countries, the classic policing services and duties are spread out on several agencies, including state, municipal and even more civilian entities. There has, however, been strong resistance in Norway against dissolving the ‘unity police model’. As already mentioned: The ten principles of policing, stating *inter alia* that the Norwegian police force is *one*, have been and are still frequently reiterated.

Are we moving toward law enforcement without a state? Mitsilegas argues that the state may be seen as *strengthened*, not weakened, in the era of globalisation.<sup>58</sup> It has extended its reach through *inter alia* internationalisation of its substantive criminal law, and through securitization tendencies moving aspects of immigration control into the crime control proper. In total, the development may signal a development where states are at least as active in the crime control and policing area as they used to be, but that there are, in addition, more players on a field that has widened.

What does the future hold for the Norwegian police? An event that in many ways shook the foundations of the Norwegian society was the 2011 bombing of the Government Headquarters and the atrocities that followed at Utøya. In the evaluation of the police work during and following the terrorist attack in 2011, the evaluating Committee concluded that the deficiencies in the police did *not* primarily concern a shortage of resources, insufficient legislation, organization

---

56 See Ugelvik, Synnøve, *Justifications and State Actions: EU Police Cooperation, Schengen Borders and Norwegian Sovereignty*, European Journal of Policing Studies, 3 (2), 2015.

57 Bowling, Ben and James Sheptycki, *Global policing*, Los Angeles: Sage, 2012, p. 35 ff.

58 Mitsilegas, Valsamis, *Immigration Control in an Era of Globalization: Deflecting Foreigners, Weakening Citizens, and Strengthening the State*, Indiana Journal of Global Legal Studies, 19 (1), 2012.

or major value changes.<sup>59</sup> The failure, they argued, was one of leadership and a lack of cooperation. The subsequent so-called Police Analysis (*Politianalysen*; NOU 2013:9) suggested major reforms of the Norwegian police, *inter alia* a further centralization of the police by reducing the number of police districts from 27 to 6, as well as a general improvement of management and efficiency. The report emphasised that ‘the police of the future’ must be able to “meet the complicated, serious and cross-border crime, and at the same time deliver a good police service where the population lives.”<sup>60</sup> It was underscored that the Norwegian police force was not sufficiently centralized.<sup>61</sup> Although crime levels in general throughout Europe are *declining*, the crime that does take place is in the Police Analysis described as steadily more complex, cross-border and organised.<sup>62</sup> The local management of police work was considered to be insufficient.

The suggested reform has since entered into force, and as of January 2016, the 27 police districts in Norway are reduced to 12. One might speculate that crime in the future may become so serious that the local police models must be abandoned altogether, despite its apparent success, given that the crime rate have in fact dropped has been declining. One might even see in this development an anticipation of a further centralisation process where the decision-making level is moved away not only from local and regional levels, but also the national levels – towards an EU or joint Nordic level.

Norwegian police districts have complained that the increased requirements for contingency preparedness take away resources from ordinary police work. This may in turn lead to serious arrears.<sup>63</sup> A new government demand is that the police should be able to prevent major crime events or disasters such as the terrorist attacks in Oslo and at Utøya in 2011. As mentioned before, the same requirement and focus apply to other serious crimes such as cross-border, organised crime. International police cooperation and specialised police forces may be well suited to prevent and stop cross-border crime. It might, though, also lead to a lopsided security and safety perception, if the threat and risk assessments the various police resource allocation is based on, at least to some extent, an overly strong focus on the serious, cross-border crimes. In my opinion, the emphasis on contingency preparedness and certain types of serious crimes, to some extent follows both because of the various risk assessments from the EU and national levels, but also simply from the increased availability on cross-border police cooperation instruments. One problem is, then, that the focus is turned away from the regular, everyday property crime that most people are victims of, such as low-level property crime, and domestic violence. Another problem is that there may

---

59 NOU 2012:14 *Rapport fra 22. juli-kommisjonen*.

60 NOU 2013:9 *Ett politi - rustet til å møte fremtidens utfordringer* p. 9, my translation.

61 Op.cit. p. 18.

62 Op.cit.

63 [aftenposten.no/nyheter/iriks/--Beredskap-har-apenbart-gatt-ut-over-etterforskningen-7572205.html#.U4MztXY4VaQ](http://aftenposten.no/nyheter/iriks/--Beredskap-har-apenbart-gatt-ut-over-etterforskningen-7572205.html#.U4MztXY4VaQ) [01.04.16].

be lack of resources for, and even interest in, the needs and wishes of the citizens related to policing. These are the people who in principle constitute the state that employs and legitimates the pertinent police force. Although this is a speculation in a worst case development, such an outcome could certainly lead to law enforcement without a state in the sense that the law enforcement would not be legitimately based in the citizens' will – and thus not in a state as such.