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Chapter Seven

Transnational policing in Southern Africa: moving towards a centralized European model of police cooperation?

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Abstract

The nature of cross-border police cooperation in Southern Africa has undergone radical transformation over the past two decades. Numerous international treaties and agreements now formalize and enhance the conduct and effectiveness of police cooperation. Legislative and policy initiatives have given shape and form to a framework of cooperation, with the Southern African Development Community (SADC) and its constituent Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) at its centre. The establishment of Afripol in 2015 suggests that transnational policing is becoming more centralized, similar in ways to the EU transnational policing infrastructure. The chapter questions the wisdom of using EU structures and processes for police cooperation as a benchmark.

Introduction

The creation of the African Police Cooperation Organisation (Afripol) in 2015 represented a new departure for police cooperation in Africa. African governments which were renowned for their 'regionalism' appeared to have embraced the ideal of 'centralization' which was more common to the neighbouring continent of Europe. Although the founding Statute of Afripol (2017) said nothing of the EU or its primary centralized agency for police cooperation, Europol, it is widely expected that European experiences will have a significant influence on the evolution of its structures, processes and practices (Dietrich, 2016; Vorrath and Zoppei, 2017). Due to the relentless introduction of centralized agencies and legal and procedural instruments within the EU area since the early 1990s, the EU policing project is widely considered to be the prime case of regional police cooperation from which generalizations can be drawn (Anderson et al., 1995; Walsh, 1998; Occhipinti, 2003; Den

Boer, 2010; Dietrich 2016). Moreover, the Chief Commissioner of the Seychelles Police explicitly announced that 'Afripol … will be similar to other continental bodies like Europe's Europol for example' (Uranie and Nicette, 2014), while one Rwandan newspaper anticipated that 'Afripol will act on the model of Europol' (Tumwebaze, 2013).

This chapter will consider whether and to what extent the creation of Afripol represents a shift towards a more centralized 'European' model of transnational policing. Since Afripol remains an embryonic organization for police cooperation and has not, at the time of writing, published its first annual report, the chapter will consider the recent evolution of regional structures and processes for police cooperation and evaluate whether there is an identifiable trend towards centralization. Due in part to the size of Afripol's membership base (40 participant states), and the fact that one of the authors is based at the University of Cape Town, South Africa, the evaluation will be concerned primarily with the conduct and evolution of transnational policing in Southern Africa, as a distinct region. Unfortunately, much of the research on transnational policing in Southern Africa is thin on the ground, so the chapter must rely on research which is almost a decade old in parts (see Hills, 2008; van der Spuy, 2009; Tait and van der Spuy, 2010).

The evolution of Afripol

The chiefs of police of 40 African countries, ranging from Algeria to Zimbabwe, adopted a recommendation to establish the African Police Cooperation Organisation (Afripol) at the 22nd African Regional Conference of Interpol held in Oran, Algeria on 10-12 September 2013 (Recommendation No. 7). The recommendation was driven by deepening concerns about the challenges of combatting increasingly complex forms of terrorism and organized crime in several African sub-regions. Recognizing the need for greater police cooperation at strategic, tactical and operational levels, Afripol is designed to facilitate the coordinated assessment of threats, analysis of criminal intelligence, the harmonization of police methods, the exchange of best practices and investigative techniques, and the planning and implementation of actions, and the strengthening of African police capabilities. Although the recommendation was adopted at an Interpol Regional Conference, the recommendation provided that Afripol would subsequently derive its legal and juridical personality from the African Union (AU).

Following four years of negotiation between regional police forums and government representatives from the participating states, the founding Statute of Afripol, the African

Union Mechanism for Police Cooperation, was ratified in 2017 at the 28th Summit of the African Union in Addis Ababa, Ethiopia. It required the new organization to: establish a framework for police cooperation at the strategic, operational and tactical levels between the Participant State police institutions; facilitate the prevention, detection and investigation of transnational organized crime in coordination and collaboration with national, regional and international police institutions; prepare a harmonized African strategy to fight against transnational organized crime, terrorism and cyber-crime; and enhance coordination among police forces (Art. 3). More specifically, in order to achieve these objectives, it should assist Member States' police institutions to set up a framework of cooperation at the national, regional, and international levels; assist Member States' police institutions to improve their efficiency and effectiveness; facilitate the sharing of information or intelligence to prevent and combat transnational organized crimes, terrorism and cybercrime; enable planning and coordination of joint patrols and operations; and develop appropriate communication strategies, systems and databases, amongst other requirements (Art. 4). With its headquarters in Algeria and funded by the budget of the AU, Afripol's organizational structure is headed by a Director, who is supported by a Secretariat, National Liaison Offices, regular 'session' meetings of a General Assembly of the chiefs of police, a President of the General Assembly and a broader 'Steering Committee' of AU officials (Arts. 7 - 13).

However, it is still too early to determine the extent to which Afripol will redefine the transnational policing landscape in Southern Africa. Afripol's website (afripol.peaceau.org), within 12 months of its official launch, did not contain any data or entries under its 'documents' tab, nor had it published any threat assessments or reports on its website. Moreover, its founding statute does not outline what the 'framework of cooperation' or the 'appropriate communication strategies, systems and databases' should look like. The frequent use of the terms 'assist' and 'facilitate' in Article 4 suggests that it will have limited power, if any, to require cooperation to take place on the ground. Furthermore, questions have already been raised about the quality of Afripol's leadership after the first President of the Afripol General Assembly, Director General of the Algerian Police, Abdelghani Hamel, was dismissed amid a drug-trafficking scandal in Algeria a little over a year after Afripol's official launch (Rouaba, 2018). In the absence of any official Afripol annual reports or threat assessments to determine the level of impact that the organization has had in its first 12 months of operation, the chapter will turn to developments in one distinct region within

Africa, namely Southern Africa, to consider whether the establishment of Afripol represents a shift towards a centralized model of transnational policing.

The evolution of the Southern African framework for transnational policing: a trend towards centralization

The Southern African Development Community (SADC) was established in 1992 to replace a number of inter-governmental networks and conferences responsible for facilitating cooperation in socio-economic, political and security policy areas. It has 16 Participant States, including: Angola, Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Namibia, Seychelles, South Africa, eSwatini and Zambia, amongst others, as of 2018. One of the catalysts for its establishment was the publication of a document by one of its forerunners, the Southern African Development Coordination Conference (SADCC), entitled 'SADCC: Towards Economic Integration', which had argued that a higher level of cooperation would enable the countries of the region to address problems of national development, such as food security and poor infrastructure, and increase regional trade and cross border investment, especially at a time when the system of apartheid and the remaining remnants of colonialism and the Cold War were being dismantled across Southern Africa (SADC 1992). The proposals were subsequently adopted in a Declaration and Treaty at a summit of heads of state and government in Windhoek, Namibia in 1992, which tasked the organization with fostering greater socio-economic, political and security cooperation in the region (Art. 21 and 22 of the Treaty of the Southern African Development Community 1992). Reflecting an ethos of democratization, the new inter-governmental organization consisted of a regular summit of governmental leaders of the participating states, a council of ministers in each of its primary policy areas, a tribunal to resolve legal conflicts and a secretariat.

However, initial attempts to establish mechanisms of police and security cooperation through the organization proved challenging. Countries and regions within Southern Africa continued to be affected by serious disorder and inter-state conflict throughout the 1990s (van der Spuy, 2009). Political destabilization in the region had created weak political, social, economic and legal structures, and the public police in many countries were still viewed by civilians as agents and defenders of brutal, oppressive and corrupt regimes (Dissel, 2010). The civil strife and political tensions resulted in significant delays in the development of key institutions, such as the SADC's tribunal, which was not formally inaugurated until 2005. It ultimately

took almost ten years for the SADC to introduce substantive legal instruments regarding police cooperation.

The slow-moving workings of the SADC encouraged many police chiefs in the region to pursue police cooperation independently. In 1995, three years after the SADC had been established to foster greater regional cooperation in the areas of peace and security, a meeting of police chiefs in Zimbabwe resulted in the creation of an entirely separate Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO). The organization functioned primarily as an independent forum for police chiefs and their representative subordinate officers to meet annually to discuss regional crime concerns, devise joint strategies to combat cross-border crime and share best practices (Tait and van der Spuy, 2010). Areas of interest initially included the theft and cross-border transfer of vehicles and livestock, trafficking in drugs, humans, firearms and precious stones, crimes against women and children, counterfeit pharmaceuticals, fraud, terrorism and wildlife crime. The participants prepared and disseminated information and intelligence on regional criminal activities; monitored joint crime management strategies; and formulated regional training policies, amongst other initiatives.

In 1997, SARPCCO introduced an 'Agreement in Respect of Cooperation and Mutual Assistance in the Field of Crime Combating' which represented a radical departure for cross-border police cooperation in Southern Africa. In an area where national interests frequently trumped 'regional' ones (Hills, 2008), the Agreement established a framework for cross-border police cooperation in Southern Africa which allowed police officers, with the permission of the host police force and acting under their authority, to travel across borders to undertake joint investigations and operations, question witnesses and seize exhibits in connection with any offence. The Agreement also provided for urgent 'hot pursuit' into foreign jurisdictions. In addition, the police chiefs established a mechanism for the exchange of information and intelligence, a desk for financial and economic crimes, and a Regional Organized crime Threat Analysis (ROCTA) (van der Spuy, 2009). The organization did not maintain a series of liaison bureaux or a hub of analysts to support these initiatives, but instead relied heavily upon Interpol's Sub-Regional Bureau in Harare as a *de facto* secretariat (Dietrich, 2016). Interpol Sub-Regional Bureaux typically include the chief officers of all of the countries in that sub-region, who represent their respective police forces and National Central Bureaux (NCBs) (Hills, 2008).

SARPCCO was not alone in utilizing Interpol; three other regional police chief forums and committees from across Africa also rely upon Interpol for administrative support (Dissel, 2010). Although only loosely aligned, SARPCCO operates alongside the Central African Police Chiefs Committee, also known as Le Comité des Chefs de Police de l'Afrique Centrale (CCPAC), established in 1997; the Western African Police Chiefs Committee, also known as Le Comité des Chefs de Police de l'Afrique de l'Ouest (WAPCCO), and the Eastern African Police Chiefs Cooperation Organisation (EAPCCO), established in 1998. Since Interpol tends to divide its scarce resources around the world, it can often do little other than provide an apolitical meeting place for senior police officers to come together to plan operations, facilitate communication between the participants, provide technical support, provide officers with laptops where needed and ask participating police forces to second an official to the scene of an investigation to ensure that the requisite procedures were followed, relying largely on its professional recognition (Hills, 2008; Lucey, 2010). A post-operation report was then typically submitted to the Interpol secretariat and analysed by seconded specialist police officers focusing on specific priority crimes (Dietrich, 2016). Nevertheless, by the late 1990s, SARPCCO had firmly established itself as the primary transnational policing organization in Southern Africa and had overseen a notable increase in the quality of cross-border police cooperation in the region (Tait and van der Spuy, 2010). Its successes had even stimulated the creation of similar regional organizations across Africa, such as CCPAC and EAPCCO. SARPCCO remains the most active, successful and high-profile regional police organization in Africa (Hills, 2008).

SARPCCO was arguably so successful that its remit, which was largely the responsibility of the national police chiefs, was subsequently reflected (and largely duplicated) by the SADC within its 'Protocol on Politics, Defence and Security Cooperation' introduced in 2001. Formulated by the SADC's Organ on Politics, Defence and Security (OPDS), which was established in 1996 to coordinate policies and activities concerning politics, defence and security at governmental level, the Protocol contained many of the same aims and objectives. Priorities were to include: promoting regional coordination and cooperation among the police, state security and other law enforcement agencies on matters related to safety, security and defence, amongst other areas. Specific areas of police cooperation were to include: drug trafficking, human trafficking, money laundering, theft of livestock and vehicles, counter-terrorism and extradition. Although SARPCCO was already facilitating cooperation in these

areas, the establishment of the inter-governmental protocol represented a statement of intent by the participant governments that they would bear responsibility for the creation of a far more formal framework of cooperation.

Further enhancing the extent of government involvement in matters of cross-border police cooperation, a Protocol on the Control of Firearms, Ammunition and other Related Materials (2001) was also introduced. It provided for the establishment of national databases on firearms; inter-agency working groups to improve information-sharing and policy coordination; and the coordination of national training programmes and joint exercises. More particularly, Article 14 of the Protocol provided for mutual legal assistance in various areas, including measures concerning the investigation of offences, the gathering of evidence, requests for searches to be carried out, and any other form of assistance consistent with national laws. Article 15 of the Protocol provided for the establishment of police communication systems, national focal points and multidisciplinary law enforcement units. These instruments were followed by more wide-reaching measures in the areas of mutual legal assistance and extradition. Articles 2.1 and 2.2 of the Protocol on Mutual Legal Assistance in Criminal Matters 2002 provided that the State Parties would provide each other with the 'widest possible measure' of mutual legal assistance in respect of investigations, prosecutions and proceedings in criminal matters. Such assistance could include locating and identifying persons, property, objects and items; search and seizure; taking evidence; obtaining statements; freezing proceeds of crime; providing and transferring exhibits; and the authorization of persons, including police officers, from the Requesting State to be present at the execution of requests (Art. 2.5). Upon receiving a request pursuant to the Protocol, the competent authorities of the Requested State were required to do everything in their power to promptly execute a request and follow the procedures or requirements requested therein (Arts. 4 & 5). Requests could be refused or postponed in instances where it was determined by the competent authority that the request could interfere with an ongoing criminal investigation or prosecution.

In addition, the SADC Protocol on Extradition 2002 provided for the extradition of persons wanted for prosecution or for the enforcement of sentences of at least one-year's imprisonment (Arts. 2 & 3). However, due in part to the history of apartheid and likelihood of inter-state conflict in Southern Africa, the protocol held that it was mandatory to refuse extradition for offences of a political nature or where there were substantial grounds for

believing that the request was made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, sex or political opinions (Art. 4a). Numerous other protocols were also established in the areas of illicit drug production and trafficking, the free movement of people, corruption and defence cooperation.

The introduction of numerous legal instruments between 2001 and 2002 represented a major and radical shift in the treatment of cross-border police cooperation in Southern Africa, particularly at government level, within a remarkably short space of time. Although the SADC had struggled to introduce measures in the policing field in the decade prior, the relentless introduction of measures within a two-year timeframe marked a dramatic and unprecedented increase in governmental interest and inter-governmental cooperation. One of the most remarkable developments was the similarities between the SADC measures and ones which were introduced within the EU almost at the same time. Shortly before the introduction of the Protocol on Mutual Legal Assistance in Criminal Matters 2002, the EU had introduced its Convention on Mutual Assistance in Criminal Matters 2000, which covered many of the same forms of assistance and cross-border cooperation. The EU also introduced its Framework Decision on the EAW in 2002, for the purposes of facilitating extradition according to common standards and processes (the EU instruments will be discussed in more depth below). The fact that the SADC introduced an unprecedented suite of measures almost at the same time as the neighbouring EU indicated that the SADC was ambitiously pursuing a similar agenda. The SADC and EU models appeared to be converging in the field of transnational policing.

By the end of 2009, the SADC had subsumed SARPCCO. An amendment to the Protocol on Politics, Defence and Security Cooperation 2001 incorporated SARPCCO into the SADC. The measures introduced in 2001 and 2002 had apparently served to reassure police chiefs that the SADC could function as a cohesive policy-making body. Furthermore, the clarification of the SADC's objectives in the areas of counter-terrorism, drug trafficking, human trafficking, money laundering, counterfeiting, vehicle and livestock theft, illegal immigration, disarmament and extradition, and the establishment in 2007 of a Regional Coordinating Committee (RCC) to drive the implementation of the SADC Protocol on Firearms of 2001 provided further proof of progress in cooperative ventures.

The evolution of the Southern African framework for transnational policing: the reality on the ground

Although the instruments introduced by the SADC created an unprecedented framework for police cooperation in Southern Africa, it did not necessarily mean that they directly affected and redefined the conduct of cross-border police cooperation on the ground. Although legal frameworks are an important source for police cooperation, they are not introduced and applied in a vacuum (Stenning, 1995; McDaniel, 2015). In Southern Africa, as in other regions of the world, context invariably shapes the implementation of normative and operational frameworks. It is widely acknowledged that both political and cultural factors can impede transnational forms of police cooperation (Anderson, 1989; Benyon et al., 1993). Nathan (2013), for example, questions whether Southern Africa can be described as an 'emerging' or 'embryonic' security community at all. 'Security communities', he argues, exhibit a sense of 'shared community' and belonging based on trust. In Africa, however, States are typically weak in terms of institutional capacity, and governments often lack the popular legitimacy, infrastructure depth and political motivation to construct meaningful regional organizations (Hills, 2008). Where attempts are made to share ideas, values and political goals so that government policies can be used to transform a geographical area into a common space, giving form to the idea of 'regionalism', structural inhibitors to cooperation typically add further complicating factors (Hills, 2008). Hills (2008) argues that sub-state politics and issues tend to override concerns about regional security. She observes that: 'sub-state issues dominate government threat assessments … police rarely pay attention to developments outside their locality, and few exert cross-border influence' (Hills, 2008:103). This suggests that deep-seated obstacles to regional cooperation need to be addressed if cooperative networks and measures are to be fully implemented in practice.

Although the SADC appears, on face value, to be establishing an effective framework for cooperation, its capacity to facilitate cross-border police cooperation continues to be curtailed by budgetary constraints (Kanganja, 2016). SARPCCO continues to rely heavily upon Interpol and lacks a well-resourced headquarters and intelligence agency (Tait and van der Spuy, 2010; SADC 2018). Reliance upon the resources of Interpol continues to be critical. For example, Operation 'Usalama III' saw the deployment of 1,500 police from 22 countries in East and Southern Africa to conduct tens of thousands of checks relating to cross-border criminality using Interpol databases within a 48-hour period, resulting in a number of arrests (Interpol, 2016). In the aftermath of the operation, the Inspector General of the Kenyan

National Police Service commented that '(o)perations like Usalama show what can be achieved when law enforcement agencies work closely together in combating transnational crime' (ibid). Nevertheless, the absence of a well-funded, dedicated budget which could finance joint operations and maintain well-resourced units of analysts and liaison officers undermines the ability of the organization to reduce cross-border crime at its very roots. The secondment of police officers to neighbouring police forces or the payment of informants for information is too costly for some individual police forces, and SARPCCO cannot rely upon Interpol to fund such initiatives on a regular basis (Lucey, 2010). Interpol (2018) has recently invested two million Euro to enhance the inter-operability of the police communications infrastructure in Africa, which will go some way toward facilitating similar forms of information exchange and cooperation in the future, but it is little more than seed funding. Due in part to its lack of infrastructure and funding, SARPCCO appears to have evolved largely as a hub for multi-lateral training initiatives. Its *Calendar of Activities for 2018,* for example, reflects a large number of training courses which are being offered to participant police forces (SARPCCO, 2018). Courses have been designed to enhance both generic policing skills (crime intelligence, investigation, forensics and crime scene management) as well as investigative skills relating to transnational organized crime (drug trafficking, counter-terrorism, firearms, environmental crime, human trafficking, online child sexual exploitation and maritime piracy) (ibid).

The limitations of SARPCCO mean that, in practice, a disproportionate amount of cooperation is centred around the national South African Police Service (SAPS), which is comparatively well-resourced (Tait and van der Spuy, 2010). SAPS helps to fill the void by acting as the driver of cross-border police operations to tackle organized crime, weapon trafficking, human trafficking, terrorism, illegal immigration and livestock theft in close cooperation with police forces in countries such as Zimbabwe, Mozambique, Namibia and Angola (van der Spuy, 2009; Edwards, 2010). It also conducts regular joint operations and border patrols with the Lesotho Mounted Police Service (LMPS) to tackle *dagga* smuggling (a regional term for cannabis), drug dealing, diamond smuggling, armed robberies, illegal migration and the theft of vehicles and cattle. Weekly inter-agency meetings between SAPS and the LMPS teams have culminated in the development of monthly operational plans to carry out joint activities (Lucey, 2010). The degree of cooperation between South Africa and Lesotho was particularly remarkable since both countries had virtually closed their borders to one another between the 1970s and 1990s. South Africa had reportedly feared that Lesotho

was working to undermine the system of apartheid by supporting the cause of the African National Congress (ANC) (Lucey, 2010). Similar forms of cooperation have evolved between SAPS and the Mozambique Republic Police (PRM), resulting information exchange and 'hot pursuit' arrangements between both jurisdictions (Monyane, 2010).

In reality, SARPCCO appears to be quite far removed from a centralized (or centralizing) organization which can coordinate, support and finance operations and maintain a common intelligence database and communication system. The lack of a centralized organizational hierarchy which can identify the competencies, needs and skills gaps of the participant police forces means that internal power struggles between senior police officers and ambiguity around roles and responsibilities tend to hamper the most basic bilateral operations from the outset (van der Spuy, 2009; Monyane, 2010). Neighbouring police forces are typically sharing information and intelligence on a needs-basis and frequently rely upon informal phone conversations to discuss cases (Lucey, 2010). Even the employment of translators to overcome the difficulties of interpersonal communication between two police officers who do not speak the same language can be problematic (Monyane, 2010). Cooperation remains *ad hoc*, disjointed and inconsistent across the region (Tait and van der Spuy, 2010; Kanganja, 2016).

Moreover, no systematic frameworks or clear operating procedures have been put in place to standardize or formalize processes of hot pursuit or information exchange across the region. Participant States continue to rely upon protocols, agreements, Memoranda of Understanding (MOU) and letters of intent which do not have the same legal standing as conventions or treaties (van der Spuy, 2009). Some of the measures are little more than informal 'gentlemen's agreements'. Moreover, no oversight mechanisms or systems of accountability have been established to scrutinize the quality of day-to-day police cooperation. Rather than respond to urgent operational needs, police forces can often do little other than participate in joint operations only when officers and resources became available (Lucey, 2010). As a result, regions in Southern Africa remain highly accessible, attractive and an area of low risk for organized crime (van der Spuy, 2009).

Although the SADC spearheaded the introduction of a range of radical instruments in the early 2000s which were designed to establish the features of formalization, centralization, regulation and regularization which are central to various forms of effective cross-border

cooperation, it has failed to realize many of the features in reality. Similarly, although SARPCCO has been central to the development of cross-border police cooperation in Southern Africa and, at least initially, enjoyed an unprecedented level of co-option or 'buy in' from participating police forces, its development appears to have been stymied. SARPCCO's 1997 Agreement and SADC's 2001 Protocols called for the establishment of centralized information databases and working groups which could have grown and proliferated within a central organization such as SARPCCO. Instead there is little evidence to suggest that the SADC has overseen a radical improvement in the condition of cross-border police cooperation in Southern Africa. It has done little other than centralize the responsibility and authority for the transnational policing agenda within a transnational organization (itself) without strengthening or centralizing the structures and processes for cross-border police cooperation on the ground. If the SADC cannot bring more resources and organizational clarity to bear, its integration and centralization of the police cooperation agenda, and incorporation of SARPCCO, is little more than a superficial exercise.

Unfortunately, the SADC's attitude towards police cooperation appears to be well reflected in its own recent review of the progress it has made towards the creation of a National Firearms Electronic Database. Rather than supporting and funding the involvement and capacity of participant police forces, it reiterated the need for police agencies to mobilize resources from development partners so that they could participate fully in the initiative (SADC, 2017a). Donor-assistance and funding are considered to be crucial to successful cross-border operations in Southern Africa despite their provisional and unpredictable nature. Lauded operations such as the policing of the FIFA World Cup 'mega event' in South Africa in 2010 were successful largely because of generous budgets provided by FIFA and other international donors, which facilitated the purchase of state-of-the-art technology and the maintenance of joint policing databases and networks in the short-term (van der Spuy, 2010). Similarly, regional initiatives such as 'Operation Rachel' which focused on the destruction of firearms and arms caches in Southern Africa, depended heavily upon donor funding from the UK, the EU and regional and international NGOs (Monyane, 2010).

The evolution of the Southern African framework for transnational policing: the challenges of further centralization

The inability of the SADC to fulfil its potential and its relative lack of progress over the past decade means that it is difficult to predict the future trajectory of transnational policing in

Southern Africa. The recent establishment of Afripol could be viewed as a renewed attempt at centralization. Interpol, which supported the establishment of the new institution, values regionalism (its member states are divided into geopolitical regions and it delivers its key services on a regional basis in recognition of regional needs), so it is likely that it will support the development of a strong and influential regional organization. The EU and SADC officials have also held workshops to establish new frameworks for partnership and cooperation, and Europol has pledged to help Afripol build its structures (Tumwebaze, 2014; SADC, 2016), potentially in its own image (Vorrath and Zoppei, 2017). The EU has even provided funding for a three-year project (2017 – 2019) called ENACT (enhancing Africa's capacity to respond to transnational organized crime) which is tasked with raising awareness about the corrosive effects of transnational organized crime on the continent and to enable African countries to respond more effectively to transnational organized crime. However, Hills (2008) observes that meaningful regional organizations involving African states are more likely to develop in response to governments confronting similar or shared domestic problems and challenges than to external prompts or to any simple desire for integration (Hills, 2008). The history of serious disorder and inter-state conflict in the region has not only created weak political, social, economic and legal structures but rendered governments and civil society particularly distrustful of external attempts at intervention and advice (Dissel, 2010; Nathan, 2013).

The legacy of external peacekeeping and intervention missions

Throughout the late twentieth and early twenty-first centuries, peacekeeping and capacity-building missions have had a significant effect on the shape and nature of transnational policing across the African continent. Long-term policing assistance and reform missions became the standard *modus operandi* for peacekeeping initiatives from the 1990s onwards due to the belief that modern police forces, which were designed to protect civilians and establish an ethos of community-oriented policing and human rights compliance, were more likely to engender feelings of safety, fairness and justice, than soldiers who were trained to rely upon the threat of violence to suppress or deter opponents (see Blum and Pearson chapters above). A functioning police force was also considered to be a crucial prerequisite for the establishment and viability of new political and electoral structures, election monitoring processes, human rights protections, the functioning of the courts system, disarmament and economic investment (Kukkuk, 2010). Seconded police officers and advisors from the EU, and further afield, were increasingly relied upon to assist, support,

mentor, train, monitor and reconstruct police forces and, in some cases, carry out executive policing functions to restore law and order.

However, it quickly became evident that peacekeeping missions and capacity-building programmes did not always engender stronger bonds between police forces and the communities they served, nor did they create better transnational relationships between donor and receiving States. UN missions, sometimes containing 'brigades' of hundreds of police officers and civilian police, were frequently associated with the excessive use of force, abuse of power, sexual assault, gender-based violence and torture, amongst other ills (van der Spuy, 2009). Some UN police officers were suspected of running organized smuggling rings, participating in organized paedophilia networks, engaging in widespread sexual violence, swapping weapons with rebel groups for gold, tipping off arms traffickers prior to raids, and the exchange of food for sex, amongst a litany of other offences (Monyane, 2010; UN 2013, 2016, 2018). Contingents from other African States attached to UN missions were equally associated with serious misconduct. Poorly resourced and managed peacekeepers could be corrupted quite easily in instances where crime, insurgency, or private employment promised greater economic benefits than government employment (Kukkuk, 2010). Moreover, rather than (re)introducing much needed community-oriented policing styles, UN and AU peace operations became renowned for using militarized Peacekeeping Standby Forces (PSFs) and Formed Police Units (FPUs) to respond overzealously to large-scale crowd control and public disorder in an attempt to present an image of stability and peace to the international community (Kukkuk, 2010). Such repressive tactics were closely associated with previous abusive regimes and suggested that the close alignment between the public police and those in power had not been disturbed. Local populations who were previously conditioned to believe that the excessive use of force was a normal type of social interaction, continued to experience the same forms of repressive policing to which they had become accustomed (Goldsmith and Harris, 2017).

Not only were foreign peace-keepers guilty of serious misconduct, but the UN has come under severe criticism for its own approach to police accountability. Although UN police missions were generally endowed with internal professional standards departments and a prescriptive set of disciplinary infractions, the Commissioner of Police of a UN mission could only hand down administrative penalties to an offender, such as a fine, dismissal from UN duty, repatriation, or blacklisting from future missions. He or she could also recommend that

the contributing police force take action against errant officers. However, the UN left it largely up to the contributing police force to decide whether and to what extent an officer should be punished for extraterritorial misconduct (UN 2013; 2016; 2018). The reality on the ground in many African countries is that there was a clear lack of dedicated staff or structures within police institutions to intervene in the deployment of officers on foreign missions or even to review their performance upon their return (Goldsmith and Harris, 2017). Even if the UN Secretary-General waived an errant officer's immunity, the country in which the misconduct occurred rarely has an effective, robust or operational criminal justice system which could hold the officer to account. The net result is that the UN failed, in many cases, to take the necessary steps to protect vulnerable populations from violence by peace-keepers or deliver accountability, allowing a sense of impunity to prevail. Furthermore, reports about limited pre-deployment training and surveys which indicate that handbooks, such as the UN Criminal Justice Standards for Peacekeeping Police and the Brahimi Report, go largely unread by a significant proportion of police practitioners, have contributed to an image of UN police advisors as individuals who are less knowledgeable than the local police officers they are advising (Kukkuk, 2010; Goldsmith and Harris, 2017).

The legacy of UN structures and processes for police governance and accountability means that many African countries are cynical about 'Western' policing standards and distrust post-colonial styles of police assistance and reform (van der Spuy, 2009; Goldsmith and Harris, 2017). Kukkuk (2010) reported that, such was the level of cynicism, the need for different mechanisms of police accountability was not even readily considered or discussed in the numerous meetings that led to the design and formation of the SADC and African Union (AU) standby forces for police missions. This is not to say that police forces in Southern Africa remain untainted by scandal either. SARPCCO developed a Code of Conduct in 2001 in an effort to establish minimum professional standards for its participant police forces and services, but it lacked clear indicators for monitoring or measuring adherence to the standards of behaviour and was largely devoid of mechanisms of enforcement to ensure compliance (Lucey, 2010). Despite receiving assistance from the African Policing Civilian Oversight Forum (APCOF) to develop monitoring indicators and assessment tools to examine the levels of compliance with the Code, major differences in political and cultural approaches to police accountability resulted in frequent and flagrant violations of the code (Dissel and Frank, 2012). Even the South African Police Service, which is probably the most robust, well-resourced, technologically-advanced and experienced of the Southern African police forces,

has been scarred by allegations of misconduct and corruption (Corruption Watch, 2017). South Africa's position as the economic powerhouse of the region and its administrative capacity makes it attractive to donors who are willing to finance cross-border training initiatives in areas of strategic management, criminal investigation, community policing, human rights, police ethics and police governance, but it too has been portrayed as an 'agent of imposition' and criticized for its 'ill-defined interventions' in other ill-understood African cultures (van der Spuy, 2009, 256).

Lessons from the EU's transnational policing project

If current and future leaders of Southern African countries can manage to overcome the financial and societal challenges to cooperation, the EU-type measures which the SADC has already put in place could serve as a launchpad to realize the EU model more fully. Many of the legal frameworks are already in place for SARPCCO to evolve into an organization much like Europol, with similar tools at its disposal. However, any attempt by SARPCCO or Afripol to establish an organization like Europol to combat transnational organized crime and terrorism at a regional level should attach significant weight to what has worked, avoid what has not worked and incorporate any missed opportunities.

As the Southern African Development Community (SADC) was being established in 1992, with responsibility for fostering greater regional police cooperation, the EU was also being formed, with a 'common interest' in police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other forms of international crime (Art. K1(9) Title VI Maastricht Treaty 1992), alongside a multitude of other policy areas. EU Member States were expected to pursue new initiatives to facilitate police cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol) (Art. K1). Like the SADC, there were a number of factors which culminated in the establishment of the new EU competency. The end of the Cold War generated a wave of political goodwill and interest in inter-governmental cooperation in areas, such as police cooperation, which had been the subject of little political interest and activity in previous decades. The Council of Europe (CoE) had developed numerous instruments for mutual legal assistance and extradition in the aftermath of the Second World War to harmonize and simplify cooperation between jurisdictions, but few countries had moved to ratify them in their entirety (Benyon et al., 1993; Anderson et al., 1995). The same was largely true of UN efforts to harmonize specific criminal offence

definitions, particularly in the areas of illicit drug production, human trafficking and terrorism across Europe. Where government officials had tried to establish policy-driven networks, such as Trevi (*Terrorisme, Radicalisme, Extrémisme et Violence Internationale*), they were largely eschewed by police practitioners for being overly bureaucratic and out of touch with practical needs (Fijnaut, 1993; Anderson and Den Boer, 1994; Hebenton and Thomas, 1995). Although headquartered in France, Interpol functions primarily as a global communications agency which facilitates the sending of correspondence and information through its liaison bureaux and communication centres and undertakes some limited thematic analyses at its headquarters (Anderson, 1989; Bresler, 1992). It is not expected to manage systematic police cooperation on the ground or establish legal frameworks for joint operations.

More importantly, the EU Member States were initially concerned about removing the internal border controls between the Member States to facilitate the free movement of people, goods, services and capital. It was argued at the time that an open and single market could lead to the creation of five million new jobs, re-direct billions of pounds which was being spent on the maintenance of border crossings and related technical functions, and enable the Member States to compete and negotiate with American and Japanese conglomerates as a single and powerful economic bloc (European Commission, 1989). The Member States of Belgium, the Netherlands and Luxembourg, known as the Benelux States, had long enjoyed economic benefits from the abolition of their internal border controls and played a large part in convincing the other EU Member States of the financial and political merits of doing the same (Occhipinti, 2003). However, police chiefs, politicians, academics and other members of civil society were concerned that, upon the wider removal of border controls, the highly lucrative markets of the Member States would incur an influx of transient criminals, illegal immigrants and stolen and counterfeit goods which would otherwise have been stymied by the traditional border checks (Anderson et al., 1995). These concerns were further amplified following the collapse of the Soviet Union, with fears that it could potentially open the floodgates to increased illegal immigration, the unchecked entry of convicted criminals, and the entry of former Soviet-based organized crime networks (Van Dijk and Spapens, 2014). Although largely illusory, the uneasy political and public discourse about the arrival of foreign organized crime and immigration in the absence of border checks, coupled with the traditional limits of jurisdiction which tied police powers to national territories, created fears about an 'internal security deficit' which needed to be addressed (Benyon et al., 1993; Anderson et al., 1995; Den Boer, 2002).

Academics such as Benyon et al. (1993) pointed out that the removal of internal border checkpoints would make little difference to international immigration, drug trafficking and terrorism since borders were always highly porous. Only a small proportion of travellers were typically stopped and checked at border crossings on mainland Europe, and most were simply waved through (Ressler, 1992). Many European countries typically had so many points of entry by road, river, field or sea that border checks could be circumnavigated with relative ease (Nadelmann, 1993). For those who passed through border checks, the forgery of identity papers and transport documents was commonplace (Fijnaut and Paoli, 2004). Even a cursory acknowledgement of the drugs being trafficked into European countries and the number of terrorist attacks carried out on mainland Europe and the British Isles in the 1970s and '80s indicated that border checkpoints served as little more than a customs and excise function (Anderson, 1989). Nevertheless, numerous high-profile politicians were guilty of closely associating long-standing problems of organized crime and terrorism with largely unconnected issues of migration, cheap labour, unemployment, social dislocation and rising crime to generate an unfounded 'globalised crime anxiety' to support the introduction of new EU measures and populist policies (Bigot, 1994; Loader and Sparks, 2002). The ideas of 'internal security' and 'globalization' were, to some extent, being used as rhetorical levers to create a perpetual sense of crisis to legitimate the introduction of new populist 'law and order' political initiatives at the heart of the EU project (Zener, 2009; Ellison and Pine, 2012).

The evolution of Europol: A cautionary tale
Although Europol is now considered to be the centrepiece of the EU's regime for cross-border police cooperation, and has pledged to help Afripol build up its organizational structures and processes, the ambitious concept had never been piloted or tested before the Maastricht Treaty was signed in 1992 (Hebenton and Thomas, 1995). Although it was incorporated as a treaty objective, the heads of state and government had only previously spoken about the idea of Europol in conceptual terms. No substantive attempt had been made to prove that the EU framework was the most suitable environment within which to build the new trans-European policing initiatives, nor was any attempt made to clarify whether and to what extent the EU measures would coexist with the existing international organizations already active in the crowded policy space, not least the CoE, the UN and Interpol (Anderson et al., 1995; Walker, 2000). A similar degree of uncertainty and speculation has arguably continued to define and shape the EU policing project ever since. The EU has acted, at times,

without convincing evidence that their transnational policing initiatives were worth it or even necessary. As a result, a number of EU measures have faced a number of political, procedural and existential challenges, some of which have not yet been reconciled.

One pervasive issue is the fact that, despite the introduction of numerous safeguards within Europol's infrastructure, police forces remain reluctant to share information and cautious when doing so because the unintentional dissemination of shared information, the misappropriation of sensitive intelligence by corrupt officers or officials, and system hacks can jeopardize investigations, informers, undercover officers and policing techniques (Strobeck, 1997; Fijnaut, 2002; Block, 2017). As a result, EU representatives and bureaucrats began to develop and promote new ways of encouraging police forces to cooperate. The EU Framework Decision on 'simplifying the exchange of information and intelligence between law enforcement authorities of the Member States', better known as the 'Swedish Framework Decision' (2006/960/JHA), for example, required police forces to respond to requests for information from foreign police forces or EU agencies such as Europol in the same manner and with the same expediency as they would for requests between local police units, under conditions not stricter than those applicable at local levels. The 'principle of availability' was thereafter incorporated into numerous procedural instruments, not least the European Investigation Order (EIO) (Directive 2014/41/EU).

The shift in ethos from simply facilitating and enabling cooperation through European mechanisms to forcing police officers to cooperate with foreign counterparts garnered many critics and, while it may have generated more cooperation, it has arguably done little to foster greater trust between police practitioners (Ouwerkerk, 2015; Hufnagel and McCartney, 2017). In many cases, the legal and constitutional standards, processes and conditions in foreign jurisdictions are not the equivalent of standards, processes and safeguards shared by local police units within a single jurisdiction. Research indicates that, by requiring police forces to upload intelligence to the EIS and share information through Europol, even where they are unwilling to do so, the EU has served to undermine the relationship between participants and the broader EU policing project (Hillebrand, 2011; Sheptycki, 2017).

Another persistent issue is the tendency of the EU to introduce policing measures without conducting robust feasibility studies or practitioner consultation. For example, as Europol was being developed in 1995, a preliminary Europol Drugs Unit (EDU) was established to set

the groundwork for the organization (EU Joint Action 95/73/JHA). Since the Europol Convention had not yet been introduced, the EDU was prohibited from storing any information sent to it as it did not have adequate or robust data safeguards to protect the secrecy and integrity of the files (Strobeck, 1997). This prevented the EDU from supporting joint operations in any real, meaningful way, other than bringing together liaison officers to share files amongst themselves (Occhipinti, 2003). Nevertheless, the government ministers and representatives on the Council of Justice and Home Affairs (JHA Council) introduced Joint Actions in 1996 and 1997 to increase the mandate of the EDU to include not only serious drug crime but offences of human trafficking, vehicle trafficking and the smuggling of nuclear materials. A Europol IT system and database had not even been established or populated with information about drug offences and criminal networks when the EDU's liaison officers were expected to turn their attention to an array of additional crime areas. This indicated that the government ministers and EU officials were determined to realize an ambitious and illusory vision of transnational policing without fully appreciating the needs and capabilities of the practitioners involved.

This tendency has also resulted in a significant degree of policy over-reach. For example, while the EU's Convention on Mutual Assistance in Criminal Matters 2000 (not too dissimilar to the SADC Protocol on Mutual Legal Assistance in Criminal Matters 2002) was being ratified the EU took the remarkable decision to bypass the national parliaments' ongoing deliberations by introducing arguably the most contentious aspect of the convention by other means. The Convention promised to reduce the bureaucracy of sending letters of request between government ministries (see Cox chapter above) by incorporating the principle of 'mutual recognition', which had long been used in the EU's economic community policy area. The principle revolved around the premise that judiciaries would be required to officially recognize the courts of neighbouring jurisdictions as authoritative equals to the greatest extent possible without seeking further validation or legal clarity (Walsh, 2009a; Ouwerkerk, 2015). It rested primarily on the assumption that each Member State guaranteed minimum procedural human rights standards across their investigative, prosecution and detention processes in accordance with the jurisprudence of the European Court of Human Rights (ECtHR), so judges and magistrates should simply assume that the minimum standards required to issue a legal warrant had been met. Not surprisingly, the proposal was subject to sustained criticism since jurisdictions such as France, Spain and the UK were historically reluctant to engage in systematic judicial cooperation with each other

due to significant differences in criminal laws, policing processes and long-standing political tensions (although see Cox chapter above for examples of informal forms of cooperation which proved effective). Their criminal justice systems were not as closely aligned as those in the Benelux, Nordic and federal German systems, which had been harmonizing or 'tuning' their basic criminal laws, investigative procedures and professional practice for the purposes of cross-border police and prosecutorial cooperation since the mid-twentieth century (Rijken, 2003; Den Boer, 2010; Spapens, 2011).

The EU could do this because the Amsterdam Treaty 1997, which amended the Maastricht Treaty, had empowered the justice ministers to independently introduce new legally-binding procedural frameworks, known as Decisions and Framework Decisions, instead of having to secure the approval of each national parliament, as was required under the previous convention instrument (Arts. 34 and 35). Framework Decisions, in particular, could be used by the Council to introduce legally binding minimum rules concerning the approximation of laws and regulations within the Member States, who were obliged to give them the closest 'useful effect' possible to enable consistent interpretation (*Pupino,* Case C-105/03 ECR). The Member States had bestowed the Council with this independent legislative responsibility in matters of internal security primarily out of fear that the accession of ten new Member States to the EU in 2004 would render unworkable the traditional process of moving conventions through each and every national parliament (De Moor and Vermeulen, 2010). It had previously taken more than three years to ratify the Europol Convention using the Maastricht-era provisions and a further two years on average to ratify each subsequent protocol to the Convention (Walker, 2011). It was envisaged that the new instruments would enable the JHA Council to enhance and amend the existing structures, processes and objectives of cross-border policing with significant flexibility and expediency in response to changing circumstances and emerging political priorities, even if it meant riding roughshod over democratic and judicial controls (Den Boer, 2002; Peers, 2011).

Academic commentators, at the time, argued that the lethargic approaches of the national parliaments could have simply been remedied with a more straight-forward treaty provision which limited their deliberations to a short time period, possibly no more than six months, and that such a period of negotiation was normal and, most importantly, necessary in order to formulate a single substantive instrument which could overcome significant political and

legal differences between jurisdictions while still respecting key constitutional, legal and administrative values and practices (Anderson et al., 1995; Peers, 2011).

More particularly, the JHA Council used the new instruments to introduce the principle of mutual recognition in two key areas: joint investigations and extradition. In the aftermath of the September 2001 terrorist attacks in the USA and faced with the accession of ten new Member States, the Council introduced a Framework Decision on Joint Investigation Teams (JITs) 2002 and the Framework Decision on the EAW 2002, which copied the relevant mutual recognition provisions from the Convention almost verbatim. JITs were designed to fast-track and simplify the establishment of joint investigation teams using a single letter of request and were modelled on processes used in federal Germany across the separate Lander (Block, 2011, 2012). No appropriate feasibility studies had been conducted prior to their introduction and almost no effort had been made to accommodate the conventional legal rules and values of the constituent police forces across the EU area (ibid). As a result, countries such as England, Ireland, Denmark and the Netherlands largely eschewed EU JITs in practice and introduced their own domestic legal instruments to create more flexible, dynamic, responsive, and simpler investigation teams, unique to their particular border regions (Spapens, 2011; Walsh, 2011). The Irish Criminal Justice (Mutual Assistance) Act 2008, for example, enabled foreign police officers to participate in controlled deliveries with the same immunities and liabilities as outlined in the Framework Decision, but without requiring a formal JIT to be established.

The EAW, on the other hand, facilitated the extradition or surrender of individuals on the basis of mutual recognition, with only limited grounds for refusal. Far more popular than the JIT instrument, between 2005 and 2010 more than 68,000 EAWs were issued, but unfortunately (and controversially) they were used on occasion to surrender individuals for minor offences which would not previously have qualified for extradition in many jurisdictions, such as the theft of ten chickens, a piglet or a bottle of beer, and also for contentious political activities (Haggen Müller, 2013; Boycott, 2017). The application of mutual recognition meant that judges of a common law, adversarial tradition, who typically questioned applicant police officers and prosecutors in court to scrutinize the integrity of warrant applications, were required to take foreign applications for warrants at face value, without further scrutiny (Walsh, 2009b). By eroding these long-standing judicial safeguards, the instrument was criticized for being weighted in favour of catching suspects and repressive

crime control rather than adequately protecting the due process and human rights protections of the alleged criminals (Ouwerkerk, 2015; Wade 2015). Furthermore, in terms of transparency and accountability, details about the number and nature of cases which involved minor crimes, the fairness of the process, the protection of human rights, the punishment of political opinion and the sentences handed down were almost impossible to quantify or determine (Ouwerkerk, 2015). Not all court decisions were habitually recorded and published in each jurisdiction (or at an EU level) and, most importantly, defence lawyers did not always try to challenge applications for EAWs or object to them pursuant to human rights legislation (Haggen Müller, 2013). Rather than heralding a new ethos of transparency and cooperation, attempts by judges to challenge the integrity of an EAW application and, by extension, the procedural integrity of a foreign court were even met with open hostility from foreign governments and media outlets on occasion (Keene, 2018).

Quite remarkably, the two measures were followed by even more problematic instruments of mutual recognition. Between 2003 and 2005, for instance, two Framework Decisions pertaining to the seizure of evidence across borders were introduced and before the latter one was even implemented, the EU moved to replace it with an even more expansive European Investigation Order (EIO). The EIO was designed to function as a standard warrant that could be used to not only request evidence already in the possession of the State but to request a wide array of investigative measures to be carried out using a standard application form. The haste with which all of these instruments were introduced gave succour to the argument that a political majority within the EU clearly preferred the introduction of more repressive, prosecution-focused, punitive and expedient measures over and above the judicial protection of the individual (Ouwerkerk, 2015). Within a remarkably short space of time the EU's policy area of 'Freedom, Security and Justice' (AFSJ) had become the busiest and most disjointed policy area at the transnational level (Monar, 2002; Walker, 2011). Murphy (2011) observed that one of the most ironic developments was that the instruments were not introduced by the EU because of a high degree of trust between the Member State parliaments, police forces and judiciaries but, more particularly, because of a continued and distinct lack of trust and agreement between them. Walker (2000) argued that another irony was that the Member States would never have allowed such contempt of constitutional and democratic norms within their own national legislative systems.

Fortunately, the EU Council and Parliament have since sought to rebalance the EU's predominant 'crime control' model towards a more rights-oriented 'due process' model (Packer 1964). The greater involvement of the EU Parliament pursuant to the Lisbon Treaty, and the introduction of the 'co-decision' and 'emergency brake' procedures have helped to create a far more considered and democratic, albeit slower, policy process and have kept the tendency of EU ministers to introduce emotionally-charged partisan legislation and abusive practices in check (Loader and Walker, 2007; Fletcher, 2011). Most importantly, in an effort to promote and foster greater 'mutual trust' between participating states, a number of key directives have been introduced to protect the rights of suspects and victims of crime pursuant to Article 82 TFEU (Hufnagel and McCartney, 2017). Directive 2012/29/EU, for instance, established minimum standards on the rights, support and protection of victims of crime, covering legal advice, interpretation and translation, protection measures, specialized support, and accommodation, amongst other measures. Directive 2013/48/EU, on the other hand, was introduced to expand and protect the right of suspects, including the right to have a lawyer present during police interrogations, external communication and translation services, amongst other provisions. More recently, Directive 2016/343/EU on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings has helped to further enhance common minimum standards.

Nevertheless, it is remarkable that the EAW was in place for more than a decade before these basic and necessary procedural rights were introduced at the transnational level. The differences and clear gaps between national criminal justice systems and between national and transnational proceedings, which could strip individuals of their constitutional identities and protective rights, were plainly evident at the start of the EAW project and were the primary cause of the initial political hesitancy to introduce such measures through previous institutions, such as the CoE, in the first place (Walsh 2002, 2016; Wade 2015). The experience has served as a lesson to the EU, and to communities such as the SADC who may seek to mimic it, that justice ministers, EU officials, ambassadors, 'interest shapers' and technocrats on working groups and committees can have a propensity for valuing procedural expediency and the appearance of political productivity over and above legal tradition and the needs, expectations and preparedness of practitioners. The 'security' discourse which shaped the creation of the EU policing project evidently gave rise to insular policy-making forums at the EU level which had a vested interest in stimulating anxieties and the continuous expansion of European policy in the policing field, whether or not it was necessary or even

desirable, partly because political expectation demanded it and the jobs of technocrats depended upon it (Walker, 2006; Zener, 2009).

The fact that poorly conceived, contentious and often unworkable measures were introduced by largely self-serving EU bodies which were considerably undemocratic continues to afflict the EU and its legacy (Mitsilegas, 2008; Spapens, 2017). Euro-scepticism is growing within the EU area and the problematic measures have not yet been completely reformed or re-balanced. Neither the JIT nor EAW instruments have been transformed into 'Directives', even though the Lisbon Treaty requires it; arguably because the national and EU parliaments are likely to use any opportunity of renegotiation to demand drastic reform of the EU policing infrastructure (Baker, 2015). The fact that much needed reform has not yet taken place should serve as a warning to other inter-governmental organizations. As the SADC continues to develop its policing and mutual assistance measures, it should tread carefully when considering comparable EU instruments as a benchmark.

Conclusion

The long-standing under-development of public police agencies and institutional weaknesses, which have led to a degree of strategic and institutional fluidity, continue to shape the prospects for cross-border police cooperation in Southern Africa. As a result, new approaches to government and donor funding are needed, and the legacy of ill-defined foreign interventions must not be ignored. Deliberations aimed at building consensus around principles and operational strategies, for instance in the policing of assemblies and public health, should feature increasingly in regional conversations (Biegon et al., 2017; SADC, 2017b). If Southern African governments and police forces can work together to pursue transnational policing initiatives as zealously as their European counterparts, albeit in a more democratic, community-oriented, practitioner-focused and measured manner, the condition of transnational policing in Southern Africa could be greatly improved. To start, it is submitted that Southern Africa needs to develop an innovative and flexible framework of police cooperation which is clearly enunciated in a way that permeates government policy, legislative initiatives, judicial decisions, policing ethos and the 'institutionalization' and 'operationalization' of police cooperation in practice.

The evolution of transnational policing in Southern Africa has many similarities to the early years of the EU regime for cross-border police cooperation, but Southern Africa should try to

learn from the failures and lessons of the tainted EU project to reshape and redefine the institutional development of its national and transnational policing infrastructure. The modern EU regime hides a deeply fractured relationship between Member State police forces and the transnational policing infrastructure, which continues to affect the degree of co-option across Europe. SARPCCO and the SADC must ensure that the actual threat of cross-border crime and the problems of cooperation are defined and measured so that initiatives and measures are driven by informed calculation and practitioner consultation rather than abstract rhetoric and superficial political ambition. Decisions should be taken as closely as possible to police practitioners and civil society; and open and transparent mechanisms of communication and complaint must be maintained. Reforms should be evidence-based, progressive and holistic so that a more knowledgeable and critical audience is not continually asking the police to change in impractical ways.

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