

STUDIES OF ORGANISED CRIME

Organised Crime in Europe

Concepts, Patterns and
Control Policies in the
European Union and Beyond

Edited by

Cyrille Fijnaut and Letizia Paoli

 Springer

La criminalité

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European Union and Beyond

Edited by

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Preface

Letizia Paoli and Cyrille Fijnaut

The idea of this book began to take shape over four years ago in a pleasant but aimless conversation at the Max Planck Institute for Foreign and International Criminal Law in Freiburg, Germany. While discussing recent progress and persistent deficiencies of research into organised crime, it suddenly occurred to us that we could make a meaningful contribution to European scientific and public debate by together editing a book that nobody had until that point dared to write: namely, a volume attempting a systematic comparison of both organised crime patterns and control policies in Europe.

Even before drafting the project proposal and recruiting experts from thirteen European countries, we knew that our aim was ambitious and daring. We were also fully aware that the practical and methodological difficulties that had so far prevented our colleagues from embarking on similar projects would hamper our efforts too. Nonetheless, we decided to unite forces – as well as experiences and networks of contacts – and give it a try.

Four years later and thanks to the valuable contributions of many of the most outstanding European scholars on organised crime, we are now happy to present the final product of our efforts. As explained in more detail in the general introduction, we are aware of both its strengths and limits.

The main strength of the book lies in the full realisation of our original aim. Bringing together experts from different social and legal disciplines, this volume represents the first attempt systematically to compare organised crime concepts, patterns and control policies in thirteen – western and eastern – European countries. These include seven ‘established’ Member States of the European Union (Denmark, France, Germany, Italy, the Netherlands, Spain and the United Kingdom), two new eastern European members (the Czech Republic and Poland), a candidate country (Turkey) and three non-European Union countries (Albania, Russia and Switzerland).

Further strengths derive from seminal reflections on the history of organised crime, an attempt to assess the effectiveness of organised crime control policies in Europe, and the attention given to the interaction between European Union bodies and member, candidate and neighbouring states in the development and implementation of a harmonised organised crime control policy.

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The book's main limits are closely linked to its very innovative character. In none of the areas of research pursued have we had the ambition – or indeed the possibility – to provide any conclusive judgments. With this volume we merely intend to open up new research paths, and create an awareness of their scientific relevance and political necessity. We are fully aware, however, that we are far from having exhausted the associated tasks.

In the course of such a long and ambitious project, we have amassed many intellectual and material debts. Our greatest debt of gratitude is to the 33 authors of the country reports. Without their expertise and their willingness to present their knowledge of organised crime patterns and control policies in their countries of origin or specialisation along the lines indicated in our protocol, this book would not have been possible. We have genuinely learned a great deal from their papers, which constitute the main pieces of the mosaic we have begun to put together.

We also thank the few other scholars who participated in different stages of the project but for a variety of reasons could not deliver a final contribution: Prof. Dr. Jörg Jepsen of Aarhus University, Ass. Prof. Dr. Didem Aydin of Bilkent University and Prof. Dr. Peter Young of University College, Dublin, who assumed initial responsibility for reports on organised crime in Denmark, organised crime control policies in Turkey and organised crime and control policies in Ireland, respectively.

The conference held in Freiburg from 27 February to 1 March 2003 to present and discuss the first drafts of the country reports was made possible through the financial support of the Fritz Thyssen Stiftung. We are most grateful to the foundation board for the generosity and rapidity with which it decided to fund this project. Irina Rabkov (formerly Mirimovitch) and Sarah Brandherm (Max Planck Institute, Freiburg) made valuable contributions to the conference's success, with their competent organisation and by taking care of all practical details and we thank both heartily. Through her unfailingly reliable and valuable assistance to Letizia Paoli, Irina Rabkov also managed to maintain contact with project participants and keep track of the different versions of their reports.

We also owe much to our home institutions – the University of Tilburg and the Max Planck Institute for Foreign and International Criminal Law – for their continuous financial and practical support, without which we would not have been able to realise this ambitious project. A special thank you is due to Prof. Dr. Hans-Jörg Albrecht, director of the Max Planck Institute, who has been particularly generous, providing not only material support but also constant encouragement and pointed advice throughout the project.

At different stages, Gabrielle MacManus (La Trobe University, Melbourne), Corene Rathgeber (Max Planck Institute, Freiburg) and Sara Harrop (Cambridge University Institute of Criminology) revised the country reports written by non-native English speakers and our own introductory and comparative pieces. We are

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very grateful to them for their invaluable help. Many sincere thanks also go to Steve Lambley, our copy-editor, who competently typeset the whole manuscript.

And now the moment has come to say: '*Habent sua fata libelli!*' (or, for those who have not refreshed their Latin recently, 'Books have their own destiny').

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General Introduction

Letizia Paoli and Cyrille Fijnaut

Since the late 1980s organised crime has become a ‘hot’ topic in public debate and in the political and scientific agenda all over Europe. To control organised crime, far-reaching legal and institutional reforms have been passed in all European states and *ad hoc* instruments have been adopted by all major international organisations, ranging from the European Union to the Council of Europe and the United Nations.

Despite the popular and media success of the term and the flurry of national and international initiatives, comparative research on organised crime has so far been very limited and sketchy even within Europe. Bringing together experts from different social and legal disciplines, this volume represents the first attempt systematically to compare concepts of organised crime as well as its concrete historical and contemporary patterns and control policies in thirteen – western and eastern – European countries. These include seven ‘established’ Member States of the European Union (Denmark, France, Germany, Italy, the Netherlands, Spain and the United Kingdom), two new eastern European members (the Czech Republic and Poland), a candidate country (Turkey) and three non-European Union countries (Albania, Russia and Switzerland). Whether they are European Union members or not, these thirteen countries all play host to activities and protagonists that are routinely labelled as organised crime and are perceived as a threat for the European Union. All have adopted numerous – and sometimes radical – measures for controlling this criminal phenomenon.

In the first part of this introduction, we would like to recall briefly how organised crime has come to be perceived as a serious problem of driving concern for the whole of Europe. The first section focuses on the expansion of European illegal markets. The second highlights a few large-scale transformation processes and a variety of worldwide and local events that have fostered changes on the illegal marketplace and altered the perception of organised crime in Europe. The third section shows how organised crime has progressively become a ‘picklock’ for the introduction of criminal law and justice reforms.

After a fourth section recalling the hindrances to comparative research on organised crime, the second half of the introduction focuses on the research project underlying this book. The fifth section explains its main rationale: i.e. beginning a

systematic comparison of organised crime patterns and policies across and within European countries. The sixth section considers two further lines of reflection and investigation that enrich the project (and this book) – namely, the historical and international lines (the latter encompassing the relationships between the European Union and the member, candidate and neighbouring states) – and the constraints imposed on our efforts to pursue them. The seventh and final section explains the criteria we used in selecting the countries involved and lists the project participants.

1. Perception Changes: The Expansion of European Illegal Markets ...

Today most European countries agree that each has an organised crime problem. Each dutifully sends yearly reports on its situation to Europol, the European Union coordination and intelligence police office, and has underwritten numerous international agreements – ranging from a variety of European Union directives and other binding and non-binding agreements to several conventions of the Council of Europe and of the United Nations – to tackle specific criminal activities considered typical of organised crime or the problem in its entirety.

The apparent consensus now dominating much European official and media discourse is in itself astonishing since until the late 1980s organised crime was considered a problem that concerned only a limited number of countries: primarily the United States and Italy, with the eventual addition of Japan, China, and Colombia.

Before the watershed date of 1989, the scientific communities, political leaderships and public opinions of virtually all European countries aside from Italy considered themselves largely unaffected by organised crime. True, popular fiction, TV programmes and movies about the mafia had already enjoyed great success throughout the Western world. In all European countries except Italy, however, these were enjoyed by informed and casual consumers alike, all with the serene conviction that organised crime had nothing to do either with their countries or, even less, with their own personal lives. Fascinating as it was, organised crime was perceived – and presented by the media – as exotic and far removed.

This perception started to change in the 1980s. Several long-term processes and a variety of both far-reaching and localised historical events contributed to this change. Some of these changes and occurrences directly impinge on the activities and perpetrators typically associated with organised crime; others are related to them only indirectly.

Among the first group, the most significant long-term change was undoubtedly the rise of the illegal drug industry. In virtually all Western countries since the 1970s this has become the largest and most profitable illegal market activity, attracting the greatest number of traditional underworld figures and fostering a re-conversion of

professional crime to the drug business. Even according to the most conservative (and realistic) estimates, drug markets in the United States and western Europe have a yearly turnover of about USD 120 billion (Reuter, 1998). This is a substantial figure, probably much larger than the turnover of any other illegal entrepreneurial activity, though reliable estimates exist for none of these.

Since the late 1980s a second wave of expansion of European illegal markets has been triggered by the rising number of migrants from Second and Third World countries wishing to enter the European Union. Due to the restrictive migration policies of virtually all Western countries, this growing demand can only to a minimal extent be satisfied legally and has thus fostered the development of a veritable human smuggling and trafficking industry in both source and destination countries (for a more detailed analysis of these two waves of expansion, see the comparative synthesis at the end of Part II).

2. ... and the Underlying Social Processes and Events

These two major changes affecting European illegal markets cannot be properly understood unless we consider wider social processes and events. These have profoundly affected not only the organisation and flow of illegal markets but also the general perception of organised crime.

The worldwide processes of globalisation have accelerated the interconnection between previously separate domestic illegal markets and increased the mobility of criminals across national borders. At the same time, economic liberalisation has reduced the ability of governments to withstand and regulate market forces and has unintentionally facilitated the sectors of the global economy that remain criminalised. Some of the very initiatives designed to promote legal economic exchange – trade and financial liberalisation, privatisation, deregulation of transportation – also benefit illegal economic exchanges (Andreas, 2002). For illegal entrepreneurs it has become easier than ever to move drugs and other illegal commodities from producing to consuming countries, to repatriate profits, to establish business partnerships with foreign counterparts and even to operate in foreign countries themselves. The incentives for embarking on these enterprises have also become greater, as the gap between living standards in Western countries and the rest of the world has become increasingly apparent and getting rich fast through illegal means looks like an appealing shortcut for thousands of people, particularly if they are living in less privileged countries.

Illegal exchanges were also further facilitated by the fall of the Iron Curtain in 1989. This paved the way for the transition of eastern European countries to democracy and capitalism and was followed by the collapse of the Soviet Union (USSR) two years later. The opening of the eastern borders, once strictly patrolled by Warsaw Pact troops, has triggered a veritable boom of illegal markets all over

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the former Soviet Union and its satellite countries and objectively enhanced the movement of people, goods and capital across the two formerly segregated portions of Europe: criminals as well as ordinary people, drugs as well as regular commodities, dirty as well as hot and legitimate money could all circulate more freely than before.

The fall of the Iron Curtain also had a tremendous impact on the perception of the organised crime problem. Throughout Europe, organised crime – particularly in its transnational variant – became one of the most frequent and successful labels to express the rising sense of insecurity caused by the sudden collapse of the bipolar world and the obscure menaces coming from the East. From the early 1990s on, many professional Sovietologists, bereft of their primary object of study, as well as populist politicians and ambitious journalists ceased upon the topic of organised crime as ‘the’ new threat capable of replacing the former ‘empire of evil’: the USSR. Features typical of the Soviet Union – power, high-level technology, nuclear weapons, lack of scruples, avidity and expansionism – have, since its fall, been transferred to Russian organised crime. The latter has also been characterised by qualities that Western public opinion has associated with Russia since the nineteenth century and thus presented as particularly violent, brutal and barbarous (see Woodiwiss, 2001; Paoli, 2004).

Within the countries of the European Community (integrated into the Union in 1993), the widespread feeling of insecurity was further increased by the completion of the internal market and the abolition of internal border controls. Though the latter measure was not extended to the majority of western European countries until the mid-1990s, by the end of the previous decade it had already become clear that the implementation of the internal market programme de facto generated a common internal security zone encompassing all Member States. Ordinary people and politicians alike progressively realised that in the new, united Europe free movement, increased economic interdependency and the facilitation of cross-border financial activities rendered internal borders increasingly ineffective both as instruments of control and as obstacles to the movement of criminals and their activities.

This realisation came at a time when the southern Italian mafia associations were proved by the testimonies of high-ranking defectors and the resulting inquiries of the Sicilian judiciary (Tribunale di Palermo, [1985] 1992) to be well-structured and mighty criminal organisations, staged alarming acts of terrorism in several northern Italian cities and were purported to be ready to invade the rest of Europe and take control of the most profitable illegal markets. The media magnified this perception, as hundreds of newspaper and TV reports and books on the topic (some carefully researched, others far less so) were published (as an example of a well researched book, see Stille, 1995). In Germany, for example, then Chancellor Helmut Kohl allegedly became convinced of the necessity of tackling organised crime after reading *Der Mob* (see Raith, 1989: 37). This is a book on the Italian mafia, published in 1987 by the journalist Dagobert Lindlau, which immediately became a best-seller,

though it contained numerous mistakes and provided unfounded analyses and apocalyptic forecasts.

In addition to the murders of Judges Giovanni Falcone and Borsellino in 1992 and the bombs attacks in Continental Italy in 1993, organised by the Sicilian Cosa Nostra mafia organisation, which received widespread media attention throughout Europe, a variety of unrelated local events brought home for millions of European citizens the conviction that organised crime had become a problem much closer to home. These ranged from the murders of a journalist investigating the drug wholesale trade in Ireland and of a prominent politician in Belgium to the arrest of Italian mafiosi and scandals linking politicians to illegal market entrepreneurs in several European countries (see Fijnaut, 1993; Mooney, 2001).

In short: since the 1970s the above-mentioned processes and events have fostered an unprecedented expansion of illegal markets in virtually all western European countries. Illegal activities also spread across eastern Europe at an alarming pace over a decade later – the time lag being due merely to the communist dictatorship's lack of familiarity with the darker side of the market economy prior to 1989. Wider social changes have also radically affected the perception of organised crime: together with several other, at least partially overlapping, concepts (the drugs and arms trafficker, the white slaver and, after September 2001, the terrorist), organised crime has become a convenient tool to express the anxieties of the general population at living in the ever more uncertain and insecure world of the late or post-modern stage of modernity (Bauman, 2000). These anxieties tend to rebound as perceptions of threats to the personal and property safety and have contributed to make organised crime a veritable 'folk devil' (Cohen, 1972).

3. Organised Crime as a Picklock for Criminal Law and Justice Reforms

The stigmatisation of organised crime as a new folk devil, however, has been far from uncontested. Besides many critical voices from the scientific community, several European governments have long resisted this trend, denying that their countries had an organised crime problem and insisting they did not need the special investigative techniques and control policies introduced by the United States and Italy to fight it. The notion of organised crime and its related policy package have remained until now particularly controversial in Denmark and most other Scandinavian countries. The United Kingdom government also long treated the whole issue of organised crime with a high degree of scepticism, before 'capitulating' to growing international pressure in the mid-1990s. Other states, most notably France, have long refused to frame their crime problems in terms of organised crime and have stuck to their own native concepts (for instance, *grand banditisme* in France's case).

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Despite this strong resistance, it is fair to say that from the late 1980s organised crime has been increasingly exploited by politicians and domestic and supranational government agencies alike to thoroughly reform criminal and criminal procedural law, introduce new offences and special investigative powers for law enforcement agencies and, last but not least, propel the transnationalisation of crime control and criminal justice. This has been aggressively promoted since the late 1960s by the United States government through the establishment of United States law enforcement outposts in many foreign countries, the intensification of international law enforcement cooperation and the global diffusion of proactive investigation methods deeply impinging on defendants' rights (ranging from the interception of communication to controlled delivery of drugs), harsh penalties for serious offenders and even new offences (most notably, membership of a criminal organisation and money laundering). The idea underlying these United States initiatives is that the 'first line of defence is outside the borders of the United States'. By referring to the major threat represented by organised crime and several other related 'evils', such as drug trafficking, money laundering and more recently terrorism, successive United States cabinets since the Nixon presidency have put a lot of pressure on allied and satellite countries to conform to United States standards in their criminal legislation and practices, sometimes going as far as to provide detailed policy plans for each (see Nadelmann, 1993).¹

In 1970 the passage of the Racketeer Influenced and Corrupt Organisations Act was largely justified by the looming threat represented by Italian American organised crime. Since then, however, internationalisation of law enforcement has been primarily justified by the United States, first by the increased scale of international drug trafficking and the damaging effect of 'dirty money', and, since 11 September 2001, by the need to carry out a widespread crusade against Islamic terrorism. In Europe and the international arena, on the contrary, criminal law and justice reforms have been increasingly justified by appealing to the catch-all concept of organised crime – particularly in its transnational dimension – and its undefined and thus particularly threatening menace. This evocative and emotional approach is well exemplified by a background paper prepared for the World Ministerial Conference on Organised Transnational Crime, which was convened in Naples in 1994 by the United Nations and gave a strong impetus to the growing perception of organised crime as an impending threat, particularly in eastern Europe:

¹ For an early example of how disruptive this policy can be, see Fijnaut (1983). The book reconstructs and assesses a political scandal that shook the Belgian police in the early 1980s, after Belgian police officers resorted to illegitimate investigative techniques in the prosecution of an international drug trafficking scheme under the heavy pressure of United States liaison officers.

No doubt, organised transnational crime, a new dimension of more 'traditional' forms of organised crime, has emerged as one of the most alarming [...] challenges for the safety of humanity [...] Organised transnational crime, with the capacity to expand its activities and to target the security and the economies of countries, in particular developing ones and those in transition, represents one of the major threats that Governments have to deal with in order to ensure their stability, the safety of their people, the preservation of the whole fabric of society and the viability and further development of their economies (United Nations Economic and Social Council, 1994: 3).

That the world perception of organised crime could change so abruptly in less than a decade is certainly due also to the ambiguity of the concept itself. Various and sometimes contrasting meanings have been attributed to it ever since it first entered North American discourse in the 1920s. As Mike Levi puts it, organised crime is like the psychiatrist's Rorschach blot, whose 'attraction as well as [...] weakness is that one can read almost anything into it' (2002: 887).

4. Hindrances and Tasks for Comparative Research

Where exactly does organised crime begin? What are its specificities *vis-à-vis* other forms of serious crime? Despite more than three decades of passionate and occasionally acrimonious debates, it is still unclear whether organised crime involves sets of criminalised activities or groups of people engaged in crime (see Paoli, 2002). Other questions derive from this basic ambiguity. If organised crime is understood as a set of criminalised profit-making activities, how does it differentiate from enterprise (i.e. profit-making) crime? If instead it involves groups of criminals, what is the minimum number of individuals necessary in a group or network to apply the label of organised crime? As we will see in the introductory chapter to Part I, these are some of the key questions that pop up persistently in scientific and public debate on organised crime, and only half-hearted scholars, superficial journalists, opportunist politicians and law-abiding practitioners are able to ignore them.

A key issue in its media and popular success, the plurality of meanings of the concept of organised crime unavoidably represents a major hindrance to scientific – and especially comparative – research. The confusion surrounding its definition, along with media glamorisation of the topic, has long alienated the attention of scholars from organised crime. In particular, the distressingly long list of associated protagonists and activities have discouraged most researchers from embarking on wide-ranging comparative projects even within the restricted realm of the European Union.

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If at all, the few criminologists and social scientists willing to transcend national borders have produced bird's eye views of transnational illegal activities, usually relying on media sources and limiting empirical data collection to one or just a few countries (see Levi, 1998; Ruggiero and South, 1995; Naylor, 2002) or have offered unsystematic accounts of organised crime in Europe (Ruggiero, 1996; Van Duyne, 1996; Van Duyne et al., 2000, 2003, 2004). Direct and systematic comparisons have so far been limited to the scale and organisation of markets for a single illegal commodity – usually drugs (Ruggiero, 1992; Paoli, 2001; Gruppo Abele, 2003) and human beings (De Ruyver et al., 1998; Siron et al., 1999) – in two or three European countries (for a more detailed summary of the scientific literature, see the introduction to Part II).

Even leaving aside the language problem, access to data also represents a powerful hurdle discouraging comparative research. The illegal nature of organised crime activities makes data collection not only particularly difficult and occasionally risky but it also makes the researcher almost unavoidably dependent on the cooperation of the police and the judiciary. In most European countries this is still far from optimal, as many law enforcement agencies are hardly willing to open their files to social scientists. Jealously guarding their data and cases, many police officers and representatives of the criminal justice system are unused to cooperating with academic researchers, particularly those from foreign countries. Moreover, even when they are willing to provide support, police and judicial bodies collect and file data on concrete organised crime cases for other purposes than those of scholarly analysis – thus neglecting or losing much of the information that would be most interesting for researchers (see Fijnaut, 1996 for a review of the methodological problems limiting research on organised crime).

Possibly because the terrain is less contested and the methodological difficulties are less constraining, there have already been some attempts to compare in a systematic way the legal instruments adopted to fight and prevent organised crime (Gropp, 1993; Tak, 2000b; Gropp and Huber, 2001; Militello, Paoli and Arnold, 2001). To our knowledge, however, there has so far been no effort – except for specific topics (such as confiscation; see Kilchling, 2001) – to compare the effectiveness of the measures introduced or to assess the impact of the numerous recent initiatives launched by the European Union and other international organisations on domestic legislation and the everyday containment of organised crime. As Cyrille Fijnaut has written elsewhere regarding police cooperation in the European Union, 'there is no, or hardly any, research being carried out on how this cooperation actually operates and what effects it has on the problems of crime [...] most of the literature about this cooperation is normative, formal by nature, and completely disregards the practice of police cooperation or reflects only the personal impressions of the researchers on this point' (2004: 270; see also Tak, 2000a). Unfortunately, Fijnaut's comments on police cooperation can be extended to most other areas of the European Union and international home affairs and justice policies.

With the launch of the Falcone programme and other related initiatives, since the mid-1990s the European Commission has made a valuable effort to foster communication and exchanges among European practitioners and researchers on such important topics as organised crime and the trade in human beings. Primarily targeting practitioners and initially funding projects lasting no longer than twelve months, however, these European Union programmes have proved unsuitable to support comprehensive, synchronic analyses of concrete manifestations of organised crime and the repressive and preventive measures enforced in several European countries (for more information on Europe-wide research projects on organised crime patterns and control policies, see respectively the introductions to Parts II and III).

5. The Main Rationale of the Project

The project underlying the present book aims to start filling the above-mentioned gaps in research: namely, to begin a much needed systematic comparison of organised crime patterns and control policies in Europe. As we will see more precisely in the seventh section, 33 scholars representing 13 European countries have been involved in the project.

To guarantee the possibility of a systematic comparison of organised crime patterns and policies, all the collaborators were asked to follow a common research protocol in writing their country reports. The protocol is loose enough to allow the authors to highlight the specificities of their own countries: for example, we have avoided imposing a common definition of organised crime on the project participants, asking them instead to present the conceptions of organised crime that are most common in their countries. However, the protocol has bound the authors to structure their contributions along similar lines and (to try) to answer the same questions in specific sections of their papers. The rapporteurs on contemporary organised crime patterns, for example, have been asked to reconstruct the public, academic and professional debate on organised crime and to summarise the existing scientific research in the first section of their contributions. The second section provides an overall picture of the organised crime problem in each selected country and highlights its most prevalent forms of organised crime. The third focuses on the scale and organisation of illegal markets, and the fourth will critically consider organised crime infiltration into the legitimate economy. In the fifth section, after analysing the strategies of those involved in organised crime to avoid prosecution, the authors are asked in their concluding remarks to discuss the most probable changes affecting the immediate future of organised crime perpetrators and activities.

The reports on organised crime control policies have a similar structure. Their authors have been invited to review public debate and scientific research on organised crime policies in the first section of their papers. In the following section

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they provide an overview of the policies developed in their country of nationality or study in the past 20 years and of the social and political context in which the process of legal and institutional change has taken place. The third and fourth sections analyse in detail this process of change, focusing respectively on the legal instruments introduced and the institutional reforms made to contain organised crime. The fifth section of these contributions reconstructs the development of international police and judicial cooperation and assesses the relevance of the instruments provided by the European Union, the Council of Europe and other international organisations. Finally, in their concluding remarks the authors of the policy papers were asked to discuss the most probable trends in the development of organised crime control.

The first drafts of the country reports were presented and discussed at a conference, convened at the Max Planck Institute for Foreign and International Criminal Law in Freiburg, Germany on 27 February – 1 March 2003. In the following months, the two editors sent detailed comments to the report authors, who submitted the finalised versions of their pieces in 2003. A second round of interaction was necessary in a few cases, after which the papers were all edited by native English speakers. Meanwhile, several meetings of the two editors took place in Freiburg and elsewhere to identify the main similarities and differences in organised crime patterns and control policies.

The country reports on contemporary organised crime patterns are collected in Part II ‘Contemporary Patterns of Organised Crime’; those on control policies form Part III, which is entitled ‘Organised Crime Control Policies’. At the end of each part, the editors have written a comparative synthesis, pointing out the main similarities and differences of, respectively, organised crime and control policies in the countries involved. The two parts are each prefaced by introductory chapters, also written jointly by the editors. The chapter introducing Part II assesses the current state of knowledge about organised crime in Europe, as it emerges from national and supranational official reports on organised crime and earlier comparative research efforts. The introduction to Part III critically reviews the initiatives taken by the European Union, the Council of Europe and other international or regional organisations to contain organised crime.

Ensuring a systematic cross-national comparison represents the most important, but by no means exclusive, rationale of the project resulting in this book. A second important aim is the contemporaneous scrutiny of organised crime patterns and policies in each selected country. In our view, this scrutiny constitutes a necessary – though neglected – prerequisite to an evaluation of the adequacy and effectiveness of containment policies.

Pressurised by tragic events or by the damning reports of moral entrepreneurs, politicians and government agencies can seldom afford to wait for the results of scientific inquiries before launching initiatives in such sensitive areas of governance as crime control. But if policies cannot always be designed on the basis of accurate

and empirically based *ex ante* knowledge of the phenomena they target, they should at least be *ex post* contrasted with these phenomena, to soundly assess their output and impact. This should especially be the case with organised crime control policies. In this area, in fact, domestic and international initiatives have been numerous and far-reaching, the sums invested and the resulting costs for tax-payers are relevant and many of the new investigative powers granted to law enforcement agencies ostensibly touch, and sometimes sharply restrict, the defendants' and the general population's civil rights.

The European Union and the Council of Europe sponsor mutual evaluation programmes to assess the implementation of international agreements signed by their members. However, they understand the key concept of implementation in a very technical way and the delegations in each Member State sent to review the enactment and application of the laws and regulations resulting from international agreements do not assess their outcome and impact on the concrete manifestations of organised crime.² As already mentioned, the comparative works published so far on organised crime control policies in Europe do not focus on implementation, as they primarily adopt a juridical approach. Our book thus also aims to start filling this gap, considering the impact of the policies enacted on the concrete crime phenomenon.

Despite the editors' wishes, not all the reports collated in Part III have thoroughly explored the implementation and effectiveness of organised crime control policies due to lack of empirical data or to the purely legal training of their authors. In this case – as in the case of cross-country comparison of organised crime patterns and policies – we have merely opened up a new research path, aware of its scientific relevance and political necessity, but we are far from having exhausted the associated tasks.

6. International and Historical Dimensions

In addition to providing a horizontal intra- and cross-country analysis of organised crime patterns and control policies, this book is further enriched by an international – to a certain extent, vertical – dimension. This is provided not only by the multinational background of the authors, who represent fourteen different nationalities,

² The European Union has so far restricted its mutual evaluation efforts to mutual legal assistance in criminal matters. The first *Final Report on the First Evaluation Exercise* was published in the *Official Journal*, C 216/14-26, 1 August 2001. Subsequent reports were not published officially. An important example of the mutual evaluation initiatives promoted by the Council of Europe takes place under the umbrella of the Greco (Group of States against Corruption) Programme, the mechanisms and goals of which are explained in the introductory chapter to Part III.

but, more specifically, by the attention to the interaction between European Union bodies and member, candidate and neighbouring states in the development and implementation of a harmonised organised crime control policy. One of the book's additional aims is to assess the impact of European Union legislation on national policies (and eventually upon organised crime manifestations themselves). This 'top-down' perspective is complemented by a 'bottom-up' approach. As far as possible, project participants were asked to identify the states' efforts to influence European Union policies and assess their varying degrees of success. As the reports in Part III show, some authors have convincingly pursued both lines of investigation.

This first, tentative exploration of the interaction between the European Union and its member and neighbouring states is necessitated by the impetuous development of the European Union's organised crime control policy. With the implementation of the Amsterdam Treaty on 1 May 1999, the development of European Union policies in 'justice and home affairs' (JHA) – of which organised crime control constitutes a major goal – was transformed into a fundamental treaty objective: Article 29 of the Treaty on European Union provides for the maintenance and development of the European Union as an 'area of freedom, security and justice'. As Jörg Monar puts it, 'there is no other example of a policy-making area which made its way as quickly and comprehensively to the centre of the Treaties and to the top of the European Union's policy-making agenda' (2001: 747-8). Though police and judicial cooperation is still to be dealt with solely under the intergovernmental rules laid down in Title VI of the European Union Treaty (the 'third pillar'), the prevention and repression of organised crime, particularly in its cross-border manifestations, have become European Union priorities and a plethora of legal and institutional reforms – ranging from the criminalisation of membership of a criminal organisation to the creation of Eurojust – have been enacted by the European Council (see Fijnaut, 2004; Barents, 2002).

Scarcely mentioned by the media and sometimes ignored even by legal scholars, European Union initiatives in the field of organised crime control shape domestic policies today not only in the 25 European Union Member States but also in all the European Union candidate states and in all the other countries that are dependent – for either historical or geographical reasons – on the Union or some of its members. Though few non-European Union insiders are aware of it, organised crime control policies have, at least since the early 1990s, become an integral part of the European Union's foreign policy. This inclusion has been made official with the adoption of the European Security Strategy in December 2003 (more information on this can be found in the introductory chapter to Part III).

The book also has a historical dimension. In addition to the analysis of contemporary organised crime patterns and control policies, it begins to draft a history of criminal groups and activities that may not usually be labelled as organised crime but fit into even the most stringent definitions of this phenomenon. The underlying idea is to show that – while the concept of organised crime was imported to Europe

from the United States in the early 1970s, and most European countries did not consider themselves affected by the problem until the late 1980s – more or less cohesive forms of collective crime can be traced in the history of many European states besides Italy, sometimes as late as the nineteenth century. Indeed, in some contexts there is no clear break between historical and contemporary manifestations of organised crime.

Due to paucity of research on these issues (and the need to keep the book to around 1,000 pages) we have restricted exploration of the historical dimension of organised crime in Europe to six countries: France (or more precisely, Corsica), Germany, Italy, The Netherlands, Russia, and Turkey. The respective articles constitute Part I, which is entitled ‘The History of Organised Crime’. As in Parts II and III, these historical contributions are compared in a final synthesis written by the editors. The country reports in Part I are introduced by a jointly written article summarising the political and scientific debate on organised crime and critically (though synthetically) reviewing the flurry of definitions that have been attributed to this expression.

Convinced of the added value provided by the historical dimension, we have also accepted contributions for Part I that were not able to provide a nationwide or longitudinal history of organised crime in the selected countries or to comply with our country reports’ protocol. Even when studying deviance and crime, most historians hardly frame their subjects of study in terms of contemporary ideas of organised crime. Moreover, they tend to specialise in single phenomena and to devote all their energies to patient and time-consuming archive research, not caring much for comparisons across time and space even within the same country. For these reasons, only two of the experts contributing to Part I were able to follow the protocol that we had provided, whereas the remainder focused on specific *ante litteram* manifestations of organised crime. As mentioned earlier, the aim of our book has not been to provide a conclusive assessment of either the history of organised crime or its contemporary manifestations and control policies, but merely to open up new research paths.

7. The Countries Involved and the Project Participants

To obtain as varied a picture as possible of organised crime patterns and control experiences and to analyse the impact of European Union legislation from various perspectives, our project does not exclusively involve the Member States of the European Union. Instead, we have adopted a wider, geographical definition of Europe, which by and large takes the membership criteria of the Council of Europe into account. Besides seven ‘old’ European Union Member States (Denmark, France, Germany, Italy, the Netherlands, Spain and the United Kingdom), there are therefore two ‘new’ members (the Czech Republic and Poland), a candidate country

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(Turkey) and three other countries (Albania, Russia and Switzerland), that have either no interest in or no means to join the European Union, but host organised crime activities and protagonists that are perceived as a potential or actual threat to the European Union.

Like the European Union's 'traditional' Member States, the non-European Union members have all passed a flurry of legal and institutional changes to contain organised crime and are directly or indirectly influenced by European Union decision-making. For the Czech Republic and Poland – as for the other eight countries that joined the Union on 1 May 2004 – the full subscription of the *acquis communautaire* (and of the conventions of the Council of Europe) has been a precondition for accession to the European Union. Albania and Turkey are striving in the same direction, whereas European Union influence is at its weakest in the cases of Russia and Switzerland: these two countries are, however, bound by numerous international and bilateral agreements that sometimes meticulously prescribe legal texts and institutional procedures even on home policy matters.

Following the table of contents of the book, we present here the experts who have participated in the project, analysing the historical or contemporary manifestations of organised or control policies in any of the thirteen selected countries:

Part I. The History of Organised Crime

Introduction:	Dr. Letizia Paoli (Max Planck Institute for Foreign and International Criminal Law [hereinafter Max Planck Institute], Freiburg and Prof. Dr. Cyrille Fijnaut (Tilburg University)
Italy:	Dr. Gianluca Fulvetti (University of Pisa)
The Netherlands:	Dr. Florike Egmond (University of Leiden)
Germany:	Dr. Katrin Lange (Gießen)
France (Corsica):	Prof. Dr. Stephen Wilson (University of East Anglia)
Turkey (Ottoman Empire):	Dr. Yücel Yeşilgöz and Prof. Dr. Frank Bovenkerk (University of Utrecht)
Russia:	Prof. Dr. Yakov Gilinskiy and Dr. Yakov Kostjukovsky (Russian Academy of Sciences, St. Petersburg)
Comparative Synthesis:	Prof. Dr. Cyrille Fijnaut and Dr. Letizia Paoli

Part II. Contemporary Patterns of Organised Crime

Introduction:	Prof. Dr. Cyrille Fijnaut and Dr. Letizia Paoli
Italy:	Dr. Letizia Paoli
The Netherlands:	Dr. Edward Kleemans (Research and Documentation Centre, The Netherlands Ministry of Justice, The Hague)
Germany:	Dr. Jörg Kinzig and Anna Luczak (Max Planck Institute, Freiburg)

General Introduction

France:	Dr. Nacer Lalam (Institut National des Hautes Etudes de Sécurité, Paris)
Spain:	Alejandra Gómez-Céspedes and Prof. Dr. Per Stangeland (University of Malaga)
The United Kingdom:	Prof. Dr. Dick Hobbs (University of Durham)
The Czech Republic:	Dr. Miroslav Nožina (Institute of International Relations, Prague)
Poland:	Prof. Dr. Emil Pływaczewski (University of Białystok)
Switzerland:	Dr. Claudio Besozzi (International Center for Crime Prevention, Montreal)
Albania:	Prof. Dr. Vasilika Hysi (University of Tirana)
Russia:	Prof. Dr. Louise Shelley (American University, Washington, DC)
Turkey:	Prof. Dr. Frank Bovenkerk and Dr. Yücel Yeşilgöz (University of Utrecht)
Comparative Synthesis:	Dr. Letizia Paoli and Prof. Dr. Cyrille Fijnaut

Part III. Organised Crime Control Policies

Introduction:	Prof. Dr. Cyrille Fijnaut and Dr. Letizia Paoli
Italy:	Prof. Dr. Antonio La Spina (University of Palermo)
The Netherlands:	Prof. Dr. Henk Van de Bunt (Free University, Amsterdam)
Germany:	Dr. Michael Kilchling (Max Planck Institute, Freiburg)
France:	Dr. Thierry Godefroy (Centre de Recherches Sociologiques sur le Droit et les Institutions Pénales, Paris)
Spain:	Prof. Dr. José Louis De la Cuesta (University of the Basque Country)
The United Kingdom:	Prof. Dr. Michael Levi (Cardiff University)
Denmark:	Dr. Karin Cornils (Max Planck Institute, Freiburg) and Prof. Dr. Vagn Greve (University of Copenhagen)
The Czech Republic:	Dr. Miroslav Scheinost (Institute of Criminology and Social Prevention, Prague)
Poland:	Dr. Wojciech Filipkowsky and Prof. Dr. Emil Pływaczewski (University of Białystok)
Switzerland:	Dr. Elias Hofstetter and Prof. Dr. Karl-Ludwig Kunz (University of Bern)
Albania:	Prof. Dr. Vasilika Hysi (University of Tirana)
Russia:	Dr. Thomas Krüssmann (University of Passau)
Comparative Synthesis:	Prof. Dr. Cyrille Fijnaut and Dr. Letizia Paoli

The selection of the countries and the recruitment of experts have been dictated not only by scientific, but also by practical reasons. First, we had to limit the number of countries involved to avoid producing a mammoth publication and were thus obliged to neglect the other 32 Member States of the Council of Europe, most of which would have certainly provided interesting additions. Second, we have had to exclude some countries especially in eastern Europe, because we had difficulties recruiting qualified and interested researchers.

Due to the same problems, we have also been unable to ensure a full match for two of the selected countries. The report on organised crime control policies in Denmark is not accompanied by an article on the phenomenon itself. In turn, the two papers on historical and contemporary manifestations of organised crime in Turkey are not matched by a review of Turkish control policies. In both cases, the collaborators originally selected were not able to submit their contributions in time and we have not been able to find an adequate replacement.

Despite these and the other shortcomings mentioned earlier, we do hope that our book may provide an innovative, well-founded and unprejudiced contribution to scientific and political debate on organised crime in the Europe Union and beyond.

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PART I
THE HISTORY OF ORGANISED CRIME

Introduction to Part I: The History of the Concept

Letizia Paoli and Cyrille Fijnaut

At the beginning of the twenty-first century the concept of organised crime has gained almost complete – political and scientific – legitimacy in Europe. Its political legitimacy is clearly shown by the fact that most European domestic governments and virtually all the major international organisations have issued *ad hoc* laws, conventions and plans specifically targeting organised crime and mentioning it in their titles. Despite some resistance, especially in northern European countries, organised crime has also become a legitimate scientific research topic and one that attracts much interest among criminologists and other social scientists. At the conferences held annually since 2001 by the European Society of Criminology, for example, organised crime has been one of the most prominent topics.

Notwithstanding the current – as we will later see, largely apparent – consensus, organised crime was long a very controversial concept that became accepted in the European public and scientific debate only in the last 15 years of the twentieth century. As already mentioned in the general introduction, it has yet to be incorporated into historical research, so much so that it is still difficult to find scholars willing to reconsider historical patterns of crime in the framework of the criminological debate on organised crime.

Therefore, we are delighted to present here five innovative chapters that attempt either to reconstruct the history of organised crime in a given country or to analyse national or local historical manifestations of collective crime that would meet even the most stringent definitions of organised crime. Part I of this book can indeed be considered as a first contribution to the drafting of the history of organised crime in Europe. Though the term ‘organised crime’ was rarely used in Europe before the early 1980s, in most European countries’ histories we can trace crime patterns that show surprising similarities and continuities but also radical breaks with contemporary forms of (organised) crime. We also hope that this part will serve as a bridge between historians of crime and deviance, on the one hand, and criminologists and other social scientists conducting research on crime and crime control policies on the other. These two groups of scholars at present hardly communicate and exchange findings due to both increasing specialisation in all scientific disciplines and the lack of common concepts.

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To understand both the historians' lack of interest in organised crime and the sudden turns and persistent ambiguities of the contemporary political and criminological debate on the topic, it is necessary to understand the history of the concept. This chapter aims to do just that. It follows the trajectory of the concept of organised crime, starting in the United States where it was first coined and was used almost exclusively until the 1970s, then following its rapid spread to and across the 'old Continent'.

After outlining some key traits and functions of the debate on organised crime on both sides of the Atlantic, the following two sections of this introduction reconstruct the American debate on organised crime, focusing respectively on its beginning and the consolidation of a mafia-centred view of organised crime, and on the rise of an alternative approach, labelled here as an 'illegal enterprise' paradigm. The fourth section illustrates the spread of the 'illegal enterprise' paradigm in the European scientific debate and reviews its few critical assessments, which have come largely from scholars studying Italian organised crime. The fifth section highlights the vague and far-reaching definitions of organised crime that have been adopted by several European states, thus demonstrating the gap between these and official and media rhetoric. The sixth and final section proves the existence of the same gap at the international level, on the one hand by recalling recent international emphasis on the transnationality and growing dangerousness of organised crime, and, on the other, by pointing out the impreciseness of the definitions of organised crime adopted by the United Nations and the European Union.

1. Organised Crime: An Ambiguous but Effective 'Trojan Horse'?

Since it was first adopted over a century ago, such a wide variety of different meanings have been attributed to the term 'organised crime' that we are now left with an ambiguous, conflated concept. In Europe as in the United States, public, political and even scientific debates still oscillate between thinking of organised crime as meaning sets of criminalised activities, and as meaning sets of people engaged in crime. In other words, as we will see in more detail in the following pages, the concept of organised crime inconsistently incorporates the following two notions: a) the provision of illegal goods and services; b) a criminal organisation, understood as a large-scale entity primarily engaged in illegal activities with a well-defined collective identity and subdivision of work among its members.

Despite the common ambiguities of the American and European discourse on organised crime, there is a clear temporal mismatch. In the United States political and scientific interest in organised crime peaked in the late 1960s and early 1970s and has since been diminishing along with the decline of its major embodiment, the Italian-American mafia organisation, (La) Cosa Nostra (Reuter, 1995; Paoli, [2000] 2003: 3-13). The late 1980s and 1990s saw the arrest and prosecution of all

chiefs and many rank-and-file members of the once powerful Cosa Nostra families in New York and these investigations attracted much media attention and provided new empirical material for numerous true-crime books and glossy films on the mafia. However, with few exceptions (Jacobs, 1999), the United States scientific community and even political bodies have lost much of their former interest in the subject.

It is almost a paradox that, at the same time as organised crime saw a dramatic decline in its political and scientific relevance in the United States, it attracted much media, political and scientific attention in Europe. Only since the shocking events of 11 September 2001 has organised crime also begun to lose some of its political and media brisance in Europe and to be subsumed by the topic of terrorism: the real and imagined links between organised criminals and terrorists now occupy a large part of practitioners' and journalists' reflections on the topic.

Notwithstanding the recent emphasis on terrorism, organised crime has, since the early 1980s, become an ambiguous but effective catchphrase in the European public discourse for pointing out the changes affecting the world's illegal markets and simultaneously expressing public anxiety at living in late modernity's increasingly uncertain and insecure world. The transformations of illegal markets and the surrounding social and political context will be thoroughly described in the single country reports and the comparative synthesis of Part II. In turn, the country reports and the comparative synthesis of Part III will analyse the reforms introduced in the criminal and criminal procedural law and criminal justice systems of the 13 selected countries and sketch European Union and Council of Europe policy in the fight against organised crime.

Besides analysing semantic and theoretical issues, it is important here to indicate the political uses that have been made of definitions of organised crime and particularly of its frequent identification with mighty mafia-type criminal organisations. *Mutatis mutandis*, in fact, a similar pattern can be identified since the 1950s, first in the United States and then in Europe. The spectre of mighty mafia-type criminal organisations – primarily the Italian mafia, but since the early 1990s the Russian and other ethnic mafias as well – has been agitated with varying degrees of good faith by the media, politicians, law enforcement agencies and, more recently, international organisations to increase the power of domestic law enforcement agencies and to enhance international police and judicial cooperation. Since the early 1990s the transnational dimension of organised crime has also been strongly emphasised, obscuring the fact that most organised crime activities are anchored locally.

This mythologised image of organised crime has become a veritable 'Trojan horse' to pass reforms that would otherwise meet resistance from lower-level agencies seeing their competencies reduced – primarily state law enforcement agencies in the United States, but increasingly their counterparts in Europe called to intensify their cooperation and share their competencies with new-born European

Union agencies – and the opposition of civil-rights organisations. Instead, far more infrequently, both in the United States and Europe legislative and institutional changes have been justified rationally by the changes effectively taking place in legal and illegal markets and the inability of lower-level agencies to cope alone with increasingly interconnected and mobile patterns of crime.

At the same time, however, the legal definitions of organised crime adopted by most states and international organisations hardly reflect the mafia fixation of much political and media discourse. As we will see, most of them are very broad, if not vague, so much so that they – and the special powers granted to organised crime investigators and judges – can be applied to a wide range of criminal phenomena and people involved. Indeed, by reading most official and semi-official definitions, one can barely grasp the specificity of organised crime *vis-à-vis* other types of crime, and the novel dangerousness of this phenomenon justifying the introduction of incisive investigative powers and the restriction of defendants' and common people's rights. It is in the gap between the dramatic images presented by political and media rhetoric and the wide-ranging and petty behaviours included in most official definitions that serious deceit of the general public lays.

2. The American Debate I: From its Origins to the Consolidation of the Mafia Paradigm

Despite uncertainties about the time and place of its coinage, there is no doubt that organised crime is – originally – an American concept. The exact phrase 'organised crime' was probably first used in the 1896 annual report of the New York Society for the Prevention of Crime, which resorted to it to refer to gambling and prostitution operations that were protected by public officials (Woodiwiss, 2003: 5). In those days, as Michael Woodiwiss (*ibid.*: 4) points out, 'organised crime had no fixed meaning and could be understood only in context'. Depending on their political inclinations, the first American commentators used the phrase to refer to illegal business deals involving politicians, police officers, lawyers, or professional thieves and to suggest that their crimes were organised. 'Only a few would have associated organised crime almost exclusively with conspiratorial groups among foreign career criminals' (*ibid.*).

Commentators and academics began to make serious efforts to define and discuss organised crime in the 1920s and 1930s, when Prohibition forcefully enhanced the development of North American illegal markets. Several meanings were then attached to the term 'organised crime', though it was still rarely used to signify separate associations of gangsters. Most often organised crime was made synonymous with racketeering, another loose expression which usually referred to extortion, predatory activities, and the provision of a variety of illegal goods and services, ranging from counterfeit documents to illegal gambling and trafficking

in drugs and liquor (Woodiwiss, 2003: 7; Smith, 1975: 66-81). Even Frederick Thrasher, whose book *The Gang* ([1927] 1963: 286) constitutes the first full-scale treatment of organised crime, made it clear that 'organised crime must not be visualised as a vast edifice of hard and fast structures' and stressed its links with the upper-world, by highlighting the 'indispensable functions' for professional criminals played by 'certain specialised persons or groups' including doctors, lawyers, politicians and corrupt officials (*ibid.*).

Two years after the appearance of *The Gang*, the landmark study of John Landesco's *Organised Crime in Chicago* was published as Part III of the Illinois Crime Survey ([1929] 1968). Written under the influence of the University of Chicago's School of Sociology and its ecological approach to urban life, Landesco's report – as Mark Haller (1968: vii) observed when introducing its second edition in 1968 – 'stands alone as a scholarly attempt to understand the social roots of organised crime in an American city and to describe the gangsters' diverse ties with many segments of conventional society'.

The first federal government attempt to study organised crime was conducted between 1929 and 1931 under the auspices of the National Commission on Law Observance and Enforcement under the chairmanship of George Wickersham. In their report to the commission on the costs of crime, two of the commission's consultants, Goldthwaite H. Dorr and Sidney Simpson, dealt extensively with organised crime. As Dwight Smith (1991: 142) points out, the two consultants 'organised their data around categories based on criminal law, not categories based on criminals. *What* was more important than *Who*'.

The enlightened approach of the Wickersham Commission and, more generally, the understanding of organised crime as a set of criminal entrepreneurial activities with the frequent involvement of legal businesses and state representatives was abandoned after the Second World War. To put it in Dwight Smith's terms, '*Who*' became more important than '*What*'. From the late 1940s on, conceptualisations of the problem focused on foreign career criminals who allegedly constituted well-structured and powerful criminal organisations representing a threat to the integrity of American society and politics. As opposed to previous analyses, the role played by politicians, public officials, professionals and other representatives of the 'respectable classes' was largely played down or ignored (Woodiwiss, 2003: 14-15).

The new organisation-based approach, which was dubbed as 'alien conspiracy' by its critics due to its emphasis on foreign criminals, was most clearly enunciated by the Kefauver Senate Investigating Committee, which set out 'to investigate organised crime in interstate commerce' in 1950. Despite the scarcity of empirical proof, in particular, the committee set out the terms of an Italian mafia-centred view of organised crime that remained the United States official standpoint for almost three decades. This identified organised crime with a nationwide, centralised criminal organisation dominating the most profitable illegal markets, which allegedly

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derived from an analogous parallel Sicilian organisation. This was headed by and, to a great extent, consisted of migrants of Italian (and specifically Sicilian) origin. In its *Third Interim Report*, the Kefauver Committee famously concluded: 'There is a nationwide crime syndicate known as the Mafia, whose tentacles are found in many large cities. It has international ramifications which appear most clearly in connection with the narcotics traffic. Its leaders are usually found in control of the most lucrative rackets of their cities' (United States Senate, 1951: 131).

By stressing the mafia's control of United States illegal markets, Kefauver and his colleagues effectively demonstrated the need for increased federal involvement in the enforcement of the gambling and drug laws. Seen from this perspective, it is perhaps no coincidence that the Federal Narcotics Bureau (a forerunner of the contemporary Drug Enforcement Administration) was the major 'moral entrepreneur' of the new organisation-based understanding of organised crime, providing the testimony that led the Kefauver Committee to assert the existence of the mafia in the United States (Smith, 1975: 138-41; W. Moore 1974). In contrast, the Federal Bureau of Investigations (FBI) long resented the concept of organised crime. Before the publication of the second major Congressional report in 1963, the FBI director, J. Edgar Hoover, not only refused the notion of an Italian-American mafia, but also opposed broader conceptions of syndicates and criminal organisations as a dominant factor in crime (Powers, 1987).

Overcoming the FBI's initial opposition, the merger of two concepts of organised crime and mafia was fully accomplished in 1963 when Joe Valachi testified before the Senate Permanent Subcommittee on Investigations. By recalling his experiences as a low-ranking member of an Italian-American mafia association called (La) Cosa Nostra, Valachi gave a new name to the menacing criminal association singled out by the Kefauver Committee and provided many details about its internal composition and illegal activities (United States Senate, 1963). Thanks to extensive television coverage, Valachi's view became popularised in the American public eye (Smith, 1975. 222-42).

The mafia-centred concept of organised crime that consolidated during the 1950s and 1960s was to no small degree the result of a focus on New York City: Valachi himself was from New York, as were several influential members of the congressional and government bodies researching organised crime. Despite its tremendous impact on public perception, it soon proved unsuitable for devising valid law-enforcement strategies for the entire United States. After rejecting a proposal to outlaw membership of La Cosa Nostra,¹ Congress passed the Racketeer Influenced and Corrupted Organisations (RICO) statute in 1970 with an extremely

¹ See United States Senate Bill 2187, 89th Congress and United States Senate Bill 678, 90th Congress.

broad underlying concept of organised crime (Aktinson, 1978). Likewise, many state commissions on organised crime, established in response to the national debate, at best paid lip-service to the concept of La Cosa Nostra as an all-encompassing criminal organisation. Instead, they defined organised crime in much broader terms to include less structured gangs and illicit enterprises (Von Lampe, 1998: 97-9).

A similar uneasiness with the mafia paradigm was shown by many law-enforcement officials at state and local levels and even by members of the federal Organised Crime Strike Forces, which were established in several American cities in the late 1960s and 1970s. As the General Accounting Office pointed out in a review of federal efforts against organised crime published in 1977, 'at one extreme the term was defined to include only members of La Cosa Nostra, while at the other extreme organised crime included any group of two or more persons formed to commit a criminal act' (GAO, 1977: 8).

However, the myth of a powerful and centralised mafia organisation representing a threat to America's political, economic and legal systems continued to be a resort whenever police budgets had to be raised or new legislation increasing federal jurisdiction had to be passed. As Robert Kennedy (1960: 253) said in his book, *The Enemy Within*, 'if we do not on a national scale attack organised criminals with weapons and techniques as effective as their own, they will destroy us'.

Similar dramatic assessments were put forward by the Nixon administration and Congress when the latter passed the Organised Crime Control Act in 1970. This and other legislation gave federal law enforcement and intelligence agencies an unprecedented array of powers, such as installing wiretapping and eavesdropping devices, resorting to informants and seizing the financial assets of their targets. They authorised special grand juries, the detention of recalcitrant witnesses and increased sentences for dangerous adult special offenders (see Block and Chambliss, 1981: 191-215).

The mafia-centred view of organised crime also continued to dominate public perception of the problem: since the 1960s hundreds of books have been written on the topic, and dozens of movies have been made. Some of these – above all, Mario Puzo's *The Godfather* (1969) and Francis Ford Coppola's film adaptation (1972) – have been so successful that they have profoundly shaped the general understanding of organised crime and the mafia in the United States and elsewhere. For many people the Italian-American mafia, which is de facto identified with organised crime, *is* and *behaves* as it is recounted in these romanticised novels and films.

Such an interpretation received scientific systematisation from Donald Cressey, who was called on to work as consultant to President Lyndon Johnson's Task Force on Organised Crime in 1967 (Task Force, 1967). In his subsequent book, *The Theft of the Nation*, Cressey adopted the ethnic position of federal law enforcement agencies even more strongly than in the paper he wrote for the Task Force and maintained that the Italian-American crime confederation, La Cosa Nostra, represented 'all

but a tiny part of all organised crime' in the United States. According to Cressey, La Cosa Nostra relied upon Sicilian traditional cultural codes but was also a hierarchical and 'rationally designed' organisation, very close to Max Weber's ideal type of legal-rational bureaucracy and was therefore capable of operating in contemporary America (Cressey, 1969).

3. The American Debate II: The Rise of the Illegal Enterprise Paradigm and the Revision of the Mafia Conspiracy Theory

The identification of the mafia with organised crime – and thus the idea of an alien conspiracy polluting the economic and social life of the country – has been rejected by the majority of American social scientists since the 1960s. These have alternatively accused the mafia-centred view of organised crime of being ideological, serving personal political interests, and lacking in accuracy and empirical evidence (Smith, 1975; W. Moore, 1974). Most scholars, however, have overreacted, up to the early 1980s categorically denying the existence of the Italian-American mafia as a structured and longstanding criminal organisation (see, among others, Hawkins, 1969).

Scientific attention has instead been re-directed upon the most visible and non-controversial aspect of organised crime: the supply of illegal products and services. In order to eradicate ethnic stereotypes of crime and direct attention to the marketplace, several authors have put forward the expression 'illicit' or 'illegal enterprise' as a substitute for the ethnically-loaded term 'organised crime'. As Dwight Smith, one of the earliest proponents of the new approach, expressed it, 'illicit enterprise is the extension of legitimate market activities into areas normally proscribe – i.e. beyond existing limits of law – for the pursuit of profit and in response to a latent illicit demand' (1975: 335; see also Haller, 1990).

More often, however, organised crime itself has been equated with the provision of illegal goods and services. Hence, according to Alan Block and William Chambliss, 'organised crime [should] be defined as (or perhaps better limited to) those illegal activities involving the management and coordination of racketeering and vice' (1981: 13). Organised crime has thus become a synonym for illegal enterprise. Indeed, according to a review of definitions carried out in the early 1980s by Frank Hagan (1983), a consensus by then existed among American criminologists that organised crime involved a continuing enterprise operating in a rational fashion and focused toward obtaining profits through illegal activities.

Involvement in illicit market activities has indeed become the basic requirement of virtually all definitions of organised crime in the United States scientific and official discourse, and this view is shared by both supporters of the mafia-centred understanding of organised crime and its critics. As Ivan Light noted, even Cressey 'had no trouble acknowledging that the Italian crime confederation "thrives because

a large minority of citizens demand the illicit goods and services it has for sale” (1977: 466).

A negative side-effect of this partial consensus has been that the term ‘organised crime’ is intermittently used to refer to both sets of people involved and sets of activities. In the definition quoted above, Block and Chambliss clearly present organised crime as a set of activities. The identification of organised crime with a set of protagonists is instead fostered by supporters of the United States official standpoint and a few independent scholars. Since the late 1990s, for example, Jim Jacobs (1999; with Gouldin, 1999; with Panarella and Worthington, 1994) has written a series of books and articles focusing on the Italian-American mafia organisation La Cosa Nostra and its successful repression in New York. Organised crime is clearly identified with a set of people engaged in criminal activities, even by some critics of the official understanding. According to Peter Reuter (1983: 175), for example, ‘organised crime consists of organisations that have durability, hierarchy and involvement in a multiplicity of criminal activities [...] The mafia provides the most enduring and significant form of organised crime’. Unsurprisingly, this confusion between offender and offence frequently leads to circular reasoning (Maltz, 1976). In 1986, for example, the (second) President’s Commission on Organised Crime (1986: 11) concluded that drug trafficking was ‘the single most serious organised crime problem in the United States and the largest source of income for organised crime’.

Scholars, politicians, and journalists still disagree on how illegal goods and services are provided. In the official North-American discourse, the combination of the notions of ‘criminal organisation’ and ‘provision of illegal goods and services’ is still largely undisputed, although exclusive reference is no longer made to La Cosa Nostra. When it became evident in the early 1980s that ‘the histories of American organised crime have been ordinarily drawn too narrowly in that they have focused nearly exclusively on the Mafia or La Cosa Nostra’ (President’s Commission, 1986: 176), the strategy pursued by American government institutions was to broaden the definition of organised crime to include other criminal organisations involved full-time in the supply of illegal commodities in demand by the general populace. The concept of ‘non-traditional’ or ‘emerging organised crime’ was advanced, which largely transferred the mafia model to other ethnically defined criminal organisations allegedly similar to La Cosa Nostra. The President’s Commission on Organised Crime, established by president Ronald Reagan in 1983, for example, listed a host of other organised crime entities in addition to La Cosa Nostra, including outlaw motorcycle and prison gangs, Colombian cartels, the Japanese Yakuza, and Russian groups. Gary Potter (1994: 7) aptly described the new official consensus as the ‘pluralist’ revision of the alien conspiracy interpretation.

In recent years, outlaw motorcycle and prison gangs have somewhat dropped out of sight, while groups of criminals from Asia and Europe, and especially criminals from the former Soviet Union, have received more attention. The priority targets

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currently assigned by the United States Department of Justice to investigators and prosecutors dealing with organised crime matters are, for example, the following: 1) La Cosa Nostra and Italian organised crime 2) Asian organised crime (basically Chinese Triads and tongs as well as the Japanese Yakuza) and 3) Eurasian (primarily post-Soviet) organised crime (Lowrie, 2001).

Taking the special constraints derived from product illegality into account, some American scholars – and most clearly Peter Reuter – have argued that illegal market activities largely take place in a ‘disorganised way’ (Reuter, 1983, 1985; M. Moore, 1974; Naylor, 1997; their argument will be fully developed in the comparative synthesis of Part II). They have rejected the superimposition of the notions of ‘criminal organisation’ and the ‘provision of illegal commodities’, showing why it is rather unlikely that large, hierarchically organised firms should emerge to mediate economic transactions in the illegal marketplace.

Other researchers, on the other hand, who have also applied economic concepts and tools to the study of organised crime, have reached almost opposite conclusions. They have done so by emphasising the analogies between legal and illegal enterprises. This analogical process has often led to conclusions not far removed from Cressey’s portrait of La Cosa Nostra. Unlike the latter, more recent studies no longer focus on a single ethnic group. Like Cressey’s work, however, these studies emphasise the market rationality of illegal firms and postulate that criminal organisations in charge of the provision of illegal commodities react to the same incentives and restraints as legal firms and follow the same organisational models. As Nikos Passas, for example, writes,

If the goods or services happen to be outlawed, then illegal enterprises will emerge to meet the demand. In this respect, there is no difference between conventional and criminal enterprises. Very often, all that changes when the business is illegal are some adjustments in modus operandi, technology and the social network that will be involved. In some cases, we have a mere re-description of practices to make them appear outside legal prohibitive provisions (1998: 3).

We have thus come full circle. The ‘illegal enterprise’ approach was developed in the 1970s to criticise the ‘alien conspiracy’ model but, 30 years after, some of its later followers – by the very use of economic tools – have ended up subscribing to one of the basic tenets of such a theory: namely, the rise of large-scale bureaucratic organisations to provide consumers with the illegal commodities they demand.

In the early 1990s in particular, when official bodies and the general public became increasingly concerned about the international spread of organised criminal activities, the analogy between criminal organisations and multinational corporations became fashionable and was simplistically pursued by a number of scholars. On this point, for instance, Phil Williams and Carl Florez (1994: 9) wrote:

‘Transnational criminal organisations, particularly drug-trafficking organisations, operate unrestricted across international borders. They are very similar in kind to legitimate transnational corporations in structure, strength, size, geographical range, and scope of their operations’.

This conceptualisation of organised crime is fully in line with the pluralist revision of the mafia conspiracy theory set out by United States federal executive bodies since the late 1980s and, as we will see in the fifth section, has effectively backed the American government’s attempts to internationalise its approach and methods in the fight against transnational organised crime (Woodiwiss, 2003).

4. The Importation of the ‘Illegal Enterprise’ Paradigm in Europe

Since the mid-1970s the ‘illegal enterprise’ approach has acquired a dominant position in the European scientific debate, influencing both a series of studies on the Italian mafia and, even more deeply, the conceptualisation of organised crime in all those European countries that long considered themselves immune to the problem.

Throughout the 1980s and early 1990s a variety of scholars increasingly emphasised the economic dimension of the Italian mafia and the role played by mafiosi on both domestic and international illegal markets. As Umberto Santino, a leading exponent of this approach, stated in 1990:

In the last years the hypothesis of analysis of mafia phenomenon as enterprise has more and more asserted itself, a not completely original approach since even Franchetti and Sonnino [two late-nineteenth century observers] talked about an ‘industry of crime’, but which has, however, marked a step forward in overcoming the stereotypes of traditional and modernised ‘mafiology’ and in giving frame to a scientific analysis (1990: 17-18).

The scholar who instigated this change, providing simultaneously a link between ‘old’ and ‘new’ methods of interpreting the mafia, is Pino Arlacchi. On the one hand, this Italian sociologist re-elaborated the analyses carried out by Henner Hess ([1970] 1973), Anton Blok ([1974] 1988), and Jane and Peter Schneider (1976) and adopted their definition of the mafia, presenting it as ‘a form of behaviour and a kind of power, not a formal organisation’ ([1983] 1988: 4). On the other hand, Arlacchi argues that, following a crisis in the 1950s and 1960s induced by the national process of economic and cultural modernisation, the mafiosi underwent an entrepreneurial transformation, abandoning the traditional roles of mediators and dedicating themselves to the accumulation of capital. Therefore, he maintains, ‘only by turning to the concepts of *enterprise* and *entrepreneurial activity* (or “entrepreneuriality”), as used by Schumpeter, rather than to more strictly sociological or criminological

categories' (1988: xv, emphasis in the original) is an understanding of the modern mafia possible. Such a perspective has, in fact, the advantage of stressing the aspect of innovation constituted by the mafiosi's entry into economic competition, which results in 'the adoption of mafia methods in the organisation of work within the company and in the conduct of its external business' (1988: 89).

The research route opened up by Arlacchi was followed by other scholars, since it was consistent with growing evidence of the mafiosi's economic activities in both legal and illegal arenas. With few exceptions (Centorrino, 1986), however, most subsequent reflections on the mafia have differed from Arlacchi's work in one major point: by refuting the process of an 'entrepreneurial transformation' of mafia groups, his followers have tended to ascribe a primarily economic-oriented behaviour even to traditional mafiosi. According to Raimondo Catanzaro, for instance, 'the only commonly agreed upon identifying characteristic is that the Mafia exists to make profits illegally' ([1991] 1992: 3), and the element that mafia and organised crime share and that distinguishes them from social bandits is 'their organisational stability, their being shaped in the form of a "firm" within the field of normal economic activities' (ibid.: 4). In order to prove his thesis, Catanzaro identifies the mafiosi with the *gabellotti* (lease-owners) and the *campieri* (guards) working on the large inland estates, and he concludes that the traditional ways of exploiting farmers in the *latifundium* (great estate) system were forms of mafia accumulations (ibid.: 31-4). Contemporary mafia enterprises are, instead, in his opinion, all enterprises 'that perform legal [...] and illegal production activities and employ violent methods to discourage competition' (ibid.: 203). The links between these forms of mafia entrepreneurship remain, however, loose (see also Santino and La Fiura, 1990; Pezzino, 1987, 1988; Recupero, 1987; Pizzorno, 1987). Moreover, such an operation, while usually reducing contemporary mafia groups to business enterprises and thus denying them any other goal but profit, fails to mark the boundary of the mafia phenomenon. Under this paradigm, in fact, mafiosi become indistinguishable from large sectors of the Sicilian bourgeoisie and, at the same time, lose any peculiarity in regard to other types of organised crime, irrespective of their cultural and historical background.

A variant of the long-dominant enterprise approach was proposed in the early 1990s by Diego Gambetta (1993: 1), according to whom the mafia must be seen as 'a specific economic enterprise, an industry which produces, promotes, and sells private protection'. By shifting attention away from traditional licit and illicit entrepreneurial activities, Gambetta's work points to one of the most important functions historically played by Sicilian and Calabrian mafia groups and paves the way for a reassessment of the political dimension of mafia associations. His interpretation can, however, be criticised for his one-sided emphasis on protection, which can be justified only by a very selective reading of past and present sources. As David Nelken states, 'Gambetta's insistence that the mafia is and has always

been in the protection business is somewhat essentialist. The wide range of activities in which the mafia plays a part makes generalization difficult' (1995).

Distancing themselves even more from the illegal enterprises approach, other scholars have emphasised the differences between Italian mafia groups and other, more business-like forms of organised *qua* enterprise crime. Henner Hess has gone as far as to conclude that 'the mafia is a power structure and, as such, completely different from what is commonly called organised crime (and which is usually a cooperation aimed at gaining material advantages)' (1995: 63). More prudently, Letizia Paoli ([2000] 2003) acknowledges that the two largest Italian mafia organisations – the Sicilian Cosa Nostra and the Calabrian 'Ndrangheta – have throughout their histories engaged, directly or through their members, in a plurality of legal and illegal entrepreneurial activities. Paoli, however, stresses that it would be reductive to consider these as economic enterprises aiming at maximising profits or as an industry for private protection. In her view, southern Italian mafia organisations are secret brotherhoods that have traditionally employed the strength of mafia bonds to pursue a plurality of goals and to carry out numerous different functions, one of the most important of which has been the exercise of political dominion within their communities (see Paoli's article on organised crime in Italy in Part II). Distancing themselves from the illegal enterprise paradigm, other scholars have also re-assessed the cultural and political dimensions of the mafia phenomenon (see, for example, Siebert, 1994; Di Maria and Lavanco, 1995; Di Lorenzo, 1996; Santino, 1994; Santoro, 1998, 2000).

Even more unreservedly than in Italy, the illegal enterprise approach has been imported in all European countries that had little or no experience of mafia phenomena until recently. As early as the mid-1970s (1975), for example, Hans-Jürgen Kerner and John Mack talked about a 'crime industry' and, in an earlier report written in German, Kerner subscribed even more explicitly to the view of organised crime as an enterprise (1973).

The emphasis on illegal market activities has remained unchallenged ever since. Thus, for example, according to Dick Hobbs (1994: 444-5) 'the master context for professional and organised crime is the marketplace [...] [and] the marketplace can be seen to define and shape professional and organised criminal activity'. Likewise, the Dutch scholar Petrus Van Duyne points out that organised crime results from illegal market dynamics: 'What is organised crime without organising some kind of criminal trade; without selling and buying of forbidden goods and services in an organisational context? The answer is simply nothing' (1997: 203).

As in the United States, the adoption of an economic approach in Europe has not necessarily meant avoiding superimposition of the notion of 'provision of illegal goods and services' and that of 'criminal organisation.' Indeed, the parallels between legal and illegal markets have frequently led to the conclusion that the supply of illegal goods and commodities is carried out by organisations similar to those present in legal markets. This is, for example, the theory of German scholar Ulrich Sieber.

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Although he does not completely disregard the peculiarities of illegal markets, his analyses on the logistics of organised criminality 'are based on the research hypothesis that normal and criminal commercial activities present analogies and common points' (Sieber, 1997: 49). After interviewing several experts (to a large extent drawn from law enforcement agencies), Sieber and his collaborators come to the conclusion that, in addition to a loose network of offenders, large hierarchical organisations exist which are 'characterised by a strong centralisation and a clear internal organisation' (ibid.: 70).

5. Legal and Official Definitions in Four European Countries

As the country reports in Part II and III show, starting from the early 1980s organised crime has attracted much media and political attention in virtually all European states and most domestic governments and international organisations have not only adopted legislation to contain the problem but have also made efforts to define it.

Given the lasting and visible problem of southern mafia organisations, the Italian, unsurprisingly, was the first European government to enact laws specifically addressing organised crime and attempting to define the problem. While the first law specifically addressing the mafia, which was passed as early as May 1965, failed to specify what mafia meant, a specific offence of *associazione a delinquere di tipo mafioso* (mafia-type criminal associations) was defined in 1982 by Act No. 646. The bill, which modified the Criminal Code by introducing Article 416*bis*, was – as Valsamis Mitsilegas (2003: 57) points out – 'one of the first international attempts to introduce the concept of an organised criminal association in criminal law'. According to this new provision, a mafia-type delinquent association consists of three or more persons, and

those who belong to it make use of the power of intimidation afforded by the associative bond and the state of subjugation and criminal silence (*omertà*) which derives from it to commit crimes, to acquire directly or indirectly the management or control of economic activities, concessions, authorisations or public contracts and services, either to gain unjust profits or advantages for themselves or for others.

After the *Mani Pulite* (Clean Hands) investigations of the early 1990s revealed extensive corruption networks including mafia members, Article 416*bis* was amended to add, in its conclusion, the aim of 'preventing, or obstructing the free exercise of the vote, or of procuring votes for themselves or for others at a time of electoral consultation'.

Italy is one of the few countries in Europe, and possibly in the world, where there is a relatively high degree of correspondence between the official definition

and the general understanding of organised crime. In this southern European country, both practitioners and the general public have no doubt that *criminalità organizzata* is a set of large-scale organisations that are either criminal *per se* or are primarily engaged in illegal activities (see Ministero dell'Interno, 2001). Though the existence of mafia organisations was denied by most scholars until the early 1980s, since then organised crime has been conventionally equated with southern Italian mafia associations, most notably the Sicilian Cosa Nostra, a coalition of about a hundred mafia families predominantly located in western Sicily. Indeed, many people, including many practitioners, still believe La Cosa Nostra represents a viable model for all forms of organised crime worldwide (Paoli 2000; for more information on Italy's organised crime and control policies, see Paoli's and La Spina's chapters in Part II and III, respectively).

Only recently, as southern mafia groups have become less visible and traditional anti-mafia investigations have waned, some practitioners and scholars have not been able to resist the temptation of applying Article 41*bis* and its related special investigative powers to the so-called *nuove mafie* or *mafie etniche* (Massari and Becucci, 2001). With these labels, one usually points out foreign criminal groups, which are, however, much looser, less durable and dangerous than the original mafia associations of southern Italy.

Virtually all other European countries show a more or less conspicuous gap between the drama of media and political assessments and the pettiness of official definitions, as outlined at the beginning of this chapter. In public discourse organised crime is frequently identified with Italian mafia organisations and a succession of foreign mafias: the Russian, Turkish, and Albanian mafias, and so on. In attempting to define organised crime, however, the government agencies of many European countries usually include all forms of entrepreneurial crime, though they may pay lip service to the traditional mafia-centred concept of organised crime. This strategy is well exemplified by the definition adopted by the Conference of German State Ministries of the Interior in 1983. According to them, 'the expression "*organisierte Kriminalität*" refers not only to a mafia-like parallel society as "organised crime" [in English in original quote] implies, but also to the conscious, desired, and lasting cooperation of several people for the accomplishment of criminal actions – often with the exploitation of modern infrastructure – with the aim of rapidly accumulating high financial profits' (Sielaff, 1983).

The current, semi-official² German definition of organised crime, which was adopted in 1986 by the State Ministers of the Interior and Justice, drops instead the reference to the mafia and fully subscribes to the illegal enterprise paradigm:

³ This definition is usually termed as semi-official because it was first formulated in guidelines adopted by the State Ministers of the Interior and Justice and has never been included in a law, despite the fact that the German Parliament has enacted several bills on

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Organised crime constitutes the planned commission of criminal offences driven by the quest for acquiring profits or powers. Such criminal offences have to be, individually or in their entirety, of major significance and involve the cooperation of more than two participants acting with a common intent for a longer or indefinite period of time on a distributed-task basis

- a) by utilisation of commercial or business-like structures
- b) by application of violence or other methods suitable for achieving intimidation or
- c) by exerting influence on politics, the media, public administrations, justice systems, or commerce and industry.

The influence of the illegal enterprise paradigm on the understanding of organised crime among German practitioners is confirmed by the following statement, made by Peter Korneck, a Frankfurt prosecutor with many years' experience in the field:

Experts who work not only theoretically but also practically maintain that organised crime implies the activities of persons who commit serious offences in an enduring cooperation founded on the principle of the division of labour with the aim of maximising profits. If you omit the reference to 'serious offences', you are left with the description of an activity that in Germany and in the entire Western world is usually described as entrepreneurial activity (Raith, 1989: 268).

An analogous, market-oriented definition has been adopted by the National Criminal Intelligence Service (NCIS) in the United Kingdom. In its annual assessment of the threat of organised crime for 2000, the NCIS conceptualised it as ensuring the availability of illicit commodities, providing a criminal or quasi-legitimate infrastructure that facilitates other serious crime. A definition, if further attempted, of organised crime groups, is that they have to satisfy the following criteria:

- They contain at least three people;
- They engage in criminal activity that is prolonged or ongoing;

organised crime. The above-mentioned definition has however much practical relevance, as it determines which investigations carried out by the Bundes- and Landeskriminalämter (Federal and State Criminal Offices, usually referred with their acronyms, BKA and LKAs) have to be considered organised crime investigations and serves as the basis of the yearly reports on organised crime prepared by the BKA (for more information on this point, see Kinzig and Luczak's article in Part II and Kilchling's report on organised crime control policies in Germany in Part III).

- Their members are motivated by profit or power;
- They commit serious criminal offences (NCIS, 2000).

The NCIS's approach not only resembles the German one, but also shares the important characteristic of not providing a legal definition. As in the United States, United Kingdom prosecutors and law enforcement organisations agree that a detailed legal definition would not be beneficial for fear of creating legal controversy that might unduly complicate criminal trials (see Levi's report on United Kingdom organised crime control policies in Part III).

The 'entrepreneurial' definitions adopted both in Germany and the United Kingdom can be applied not only to members of criminal organisations in a strict sense, but also to relatively small, loose partnerships and teams set up for the pursuit of profit-oriented offences, as data collected annually by the German Bundeskriminalamt (Federal Criminal Office) clearly demonstrate. Although organised crime is usually equated with highly structured mafias in the German media discourse, the BKA data on organised crime proceedings show the small size of the criminal enterprises targeted by German prosecutorial offices. Less than ten people were in fact involved in 53 per cent of all the organised crime investigations carried out between 1991 and 2002. In 41 per cent, the number of suspects ranged between 11 and 49. Only 6 per cent of organised crime proceedings involved more than 50 suspects at any one time, although customers in illegal transactions and even smuggled persons are often counted as members of the organised crime groups (BKA, annual; see Kinzig and Luczak's article on organised crime in Germany in Part II).

Whereas the German semi-official definition of organised crime has been praised and adopted even by some scholars working in the illegal enterprise approach, it has been criticised for its vagueness by the research team that carried out the first systematic study of organised crime in the Netherlands on behalf of the Dutch Parliament in the mid-1990s, among others. Pointing out that this definition includes an extremely wide range of criminal groups and offences, ranging from tax fraud by legitimate companies to terrorist acts by political movements and the trade in exotic animals and drugs, a group of experts led by Cyrille Fijnaut stated the following: 'We do not feel [that] a definition of this kind, which covers such a wide range of criminal offences with such varied impacts on society, can be used for scientific analysis of organised crime or the legal regulation of norms for investigation methods in the battle against it' (Fijnaut et al., 1998: 24).

The Fijnaut research group went on to elaborate a more stringent definition of organised crime, which goes as follows: 'groups primarily focused on illegal profits systematically commit crime that adversely affect society and are capable of effectively shielding their activities, in particular by being willing to use physical violence or eliminate individuals by way of corruption' (ibid.: 26-7). As neither Parliament nor executive agencies have ever issued an official definition

of organised crime, the definition produced by Fijnaut's research group has been endowed with quasi-official status and is the one most frequently referred to in the political and scientific debate in the Netherlands.

6. Transnational Organised Crime and International Initiatives

Discourse and actions of major international organisations show the same gap between the dramatic tone of general assessments and the vagueness of official definitions that plagues the domestic debates of most European countries. On the one hand, the general assessments subscribe to what has previously been called the global pluralist theory of organised crime and emphasise its increased transnational dimension. On the other hand, the definitions proposed by international bodies are so broad that they may include anything from the Italian Cosa Nostra to a gang of thieves, from Al Qaida to a paedophile ring, a drug-trafficking network to a youth clique.

This double track emerges most clearly from discourse and action pursued by the United Nations since it decided to focus its own and individual nations' government attention on organised crime in the early 1990s. The turning point was represented by the World Ministerial Conference on Organised Transnational Crime, held in Naples in November 1994 and attended by high-level governmental representatives from 142 countries. In the Naples Political Declaration and Global Action Plan against Organised Transnational Crime, the conference organisers and participants declared themselves 'deeply concerned about the dramatic growth of organised crime over the past decade and about its global reach, which constitute a threat to the internal security and stability of sovereign States' and 'alarmed by the high cost of organised transnational crime in both human and material terms, as well as by its effects on national economies, the global financial system, and the rule of law and fundamental social values' (United Nations General Assembly, 1994: 2).

The 1994 World Ministerial Conference may be considered the official baptism of the term 'transnational organised crime', which was bound to dominate the international debate for the following ten years. In a resolution approved by the United Nations Economic and Social Council shortly before the conference, organised crime was equated with transnational organised crime and 'the following qualities' were considered 'characteristic':

group organisation to commit crime; hierarchical links or personal relationships which permit leaders to control the group; violence, intimidation and corruption used to earn profits or control territories or markets; laundering of illicit proceeds both in furtherance of criminal activity and to infiltrate the legitimate economy; the potential for expansion into any new activities and beyond national borders; and cooperation with other organised transnational criminal groups (ibid.: 3-4).

Whereas this definition may be praised for the variety and complexity of the criteria that it lists, it completely overlooks the fact that much organised crime is local. In Dick Hobbs's words (1998: 419), 'organised crime is not experienced globally or transnationally for these are abstract fields devoid of relations'. Even in typically transnational illegal trades, such as drug trafficking, transnationality usually refers exclusively to the transportation of commodities, communication between exporters and importers and the eventual laundering of profits. Crucial phases, such as production and processing, wholesale and retail distribution and final consumption of the drugs take place locally. 'In focusing on the cross-border transnational aspects', as Margaret Beare (2003: xxi; emphasis in the original) maintains, 'we remove the serious crime activity from the *originating* political, economic and social context within which the criminal activity might be better understood or explained and dealt with by law enforcement'.

At the World Ministerial Conference in Naples, the new emphasis on the complexity and borderlessness of transnational organised crime was then exploited to foster increased and more effective international cooperation. 'The challenge posed by transnational organised crime', the United Nations press release maintained, 'can only be met if law enforcement authorities are able to display the same ingenuity and innovation, organisational flexibility and cooperation that characterize the criminal organisations themselves' (United Nations, 1994a). Countries were called, in particular, to adopt many of the measures envisaged by the United States and Italy in their fight against mafia-type organised crime, neglecting the fact that this form of organised crime was not present in most United Nations Member States and was far from controlling illegal markets and exhausting organised crime *qua* enterprise crime even in the two aforementioned countries. As the Naples Political Declaration put it, 'the experience of those states which have confronted organised crime and the intelligence derived from the study and analysis of its structures and criminal activities should be examined by every State for useful guiding principles concerning what substantive, procedural and regulatory legislation and organisational structures are necessary to prevent and combat the phenomenon' (United Nations General Assembly, 1994: 2).

The measures suggested for adoption included criminalisation of participation in criminal organisations and money laundering; confiscation of illicit proceeds; the introduction and development of evidence-gathering techniques, such as electronic surveillance, undercover operations and controlled delivery, and of measures encouraging the cooperation and testimony of members of organised crime groups, including adequate protection programmes for witnesses and their families; the creation of special investigative units; and the development of financial investigations (ibid.: 4-5). The conference also called for an improvement in international cooperation during investigations and judicial proceedings. As Silvio Berlusconi, Italy's prime minister emphatically put it (and it is ironic that Berlusconi was informed that he was being investigated for corruption charges on that same day),

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crime organisations are ‘armies of evil’ that can be defeated ‘only by international collaboration’ (United Nations, 1994b).

The policy goals outlined by the World Ministerial Conference have been actively pursued with the drafting and ratification of the United Nations Convention against Transnational Organised Crime, which was opened for signature in December 2000 and came into force in September 2003. When it comes to the crucial task of legally defining organised crime, however, this international agreement has adopted ‘a minimum common denominator definition’ (Paoli 2002: 208), with no strict criteria in terms of number of members and group structure. Article 2, paragraph (a) of the Convention states: “‘Organised criminal group’ shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crime or offences established in accordance with this Convention, in order to obtain, directly or indirectly a financial or other material benefit’ (United Nations General Assembly, 2000a: 25). Serious crime is defined by paragraph (b) of the same article as any offence punishable by a maximum deprivation of liberty of at least four years (ibid.). A structured group is defined by paragraph (c) as ‘a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure’ (ibid.).

To dispel any doubts regarding the broadness of this definition, in the interpretative notes for the official records, enclosed in the Convention, the Ad Hoc Committee for the Elaboration of the Convention states: ‘the term “structured group” is to be used in a broad sense so as to include both groups with hierarchical or other elaborate structure and non-hierarchical groups where the roles of the members need not be formally defined’ (United Nations General Assembly, 2000b: 2). This means that the incisive investigative methods and other legislative and institutional changes recommended by the World Ministerial Conference of 1994 and now to a large extent included in the Convention can be also applied to cliques, gangs and networks that are very far removed from the stereotypes dominating the media and political discourse.

An analogous ‘double-track’ approach has been pursued by the European Union executive bodies. To justify its intervention, the European Union Council presents organised crime as a new threat, whose novelty lies in the increasing involvement of criminal organisations in the supply of criminal goods and services. Such a view is clearly stated in the first programmatic document dealing with organised crime, the Action Plan to Combat Organised Crime, which was adopted by the Council of the European Union on 28 April 1997. Its opening statement maintains:

Organised crime is increasingly becoming a threat to society as we know it and want to preserve it. Criminal behaviour no longer is the domain of individuals only, but also of organisations that pervade the various structures of civil society, and indeed society as a whole (European Union Council, 1997).

The 1997 European Union Action Plan also made 30 concrete recommendations to improve the Member States' fight against organised crime. These will be analysed in the introductory chapter to Part III, along with the steps subsequently taken at European Union level to achieve the same goal. Here it suffices to say that, when it comes to defining what a criminal organisation is, the European Union also proposes a very loose interpretation, setting low numerical standards. In the Joint Action adopted by the European Council on May 1998, a criminal organisation is defined as 'a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty [...]' (European Union Council, 1998). If three people only are sufficient to form a criminal organisation, one might justifiably ask if the (alleged) increasing presence of these entities in the illegal arena really represents a major innovation in regard to the past and the threatening menace that the plan assumes it to be.

As we will see in the following pages, whereas the novelty, transnationality, and the threat of organised crime have probably been over-estimated in most European countries and at the international level, the legal and institutional changes that have been introduced to fight it more effectively, are very real and substantial.

As this review shows, the phrase 'organised crime' originally stood for an analytical and 'muck-racking' concept with a broad extent and loose boundaries. As such, it could be used by the first American commentators to point to a variety of crimes committed not only by career criminals but also by members of the respectable classes, all of whom were integral parts of one corrupt socio-political system.

In the course of a century-old debate, while criminologists and other social scientists have tried to pin it down and specify its definitions, organised crime has progressively been endowed with a new, legal dimension. It has increasingly been treated as a legal or quasi-legal category, the application of which allows incisive investigative powers and increased sentences to be used. It is fair to say that organised crime has not yet fully accomplished this transformation. Its very plurality of meanings, explaining its recent success in world public debate, and making it a catchy label to signify popular anxieties and foster legislative changes, hinders the full transformation of organised crime into a clear-cut legal category. Despite the definitional efforts made by several domestic governments and international organisations, organised crime is still far from meeting the normative characteristics of legal categories and its definitions usually lack both rigorousness and exhaustiveness. It remains a vague and ambiguous catchphrase, the application of which inevitably entails varying – but usually high – degrees of arbitrariness.

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The Mafia and the ‘Problem of the Mafia’: Organised Crime in Italy, 1820-1970

Gianluca Fulvetti

1. Introduction

Some years ago, Peter Lupsha explicitly referred to ‘degrees’ of organised crime, identifying three phases of organised crime development: a first ‘predatory’ one, marked by the use of violence to gain control of a given territory; a second ‘corrupting’ one, during which criminal associations establish relations with the legitimate state authorities; finally, a third ‘symbiotic’ stage, in which they would merge with state authorities, this being an indispensable move in order to attain social legitimacy (Lupsha, 1996). This is an interesting analysis in many ways, yet it tends to regard the three phases as chronologically consecutive, whereas these functions tend to be simultaneously played by criminal associations since the beginning.

The same is also true for Italian mafia organisations, Italy’s special type of organised crime. This article aims to disprove the interpretations that overstress the distinction between a new, more ‘acquisitive’ and violent contemporary mafia and an old, mediating and conciliatory one. The picture emerging from my research, on the contrary, shows a clear continuity in the development of the mafia phenomenon rather than dichotomies or abrupt changes.

In the next section, I will attempt to explain what is meant by the term ‘mafia’ and to single out the activities and forms of organised crime that are typically referred to by this word. In the third section, I will summarise the main interpretations of the mafia phenomenon that have been proposed since the mid-nineteenth century by politicians, law enforcement officers, intellectuals and scholars. The fourth section will demonstrate that a formal, criminal associative structure pre-dating single illegal enterprises has been the defining feature of the Sicilian mafia from the beginning, distinguishing it from the other forms of organised crime. However, the question of mafia organisation has also been the key issue of dissent for all those who have written and spoken about it. The subsequent three sections provide a brief diachronic analysis of the Sicilian mafia since the middle of the nineteenth century, with constant reference to both archive materials and the evolving debate about the mafia phenomenon. In the last section, I will briefly sketch the history of the mafia in the decades following the Second World War.

2. The Italian Mafias

In Italy, 'mafia' is the term used since the 1860s to describe the widespread manifestations of organised crime in the southern regions of the country. With different forms and intensity, Italy's three main criminal associations – the Sicilian mafia, the Calabrian 'Ndrangheta and the Campanian camorra – have intertwined their criminal history with the wider one of the Italian social, political and economic development.

Before going on, however, we need to ask if it is correct to apply the category of 'mafia associations' to describe the three above-mentioned criminal phenomena. A lot of research tends to distinguish the camorra from the other two associations: in a recent book, for example, Letizia Paoli uses the concept of 'mafia brotherhood' only to refer to the Sicilian and Calabrian associations (Paoli, 2003). However, I intend to demonstrate that it is heuristically valid to speak of 'mafias' for all three organisations.

First, the Italian government authorities usually do so. Since 1982, a specific legal category exists in Italian law ('the offence of mafia-type criminal association'), which is frequently applied in the investigations against the Sicilian mafia, the Calabrian 'Ndrangheta and the Campanian camorra (Ingroia, 1993). In the 1980s, even the Italian Parliamentary Investigative Committee on the Mafia (operating in the Italian Parliament since 1962) changed its name to Parliamentary Investigative Committee into the Phenomenon of the Mafia in Sicily and Other Similar Criminal Associations. And, again, the Direzione Investigativa Antimafia, the anti-mafia central investigating office created in 1991 to coordinate anti-mafia investigations, presents bi-annual reports to the Parliament in which the Sicilian mafia, the Calabrian 'Ndrangheta and the Campanian camorra are all included in the category 'Organised Crime of Mafia Type'.

To consider the other reasons why the three above-mentioned organisations can all be termed as mafia, it is necessary to define the very word mafia. In this article, this indicates:

a criminal and delinquent structure, or better, an aggregate of criminal organisations having a particular 'political skill' i.e. the ability to take root in a territory, control vast economic resources, exercise forms of control over increasing parts of local society by imposing itself with the use of a strong military apparatus (Pezzino, 1997: 10).

In other words, the mafia is a type of organised crime with 'something extra', which resides in its organisational dimension – formal and secret, independent and pre-dating the management of the single activities and illicit enterprises, and which operates as a primary element of internal identification and of defence against the outside world.

It is precisely thanks to the existence of a formal mafia organisation that mafiosi are able to take root in a given territory, exercising various forms of control on the local society and its resources. This pattern of action emerges most clearly in Sicily, but it is also true for Campania and Calabria, even if the history of local criminal associations has had a different course, more fluctuating and uncertain, with alternating periods of obscurity and re-emergence (Ciconte, 1992; Marmo, 1984 and 1997). Considering these similarities, some authors have theorised a common origin of Italy's three main criminal associations in the centuries of the Spanish and feudal rule of southern Italy (Tranfaglia, 1991). This is, however, a thesis that needs further historical proof, because it tends to present the mafia as a residual phenomenon and is thus unable to grasp their original modernity (Bevilacqua, 1992).

Mafia organisations aim to exercise a long-term territorial control so that they can present themselves as social realities of stable power, capable not only of creating collaborative networks with legitimate authorities and official institutions, but also of exerting increasing pressure on them. Recently, Rocco Sciarrone defined this characteristic by using the concept of 'social capital' (1997: ch. 1). According to his analysis, the mafias show their specificity in the activity of networking, i.e. in creating a web of relationships with various social subjects with the aim of pursuing their own goals of power and enrichment (both these elements, as will be shown, have travelled on the same track since the nineteenth century). In other words, mafia associations aim to exercise the typical functions of a modern political entity: imposing norms of behaviour on the general population, controlling a territory, exerting physical coercion and punishing transgressors and imposing a rudimentary tax system through the practice of generalised extortion.

The organisation-extortion-violence triad really describes the structure, methods and activities of the mafia since its origins. And this triad is not exclusively typical of the Sicilian mafia, but also characterises the Calabrian and Campanian mafia phenomena. In Naples, for example, extortion is the *camorristi*'s main activity, and is imposed on all, licit and illicit, economic businesses (Casarino, 1984; Marmo, 1990). Similarly, the first criminal cases against members of the Calabrian 'Ndrangheta at the end of the nineteenth century confirm the extraordinary relevance of extortion, the illicit crime that symbolises mafia control over local communities.

Another common element is the presence of initiation rituals and of a peculiar inner reality. Mafiosi are made, not born, and the presence of this symbolic and value-linked dimension is not an invention of those who are collaborating with judicial authorities (the so-called *pentiti*, literally 'repentants'), nor is it an element of folklore, but a very strong source of identification within the organisation itself. In this case as well, the historical continuity is very strong.

The initiation ritual (the presentation of the 'candidate' in front of the assembly of mafiosi; the swearing of an oath while holding a holy image; the explanation of the rules) was for the first time described to contemporary law enforcement officers

by Tommaso Buscetta, member of a Palermitan family of the Sicilian Cosa Nostra who was the main witness during the *maxi-processo* (maxi-trial) held in Palermo against the Sicilian Cosa Nostra in 1986 and 1987 (Stajano, 1992: 38 *passim*). However, a similar description may be found in the 1876 confession of Salvatore D'Amico, a mafioso of the Stoppaglieri group in Monreale and in several other instances of mafia history (Gambetta, 1992: appendix II). This ritual is present also in the history of the Calabrian 'Ndrangheta, or Onorata Società (Honoured Society), where it assumes the form of a schematic series of questions and answers at first learned by heart and then orally transmitted (Coletti, 1995: 59-60; Paoli, 2003).

Through their convicted members, nineteenth-century mafia associations took these initiation rites over from the sects of the Carbonari and Freemasons that were widespread in southern Italy regions in the first half of the nineteenth century. Before Italy's unification in 1861, in fact, both political opponents and the first mafiosi long prison terms were handed down in Palermo and particularly in Naples (Recupero, 1984, 1987).

The initiation rite strengthens the organisation cohesion, being a rite of passage through which the new mafioso undergoes a process of 're-socialisation' within the organisation and underwrites a 'status contract', subordinating to the mafia group all his previous allegiances. Thanks to this 'ritualised personal relationship', the bond between the mafioso and the mafia group assumes the outlines of a 'not entirely institutionalised political community', which is nevertheless capable of providing itself with norms, such as the obligation to tell the truth, the duty of mutual assistance and the respect of secrecy (Paoli, 2003). The importance of the ritual is confirmed by its persistence through the decades and by its transposition into social contexts different from the original ones. How else could we explain the similarities between the ritual apparatus of the Sicilian mafia and that of the American mafia, as described by Joe Valachi in the early 1960s (United States Senate, 1963)?

This interpretation of the mafia relies, on the one hand, on the detailed archive research conducted by several historians (primarily, Paolo Pezzino, Rosario Mangiameli and Salvatore Lupo), and, on the other hand, on the statements of mafia defectors (*pentiti*) turned government witnesses.¹ Both historians and ex-mafiosi have disclosed the mafia phenomenon to the outside world since the mid-1980s. To fully understand the mafia phenomenon, however, we need to reconstruct the debate on organised crime and the mafia and, particularly, the question of the existence of the mafia as a formal organisation, that has been the most hotly debated issue since the mid-nineteenth century.

¹ For a list of mafia *pentiti* declarations, see Paoli (2000: 305-18).

3. The Problem of Organisation

Since the 1860s the word 'mafia' has been given widely differing meanings. The mafia has been considered a simple criminal phenomenon, an expression of the Sicilian culture, a positive desire to make one's own justice, the strong arm of Sicilian landowners, a criminal enterprise and much else. This confusion is the result of the great deal of attention and conflicting opinion that the mafia has generated in the spheres of culture, politics and public opinion since Italy's unification in 1861. Some years ago Giovanni Falcone himself defined the mafia as an 'over-defined' concept, containing too many different perspectives and points of view:

In the past there used to be a certain restraint in using the word 'mafia' [...] now this term is used far too freely [...]. I am not at all happy that people continue to talk about the mafia in descriptive, all-embracing terms because varied phenomena, certainly pertaining to organised crime, but having little or nothing in common with the mafia, come to be jumbled together (Falcone, 1990: 10).

One of the most controversial points emerging from the history of the debate on the mafia is the question of mafia organisation – the 'associative paradigm', as Pezzino called it (1990). The discussion of this issue has been dragging on for over a century and half, since the mafia first appeared as a precise and defined social phenomenon.

The documents emerging from the archives are, however, quite clear. The term appears for the first time in an official document of 1865, when the official in charge of public security in Carini, a village near Palermo, explains an arrest by referring to it as a 'mafia crime'. Shortly afterwards, the prefect of Palermo, Filippo Gualterio, speaks of the mafia as a criminal association in a report to the Minister of the Interior. In such a way, *ab imis*, the word 'mafia' entered everyday language in the first decade following Italy's unification to indicate a particular criminal organisation.² The success of this word, however, also resulted from the frequent performances of a drama written by Giuseppe Rizzotto in 1863 and entitled *I mafiusi de la Vicaria*. The drama recounts the daily life in the jail of Palermo (*la Vicaria*), over which control is exercised by an association having a hierarchical structure, rules and initiation rites, whose members are called mafiosi.³

² The word is probably a transposition of the adjective mafioso, a translation of one of the following Arabic terms: *mayas* (overbearing, arrogant, boaster); *muafah* (the certainty of protection), or possibly *ma'afir* (the name of a Saracen tribe living in Palermo in the Middle Ages; for more detail, see Lo Monaco, 1990).

³ The text of *I mafiusi de la Vicaria* in Lo Schiavo (1962).

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This 'associative paradigm' dominated the discourse on the mafia in the first 15 years following Italy's unification. In the 1880s the Italian Positive School of Criminal Law and Criminal Anthropology again appropriated this analytical key. This is also the result of a series of books published by police officials, who had coordinated anti-mafia investigations and strongly stressed the associative dimension of the mafia phenomenon (Pezzino, 1990; Lestingi, 1885; Cutrera, 1900). Then, at the end of the nineteenth century, the Palermo chief of police, Ermanno Sangiorgi, described in minute detail the groups of mafiosi who operated in Palermo and the smaller locations in the hinterland, closely cooperating with each other.⁴

Reports of existing mafia associations are also produced in the following three decades. In 1937, Melchiorre Allegra, a physician and a member of the Castelvetro mafia family, described the structure of the mafia in the 1920s, referring to mafia groups and families and describing mafia initiation ceremony and inter-provincial ties in a confession to officials of the Police Inspectorate (De Mauro, 1962). Likewise, after the Second World War, an interesting report was written by the Carabinieri General of Palermo, Amedeo Branca in October 1946. The report stated:

The mafia, a hidden inter-provincial organisation, with secret tentacles that appear in all social classes, having as its exclusive aim unlawful enrichment at the expense of honest and defenceless people, has rebuilt its cells or 'families', as they are called here in slang, in particular in the provinces of Palermo, Trapani, Caltanissetta, Enna and Agrigento. The mafia, as had happened before Fascism came to power, has already succeeded in imposing supervisors and employees of its own liking on landowners, in granting lands or farms to rent at a good price to its affiliated members, in influencing public life with violence, interfering not only with the activity of single private persons, but trying to oppose the workers' recent gains with threats and violence towards trade union officials and leaders (Pezzino, 1995: 189).

General Branca stressed the existence of a formal mafia organisation: this is the key peculiarity of the mafia phenomenon, which we mentioned at the beginning of this article, the main resource thanks to which mafia associations are able to control a specific territory and its resources, exercise political functions and thus influence public life.

Despite widespread proof of the existence of mafia groups since the 1860s, the history of the debate on the mafia points to a real aversion against the 'associative

⁴ The reports, written by Sangiorgi between 1898 and 1900, are in Archivio Centrale dello Stato, Ministero dell'Interno, Direzione Generale di Pubblica Sicurezza, *Atti Speciali 1898-1940*, book 1, part 1.

paradigm'. This aversion fostered culturalist interpretations that perceived the mafia as a feeling, a behaviour, a typical Sicilian state of mind. According to this approach, no real 'mafia' would exist, but the adjective 'mafioso' could only be used to indicate the Sicilian's desire for independence, his opposition to abuses of power and injustices and his being, therefore, a 'man of honour'. Accordingly, these feelings would result in the Sicilian's allergy to police intervention in the resolution of any type of conflict. In 1874, Giuseppe Stocchi, a Tuscan writer and man of letters, published 14 letters in the *Gazzetta d'Italia* regarding the theme of public security in Sicily, in which we read:

The mafia is not exactly an association [...] Anyone who, whether because of his physical vigour or mental superiority or other striking qualities, feels able to impose himself on others [...] poses as a mafioso [...] This is [...] the good mafia, usually harmless and sometimes also useful, when the targets and inclinations of the leader are not dishonest or perverse (Archivio Centrale dello Stato, 1968: 983-4).

Along the same lines, the Mayor of Palermo and later member of Parliament, Marquis Antonio Starabba di Rudinì, declared the following on 10 March 1876 to a Committee of Inquiry appointed by the Italian Parliament, which had just arrived in Sicily to investigate the problems of public order:

But what is this maffia? I divide the maffia into three categories. I say that first of all there is a benign maffia. The benign maffia is that type of spirit of boasting, that non-definable inclination not to be overwhelmed, but rather to overwhelm others, that behaviour like the *farceur*, as they say in France. So even I, so to speak, could be a benign maffioso. I am not, but a maffioso can be anyone who has self-respect and has a certain exaggerated pride, and the inclination not to be overwhelmed but to overwhelm others, the will to appear courageous, to be ready to fight, and so on (Archivio Centrale dello Stato, 1968: 950-5).

In these two cases, we are confronted with a reassuring interpretation of the mafia phenomenon, elaborated by members of the Sicilian upper classes, which minimises mafia's criminality and its threat to society and denies any charge of collusion between politicians and mafiosi. A few years afterwards, this interpretation was codified by Giuseppe Pitrè, an ethnographer and researcher of Sicilian popular traditions. In 1889, Pitrè wrote that the mafia:

is neither a sect nor an association, it does not have regulations or statutes [...] If we put together and mix up some presumption, boldness, boasting, skill, overbearing manner, we will have something that resembles the mafia, without however actually being the mafia [...] The mafioso is not a thief, not

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a crook [...] The mafia is the consciousness of its own being, the exaggerated concept of individual strength, the only real arbiter of every contrast, of every conflict of interests and ideas; hence the intolerance towards superiority and, even worse, someone else's arrogance (Pitrè, 1889: 290 passim).

This interpretation has often been repeated by important Sicilian politicians, such as Vittorio Emanuele Orlando, one of Italy's Prime Ministers. Before the administrative elections of 1925, Orlando publicly stated that 'if mafia is taken to mean a sense of honour carried to extremes, an abhorrence of any arrogance or tyranny [...] the generosity which stands up to the strong but is benevolent towards the weak [...] then I call myself mafioso and am happy to be so' (Marino, 1976: 314). This point of view has persisted, virtually unchanged, up to our times. The same applies to the adroit semantic manipulation of the term *omertà*, taken to mean *omineità* (worthiness, a noble spirit) and not its original meaning of *umiltà* (humility). As such, *omertà* originally was a cultural code indispensable for the survival of criminal groups, in as much as it is synonymous with silence and obedience to superiors (Fiume, 1989).

This trend of denying the associative dimension of the mafia in favour of cultural or subcultural interpretations re-emerged in the period between 1960 and 1975, during which several seminal fieldwork studies were conducted in Sicilian towns by foreign anthropologists and sociologists (Hess, 1973; Blok, 1974; Schneider and Schneider, 1976). These studies were clearly influenced by what was happening in the United States, where, between 1950 and the early 1960s, a debate had emerged on the nature of criminal organisations and the very concept of organised crime. The American debate was prompted by the hearings and the documentation produced by investigative commissions of the United States Congress (first the Kefauver Committee, later the McClellan one) and found its main source of division precisely in the question of whether or not organised crime had its own distinctive formal dimension (Santino and La Fiura, 1984).

Applying concepts and methods of network analysis to the study of local Sicilian communities, the foreign scholars working in Sicily insisted upon the existence of mafiosi but not of the mafia as a formal organisation. For them, the mafia was merely a 'quasi-group' (i.e., a non-corporate group), a network of family ties and informal – friendship and clientelistic – relationships through which the mafiosi would carry out illicit enterprises together. Furthermore, for these scholars, the mafiosi personified a series of attitudes and values, a 'subculture' widespread throughout the whole of Sicilian society, and exercised functions of representation and social mediation for the more traditional segments of the Sicilian society, monopolising the channels of (political and economic) communication and trade between the centre and the periphery. In a well-known book, *La mafia imprenditrice*, published in 1983 (*The Mafia Business*, 1988), Pino Arlacchi accepted his predecessors' conclusion, assuming the non-existence of the mafia as a formal

association. Arlacchi, however, revised his thesis in two following books, based on interviews with two of the first contemporary mafia defectors, Tommaso Buscetta and Antonino Calderone (Arlacchi, 1993, 1994).

As already mentioned, during the 1980s and 1990s, law enforcement investigations provided irrefutable proof of the existence of contemporary mafia associations and a new generation of historians demonstrated that mafia groups were active in Sicily as early as the mid-nineteenth century. Despite this abundant proof, some recent books and articles still overtly aim at revising historical findings, promoting the thesis that the mafia as a secret society was an invention of the police and judicial authorities, and 'melding' mafia associations in a broader social stratum (the 'mafia bourgeoisie'), that holds power and gains control of resources illegally and violently (Crisantino, 2001). There are also reconstructions of the patterns of mafia violence that tend to deny the secret dimension of mafia criminal brotherhoods, unreservedly identifying the mafiosi with the dominant Sicilian classes and a state always ready to repress social movements, so that mafia violence and state repression (above all in the post-1945 period) are seen as the two sides of the same coin (Santino, 2000). Even today, those who study the mafia have to do so using a complex game of mirrors and contrasting interpretations.

4. The Origins: The Mafia and Banditry

In Sicily, several conditions favoured the development of the mafia phenomenon in the first half of the nineteenth century. In 1812, the Sicilian Parliament abolished the feudal system, a decision confirmed by the Bourbon rulers during the Restoration, and a model of census monarchy (i.e. a system in which political rights were based on the income taxes paid) was established in Sicily for the first time (Romeo, 1950; Renda, 1984). As a result of these changes, identities and social and juridical hierarchies were redefined and conflicts split local communities. Clashes did not merely set aristocrats against bourgeoisie, but involved different patron-client groups, the so-called 'clientele' or *partiti* (Davis, 1988). The political struggle and social tensions resulting from this embryonic process of modernisation were not resolved by the political dialectic or market forces but rather outside the framework of legality.

In Sicily, in other words, there were no hegemonic social classes able to guide social processes and interact with political institutions. In the course of what has been called a 'violent modernisation' (Pezzino, 1990), 'violent entrepreneurs' (*imprenditori della violenza*) came to play an important and often decisive role, usually composing networks that impinged upon a wide range of social groups. Illegal violence was resorted to by a plurality of social players: the so-called 'parties' (*partiti*), namely factions struggling for the control of local administrations; social climbers and *nouveaux riches*, who were usually of peasant extraction and

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controlled the break-up of large agricultural estates; as well as bandits or people of very humble origins, who used violence as an alternative means of climbing the social ladder (Recupero, 1984: 10-15).

These violent groups and individuals organised themselves on the basis of familiar and personal solidarities, often tracing back to the feudal period. Many of these 'violent entrepreneurs', in fact, came from the old feudal landowners' armed groups. Although formally disbanded after 1812, these groups kept on roaming the Sicilian countryside committing crimes such as cattle rustling, theft, and kidnapping. At the same time, they displayed a very marked interest in politics, creating alliances for control of local administrations. Furthermore, they established protective agreements with representatives of higher social strata, both with landowners (who often resold stolen goods) and public authorities (mayors and judges). The latter often occupied the highest positions in the violent entrepreneurs' networks of support and protection, which enabled their gangs to operate freely and guaranteed them impunity (Recupero, 1984 and 1989; Fiume, 1984).

This socially widespread violence – the real defining characteristic of nineteenth-century Sicilian society – had an organisational framework since its beginning. At least some of the criminal networks developed a hierarchical internal structure. As the official Puoti from Carleone put it in 1846, there are the 'organisers' who 'work together, prepare the plans, supervise the operations, establish the objectives and choose the operatives, hide the booty, keep the animals on their own land'; the 'mediators' who transmit the orders to the lower ranks and 'negotiate and deal with the courts, the island judges, the public officials and the prisons in order to keep intact all the strands of the black web of destruction'; and finally, the 'operatives', the criminal 'labourers' (quoted in Fiume, 1984: 74-5). This is, thus, a violence systematically enforced to accumulate resources. For example, in the centre of Sicily an organisation, the Sacra Unione (Holy Union), operated since the 1820s in the villages of Mazzarino, Aidone, Barrafranca, Mussomeli, Delia and Butera, comprising 38 people, mainly *campieri* (herdsmen) and *gabellotti* (lease-holders), but also including two priests. The network of collusive relationships was very wide, including even the judge of Mazzarino and several local politicians (Fiume, 1984: 98 *passim*).

Possibly having similar cases in mind, in 1838 the Bourbon official, Pietro Calà Ulloa, wrote a report to the Minister of Justice of the Kingdom of the Two Sicilies. This report is considered the first precise description of a mafia *cosca* (group, i.e. mafia family):

There are in a lot of villages unions or brotherhoods, kinds of sects that are called *parties*, without colour or political aim, without meeting-places, without any other link than the dependence on a leader, who may be a landowner here, or an archpriest there. A common fund serves various needs: to get an official dismissed, to defend him, to protect a witness, to accuse an innocent. There are so many kinds of little governments in the government.

The lack of police has multiplied the number of crimes! People have come to a tacit agreement with the criminals. As soon as a theft occurs, intermediaries come out to offer transactions to recover the stolen goods. The number of such agreements is never-ending. So a lot of landowners thought it would be better to become oppressors rather than the oppressed, and they join the parties. Many important officials covered them with an impenetrable aegis [...] Sometimes the funds are held in common with other provinces in order to commit thefts and to deal in stolen animals between one province and another (Pezzino, 1995: 6-7).

Calà Ulloa's report highlights certain elements that characterise mafia groupings even today: the use of violence; the roots in a given territory and the extensive network of collusive relationships; the collusion of public authorities and widespread illegality; the mixed social composition of most mafia groups; and the presence of a precise structural framework (there is even a 'common fund'). The report also confirms the emergence of mutual relationships between members of the subordinate classes, who used violence to control a territory and foster their own economic activities, and those of the upper classes, who were ready to exploit the *facinorosi's* services. Despite the absence of specific, detailed studies, one cannot also avoid being struck by the extraordinary geographical correspondence between the location of the first violent networks active the early nineteenth century and the areas where mafia associations have been active for over a century: an observation already made by Pasquale Villari in 1878 in his *Lettere Meridionali*.

'Violent entrepreneurs' also played a significant political role during the revolutionary crises which affected Sicily in the first half of the nineteenth century up to Italy's unification in 1860 (Fiume, 1982; Pezzino, 1990). In particular, during the 1848 revolution, violent gangs and their leaders (Giuseppe Scordato and Salvatore 'Turi' Miceli), officially under the authority of the Provisional Committee, played an autonomous role in the political vacuum resulting from the fall of the Bourbon government that revolutionary authorities could not completely fill. Scordato and Miceli's gangs, in particular, enjoyed ample freedom to resolve conflicts, to take revenge against the Bourbon police, to free their comrades from jail and to carry out illegal actions for gain. There was, in effect, a sort of osmotic process between the path of political mobilisation and growth of Sicilian society and the experiences of organised violence: an osmosis which was centred upon the development of initiation rites.

After the 1848 revolution, in concomitance with the harshest period of Bourbon repression, the early violent networks became quiescent. They often operated at the service of the landowners and the rich bourgeoisie, keeping an eye on their lands. However, they did not give up their illicit activities although they did forget their modernity and desire for autonomy, which would re-emerge during Giuseppe Garibaldi's expedition for the unification of Italy in 1860.

5. Italy's Unification

The spread of the new unitary political and administrative system was fraught with problems and difficulties in Sicily right from the beginning. The new political system (a parliamentary monarchy) allowed greater political freedom, the power of local administrations increased (as they became responsible for tax collection, public works tenders and the control of electoral lists), but the new state's social legitimacy remained very low and its relationship with the Sicilian ruling class was difficult. The peculiarities of the Sicilian society were a real puzzle for most public officials of the Kingdom ruled by the House of Savoy. The problem of public order remained insoluble (in 1861 alone there were 200 murders in Palermo, most of which went unpunished), and the local ruling class had no qualms about continuing to cultivate relationships and links with 'violent entrepreneurs', with the aim of gaining power and wealth.

As Norbert Elias explains, a modern state comes into being when there is a 'crystallisation centre' capable of being in complete control and acquiring legitimacy and consensus, so that it monopolises violence, provides protection and fosters political integration (1983a, 1983b). In Sicily, however, the Italian state appeared to intervene in a distorted fashion: there was a sort of 'permanent transition' (Lyttelton, 1990: 341), in which the Italian government became an incomplete crystallisation centre. In the dialectic between the centre and the periphery, the Italian government did not succeed in making the periphery an integral part of the system and having it share its ultimate goals.

In other words, the Italian state was unable to establish a monopoly of force, to guarantee the security of its citizens, to have the rules of free trade respected – and all these functions were instead carried out by violent networks. In 'unified' Sicily these networks consolidated their position by taking advantage of precisely the tensions between central institutions and local society, between national and local interests (Blok, 1974; Schneider and Schneider, 1976). It was as if the process leading to unification had given a further impetus to the 'violent modernisation' begun in preceding decades, thus paving the way for the process of 'democratisation of violence', that was first highlighted by Leopoldo Franchetti:

Released, by now, from every bond and privilege, the industry of violence had an independent existence and organisation. This had the effect of infinitely multiplying the things for which violence was committed. Consequently, in the Island, the class of the *facinorosi* [violent] was in a special condition, which has nothing to do with that of criminals in other countries [...] it is even a social institution. Since, besides being a tool at the service of social forces existing *ab antiquo*, it has become, because of the conditions brought by the new social order, a class with its own industry and interests (Franchetti, 1992: 111-15).

This 'special condition' of Sicilian men of violence crystallised in the decades following Italy's unification. However, among those profiting from mafia violence we find even representatives of the Italian state. This is indirectly confirmed by the already mentioned report of the prefect of Palermo, Gualterio, who in April 1865 informed the Minister of the Interior:

A serious and very long misunderstanding between the Nation and the Authority resulted in the so-called *Maffia* or *dishonest association* growing in boldness, and on the other hand the Government found itself without the proper moral authority to demand the necessary support from the large class of the most influential citizens in wealth and authority [...] certainly it is [...] clear and evident that, as we can already see in other circumstances, *this association had and still has a guiding hand, strong protectors and effective defenders* [...] it *even has statutes* and a traditional habit of depending on the powerful figures, at first on feudal overlords, without whom it nearly changed its position turning from being protected into a protector, basing itself on the use of fear, and later protecting political parties, all equally small in size, and so all equally needing to turn to this arm of violent people in case of necessity (Alatri, 1954: 92 et seq.).

Here we have the 'Maffia' with a capital 'M', an association which 'even has statutes', is able to ensure protection, and is tied to political factions. This analysis does not achieve Calà Ulloa's subtlety, because Gualterio tends to reduce the mafia phenomenon to an instrument in the hands of the 'political parties', an expression used at that time to refer to the various opponents of the 'Historical Right' cabinets that ruled the country from 1861 to 1876 (opponents were considered Garibaldi's followers, Bourbon supporters as well as the deputies of the left opposition). This 'political-delinquent paradigm' was also repeated in the aftermath of the Palermo insurrection of 1866, in order to conceal the socio-economic causes of the revolt (Camera dei Deputati, 1981; Ryall, 1995).

Proof of collusive agreements between state authorities and mafiosi emerge even more clearly from other documents of the same epoch. As early as 1861, Diomede Pantaleoni, a physician from Macerata sent to inspect Sicily by the then Prime Minister, Bettino Ricasoli, criticised the frequent habit of state officials of turning to members of violent associations for help:

As happens in every sectarian association, those who establish ties with this party include people of ill-repute, the violent, the cut-throats, who, causing great scandal and harming the government's reputation, often come to be appointed to government posts on account of the protection, which a sect always gives its followers (Alatri, 1954: 43 et seq.).

In the following years several episodes prove secret exchanges and collusions between high-ranking state officials and mafiosi. Among them, we can mention the murder of the *garibaldino* Giovanni Corrao which was carried out by mafiosi at the request of the police, the ‘conspiracy of the stabbers’, which can rightly be considered the first example of a ‘strategy of tension’ (Pezzino, 1992), and the clash between the public prosecutor of Palermo, Diego Tajani, and the chief of police, Pietro Albanese. The indictment against Albanese was filed in 1875, when Tajani had already become a member of Parliament and accused police authorities not only of lacking an ‘anti-mafia policy’, but of ‘politically’ using mafiosi’s violence against their political opponents in exchange for judicial immunity. As we will see, this is a practice bound to remain a constant in the history of the Italian state in Sicily (Alatri, 1954: 230 *passim*; Tajani, 1993).

6. The Consolidation of Mafia Power: ‘A Particular Exchange of Favours’

By the early 1870s, mafia associations succeeded in consolidating their own structure and activities, particularly in western Sicily. This process of consolidation was noted by Giovanni Maurigi, advocate general at the Court of Cassation of Palermo, in the course of a hearing in May 1867:

Every village near Palermo has two or three bosses with their following [...] They are involved in thefts and *componende* [illegal mediations]. The authorities have often reached a compromise with the mafia [...] and its members have grown proud and become emboldened by this (Camera dei Deputati, 1981: 153).

The documentation in the Central State Archive and in the State Archives of many Sicilian towns also leaves no room for doubt: in the 1860s and 1870s the districts around Palermo, including Uditore, Monreale and Bagheria, Partinico, Mezzojuso, Corleone, Cefalù and Marineo, all witnessed an ‘industry of violence’ (Franchetti, 1992) already consolidated and territorially entrenched.

The area with the greatest mafia concentration was the so-called Giardini (‘Gardens’), namely a district of the Palermo province that had the most intense cultivation of citrus fruits. This very fact disproves the thesis, first developed by Arlacchi (1988), of a dichotomy between an old mafia aiming at social power and a new entrepreneurial one, rising after the 1960s and primarily attracted by profit and wealth. Historical research shows that since the late nineteenth century, mafia groups developed and concentrated in the richest areas with the most lucrative economic activities, controlling the circulation and exchange of goods and products between the city and the countryside (Catanzaro, 1991).

An interesting example is also provided by the mafia *cosca* of Uditore, a north-western suburb of Palermo, whose activities were described in a memoir by Gaspare Galati, a physician and owner of citrus estates, who was forced to leave Palermo by the mafia group itself. Using a famous expression of Leopoldo Franchetti (1992), the *cosca* leader Antonio Giammona (born in 1819) can be defined as a typical '*facinoroso* [violent man] of the middle class', whose social rise was due to his capacity for employing violence and the political and economic power deriving from it. A labourer in 1848, Giammona was an active member of the armed revolutionary groups in 1848 and 1860. By 1874, he had become a rich agricultural tenant and president of a benevolent association, the Tertiary Franciscans of Uditore. According to Galati, this benevolent association provided a good cover for the mafia group (Archivio Centrale dello Stato, 1968: 999-1016).

Composed of 28 people, Giammona's group aimed at monopolising the labour market of the watchmen in the citrus estates of Uditore (the so-called *guardania*) and controlling land rent (the *gabelle*), land purchases and citrus fruit sales. As the citrus cultivation process was characterised by a high number of private transactions, it was quite easy for the mafiosi to impose their 'protection': Giammona's group is thus an example of the mafia acting as a 'private protection industry' (Gambetta, 1992), in a context in which the mafia did not merely offer protection, but also used violence to increase the demand for protection (with threats and 'scrounging' letters to landowners and tenants who did not belong to the association and thefts during the picking and sale of the citrus fruits).

In the Sicilian hinterland, mafia groups usually drew most of their revenues from large agricultural estates, which were the main economic and productive units of that part of the island. The mafiosi were heavily involved in the struggle for controlling the local land rent, and were *campieri* (herdsmen) and *gabellotti* (lease-holders), playing a mediating role between the landowners and the farm labourers (Blok, 1974). They were also involved in activities, such as kidnapping and stealing livestock that they often carried out with bandits. In this way, mafiosi established relationships of complicity and protection, guaranteeing bandits' impunity in exchange for receiving stolen goods and a share of their illicit gains. Despite their frequent partnerships, however, the mafia and banditry remained distinct phenomena: the mafiosi were often, at one and the same time, protectors of the bandits and defenders of property against them. Nonetheless, certain features of banditry (the gang structure, the control of a given territory, contacts with the legitimate authorities) also provide a marked analogy with the mafia.

Offering a criminal alternative to the state's legitimate authority and counting on an extensive web of collusion, mafia power continued to spread (Romano, 1963; Pezzino, 1991). It thus had a strong impact on society, as noted by the prefect of Palermo, Gioacchino Rasponi, in a report sent to the Minister of the Interior on 31 July 1874:

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[...] In fact the maffia invades all classes of society; the rich person makes use of it to keep himself and his property safe from the incurable wound of crime, or he makes it his tool to maintain that overbearing influence and prevalence that he now sees decreasing because of the development and the progress of free institutions; the middle class throws itself into its arms and uses it, either for fear of revenge, or because it considers [the mafia] a powerful means to acquire a mistaken popularity, or to obtain wealth, or to succeed in achieving its own wishes and ambitions; finally, the proletarian becomes a maffioso more easily [...] The mafia of the proletarian or of the lowest class of the population, usually does not have other aims than to demand respect from its neighbours, or to commit robberies, or to extort money from a rich person through fear, or with threats often put into effect too cruelly, or by causing damage to the possessions or the person.

Hence it follows logically that the members of the maffia, or its supporters, are in agreement among themselves, and they help and support one another, because in this way they inexorably satisfy their own interests; so much so that we can see the country crime always giving their city counterparts a hand [...]

It is necessary to distinguish the maffioso who is an operating criminal, in other words the crook, from the one who does not appear openly, but is the centre of news regarding the premeditation and the execution of crimes. Apart from these two types of maffiosi, there is another type, that of the accomplices, who could be said to be affiliated to the maffia, who become like this either to profit from the illicit gains of the crooks, or out of fear, or to obtain protection from them or to safeguard their lives and properties [...] (Pezzino, 1995: 73-6).

From the prefect's words it is clear that violence was routinely resorted to outside the framework of legality by the upper, middle and lower classes. Despite the diffusion of violence in society, there also a clear hierarchy of roles and functions (as the prefect says, there are the 'associate members') and a complex structure of relationships and protection linking the city to the countryside. The studies recently carried out by Salvatore Lupo (1993) and Rosario Mangiameli (2000) have, for example, demonstrated that the bourgeois families that managed to control the political and administrative life of many Sicilian towns consolidated their power and wealth by cultivating long-standing and trustful relationships with members of mafia groups.

The consolidation of mafia 'circuits' proceeded smoothly even after the transfer of power from the Historical Right to liberal left-wing coalition (the so-called Parliamentary Left) on 18 March 1876. In fact, the takeover of the executive by the 'only party of the middle classes' enabled violent networks, and particularly the politicians who were their protectors, to have greater access to power, partly also because of the extension of suffrage in 1882. An extended suffrage was in

fact synonymous with new areas of activity for mafia associations that became definitively absorbed within the power structures and continued to participate in the violent modernisation of the island.

During the second half of the 1870s the failure of the first phase of the state's anti-mafia policy also became evident. While the Historical Right was still in power, evidence was collected against members of many criminal associations, above all in the cities. However, most of the mafiosi brought to trial were subsequently acquitted (and so only retained a 'presumption' of guilt). This was also the case for the above-mentioned *cosca* of Uditore, so much so that its leader, Giammona was able to continue his violent rise in subsequent decades.

Likewise, soon after the 'Parliamentary Revolution' of 1876, General Antonio Malusardi conducted a campaign to suppress banditry and, between 15 and 23 August 1877, succeeded in capturing the leaders of the main bandit gangs operating in Sicily (Rinaldi, Domenico Sajevo, Merlo and Antonino Leone). Malusardi, however, could not dismantle the relationships of collusion and protection that the bandits and mafiosi had with their accomplices in the upper classes of society. In their testimonies, bandits often mentioned members of rich, upwardly mobile families who had maintained constant and profitable relations with them, but were never charged of any crime. Here we notice another structural deficiency in the fight against the mafia: a century ago as much as today, it is very difficult to prove the penal relevance of the collusive behaviour of upper-class members, who share mafiosi's aims but are not formal members of the mafia organisation (Lupo and Mangiameli, 1990).

It is no mere coincidence that in the late nineteenth century the above-mentioned interpretation of the mafia as a mere feeling was most common, hence confirming the intermingling and reciprocal influence of three distinct levels (the political, judiciary and cultural) of the 'mafia problem'. Conceptualisations of the mafia depend, in fact, also on the relationship between illegal associations and legitimate powers, i.e. on that 'particular exchange of favours' bound to characterise the history of Sicily up to the present time. Judicial difficulties, political connivance and cultural stereotypes interacted even during the long investigations and trial(s) concerning Emanuele Notarbartolo's murder, which forcefully brought the 'mafia problem' to the attention of the national public (Barone, 1987; Lupo, 1990).

A person of the highest moral standing, Emanuele Notarbartolo was mayor of Palermo between 1873 and 1876 and the director general of the Banco di Sicilia for over a decade from 1876 up to 1890. On 1 February 1893, while travelling by train between Termini Imerese and Palermo, he was stabbed to death. Public opinion held Matteo Filippello and Giuseppe Fontana, members of the mafia group of Villabate, responsible for the murders, and the member of Parliament, Raffaele Palizzolo, was regarded as the instigator of the assassination. Palizzolo's biographical details were similar to Antonio Giammona's: for many years Palizzolo was a tenant of citrus estates, participating in the activities of the local mafia group and investing his illicit gains in buying land and orchards in the south-eastern suburbs of Palermo.

His political position was opposed to Notarbartolo's and their rivalry had become more marked in 1882, when Palizzolo was elected to Parliament.

In the course of his investigations into the murder, the Palermo chief of police, Ermanno Sangiorgi, sent 31 hand-written reports to the Minister of the Interior, describing the spread of mafia gangs in the suburbs of Palermo. Sangiorgi identified 670 mafiosi, divided into 8 distinct groups that went through alternating phases of cooperation and conflict. According to Sangiorgi, who wrote his reports between November 1898 and February 1900, the undisputed leader of the Malaspina district was Francesco Siino, and Palizzolo was tied to this group, which also included the two men materially responsible for Notarbartolo's murder.

Once again, political protection got the better of anti-mafia repression. In fact, Palizzolo (a man of the Sicilian parliamentary left faction) and Fontana were acquitted in Milan on 31 July 1902, then sentenced to 30 years' imprisonment by the Bologna Court of Appeal. However, the Court of Cassation quashed the sentence because of a legal technicality. The trial, repeated in Florence, saw them definitively acquitted in 1902. Although Sangiorgi's efforts resulted in charges against many mafiosi identified in his reports, the evidence was deemed inadequate by the courts and all defendants were acquitted in 1901.⁵

The strengthening of the mafia networks and of their economic and political relationships continued during Giovanni Giolitti's premiership. By now, the mafia had become part of the 'normality' of Sicilian life, it was a consolidated electoral machine at the service of liberal groups, was heavily involved in the struggle for the control of the land, and had also acquired an international dimension with its expansion into the United States (Lupo, 2001). In other words, the 'violent modernisation', which we identified as peculiar to Sicilian society and the root-source of the mafia associations, went on undisturbed.

An analysis of mafia activities in the years preceding and following the First World War unequivocally disproves the frequent thesis that describes the mafia as a persistent feudal or semi-feudal entity. By the First World War the '*facinorosi* of the middle classes' had become a class that retained very few traditional characteristics, but, on the contrary, was doubly tied to the sites of wealth production and was able to monopolise the channels of communication of the political and social system between the periphery and the centre.

Mafia modernity is clearly demonstrated by Anton Blok's study of Genuardo, a town of the Palermitan hinterland. This study shows how the rivalry between two groupings, the local gang of the Cassinis (supported by the liberal deputy, Lo

⁵ In this case a cultural implication is also evident: during the three trials, many members the Sicilian ruling class created a 'Committee Pro-Sicilia' in Palermo, which supported 'poor Palizzolo' against northern public opinion accused of racist prejudices against the whole of Sicily. See Renda (1985: 245 *passim*).

Monte) and gangs of the towns of Aderòn and Bisacquino (linked to the Jaconis and the popular deputy Ippolito Vassallo of the Catholic Popular Party) split the local community from top to bottom, both during the fascist era and the later struggle for land. This violent clash, which began during the First World War, revolved around the control of the two most profitable local resources: wheat and sulphur (Blok, 1974).

Likewise, in Villalba (in the neighbouring province of Caltanissetta), the famous mafia chief Calogero Vizzini repeatedly showed all his modernity and entrepreneurial skill, despite being frequently portrayed as the 'descendant' of an old, peaceful, mediating mafia. In the first decade of the twentieth century, a period marked by strikes and the struggle for the land, Vizzini 'sided' with the peasant movement to reduce the power of the great landowners. He was also the real architect of the collective leasing of the large Belici estate by the local Catholic cooperative in 1908, which was presided over by his uncle, Angelo Scarlata, a priest. Vizzini also became the manager of some local sulphur mines, influenced the policies of the Sicilian Sulphur Consortium, and even participated, as part of the Italian delegation, in the negotiations for the creation of an international sulphur cartel in 1922 in London, alongside men of the calibre of the future Finance Minister, Guido Jung, and Guido Donegani, the founder of the Montecatini, one of the major societies in the Italian chemical industry (Mangiameli, 1984; Lupo, 1993).

Both before and after the First World War the mafia relationship with the nascent peasant movement was by no means always congruous or peaceful: in this period the socialist propaganda in the countryside became a problem for landowners and *gabellotti*, many of whom were themselves members of mafia groups. Nonetheless, mafia social role cannot be reduced to that of the strong arm of the dominant classes. The mafiosi pursued their own economic interests in complete autonomy: their social action *vis-à-vis* the peasant movement (and, as we will see later on, the fascist regime as well) was inspired by a 'pattern of alternatively resisting change and then moving to exploit change' (Schneider and Schneider, 1976: 183). When the mafiosi were unable to 'manipulate' the ongoing social processes or infiltrate local institutions (cooperatives, movements, political groupings) participating in these processes, they strove to obtain a position of hegemony through the use of violence. When it was not possible, for example, to control the actions of peasant or land-leasing cooperatives, the mafia obstructed them by threatening or murdering peasant leaders.⁶ This pattern of action links mafiosi to *camorristi* – in the first ten years of the twentieth century, the camorra also violently opposed the socialist activism and propaganda on Naples' waterfront (Monzini, 1999: 54-5). If it was

⁶ In 1914, Bernardino Verro was killed in Corleone, Lorenzo Panepinto in S. Stefano di Quisquina, Nicolò Alongi in Prizzi (for more information, see Santino, 2000: 90 et seq.).

necessary, mafiosi were even perfectly capable of using violence against members of the church. For example, in 1916, Giorgio Gennaro, the priest at Ciaculli (a village near Palermo), was killed by men of the Greco mafia family (Fulveti, 2001: 141-3).

Given the entrenchment of mafia groups in Sicily's politics and society up to the end of the First World War, the consolidation of the fascist regime represented a real watershed and break with the past. The evaluation of anti-mafia repression operated by the fascist regime in the 1920s is today still an object of discussion among scholars (Duggan, 1986; Lupo, 1987; Tessitore, 1994; Renda, 1985), but undoubtedly the totalitarian nature of the regime eased the state monopolisation of violence. From 1926 onwards, there was an evident decrease in the number of crimes, and, for the first time, between 1929 and 1939 there was a series of successful prosecutions against members of mafia groups in the district of Palermo, Madonie, Mazzarino, Bagheria and Monreale.⁷ Furthermore, the complete suspension of parliamentary democracy deprived mafia networks of that web of protection that had safeguarded them for so long. In short, one could say that the modernisation without modernity realised (or hoped for) by the fascist regime replaced the 'violent modernisation' typical of the mafia.

Despite the severity of fascist repression, mafiosi demonstrated an extraordinary capacity for resistance. The thesis describing the mafia as dead proved in the 1930s to be a mere propagandistic statement of the regime. In fact, in the second half of that decade police reports presented at the yearly ceremony for the opening of judicial activities provided more than one hint about the persistence of mafia activities: even if the regime forbade the use of the term 'mafia', the phenomenon was still alive (Pezzino, 1995).

7. The Mafia after the Second World War

In its first decades, republican Italy witnessed a clear strengthening of mafia associations. The post-war growth of Italian organised crime was, however, not a novelty, but an extension of what had happened before the fascist regime and the Second World War.

The mafia did not spring up again at the end of the Second World War thanks to Allied support, as has long been thought, but more simply it was soon able to consolidate its own internal structure (membership recruitment was already operational in 1946) and re-establish its relationships with the legitimate authorities. As

⁷ The charges and rulings of these trials can be consulted in the State Archives of Palermo and Caltanissetta, and represent a very interesting source for historians, above all to shed light on the history of the mafia in the first three decades of the twentieth century.

much as the year following Italy's unification in 1861, the immediate post-World War II period was characterised by the weakness of the state and the political system: in such an emergency situation the violent know-how of the mafia and its 'social capital' found fertile soil in which to quickly recover the ground lost in the preceding 20 years.

Furthermore, the Cold War very soon became the key element around which the 'mafia problem', as we defined it in the preceding pages, re-established itself. Within the strong clash of ideologies, which continued at least up to the 1980s, the mafia regained that role of opposition to social change and popular movements that it had played before and after the First World War, thus providing fundamental support for the Christian Democratic Party, that remain unchallenged for over half a century in governing Sicily and the whole country (Commissione Parlamentare Antimafia, 1993).

Electoral support and violence (primarily against the leaders of the peasant movement, who in the 1940s and early 1950s were the embodiment of political opposition) became the basis of a veritable fusion between the mafia and the christian democrats. Even several Catholic researchers (Borzomati, 1984; Stabile, 1999) have recently recognised the 'transplanting' of Sicilian mafia associations from the old liberal groupings to the new Christian Democratic Party structures, which emerged in Sicily in the second half of the 1940s. Catholic hierarchies also played an important role in this 'transplantation' process: cardinals, bishops and priests openly encouraged believers to support christian democrat politicians and their mafia clients instead of the socialist and communist parties (Fulvetti, 2001: 150-5). And, once again, we are faced with the intermingling of the three levels within which the 'mafia problem' developed. The establishment of stable and long-lasting ties with political institutions guaranteed mafiosi judicial impunity until the beginning of the 1960s. In their turn, these ties had a clear representation at the cultural level. For over 15 years after the Second World War, public discourse was dominated by views and a language that tended to deny the presence of mafia associations and minimised the criminal (and social) danger of the mafia phenomenon (Renda, 1987: 120 et seq.).

Control of territory allowed mafia associations to get engaged in a multiplicity of economic enterprises in which they kept on shifting between resistance and openness to change. Between the 1940s and the 1950s mafiosi helped landowners to successfully sabotage the agrarian reform. Later on, however, mafia modernity expressed itself in the exploitation of the rapid building expansion of many Sicilian towns and in the involvement in tobacco and drug trafficking.

The mafia's increasing involvement in economic activities during the economic miracle that invested the whole country was not merely due to a change in the mafia, but in society. It is no accident that the main players of the Sicilian mafia's first large-scale involvement in drug trafficking were members of Greco's mafia

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family – a ‘classic’ *cosca*, certainly not a ‘new’ one (Pezzino, 1995: 220 *passim*; Lupo and Mangiameli, 1990).

During the 1950s and 1960s there was an expansion of illicit markets in Sicily, and, as a result of this expansion, the ‘industry of violence’ found new sources of economic gain. The desire to control the drugs market also fostered violent competition between various mafia groups, giving rise to a ‘mafia war’ between 1961 and 1963. Even in this case, however, we are not confronted with anything new, as feuds and violent resolutions of controversies had characterised mafia history since the nineteenth century.

Instead, we can detect certain changes in the mafia during these years in two other areas. On a strictly organisational level, a tendency towards centralisation developed which produced an oligarchic structure in the main Sicilian mafia association, La Cosa Nostra. Thanks to the influence of American ‘relatives’, some stable provincial structures were created at the end of the 1950s and, in the 1970s, a regional commission also tried to represent the interests of all Cosa Nostra families (Stajano, 1986; Lupo, 1993).

The evolution of the relationship with the political system is even more striking – a real indication of a change in the ‘mafia problem’. This makes the last 30 years of the twentieth century a very important period for the history of the mafia, one worthy of particular and close attention. As we know, the mafia has always maintained, as a basic approach, its own autonomy *vis-à-vis* the political system. Precisely due to its secrecy and its capacity to take root in a territory, and thus control a certain number of votes, mafia power has succeeded in offering politicians support in exchange for judicial impunity and economic favours. As a result, since Italy’s unification there has been a two-fold mediation between politicians and local communities (a mediation conducted by mafiosi) and between mafiosi and the state (a mediation conducted by politicians). Up to the 1960s, politicians and mafiosi largely remained two distinct entities. Very rarely in fact, before that time, we come across politicians who are strictly speaking mafiosi, namely members of criminal associations – Raffaele Palizzolo is, in this case, the exception. In the 1960s, for the first time this distinction became blurred and the relationships between mafiosi and politicians became closer and more intense. This change has also been confirmed by recent investigations. As the former Palermitan prosecutor Giuseppe Ayala puts it:

Nowadays there is the politician who yields to the mafioso, because he obtains electoral support by promising favours. Then there is the politician who is a typical example of a business-like management of politics, who not only gets the mafioso’s votes, but also deals and intrigues with the mafioso, in particular in the assignment of public works contracts; finally, there is the politician who is an organic expression of mafia (Ayala and Cavallaro, 1993: 99-110).

As the Parliamentary Commission on the Mafia also noted in its first report *The Mafia and Politics* (1993) the relationship between mafia bosses and politicians should not be viewed as 'all-embracing'. Rather than 'political convictions', La Cosa Nostra has a political strategy. As the Palermitan judge Giovanni Falcone maintains, the mafia:

does not feel, by definition, any inclination for a kind of activity, politics, that is directed to the care of general interests. What Cosa Nostra is interested in is its own survival and nothing else. It has never thought of taking or managing power. This is not its job (Falcone, 1993: 166).

Mafiosi and politicians have thus been linked by a relationship of peaceful 'mutual protection': the protection of the mafia (deriving from its capacity to impose its own rules through violence) is exchanged for the protection (not only impunity, but also the ability to make institutions and public resources receptive to the organisation's interests) offered by politicians and government officers.⁸

In the first 50 years of the Italian republic, the Christian Democratic Party constituted a channel that enabled the mafia to have direct contact with the key centres of the Italian political and institutional system. The introduction of universal suffrage enlarged the political 'circuits', and the centrality of the mass political parties enabled mafia associations to intervene in the decision-making process and, therefore, the allocation of resources. The internal structure of the Christian Democratic Party – especially since the 1950s when the party became more locally rooted and a system of membership cards was introduced – provided greater scope for mediation between politicians and the mafia. Opportunities for the mafia to influence the law-making process, the executive and, obviously, the judiciary became greater and more direct (Commissione Parlamentare Antimafia, 1993; Tranfaglia 1991, 1992).

Because of the peculiarities of Italy's economic development, the exchanges between mafia bosses and politicians increasingly involved economic resources. In fact, the development model realised in Sicily was based on a policy of public intervention (begun in 1950 with the creation of the *Cassa per il Mezzogiorno*), which quickly transformed itself into a sterile redistribution of resources and subsidies not benefiting development, but merely contributing to the consolidation of a class of 'mediators' who, through these resources, established their own local hegemonies (Gribaudo, 1982). The waste resulting from a policy of making debts

⁸ In this sense the analysis of Diego Gambetta, and its definition of the mafia as a 'private industry of protection', is incomplete: mafia associations, in fact, supply protection, but also receive it from legitimate powers.

only to provide assistance or favouring 'clients' encouraged and reinforced the bases of the relationship between politicians and mafiosi. In Sicily, this alliance was further reinforced by the island's special status of regional autonomy. Mafia associations, therefore, began to think that it would be useful to exercise a tighter control over the political class they themselves had helped to establish, and to exert more pressure on the politicians, considering them a 'resource'. Finally, mafia 'violent entrepreneurs' thought themselves capable of beginning what Salvatore Lupo has called a 'bid for absolute power' (Lupo, 1993).

As a result, for the first time, mafia 'violent entrepreneurs' began to exert pressure on the political system as a whole. This change of attitude resulted in the murder of numerous politicians and state officials since the late 1970s and in a 'final clash' between the state and the mafia in the early 1990s (Lupo, 1993: 230-250). This clash was primarily staged by a group of mafiosi, the Corleonesi (Violante, 1993), that had reached a position of hegemony inside the Sicilian mafia in the late 1980s. They were not 'new' mafiosi, as they resorted to traditional mafia methods, but they won the internal competition by using a higher level of violence.

8. Conclusions

This article stops on the threshold of the 1970s, before the beginning of the Corleonesi era. The last 20 years of the twentieth century undoubtedly represent the period best known in the history of Italian organised crime and witnessed very important events, ranging from the bomb explosions staged by the Sicilian Cosa Nostra in 1992 and 1993 to the trials of Giulio Andreotti (see Letizia Paoli's contribution on contemporary Italian organised crime in Part II). The recent events of the last 25 years confirm the presence of certain crucial elements and recurring features: the ongoing 'violent modernisation' of Sicily's politics and economy; the strained relations between the Italian state and the Sicilian society; the frequent exercise of organised violence; and the presence of 'violent entrepreneurs' aiming to control the main sources of income. This article has indeed tried to trace these crucial elements and features back as early as the second half of the nineteenth century, when they first crystallised and established themselves, and then to prove their relevance up to the 1970s, in order to follow the development of mafia associations.

The result is a diachronic analysis covering over a century, in which tangled relationships – between the mafia and the 'question of the mafia', between legitimate institutions and powers, on the one hand, and the criminal underworld, on the other – have remained the ground on which the Italian state has continued to fight the mafia and tried to gain popular consensus and legitimacy.

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Multiple Underworlds in the Dutch Republic of the Seventeenth and Eighteenth Centuries

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1. Introduction

It is no coincidence that the milieu of professional criminals is often denoted by the term *underworld*, which designates a circuit, a community, a society – in short a world – leading a shady existence. The term leaves little doubt about ranking: the underworld occupies a position below – not beside, and certainly not above – regular, established society. Members of the underworld occupy correspondingly low positions in terms of social status, although they may, in fact, figure among the top in terms of wealth. This concept of an underworld may strike a modern reader as an age-old, unchanging phenomenon. However, if we look at the historical usage of the term ‘underworld’ (*onderwereld*) in the Netherlands we are in for a surprise. In the Dutch Republic of the seventeenth and eighteenth centuries – the area and period on which this contribution focuses – the term was unknown except in its classical meaning of *netherworld*, the world of ghosts and the dead. It does not figure even once in the many thousands of pages of criminal records composed by the judicial authorities which constitute our main source of information about the practice of organised crime in the Netherlands during this period. Nor was it used by the men or women themselves who belonged to the circles of professional criminals. Intriguingly, the term ‘organised crime’ (*georganiseerde misdaad*) seems to have been equally unknown at the time.

Upon closer inspection, it turns out that there were no generic terms at all in the Dutch language for the whole of the early modern period in order to describe what we now regard as a specific social section on the margins of (or even outside) established society. The criminal sentences and legal ordinances of the sixteenth, seventeenth and eighteenth centuries use generic terms neither for the perpetrators of crimes nor for the crimes themselves. Nothing changed in this respect during this period. Obviously the Dutch – public authorities, *burghers* and criminals alike – did talk about crime and criminals, but they did so using colourful and specific terms describing very definite criminal activities or specialisations. At the time everyone knew the word for thief (*dief*), pickpocket or cut-purse (*zakkenroller* or *beurzensnijder*), burglar (*inbreker*), who specialised in climbing in through windows (*inklimmer*), or robber (*rover*). Words for violence (*geweldenarij*), threats (*bedreigingen*) or a vagrant and thieving way of life (*leven op roof en bedelen*)

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were equally common. Abstract terms such as ‘crime of violence’ or ‘property crime’ were unknown at the time. The absence of such terms (which, by the way, should be interpreted in the context of the history of language rather than of the history of crime and justice) and of the words ‘underworld’ and ‘organised crime’, should not be taken, however, as evidence for the absence of the notion of fearsome and subversive subcultures. Many criminal sentences reverberate with the Dutch authorities’ fear of particular criminal conspiracies and organisations. But their fears seem to have been inspired more by certain types of crime or specific groups than by a united, tightly structured and dangerous underworld.

The Dutch Republic differed in this respect from contemporary France, Italy, England, and the German states. During the seventeenth and eighteenth centuries relatively detailed and explicit representations of so-called ‘counter-societies’ circulated especially – but by no means only – in literary publications in those countries. Counter-societies were conceived as literal counterparts of established society, with their own hierarchies (consisting of kings or commanders, élite, middle groups, and workers), organisers who operated from behind the scenes, and fringe zones of prostitutes, fences and thieves’ assistants (Chartier, 1970, 1974; Burke, 1987). Literary works occasionally idealised such ‘alternative societies’ – with considerable success, given the fact that nearly everyone in the Western world has heard of the altruistic Robin Hood, who fought against corruption (and a nasty sheriff) and created a better world in the forest together with his companions. Far from the city, free from the rules and regulations of established society, he helped the poor, redressed wrongs, and fought injustice. At the same time there was also a much more negative literary representation of the criminal conspiracy which assisted a villainous and notorious bandit (or in later centuries an elusive criminal mastermind with unlimited resources) to gather a fortune and threaten the social order.

The influence of these stereotypical and almost schizophrenic double images of the idealised good bandit and the prototypical evil villain reaches beyond the literary domain and can still be traced in modern historiography about early modern criminals. Anecdotal historiography dealing with notorious criminal bands and bandits usually focuses on the negative side.¹ On the positive side we find Hobsbawm’s (and his followers’) famous and equally ideal typical ‘social bandit’ (Hobsbawm, 1981). These literary stereotypes have by no means permeated all historiography, however. Studies by Peter Burke (1987) and Roger Chartier (1970, 1974), to name but three, demonstrate a more subtle approach towards early modern (French and Italian) opinions about the so-called counter-world of crime and its social hierarchy in both fiction and historical reality.

¹ This type of historiography mainly dates from the period 1815-1960. A Dutch example is Christemeijer (1828).

As usual, the relation between historical fiction and historical reality is problematic. We cannot know for certain whether the existence of a criminal counter-culture in works of fiction indicates that such subversive criminal counter-societies actually existed in early modern France, Italy, or England. Nor do we know whether the near absence of such phenomena in Dutch contemporary literature indicates their non-existence in real life in the Netherlands.² But there is a relatively uncomplicated – albeit time-consuming – way of finding out about the historical existence of ‘a Dutch underworld’. Masses of criminal records (consisting mainly of sentences and interrogations) were produced in the Dutch Republic during the seventeenth and eighteenth centuries. Many of them are preserved in the archives. Going through series of such records, which were produced by several hundreds of local and regional courts with full judicial powers in criminal trials, and piecing together the groups and bands, can tell us much of what we want to know about organised crime and the lives of the men and women who were involved in it.

This contribution focuses on two main topics: criminal organisation and practice (rather than judicial theory or the practice of deterrence, prosecution or punishment); and the ways of life, culture and everyday existence of various groups that were professionally involved in crime. For reasons that will become clear as we proceed, urban and rural organised crime will be treated separately. Neither long-term patterns during the seventeenth and eighteenth centuries nor the connection between warfare and banditry or between economic and immigration patterns and organised crime will be discussed here.³ Nor will we go into developments and changes during the nineteenth century or present a comparison between *ancien régime* organised crime and modern organised crime in the Netherlands. Such an extension of the discussion to the modern period would be most interesting and is much needed, but is impossible as yet, since synthetic studies of Dutch organised crime for the period 1800-1950 are lacking, and even rudimentary (published) information about the nineteenth century is not readily available as yet.

The main question in this contribution is whether we can speak of an underworld in the Dutch Republic – that is, a world or series of groups or networks in which crime occupied a central place, but which did not necessarily have subversive purposes.⁴ We should furthermore ask to what extent we are dealing with a separate subculture, as manifested in a different language, special patterns of behaviour, customs, types of organisation and hierarchy, and perhaps in special modes of

² By Dutch I mean works originally published in Dutch, not the various translations published in the Netherlands of French and Italian works.

³ For an extensive discussion of these themes, see Egmond (1993).

⁴ Crime can of course be defined as subversive in itself, but I use the term subversive here in the sense of actively plotting the subversion of established society.

honour, rituals and symbols. And we should ask to what extent we can speak of a *counter-culture* – that is, a culturally and socially distinct segment of society which did not just differ from established society, but actively distanced itself from the upper world in terms of norms, behaviour, and customs. Finding an answer to these questions entails taking a closer look at established Dutch society first. We will briefly inspect the main rules guiding the organisation of its social hierarchy, the criteria that members of the Dutch establishment used to distinguish themselves from groups at the margins of society, and the means (especially judicial ones) which they used to maintain such distinctions.

2. The ‘Upper World’ and its Organisation

The usual image of the Dutch Republic is of a relatively homogenous, tolerant, and prosperous society dominated in every respect by the so-called middle classes, which comprised the whole range of skilled labour via lower middle classes to the upper reaches of the higher bourgeoisie just below patriciate and nobility. There was little room left at both extremes. The nobility at the top was insignificant compared to the surrounding European states. At the bottom a marginal fringe comprised beggars, vagrants and other wandering poor. Stark social contrasts were lacking, and social conflict occurred less frequently and took on less drastic forms than in other European states. If we add to this the image of the seventeenth century as a Golden Age of prosperity and development, and the special position of the province of Holland as a region of high wages which attracted migrant labour from other parts of Europe, there seems to be little room left for a sizeable social category of poor and marginal vagrants – like the ones described by, for instance, Beier, Hufton and Cobb for England and France during the sixteenth, seventeenth and eighteenth centuries (Beier, 1985; Hufton, 1974; Cobb, 1972, 1975). But this image of the Dutch Republic is a highly selective and partly distorted one. There was reportedly a considerable marginal social category of vagrants and other wandering poor during the seventeenth and eighteenth centuries, but given the lack of quantitative evidence we should interpret ‘considerable’ as significant rather than large.⁵

The distance between the heart of Dutch society (the broad range of middle classes) and these marginal groups is epitomised by the term ‘established’ with its connotations of respectability and bourgeois virtue. Strictly speaking there is nothing wrong with a mobile way of life, but it is no coincidence that the well-to-do middle

⁵ On the basis of the available evidence it is impossible to estimate how big or small this marginal zone was – especially given the fact that by no means everyone who belonged to it was involved in criminal activities and that no one belonging to this social stratum can be traced in the archives unless he or she came into contact with the courts.

and upper classes are denoted by the term 'establishment'. To have a fixed address, a home, and not to wander around was – and is, up to a point – the hallmark of belonging to society. In the Dutch Republic and most other continental European states the distinction between persons of fixed abode and those who had none was not only a social one. It had important legal aspects and consequences as well. Until the French Revolution it was self-evident to most Europeans that people were unequal, which meant that some people had more civil rights than others. Different criteria were used to determine to which specific category a person belonged and thereby which civil rights he or she would have. Women were generally categorised according to the status of their father or husband, but enjoyed fewer rights than the men of their class. The main criteria for men were income, class, and having a fixed abode, while in many countries religion (either Protestantism or Catholicism) was added to this list after the Reformation.

In the Dutch Republic we find Protestant, wealthy and established men of fixed abode and good reputation at the top of society. They enjoyed full civil rights and were allowed to vote and to hold public office. If they became suspects in a criminal trial they enjoyed relatively extensive legal rights. In the early modern period civil rights were not based on nationality – being a recognised inhabitant of a state – but on citizenship, i.e. being a respected inhabitant of a town. An established burgher of Delft who wanted to move to Amsterdam, for instance, had to newly obtain citizenship in Amsterdam. To qualify he had to demonstrate all of the above-mentioned qualities (one of which was the ability to pay the required sum). Christians who did not follow the dominant religion, such as Catholics in the Dutch Republic, did not enjoy the same full civil rights even if they fulfilled all other requirements – they were not allowed to hold public office, for instance. The same held for well-to-do and established Jews, who were not allowed to inherit citizenship (unlike Christians) and, moreover, like all Jews, were subject to a whole range of restrictive rules and regulations. On the other hand, the Jewish community in a number of Dutch towns did have special privileges regarding its internal government. Finally, there was a rather large segment of Christian society consisting of men and women who did have a fixed abode and a job and who were not indigent, but still could not afford to pay the required sum to become a full citizen (or were not interested in citizenship for various reasons) and therefore did not have full civil rights.⁶

The gap between the categories discussed thus far and the next one is a significant one. All persons – regardless of their religious denomination, gender or even class – who did not have a fixed abode thereby lacked not only certain civil rights, but also crucial forms of legal protection once they became suspects in a criminal procedure. The difference between these two main categories is often immediately

⁶ On the theme of tolerance, difference and inequality in the Netherlands, see especially Gijswijt-Hofstra (1989).

clear from the type of legal procedure followed in a criminal trial. Vagrants, beggars, ex-soldiers or sailors, rural seasonal labourers, and itinerant salesmen were invariably dealt with by so-called 'extraordinary' procedure, which meant that they could be more easily arrested, detained and tortured than their established counterparts. They had no right to legal assistance during any part of their detention or trial, and the punishments imposed on them were usually of a physical character – imprisonment, whipping, branding or capital punishment – if only because most of them had no possessions and thus could pay no fines.

Gypsies formed a special subcategory within the group of the non-established, itinerant poor. Their position was even worse. During the late fifteenth and the sixteenth centuries an increasing number of official placards issued by the Dutch authorities declared their whole way of life – and thus their very existence – illegal and punishable by law. In the course of the seventeenth century their position deteriorated even further as the Dutch local and provincial authorities more frequently acted upon these placards and announced even more stringent measures. By 1695 the Estates General issued a placard announcing that any farmer who felt threatened by a group consisting of more than six adult Gypsies was allowed to shoot them and would go unpunished if any were killed. It is no exaggeration to call the period between 1695 and the late 1720s one of unmitigated persecution of Gypsies in the Netherlands.⁷

The fundamental legal inequality in the Netherlands (which in this respect did not differ much from the rest of the European continent) served various purposes – but first and foremost functioned as a means of control in a society without an organised police force where the maintenance of law and order depended on a very small number of local sheriffs and their personal assistants, each of whom was responsible (and only had powers) in his own, generally small territory. Mobility to them implied the power to escape from their jurisdiction, and thus had to be dealt with by special powers.⁸ One of the questions to be answered is to what extent mobility was indeed related to involvement in crime. And was the situation the same in the cities as in the countryside?

3. The Urban Underworld

Unlike London or Paris, Amsterdam (with its circa 200,000 inhabitants during the seventeenth and eighteenth centuries) was surrounded by a number of smaller

⁷ The number of publications about the early modern history of Gypsies in the Netherlands is very small indeed and the history of their persecution – although mentioned occasionally – has not been seriously studied as such. It deserves a special monograph.

⁸ On the subject of inequality before the law in criminal trials, see Egmond (1989, 2001).

towns, all of them at a short distance and connected by busy roads and waterways. Moreover, the countryside in the western half of the Dutch Republic was densely populated and 'urbanised' in the sense that the proximity of towns deeply influenced not just the rural economy but also rural life in all of its social, political and cultural aspects. Frequent exchanges between towns and the nearby countryside were typical of the western part of the Dutch Republic, but not of the much less densely populated east and south, where few towns of any significance could be found. The high degree of urbanisation in the west strongly influenced the character of the urban underworld. In the Dutch Republic the urban underworld was not the local underworld of the capital, but an interurban phenomenon, concentrating its activities in the principal towns of the western part of the Netherlands, such as Amsterdam, Haarlem, Rotterdam, The Hague, Leiden, Delft, Utrecht and a few smaller towns. Interurban exchanges and the concomitant mobility were among its most significant characteristics. To a certain extent we may even speak of an international urban underworld, which united the towns on or near the North Sea coast in northern Germany, the Dutch Republic and the southern Netherlands. Two men from the southern Netherlands who were convicted in 1659 by the town court of Rotterdam are a good example. Cesar Cambalot from Louvain and Jacques Richan, alias Mareschal, had served as soldiers in the Spanish armies. Afterwards they joined up with various other former soldiers and committed burglaries in numerous towns all over the northern and southern Netherlands, such as Brussels, Louvain, The Hague, Rotterdam and Amsterdam. Other urban thieves and burglars used to operate in Hamburg, Bremen, Amsterdam, Rotterdam and Antwerp.⁹

Highly skilled and specialised burglars and thieves who generally operated alone were among the most prominent members of the urban underworld. 'Alone' should not be taken too literally, however, for they, like most other thieves, relied for information and the sale of their stolen goods on informers, fences, and other members of the so-called 'criminal infrastructure'.¹⁰ No professional thief could (or can) do his or her job properly without being able to rely on a number of assistants, ranging from supportive relatives to regular informers, friendly innkeepers and persons who provide means of transport. One of the specialised solo thieves of the period was Engelbrecht Stroo (Straw) from Hamburg. During the period 1656-1658 he broke into the houses of rich diplomats and aristocrats in and near The Hague. In 1658 Stroo was convicted for the theft of a number of diamonds. He managed to escape from prison, was caught again, and finally sentenced to hanging

⁹ Municipal Archive Rotterdam, (1659) *Criminal Records*, 248.

¹⁰ I have borrowed the term 'criminal infrastructure' from Küther (1976). Still interesting is McIntosh (1975: 18-27).

by the court of Leiden.¹¹ Those men and women who operated with others usually formed sizeable networks (rather than close-knit groups) of ‘ordinary’ thieves, cut-purses or pickpockets which could comprise up to 40 or 50 persons. Normally, the members of such networks operated in smaller groups recruited from the larger network and remained together in a town only for a brief period. The network as a whole could never be seen together in one location. During their trips from one town to another they criss-crossed the whole Dutch Republic, the southern Netherlands and adjacent German territory, always concentrating their criminal activities in the towns.

Between the solo thieves and these large networks – in terms of the number of participants – we find groups of thieves specialising in particular types of burglary or concentrating on only one or two kinds of booty. Some, for instance, were only interested in the stocks of merchants in the warehouses and storage cellars of Rotterdam, Amsterdam, Antwerp and Hamburg, stealing large quantities of goods, such as cocoa, wood, textiles, coffee or lead white. There were also small groups of professional shoplifters and sneak thieves, who specialised in sneaking in and out of houses. They came and went unseen and unheard during the night, taking money, silver, or anything of value that could be re-sold. Other burglars had developed special techniques of entering houses via the roofs and attics using ladders, and some thieves specialised in precious metals. All of these categories were designated by specific terms by the thieves themselves.

The principal organisational characteristics of the urban underworld in the Dutch Republic are epitomised by the band of Andries Wissenhagen alias The Heathen or The Gypsy (*De Heijden*). During the 1650s Wissenhagen was involved in a whole range of illegal activities in various Dutch towns. During the larger part of the year he lived in Amsterdam, but Wissenhagen and his close associates – such as Piet from Leiden (alias Piet Pair of Shoes) and Hendrik Hollow Eye (*Holoogh*) – also visited Rotterdam, The Hague, Delft, and some other towns in Holland on a regular basis. They spent much of their time in taverns frequented by sailors, ex-soldiers, artisans, unskilled labourers and servants. There they planned series of burglaries and thefts. They stole silverware, clothes, textiles, small utensils and furniture from houses and shops, and sold them to their regular fences. During the same period each of the men also temporarily joined other small groups of thieves for other ‘projects’.¹²

Almost all urban thieves in the Dutch Republic thus belonged to several overlapping networks comprising regular thieves, pickpockets, burglars, cut-purses, card

¹¹ National Archive, (1658) *Court of Holland*, 5656; National Archive, (1663) *Criminal Records Rijnland*, 8.

¹² On this band see Municipal Archive Amsterdam, (1651) *Criminal Records*, 581.

sharps, street robbers and swindlers. Such networks should not be envisaged as centrally organised, hierarchical criminal organisations, but they were definitely more than just a hotchpotch of persons involved in illegal activities who happened to find themselves in one town or another. Although there was no central planning and many of these groups operated separately, they nevertheless constituted an interurban underworld. Precisely because the membership of these groups overlapped to a certain extent, many thieves temporarily joined other groups while membership of such groups varied. Thus, there was indeed some degree of unity in this circuit. Most men and women had at least heard of each other, knew of each other's specialisations, and shared access to certain fences and reliable inns and hostels. The latter formed hubs in their networks of information exchange.

One of the most important and typical characteristics of the Dutch urban underworld, its interurban character, was predicated on both the high degree of urbanisation in the western part of the Dutch Republic and the good connections by road and water (De Vries, 1981). Like all travellers, thieves profited from the excellent and regular services of the stagecoaches and barges. A group of men might take the barge from Amsterdam to Haarlem in the morning, spend the afternoon drinking with some friends, commit burglaries or thefts during the night, and move on to Delft or The Hague early next morning. This is the main reason why most professional thieves in the Netherlands had records of convictions in more than one town. These records simply reflect their mobile way of life.

Three more important characteristics of the Dutch urban underworld should be mentioned here. It was very unusual for more than five or six men to be involved in urban burglaries. More often only two or three men actually participated, with one as lookout. Compared to rural burglaries this number of participants was small. It was directly connected with practical circumstances such as noise and the importance of speed. In the narrow urban streets and alleys larger numbers were a hindrance.

Secondly, there was a striking lack of formal hierarchy and recognisable leaders in the Dutch urban underworld, which may well be connected with the relatively small size of the active groups, the high degree of mobility, and the overlapping membership of many networks. It might be going too far to speak of an egalitarian structure of the Dutch urban underworld of the seventeenth and eighteenth centuries, but it certainly lacked a central figure of the stature of Jonathan Wild, with his double role as chief of the eighteenth-century London underworld and key informer to the local authorities.¹³ In early modern Holland there do not seem to have been any criminal masterminds – either in the foreground or the background

¹³ About the early modern London underworld, see George (1985); McMullan (1982); Beattie (1986).

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– unless, of course, they have been so successful as to have completely remained invisible. Not all thieves were equal, however, and there were differences in status and prestige between experienced professionals and newcomers, between young and old, between skilled and unskilled, and, not least, between those with fewer or more convictions to their name.

Finally, urban thieves and burglars rarely operated outside the towns. Apart from their journeys from one town to another they seldom seem to have left the urban setting. In fact, it looks very much as if they did not feel at home in the countryside, both in a professional sense and in a more personal one. They invariably lived in the towns, usually in rooms in cheap lodgings and basements which they rented by the night or the week. They spent their leisure in urban inns, at the markets, or out on the streets. But perhaps this was true of most city-dwellers and it is not really known whether the countryside held many attractions for the inhabitants of the seventeenth and eighteenth-century towns (apart from the very rich with their country houses). The few trips that urban thieves made outside the towns usually had a practical purpose – they sometimes rented a barge or smaller boat for transport, fishing or trade activities.

Their legal professional activities were also closely connected with the towns. Most members of the urban underworld were not full-time thieves or burglars but combined seasonal or irregular legal work with their illegal activities. Many of them worked as servants, carters, assistants to the market sellers, buyers and sellers of old clothes, and so on. This represents a much more general pattern. Like most other early modern working people, members of the underworld did not have a nine-to-five working day. Nor did they do the same kind of work every week all year round – whether legal or illegal. Thus, if we use the term ‘professional’ thieves this does not imply that these persons were full-time thieves or spent the largest part of their time stealing; it does not even mean that most of their income came from theft.¹⁴ It refers to their professional way of operating and to their access to the criminal infrastructure, which enabled them to sell the stolen goods and obtain reliable information about where valuable goods might be stolen.

The theme of the general urban orientation of members of the urban underworld leads us to the difficult question of culture and subculture. Judging from the organisational characteristics of the urban underworld and the clear demarcation of its domain – towns and not countryside – we may conclude that there was a distinct urban underworld in the Dutch Republic. A segment of the population consisted of medium-sized to large, overlapping and interconnected, relatively non-hierarchical networks of men and women who were professionally involved

¹⁴ In this I differ from McIntosh (1975) and Beattie (1986), who regard either full-time involvement in or complete economic dependence on crime as the hallmarks of a professional criminal.

in crime. That is not the same thing as a distinct criminal subculture. Did these men and women differ at all from their fellow town-dwellers apart from the fact that they were involved in crime?

4. A Criminal Subculture in the Dutch Towns?

The ideal way to find an answer to this question would be to go back in time and investigate like an anthropologist, looking, listening, observing, and asking questions about topics such as status symbols, language, clothes, manners, codes of honour, rituals, friendship, relations between men and women, intrigue, gossip, initiation rites, rivalries, causes of conflicts, types of violence, secrets, coded languages and so on. About many of these subjects we know nothing or next to nothing, while the chances are minimal that the judicial archives will yield more information even if we spend ten more years looking for it. The reason is simple: interrogators at the time were not in the least interested in such subjects and any information about them therefore derives from chance remarks in the court records, from exceptionally talkative defendants, and from circumstantial evidence. It is, by the way, an intriguing fact in itself that the Dutch sheriffs were not interested in such subjects. After all, if they had really feared a cohesive and subversive criminal underworld with its own secret codes and signals which plotted against established society, one would have expected them to ask questions about those topics.

By close reading and a careful analysis of interrogations it is nonetheless possible to uncover fragments of the everyday life and customs of certain criminal groups and thereby go some way towards answering the question about a distinct criminal urban subculture. We will examine a small group of seventeenth-century urban thieves who mainly operated in the province of Holland during the 1680s and 1690s.¹⁵ It consisted of Abraham Janse Genaer, alias Labourloth or Pistols (*Poffertjes*) Bram, a professional burglar from Amsterdam, and his wife Annetgen Andries (born likewise in Amsterdam); Pieter Jansse, alias Peer De Brabander (from the southern province of Brabant) and his wife Anna Van den Berg (from Amsterdam); and Jan Claasse De Groot, alias Little Gerrit (from Amsterdam). All were in their twenties or early thirties by the mid-1690s. By 1698, when these men and women were tried (and some sentenced to death) by the provincial Court of Holland, every one of them had already been sentenced more than once to a long term of imprisonment in the house of correction. Peer De Brabander, for instance, declared during interrogation that:

¹⁵ See National Archive, (1698) *Court of Holland*, 5658, 5369-4. All quotations in this section are from the latter dossier.

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he had been arrested seven years ago at the exchange in Amsterdam on account of bad affairs, and when released had again been arrested on suspicion of having put his hand in someone's pocket at the theatre; he was whipped and confined in the house of correction for two years and afterwards banished from the region for four years.

A year later he was once more arrested, this time in Leiden and sentenced to 20 years in the house of correction followed by 20 years of banishment. Yet within two years he was free again because of 'services rendered to the authorities'. Two more convictions followed. Asked about his work, he declared 'that his profession is cutting purses and to have stolen at least one hundred purses, and also to have regularly stolen goods from window sills'.

The following quotation from the same interrogation sketches the way of life and especially the importance of travel in the lives of members of the urban underworld:

he stayed there for eight days until last Saturday when Bram Labourloth arrived by the barge from Gouda and joined him at his lodgings [...] and that they travelled together by barge to Gouda on Sunday evening, took the nine o'clock coach on Monday morning from there to Rotterdam, where they stayed until the evening, where Bram was arrested while they sitting together in a basement drinking. Thereupon he had gone to Overschie [near Rotterdam] where he spent the night at the inn where the barges from Delft moor. Next morning he returned once more to Rotterdam where he planned to cut some purses on the corn market, where he was arrested by local citizens while trying to steal a woman's purse.

His wife's statement is informative about the role of women and conflicts in the group:

she had been asked to go and warn Peer de Brabander, because the sheriff's assistants were looking for him because Peer and another associate of his were suspected of having committed a burglary in the house of a woman who sells vegetables in Amsterdam [...] Thereupon she had gone to the house of a woman called Antje, where she found Peer her husband, as well as Mancke ('Lame') Jan, and a woman called Trijn Sanders. She had told Peer that people were looking for him because of the burglary, when Jan asked her whether she had betrayed them and threatened to cut open her face with his knife. Peer had prevented him from doing so, saying 'the woman does it with the best intentions'. That Trijn Sanders was at that moment wearing one of the jackets stolen during this burglary and had delivered the rest of the stolen goods to a safe house in Amsterdam.

These quotations provide a good impression of the importance of travel and mobility in the lives of these men and women. They were continually on the road, from one town, inn or other meeting place to another, and from the places where they worked to their various lodgings. Women travelled as much as men, and from various details we may infer that the women were hardly, if at all economically dependent on the men and took as much part in public life as the men – although men and women were certainly no equals. There was no division between a domestic and relatively enclosed domain for the women and a public, more open one in which the men operated. In fact, there seems to have been little of a domestic or ‘private’ domain at all in their lives. Some women played a relatively influential role in these groups, ordering the less important men around, gathering information and arranging the sale of stolen goods. They did not hesitate to use violence either against other women or occasionally even against their men.

The threat by ‘Lame’ Jan to cut up Anna’s face shows that men did not hesitate to use violence against women either. Slashing the face – in particular by an upwards slash from the corner of the mouth into the cheek – was a customary type of punishment in these circles. There was even a special term for it: *de bek opsnijden* (literally, cutting up the mouth). In both the urban and rural criminal circles of the seventeenth and eighteenth centuries many men and women were nicknamed for their facial scars. Although suspects usually did not enter into details when interrogated about the causes of their conflicts, we can easily piece some of them together. There was frequent disagreement about the division of the booty. Rivalry between men about the women or vice versa was also an important source of conflict, as were suspicions that a member of the group had given information to rivals or betrayed the group to the authorities. As we have seen from the history of Peer De Brabander, there was often good reason to fear the latter. Considerable reduction of the term of imprisonment in exchange for inside information was quite common. The judicial authorities also paid some informers to act as undercover agents and spies. Convicted band members were by no means the only ones to assist the authorities. Women who had been betrayed by their men or wanted their man out of the way in order to start a new relationship, band members who thought they had been given an unfair share of the booty, and others – fences, relatives, rivals – who held a grudge against a person or even a whole group, could take their revenge by talking to the sheriff. Of course, there were stable relationships too in these circles, as well as firm and long-lasting friendships and loyalties. But on the whole the urban criminal underworld was not exactly characterised by strong solidarity.

It is unmistakable that personal prestige – and the concomitant claims to certain possessions, such as clothes, weapons, jewellery, and occasionally women – lay behind many of the conflicts and fights among members of the urban underworld. It is much more difficult, however, to ascertain to what extent such notions of status and honour were exclusive to criminal circles. It looks, in fact, very much

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as if they were part of a shared code of honour and morals in the lower ranges of the urban working classes. Very similar conflicts and punishments occurred (as documented in both criminal records and other sources in the town archives) among men and women from this background who were not at all associated with organised crime. Almost every man at the time carried a knife (guns, on the other hand, were extremely rare), and fights during which knives were drawn were an everyday occurrence at night, not only in the streets of Amsterdam and most other towns but also outside local rural inns in the provinces. Often rural labourers, sailors and ex-soldiers were involved, but knife fights were certainly not their exclusive domain. Occasionally someone was killed. Generally, however, these were routine cases for the judicial authorities because they usually knew who was involved and why. Knives were often drawn during drunken brawls outside taverns, fights between the youths of rival villages, or simply during discussions that got out of hand.

But knife fights had their own rules too – quite often they were not the simple, impulsive acts for which they were taken by members of the middle and upper classes (and the courts). In certain respects such fights resemble the ritualised duels fought by members of the upper strata. Knives only appeared when a stage was reached in a conflict or confrontation at which words were no longer enough. Then the location changed – men went outside, often looking for witnesses and/or supporters. That was the moment when knives were drawn but only – as yet – to scrape them against a brick or stone wall, making a typical noise and causing the sparks to fly around. It was a gesture that was nothing more or less than a formal challenge. Bystanders were often supporters as well, but they also ensured that the rules were observed. There should be no stabbing in the back or dirty fighting. How people actually fought, what these rules were precisely, and to what extent such informal rules constituted a real code of conduct remains in the dark until more research is done on this specific topic, but it is clear that an opponent need not be killed in order to end the fight. Just as in upper-class duels, it seems to have been enough to draw blood in order to avenge honour impaired.

Given the above considerations, we can only conclude that there was no distinct criminal *subculture* in the Dutch towns of the seventeenth and eighteenth centuries – whether we look at rituals of conflict, violence, or gender roles and relations. Men and women who were professionally (but not exclusively) involved in crime shared the culture of their non-criminal urban counterparts from the working classes. There is no evidence for the strong mutual solidarity that we might expect if there really had been a subversive and cohesive criminal underworld or counter-culture. Mobility may have been higher in these circles than among those not involved in crime, while urban crime itself entailed participation in fast-changing groups, but there is little evidence to suggest that concepts of honour differed or to support

the existence of rituals of initiation, swearing oaths of loyalty, or the use of certain special symbols or signs.

Two characteristics, however, may be seen to point to a (partially) distinct criminal culture and require a closer look – the use of jargon and the proliferation of nicknames. In the thousands of pages of interrogations we find numerous terms that are clearly thieves' slang and therefore often untranslatable – whether into modern Dutch or English – although we can often guess at their meaning. There is no reason, however, to assume that a single specific thieves' language can be reconstructed. Terminology seems to have differed in each period, town, region, and even group. For this reason we are fortunate if we find more than about a dozen or so slang words per recorded group. It is striking how the terminology used by members of the late eighteenth-century underworld was quite different from that used in the late seventeenth century, while there was a significant increase of Yiddish since 1700 – which in fact ran parallel with the influx of large groups of extremely poor Jewish immigrants into the Dutch Republic from central and eastern Europe.¹⁶ The more commonly used slang does not seem to have ever formed a real language and may well never have comprised more than a limited repertoire of professional terms.

Nicknames pose equally difficult questions. Here are some examples: Claas ter Hooven, aka Claas the Little Captain (*Kapteintje*), because of his role as leader of a group of card sharps who worked the passenger barges; Claes the Vicar (*Dominee*); Guilliam Jennis, alias Little Soldier (*Soldaatje*); Teunis Lievens, aka Finger (*Vinger*); Jan Sacharias, alias Cross-eyed Smith (*Schele Smid*); Symon Monet, alias the Turk (*Turckie*); Thomas Frankendaal, nicknamed Tom Mud (*Modder*), a bargeman; Bastiaen Paulus, alias Gourd (*Kalebass*); or Michiel Stampert, alias Jack of Clubs (*Klaveren Boer*). Anthropologists suggest different interpretations for the functions and meanings of nicknames, but they seem to agree that their occurrence points to a sense of community, although there may also be more practical reasons for their use. Nicknames may have served to identify individuals and distinguish between the thousands of men named Jan, Kees or Piet in the Netherlands in an age when many people did not have a surname (although we cannot be certain whether this was actually their function in criminal circles).¹⁷ Yet it is clear that they also contained funny, ironical and explicit or implicit references to an event, a personal characteristic, or a special feature. In order to understand such references one had to be an insider, to belong to the community. And the very fact that such nicknames referred to stories understood only by insiders helped to constitute a community.

¹⁶ Examples are *goochem* (smart), *versliegelen* (betray), and *baldoover* (spy).

¹⁷ There is no indication that nicknames of criminals served to mask identity, as a sort of safety measure against identification by the judicial authorities.

This confirms our previous observations – the urban underworld of the Dutch Republic did indeed form a community in this sense. People had heard of each other, knew each other personally or by reputation, and often knew each other's nicknames. Once again, however, it is far from easy to decide whether these nicknames and their uses differed from those of other, non-criminal segments of the urban working classes. We simply do not know enough to compare. It is pretty clear, however, that at least a few nicknames referred directly to involvement in crime and would not have occurred in any other circle than the criminal underworld. Wonderfully expressive ones are: Gallows Leaf (*Blaadje van de Galg*) for a burglar and robber who had many convictions to his name and would undoubtedly be sentenced to hanging on his next conviction, and Moses Cat's Paw or Uncut Diamond (*Kattenickel* or *Ongesleepe Diamant*) for a young Jewish apprentice pickpocket. Cutting diamonds was an almost exclusively Jewish profession.

To sum up, the Dutch urban underworld was distinguished to a certain extent from the 'respectable' urban lower classes by typical forms of organisation, a high degree of mobility, slang, and special nicknames. In every other cultural respect the men and women who were professionally involved in urban crime do not seem to have differed from members of the working classes who did not engage in crime. They seem to have been very much part of working-class life in the Dutch Republic in a cultural sense, and certainly did not belong to any subversive or cohesive counter-culture. This ambivalent position – distinct in certain organisational ways and in terms of their illegal activities, but mostly indistinct in a cultural sense – placed them on the edge of belonging and not belonging to Dutch society. They were literally living on the margins, but precisely for that reason they were not outsiders. For the real outsiders it is necessary to take a closer look at the countryside.

5. Rural Crime in the Urbanised Western Half of the Dutch Republic

We have seen that the countryside was almost completely irrelevant for the urban criminal underworld in the Dutch Republic. But what about rural bands, especially those operating in a region dominated by towns? Did patterns of mobility exist and were there connections between members of rural bands and the regular inhabitants of the countryside? Did members of rural bands rely on their support – just as Hobsbawm's famous social bandits could count on assistance from a broad range of rural inhabitants who were strongly opposed to the rich landowners?

In the western, most strongly urbanised part of the Dutch Republic the customs of rural thieves were quite different from those of their urban counterparts. Although they stole and robbed mostly in the countryside, the city walls and gates did not constitute the boundaries of some urban *terra incognita* for them. The Jaco gang

provides one of the most extreme examples in this respect.¹⁸ If it had not committed all its important burglaries and armed robberies in the countryside, we might even have classified this group as belonging to the urban underworld. Nearly all of its members lived in urban basements and other cheap lodgings, spent most of their spare time in urban taverns, and sold all their stolen goods to fences in the big cities of Holland. The band consisted, moreover, of very experienced thieves and burglars, most of them with a long criminal record and all of them well-known figures in the urban underworld. Most of the men were between 25 and 35 years old – the age of experience in these circles.

Between 1715 and 1717, the Jaco gang undertook more than a dozen large-scale criminal expeditions into the countryside. During these armed robberies they plundered farms and country houses, some of them close to Amsterdam, others more than a day away in the eastern or northern Dutch provinces. On those occasions wagons or boats were hired to transport the men themselves and their heavy booty. The Jaco gang was a very successful group in terms of the size of its booty if not of its longevity as a group. It stole enormous sums of cash as well as large quantities of silver and gold, jewellery and textiles. The total value of the goods stolen during some of these expeditions was between 500 and 3,000 Dutch florins: a fortune at a time when a skilled labourer's annual wage was seldom higher than 150-200 florins.

The fact that the Jaco gang concentrated its criminal activities in the countryside was not the only important respect in which it differed from the regular urban groups of thieves and burglars. Its other characteristics epitomise the more general organisational differences between rural and urban bands in the Dutch Republic. First, rural bands usually operated in more closely knit groups than urban ones, ranging from tightly knit and often hierarchically organised gangs with a captain or leader to more loosely organised bands with a less pronounced hierarchy. The larger rural gangs formed extensive networks of itinerant men, women and children. Within such networks the coalitions of the men who actually committed the burglaries or robberies were less volatile than in the urban underworld. Secondly, rural gangs tended to use more violence than urban ones. This was especially true for the Jaco gang, which consistently used and threatened to use violence. The men rammed in heavy farm doors with wooden poles, brandished pistols, clubs and knives, and did not hesitate to use them either. They tied up their victims, occasionally tortured

¹⁸ Criminal sentences of members of the Jaco gang can be found in Municipal Archive Amsterdam, *Criminal Records*, 608, 374; National Archive, *Court of Holland*, 5659; Provincial Archive North-Holland, *Criminal Records Nieuweramstel*, 2347; Municipal Archive Rotterdam, *Criminal Records*, 253; Municipal Archive Delft, *Criminal Records*, 50. Frans Thuijs is preparing a dissertation about the gang.

them in order to find out where valuables were hidden, shot or strangled some of the men, and raped some of the women.

Most rural bands had a much weaker bond with the towns than the Jaco group. The gang of Dirk Verhoeven, for instance, which operated during the years 1757-1765, stole at rural fairs and markets, from barns and farmyards, and from rural shops in four Dutch provinces as well as neighbouring German territory.¹⁹ Its booty was much less spectacular than that of the Jaco gang. It consisted mostly of household and farm utensils, textiles, clothes, food, shoes, laundry, some cash and jewellery. Petty theft formed only one of their everyday activities, however, and combined well with their legal jobs as rural labourers, itinerant salesmen, peddlers, cobblers, knife grinders, and tinkers. A few members of this group played the violin and others performed at fairs as actors or jugglers. Verhoeven's gang – as the name indicates – had a leader, but it was less closely knit and less hierarchically organised than the Jaco gang. Even so, it boasted a core group of more experienced gang members. The band clearly formed a community. Many of its members were connected by kinship ties, while men, women and children travelled together in small (family) groups that met at regular and pre-arranged times and places in the Dutch provinces. Often annual fairs or markets provided such meeting points. The group made use of a number of rural inns where they were known, and sometimes met only briefly for the duration of the thefts and burglaries, only to split up again and meet once more days or weeks later, and miles away. These people spent the larger part of their lives out of doors – especially from early spring to late autumn. They travelled, mostly on foot, along unpaved country roads, and slept in barns, haystacks or cheap inns.

Even such groups with a strongly rural orientation made regular use of towns, however. At least part of their booty (in particular silver, jewellery, clothes and shoes) was sold in the larger towns – if only to prevent recognition of the booty. And towns were also the best place to buy new provisions and merchandise, to change money, and to meet friends. During the winter season the roads were muddy and almost impassable. There were no fairs or markets and trade was slack. Gang members used to spend the winters in the smaller provincial towns, where they bought or fabricated new stocks, gathered information, and generally prepared for the new spring and summer season.

Throughout the seventeenth and eighteenth centuries most rural bands in the western half of the Dutch Republic resembled the Dirk Verhoeven gang in terms of organisation, structure and general activities. They were less closely knit or hierarchically organised than the Jaco gang (although all groups had leaders or a

¹⁹ For this gang see National Archive, *Court of Holland*, 5482-4, 5665; Municipal Archive Gorinchem, *Criminal Records*, 38; Regional Archive North-Brabant, *Criminal Records Oosterhout*, 116.

group of experienced band members), but coalitions were more permanent than in the urban underworld. Such bands formed a community of men, women and children who lived, travelled, worked and stole together. They often included immigrants – mainly men – from Germany, the southern Netherlands, and occasionally England, Scandinavia, Ireland or Scotland. Nearly all of the women in these groups, on the contrary, came from the towns in the northern province of Holland. The composition of the rural bands thus perfectly reflected the position of Holland as an immigration area *par excellence*. Both women and men generally participated in the petty thefts, but burglary, armed robbery and extortion with violence were exclusively male activities. Although more violence was used in the countryside than in town, most bands preferred to enter rural dwellings with as little noise as possible, or to choose a time when all the inhabitants were away, at work in the fields or in church. These bands were not characterised by a strong degree of specialisation in crime – unlike many of their urban counterparts. They stole everything they thought they could use or sell, and adapted their burglary techniques to the situation at hand. Interestingly, their ties with the rural population or with particular local communities were almost invariably weak – on account of both their international (or at least mixed) composition and their partly urban orientation.

In terms of mobility and local ties these ‘western’ bands – as we will continue to call them, although they might range well beyond the western Dutch provinces – found themselves somewhere in the middle between the southern Dutch bands of Brabant and Limburg with their strong local and regional orientation, on the one hand, and the extremely mobile ethnic bands which maintained no special ties with any part of the Dutch countryside. The former drew their success to a large extent from their close local ties and their excellent local and regional knowledge. The contacts of the latter with Dutch society were limited to businesslike exchanges of goods and information. A closer look at those two types of rural bands will now be taken, in order to demonstrate the varied nature of the rural Dutch underworld of the seventeenth and eighteenth centuries.

6. The Rural Underworld of the Southern Provinces

There was (and up to a point still is) an enormous contrast between the northern and the southern half of the Dutch Republic, symbolised and partly caused by the dividing line of the big rivers. South – in particular the provinces of Brabant and Limburg – stood for Catholic, thinly populated, sandy soils, agriculture, poverty, and a lack of natural defence barriers. North (in particular the western province of Holland) stood for Protestant, densely populated and urbanised, clay soils, industry and trade as well as agriculture, and the easily defended (by means of water) fortress of Holland.

The differences between the rural bands of the northern or western provinces and those of the south were big, and in many respects the bands mirrored the different societies in which they operated. Unlike the ‘western bands’ discussed earlier, which comprised both indigenous and immigrant members with either a rural or an urban background, the southern bands consisted almost exclusively of men and women who had been born and bred in the region. They were descendants of either the established local population or the groups of itinerant rural labourers, peddlers and vagrants who regularly toured this part of the country. Consequently, their ties with the local population were much stronger than those of the bands active in the western part of the country. Many members of these southern bands had relatives, friends, associates, and (former) neighbours or colleagues among the local population – and turned to them for advice, assistance, information, and shelter during the winter months.

Intimate knowledge of the area and familiarity with both the local population and social and political setting played a large part in the planning and execution of the illegal activities of these bands. This was not just the case with the smaller ‘local’ bands, which usually confined their activities to certain villages and their immediate surroundings, but also with the larger and more professional groups. The latter differed in terms of their larger geographical range (covering a whole region), the grander scale of their expeditions, their more frequent use of violence, and their organisational structure and hierarchy, which was often inspired by the army. ‘Strong local ties’ may sound nice, but we should not envisage a cosy and friendly co-existence of rural bands and local established population, even if some locals did assist or even protect certain band members. Even the smallest and most locally oriented bands never operated in direct collusion with any significant part of the established local population. If locals did (seem to) collaborate with the bands, such support was usually enforced by coercion and threats.

With few exceptions, local inhabitants who joined such bands did not form part of respectable local society, but already belonged to its fringes – and were clearly regarded as such by their fellow villagers – before they ever became seriously involved in crime.²⁰ Many of them were members of families of low social status and bad repute, and many had a reputation for violence. The more time such men (and women) spent on the road, away from local society – as mercenaries, rural labourers, peddlers, sailors, vagrants, itinerant salesmen, rag and bone men, skimmers, travelling actors, musicians, and so on – the more distanced they became from established local society, both literally and figuratively. This process did not usually affect whole families at a time. Some always remained behind, either because of stronger local ties, age (the very young and very old), occupational

²⁰ The Limburg *Bokkerijders* form one of the few exceptions. See Blok (1991).

interests, physical disability, or just a lack of interest. It was usually these remaining members of marginalised families (who usually earned a living as weavers, spinners, rural labourers, and local artisans) who provided information, assistance and shelter for their more adventurous or more desperate relatives. They formed a crucial but not always voluntary link between village society and the rural bands of the southern provinces.

This was also the case with the so-called Blackeners Band (Zwartmakers), a large and notorious rural gang which operated in Brabant for almost a decade, between 1690 and 1699, and comprised at least 100 or perhaps even 160 to 180 members. The whole band was organised according to a military model and consisted of three so-called companies, each with its own captain and territory. Each covered about a third of the province and the core of each company consisted of two or three interrelated families who came from that particular territory. Local knowledge thus was fused with a hierarchical organisation and wide geographical range. During their heyday the name of Zwartmakers became synonymous with terror, plunder, violence, rape, murder and arson. Their large-scale robberies triggered a series of emergency measures, announced by means of placards, from the Estates General in The Hague which ruled Brabant and Limburg directly, since these provinces were still regarded as conquered and perhaps not completely loyal territory. The emergency measures were only suspended after dozens of band members had been captured, sentenced to death and executed in public.²¹

The southern bands thus differed from the northern ones by their stronger ties with local rural society, the much less important role of towns in their way of life and criminal operations, their more frequent and sometimes extreme use of violence, and their adoption of military organisational models. The military model remained relevant during the whole of the seventeenth and eighteenth centuries. Several Brabant bands adopted the hierarchical model of a military company including the terminology for the ranks – there were captains and commanders, lieutenants and even tribunals. Some such bands also modelled their armed robberies on regular army expeditions, posting sentries and using passwords and other elements of military jargon. Armed robberies were often conducted by groups of between eight

²¹ In all at least 69 gang members were sentenced (but not all of them to death) by courts in Dutch Brabant, the adjacent province of Brabant which formed part of the southern Netherlands, Gelderland and Holland. See Municipal Archive 's-Hertogenbosch, *Criminal Records*, 39 164/11, 146/13, 131/24, 83/8; Municipal Archive Breda, *Criminal Records*, 112-113; Regional Archive Heusden, *Criminal Records Heusden*, 34; Provincial Archive North-Brabant, *Criminal Records Land van Ravestein*, 1; Archives du Royaume de Belgique, Brussels, *Criminal Records Drossaard of Brabant*, 61; Municipal Archive Antwerp, *Criminal Records*, 159; Provincial Archive Gelderland, *Court of Gelre*, 4506 1694/3.

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and 15 men, all of them armed, who rammed open the heavy doors of isolated farm houses and subsequently tied up, maltreated and sometimes raped, tortured and murdered the inhabitants. Afterwards they literally plundered the house, taking not just cash and other valuables but also furniture and farm stocks, which were carried off in wagons. Noise was no problem – in most cases there was nobody within hearing distance in any case, and even if there was, these robbers outnumbered any rural family. Dogs barking, robbers shooting off their pistols and ramming in doors, torture and threats all helped to terrorise the immediate victims as well as the rest of the rural population. Terror and intimidation ensured silence – few neighbours dared to go to the police, which was not particularly easy in any case. It meant getting a horse and wagon or walking a number of miles to the nearest town, since there was no police whatsoever in the countryside with the exception of a few constables who were more capable of dealing with poachers than with armed bandits.

It is both interesting and understandable that most of these southern bands have been regarded by both contemporary authorities and later historians as groups of deserted and marauding foreign soldiers. Yet research into the background of the band members has shown – as indicated above – that none of the so-called military bands that operated in Brabant from the mid-seventeenth to the late eighteenth century actually consisted of foreigners. Most male band members did have military experience and had served in one or more armies, but nearly all of them were born and bred in the villages and districts of Brabant where they committed their crimes.

Only a few of the southern rural bands reached the size of the Blackeners, and by no means all of them adopted a military-style organisation. Many smaller groups more closely resembled Dirk Verhoeven's gang. Women and youngsters played a more important role in such 'family groups', while such bands committed far more petty thefts and burglaries than large-scale armed robberies. Most members of such small groups spent the larger part of the year out of doors, in the fields, on the road, at markets and fairs, or in the woods and heathlands that were far more ubiquitous in the Netherlands in those centuries than at present. For such family groups, however, local ties and knowledge were also very important, and they used more violence than the rural bands of the western, more urbanised parts of the Dutch Republic.

The southern rural bands thus differed from their western counterparts in that they consisted almost exclusively of indigenous men and women who found themselves on (or already outside) the margins of local rural society in terms of both status and income. Ties of kinship were as important to the small, itinerant 'family bands' as to the larger bands organised on a military model – with respect to both the cohesion of the bands themselves and the ties with the small part of local society that rendered them crucial assistance in the form of shelter, protection, food, information, transport and the selling of stolen goods. Bands active outside the

relatively densely populated western provinces were usually larger than the western ones; they were more likely to adopt some kind of military-style organisation, and they tended to use more violence.

7. Ethnic Bands

Such regional differences were no more or less important than the differences between all these Christian (in the sense of non-ethnic) bands and the ethnic bands active in the Netherlands which consisted of either Jews or Gypsies. Both groups played a rather prominent role in Dutch organised crime from the 1690s onwards – a chronology that is directly connected with immigration patterns.²² Gypsies remained very active until the 1730s, when the extremely harsh persecution policy of the Dutch authorities drove most of them out of the country or into anonymity and ‘ethnic invisibility’. Jews – almost exclusively of eastern European background – remained active until at least the late eighteenth century. Both groups constituted the most mobile segment of the rural underworld, and both clearly demonstrated the intimate connection between mobility and marginality (in the sense of low status and a weak position in terms of civil rights). While the regional bands of the western provinces hardly ever showed themselves in the south, and the southerners almost never appeared north of the big rivers, these ethnic groups operated all over the Dutch Republic as well as beyond its boundaries.

A high degree of mobility and a very weak position in terms of civil rights were almost the only similarities between these two very different groups. To start with, their patterns of mobility were quite distinct. Among eastern European Jews only the men were itinerant, touring from one town to another as travelling salesmen, peddlers, or making short trips in the surroundings of a town or city. While the men travelled in groups of two or three as part of their legal or illegal business, the women and children remained behind in the towns. The men met at well-known rural inns or, after their journeys, in the cities. Groups of Gypsies, on the contrary, travelled together – men, women and children – in larger groups which usually consisted of several interrelated families. Often women and children constituted more than half of such a group. Most Gypsies spent all year in the countryside – except the very coldest and muddiest phase of the winter. They slept in tents (which they carried along), local inns, or in straw huts reconstructed year after year in various

²² For a more extensive discussion of the involvement of Gypsies and Jews in organised crime, see Egmond (1993). For Gypsies, see Van Kappen (1989), which is based on impressive archival research but marred by an almost racist stance. For Jews, see Egmond (1990); Egmond and Mason (1997: 83-99).

inaccessible parts of the countryside. Men and women earned a living by selling pills and ointments, repairing pots and pans, curing animals, selling amulets, telling fortunes (palm reading) and laying ghosts. Both ethnic groups maintained few (if any) close ties with the local rural population – and this was even more strongly the case with the Gypsies than with the Jews.

These differences are reflected in the dissimilar types of organisation of Jewish and Gypsy bands. In Jewish groups theft and crime – like travelling – were exclusively male affairs. The bands formed loose-knit and often sizeable networks in which – just as in the urban underworld – smaller groups of men worked together in varying combinations. Occasionally such small groups evolved into a close-knit hard-core band with a permanent leader. Such groups operated all over the Netherlands and adjacent German and southern Netherlandish territory. Jewish bands were involved in all sorts of thefts and burglaries, ranging from picking pockets to armed robbery, but they seem to have specialised in the theft of precious metals and large quantities of textiles, church robbery and burgling the houses of priests.

Even Jewish bands that operated almost exclusively in the countryside were oriented towards the cities. They always returned to the towns after their expeditions – which is, after all, where their wives and children were. Their predominantly Jewish fences who took care of the further distribution of the stolen goods likewise lived in the towns. Women played their own part in crime, mainly by assisting in the sale of stolen goods and providing information and safe houses. Although they were nearly invisible during the actual thefts and robberies, they constituted an important cohesive element and basis for continuity in these fluctuating and loose-knit networks. They formed invisible links between many of the men who could be seen travelling, working and stealing together; these men were often bound by kinship ties – as cousins, brothers-in-law, uncles and nephews, fathers and sons, or brothers.

Kinship was a crucial element in the Gypsy bands too, but there the women were in full sight, travelling, stealing and working together with the men as well as the children in extended family units. Gypsy women generally took part as much in the legal activities as in the illegal ones. They had a reputation as fraudsters and petty thieves (of chickens, farm utensils, and so on), and even took part in a number of burglaries. Yet they were almost without exception excluded by the men from the most violent and large-scale armed robberies – that is, in all but an assisting role. During such rare exploits large gangs of up to 15 or 20 Gypsy men tortured, raped, and often brutally murdered the victims, while the women took care of reconnaissance and transport. Violence against persons thus seems to have been an exclusively male domain. The Gypsy bands had a strict hierarchy, with one or two commanders (often designated by military rank) at the top. They operated in a huge territory – often using one encampment as a more or less permanent base to which they would return after expeditions and journeys that lasted for weeks or even months. The men and women belonging to a band would meet regularly in the

meantime, at the end of a day, a week or a number of weeks, at other encampments or inns where they exchanged information, distributed stolen goods or the proceeds, and arranged new meetings and meeting points. Unlike the eastern European Jews involved in organised crime, the Gypsies did not have their own channels for retailing stolen goods. They had to rely on local (non-Gypsy) assistants who generally belonged to the periphery of rural local society, or sell their booty to Jewish fences who generally lived in the cities.

8. Criminal Subcultures of the Rural Areas

To return to the central questions posed at the beginning of this essay: Can an underworld be distinguished? Was there a criminal subculture in the Dutch Republic? Can any evidence be found that may point to a counter-culture? The answer is even more complicated for the rural underworld than for the urban one. The existence of a rural underworld of organised crime seems abundantly clear, although it consisted of multiple underworlds rather than of a single one. There is no evidence for collusion, nor for the existence of one counter-culture or a subversive criminal counter-society. The fact that we have found an even larger social and cultural variety in the circles of rural organised crime than in the cities must lead to the conclusion that there was certainly no question of a single rural criminal subculture. Yet, there is at least one more question to answer: Is it possible that the members of each of these bands differed in a cultural sense from their non-criminal counterparts? That is, can we find marked cultural differences between the members of the Brabant bands and men or women who belonged to the same classes in the same region but had not turned to crime? And were the members of Gypsy bands distinct from their non-criminal Gypsy counterparts in any other respect than their criminal involvement?

Such questions are easily asked and very hard to answer – especially since we often lack the most elementary information about the culture and everyday behaviour of non-criminal members of the poor lower classes of the seventeenth and eighteenth centuries. Ironically, it is only their involvement with the courts that has preserved their criminal counterparts from oblivion. It is impossible here to discuss each rural group in detail. As in the case of the urban underworld, a single example must suffice and we will concentrate on names, language, use of violence, the role of women, mobility and ritual. Dirk Verhoeven – leader of the above-mentioned eighteenth-century gang which committed petty thefts at rural fairs and markets besides some larger armed robberies – was arrested in the summer of 1763 and interrogated about his criminal activities, past, and accomplices.²³

²³ For the sources see note 19 above.

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Asked how long he had been with his band, he said: 'that he had been with them as long as he had been in Holland, which is for about seventeen years'. Among his accomplices he named 'three brothers with the names of Joost, Jurgen and Willem, with whom he travelled at first in the area between the big rivers, then Paulus with the Thick Lips, Jacob Van Es, who now can be found in the area of Rotterdam, Delft and Haarlem [...]'. He confessed to having committed not only petty thefts but also burglaries and armed robberies with these men (and some others) for over nine years. In some cases they had tied up, tortured and beaten up their victims, shouting things like 'here's the pistol, hit him over the head if he doesn't lie still'.

Dirk Verhoeven's wife had died some years earlier in the Rotterdam infirmary; thereafter Kate De Bruin took care of his three daughters whenever she was around. The family situation was somewhat complicated – albeit quite normal for the men and women who lived in these groups. Kate herself (born in 1730) had a daughter by the above-mentioned band member Jacob Van Es. She was briefly involved with Dirk Verhoeven and belonged to a small group of women who shared in the booty of the gang's burglaries and robberies. Kate was not directly involved in these robberies, but she regularly committed petty thefts and picked pockets at rural fairs. She was extremely forthcoming during her interrogations in 1763-1764.²⁴ Asked about her relation with Dirk Verhoeven, she stated, 'that she supposes that she first met him at Kevelaar; that they split up after having spent a night or two together; that they later met again and travelled together'. Her father had been an ex-soldier from the Prussian armies who travelled together with her mother 'from one farmer to another to earn their living as itinerant rural labourers, during the summer time in this country, during the winters in the Land of Cleves'.

Kate herself likewise used to earn a living by working for farmers. If no work was to be had, she begged together with her child. On one of her trips she ended up in The Hague in 1763 and became engaged to a soldier with whom she lived for some time. They separated, but Kate claimed that he had remained true to her and had always provided food for her and her child. Much earlier, when she was 16 and before she had her child, she had been married to a corporal in a Dutch regiment, who had left her after six months. Among the important band members Kate named the brothers Michiel and Jacob Lubbers. They were always accompanied by their dogs and were regularly involved in violent incidents – both with victims of the bands and with other band members. Someone who belonged to Michiel Lubbers' company had, for instance, shot and killed a child in some lodgings in Rotterdam where they were spending the night in 1760. And he had threatened his ex-mistress Teuntje (an abbreviation for Antonia) – the wife of a certain Jan with the Wig or

²⁴ These can be found in National Archive, *Court of Holland*, 5482-4.

Jan the Lasarus – with a knife when she had refused to be his mistress again. Only Kate’s quick intervention, by pulling Teuntje away from the knife, had rescued her from being stabbed.

Elements recur in Kate’s statements that we have already come across in the discussion of the urban underworld. All rural bands used nicknames, such as Harelipped (Hazemonsche) Kate, Jan De Lasarus, Nol with the Humpback (Bochel), William the Peddler (Kramer), and so on. The nicknames used in the bands of the south, in Brabant, such as Peer De Brabander, Willem from Hoogloon and Arike from Turnhout, are easily distinguished from the nicknames of the western and urbanised provinces on account of the geographical references. Similarly, the nicknames used in the ethnic bands differed markedly from the ones used in the ‘Christian’ or non-ethnic bands. Names such as Origlina, Aquatina, Claas the Pineapple, Don sJan, and Argulius Hergalius were unmistakably Gypsy nicknames, while Abraham Moses, alias Cat’s Paw (Kattenickel), Juda Gallows, or Isaac Hajim, alias the Uncut Diamond, belonged to the Jewish criminal circuits. Thus, whereas nicknames were ubiquitous, their form and use were specific to each group or subculture. In some circuits nicknames changed quickly; in others a nickname was for life and could even be transferred from father to son and grandson or from mother to daughter and granddaughter.

A similar argument can be made about languages. Jargon generally seems to have played a less important role in the countryside than in the circles of urban organised crime, but both non-ethnic and ethnic rural bands used their own dialects or languages to communicate within their group. These could be as far apart as a local Brabant dialect, Yiddish or Gypsy languages (denoted in the documents as *rommanischel* or *rommanisceers*). Thus we find that ordinary, group-specific and non-criminal languages – shared by all members of an ethnic or local group – were also used for criminal purposes. Such dialects and languages were clearly unsuited for communication *between* the different bands. The few examples of criminal cooperation between Jewish and non-Jewish thieves indicate as much. Even those non-Jewish thieves who had some knowledge of eighteenth-century thieves’ jargon of the big cities in Holland – with its considerable Yiddish component – could not follow a conversation in what they called ‘Jewish’. Gypsy languages were equally inaccessible to outsiders. There was no criminal *lingua franca*.

We can thus state with some certainty that there were no multiple criminal subcultures (let alone a single one) in the countryside. In every respect but their involvement in crime the rural bands represented the wider cultural and social background from which they originated – whether we look at language and dialect, nicknames, or the division of labour between men and women. As we have seen, a sharp division between the male domain of public life, travel and an outdoors existence and a female one of domesticity and assistance was characteristic of all Jewish bands operating in the Dutch Republic between the late seventeenth and the late eighteenth centuries. In Gypsy bands the pattern was exactly the opposite – men,

women and children travelled together. Their hierarchical structure, moreover, was predicated on the organisational patterns common to all Gypsy groups that consisted of extended families and clans. Similarly, kinship and organisation in the southern non-ethnic bands – with an important and cohesive role for the women that is also reflected in the nicknames – mirrored those current among their non-criminal fellow Brabanders. Even the high degree of mobility that characterised nearly all rural bands and upon which their success as criminal entrepreneurs was predicated to a large extent, cannot be regarded as a special ‘criminal’ characteristic. On the contrary, it usually formed an indelible part of their legal business activities – as in the case of itinerant salesmen, rural labourers or performers at rural fairs – and a stepping stone to success in organised crime.

A final characteristic should be mentioned that, alone, could be interpreted as evidence in favour of the existence of a special criminal culture with its own rules and sanctions. This is the swearing of an oath, which seems to have been common in a small number of bands. The evidence is extremely scarce – in all likelihood precisely because such oaths were usually meant to safeguard secrecy and loyalty to the leader and keep band members from betraying their colleagues. The few cases in which they did talk about such oaths during interrogation may therefore represent only the tip of the iceberg, but there is no way in which we can still discover how common or uncommon such oaths may have been. Very occasionally oaths of secrecy and loyalty also involved an oath of allegiance to the devil and renunciation of God. Band members who swore such oaths were by no means always newcomers, and the oath of loyalty apparently did not necessarily function as a rite of initiation. In one or two cases it looks as if such oaths were demanded by the leaders after a band had expanded considerably: perhaps in such cases a renewal of the ties was felt to be necessary. It may be significant that the two bands for which we have more than the most sketchy evidence of oath-swearing were both quite exceptional in the Dutch Republic. The first was the notorious eighteenth-century band the Bokkerijders, which operated in the southern province of Limburg, and, very unusually, consisted of established locals who led double lives. Secrecy in their case was essential and even more important than to other bands (Blok, 1991). The second example concerns a set of Gypsy bands active during the late seventeenth century and a large network operating all over the Dutch Republic shortly after the mid-eighteenth century which had evolved from these earlier Gypsy bands and combined various ‘criminal traditions’.²⁵ The high value put on secrecy in these latter bands and the concomitant oaths may be linked with the waves of persecution of Gypsies by the Dutch public authorities which started around 1690 and reached their zenith during the 1720s and 1730s. By the mid-eighteenth century Gypsies

²⁵ This was the Band of Rabonus. See National Archive, *Criminal Records Schieland*, 35.

had either fled the country or gone underground and effaced their ethnic identity. If these two most important examples of bands with oaths of secrecy are anything to go by, it looks as if practical circumstances triggered such rituals rather than any intrinsic traditions of a criminal counter-culture.

9. Conclusions

This survey clearly shows that the underworld of the Dutch Republic consisted, in fact, of a variety of groups: urban thieves and burglars who operated in ever fluctuating constellations within larger networks and in an interurban setting; southern rural bands of marginalised local or regional inhabitants who limited their activities to their own district, or at most their own province; far-ranging bands of Gypsies travelling in extended family groups; smaller groups of eastern European Jews, all of them men, who operated all over the Dutch Republic, forming part of wide-flung networks underpinned by kinship, and city-based; and the mixed rural bands of the western, most urbanised provinces with their high number of immigrant participants. We find different organisational patterns, a different composition, a different structure, and different ways of operating. Mobility, hierarchy, the size of the bands, leadership, the role of women, and criminal specialisation varied from town to countryside, from one region to another, and also depended on the ethnic or non-ethnic composition of the bands. The ethnic bands were far more mobile and covered a much larger territory than the non-ethnic ones. But they found themselves at the bottom of the scale in terms of civil rights and connections with the local population. The locally and regionally oriented Brabant bands were strong on local connections, but out of their depth when they had to move outside their own familiar territory. None of them resembled the urban underworld. In a cultural sense we find exactly the same fragmentation – multiple underworlds reflected a variety of cultures characterised by different languages, rituals, forms of violence, roles of women, types of nicknames, and so on.

Fragmentation is a key word here, as one of the most commonly used terms to typify the organisation of the Dutch Republic during the sixteenth to eighteenth centuries (Egmond, 1989, 2001). It is perhaps a logical outcome that the underworld seems to have been as divided as the upper world in the Netherlands, reflecting regional, cultural, ethnic as well as urban/rural divisions. The deep divisions within the world of crime, where the various bands had very little in common but the fact that they committed crimes, may also help explain the remarkable finding that – at least until the last two decades of the eighteenth century – there seem to have been very few contacts *between* the various groups, and even then, such contacts and forms of cooperation were modest in scale. If such contacts existed, they were never structural but depended on individual, personal relations. And at no moment in the course of the seventeenth or eighteenth centuries was there any question of central

leadership in the Dutch underworld. During this period the multiple underworlds coexisted and interacted only to a very limited extent, much as the different estates coexisted without intermingling in established *ancien régime* society. Perhaps Dutch established society was right, therefore, not to imagine the underworld as a subversive and dangerous counter-society – but we will never know whether it was simple lack of knowledge of these multiple underworlds or astute insights into the nature of Dutch society that underlay this apparent lack of concern.

With special thanks to Peter Mason. This essay is based on my dissertation research, which also resulted in Egmond, 1993. There, however, I largely left aside the urban underworld and went only very briefly into the question of subcultures and counter-cultures.

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‘Many a Lord is Guilty, Indeed For Many a Poor Man’s Dishonest Deed’: Gangs of Robbers in Early Modern Germany

Katrin Lange

1. Introduction

Gauner (crooks) are people who make a trade of robbery and theft and, by using this trade to their advantage, develop their own rituals and language. All those who adopt the same philosophy of life and rituals are their allies and the cant is the tool that helps them to recognise each other (Von Grolmann, 1813: 1).

With these words, the chief criminal judge of the province Upper Hesse (Oberhessen), Friedrich Adolf Von Grolmann, tried to define the type of organised crime he and many of his colleagues were confronted with in the early nineteenth century Germany: organised gangs (*Bande*) of robbers. Von Grolmann’s definitional efforts were, however, hampered by the blurred classifications that the public authorities of his time used for identifying the offenders they targeted. These were, in fact, alternatively and arbitrarily labelled as beggars, tramps, Gypsies, cheats and, even more often, as *Gauner* (or *Jauner*, i.e. crooks),¹ in some cases bandits and robbers. The equal treatment of these heterogeneous groups of individuals shows how undifferentiated the debate was back then (Danker, 2001: 178; Blauert and Wiebel, 2001: 56). Occasionally, the poor did not even need to commit a specific offence to find their names on a ‘black list’ of sought crooks (Blauert and Wiebel, 2001: 68).

Von Grolmann’s definition is nonetheless important because of its reference to the crooks’ organisational structure, common rituals and slang. Other of his contemporaries referred to the ranks of the *Ständegesellschaft* (estate society) to

¹ The key expressions *Gauner* and its South German variant of *Jauner* (here translated as ‘crooks’) were used up to the end of the eighteenth century as synonyms for itinerants. From then on, they increasingly assumed the meaning of ‘thief’ and ‘swindler’. For the origins of the two words, see Blauert and Wiebel (2001: 69-71); Danker (2001: 143).

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describe the internal organisation of the world of crooks.² In the late eighteenth century, for example, Johann Ulrich Schöll described crooks as forming ‘one single society’, whose members derive from ‘different social strata, not from corporations’ (1793: 226).³ However, Schöll also stressed that crooks do not subscribe to their own ‘specific law, nor can they be described as a political organisation’, for ‘there are no leaders’, no laws and no judicial institutions and sanctions in their gangs (1793: 225).⁴

Whatever the conceptual confusion plaguing the public and professional debate, it is undeniable that an increasing number of publications started to mention the existence of gangs of crooks and robbers in the eighteenth and nineteenth century, when Germany was shattered by the Napoleonic wars. The term ‘gang’ was, however, used very loosely – indeed, according to the historian Dirk Riesener (1994: 198), ‘excessively’ – and it is therefore hard to understand what was really meant by it. In Johann Zedler’s *Universal Lexikon* from 1741, for example, ‘gangs of robbers’ are nothing more than ‘a bunch of people, who go out to rob and steal in order to earn a living’ (Danker, 1988: 279). No information was given in this famous encyclopaedia on the size, organisation and composition of these gangs. The loose structure of most robbers’ gangs was also emphasised by many authors of the *Aktenmäßige Geschichten* (Official Stories). These are a series of some 20 reports that were published in the early nineteenth century by the law enforcement officers and judges in charge of gang prosecution and trials to publicise their own work,

² For other classifications of crooks based on the ranks of the *Ständegesellschaft*, see Danker, 2001: 141, and Seidenspinner, 1998: 275.

³ Schöll was a priest at the Ludwigsburg orphanage and prison (*Zuchthaus*). He wrote another book about the life story of Konstanzer Hansz in 1789. This bandit’s sentence had been commuted to life imprisonment at Ludwigsburg prison after he had testified willingly to his own actions, his fellows and their hiding places.

⁴ The original quote is:

Aber sie [die Jauner] bilden dann doch keine Gesellschaft, deren Mitglieder durch enge Bande und eingewisse gesezliche Verfassung zu einem politischen Ganzen verbunden wären. Sie haben keine Oberhäupter, von denen sie mit einer [...] Gewalt beherrscht würden, keine stehende Befehlshaber oder Anführer, die ihre Freyheit in diesen und jenen Fällen einschränkten, mit oberherrlicher Autorität, die Diebsoperationen bestimmten oder leiteten, Geseze und Vorschriften gäben, oder über deren Handhabung wachten und die Uebertretter mit richterlicher Gewalt zur Verantwortung und Strafe zögen. Sie formiren weder zusammen eine einzelne große Bande im engen Verstand; noch darf man sich von den verschiedenen Classen derselben den Begriff machen, dass sie eigentlichen Corporationen seyen, und jede derselben ihre unterschiedene Einrichtung habe, durch die gleichsam eine gewisse Gränze zwischen ihr und den übrigen abgestekt wäre.

denounce the gang members' misdeeds with the main intention of convincing the authorities of the necessity of their work, but also of promoting public awareness and feeding the public's growing curiosity for the topic (Lange, 1994: 16-18).⁵ For example, Ludwig Pfister, a town official from Heidelberg, refused to define the defendants he had interrogated as members of a gang of robbers. He merely regarded them as a bunch of people who 'worked' together for a certain time, without any true commitment towards the group. According to Pfister (1812: 199), who lived in Darmstadt, the gangs he had prosecuted had no steady organisation or permanent leader. Another representative of the state authorities, criminal judge Brill, even suggested to replace the term 'gang' with 'robbing ragtag' (*Raubgesindel*, see Brill, 1814: introduction). According to several authors of the *Aktenmäßige Geschichten*, it was the lack of a clear structure that greatly alarmed the authorities, because the composition and *modus operandi* of the gangs remained unclear and hard to prove judicially (Pfister, 1812: 199).

Other law enforcement officers contributing to the *Aktenmäßige Geschichten*, including the above-mentioned Von Grolmann and Schöll, were even more pessimistic and pointed to the existence of an extended network of crooks. For Schöll, for example, crooks composed 'a standing army of many thousands' that could organise itself within one day and do severe damage to the society (1793: IV). Pfeiffer (1828), a police officer of the province of Lower Hesse, lamented that even if one branch of the gang's criminal network was eliminated, another one would immediately develop to fill the vacuum. According to Stuhlmüller, a police inspector from Plassenburg in the Kingdom of Bavaria, the ductility and huge geographical span of the crooks' network caused great fear in the population (1823). In the early nineteenth century morally loaded expressions, such as 'the enemy within', 'the cancer of the state' (Von Grolmann, 1813: 6) or 'political disease' (Schwencken, 1822: 89) were frequently used by the authors of the *Aktenmäßige Geschichten* and other contemporary observers to describe gangs of robbers and crooks. The fight against criminals was also dominated by drastic expressions – 'to grab evil by the roots' was one of the most common ones (Pfeiffer, 1828: 16).

Despite these negative evaluations, bandits' lives were also romanticised by novelists and journalists and these mythologised accounts had great public success. Between 1797 and 1807, when the major trials were celebrated, 55 romantic novels

⁵ The *Aktenmäßige Geschichten* were published by judges, town officials and law enforcement officers. They constituted the main source of my own empirical work (Lange, 1994). Though containing many moralising passages and exaggerated assessments of the gangs' dangerousness, in fact, the reports provide very valuable, first-hand data, such as the total number of criminal gangs in each of the district covered, and detailed descriptions of the place, date and circumstances of the offences prosecuted in the trials (Lange, 1994: 16-18).

about bandits' gangs were published, the most famous of which being *Rinaldo Rinaldini*. Between 1820 and 1840 the number of these publications further increased – 200 popular novels on the subject of robberies were published in that period (Danker, 2001: 292-6). This success reflected the morbid interest of bourgeois readers for the idealised lifestyle of criminals. The bandits' lifestyle was taken to be romantic and free of all boundaries. Moreover, crooks were portrayed as victims of bad social circumstances that led them into crime.⁶

In addition to criminal cases, town officials' reports and romantic novels, the people of the time had a direct source of information about the gangs, as many of them were – especially in rural areas – directly confronted with them. The rural population felt particularly defenceless in the face of a robbery because of the lack of police presence in the country. There were numerous rumours going around concerning dangerous robbers, and people attributed supernatural, even demonic forces to them, since the common way of thinking was strongly influenced by superstition (Seidenspinner, 1998: 115; Roeck, 1993: 9).

Given these multiple and contradictory interpretations and assessments it has been quite difficult for historical research to disentangle fact from myth. Many historical studies ended up reflecting one of the positions mentioned above, alternatively repeating the nonsensical judgments of eighteenth and nineteenth century state authorities (Arnold, 1980; Bettenhäuser, 1964) or subscribing to the idealised picture of bandits spread by the romantic literature and thus considering bandits as an early form of social protest (Kraft, 1959; Kopecny, 1980; Küther, 1976; Fintzsch, 1990).

The organisation and geographical spread of gangs have also been very controversial issues in the historical debate. In 1976, for example, Carsten Küther defined them as 'a counter-society in conflict with the established one'. He described a kind of 'underworld' beneath existing districts, nations, and states and even depicted it on a map (Küther, 1976: 10). The term 'underworld' was also used by Robert Jütte (1988) and Richard Evans (1988). For the latter, for example, 'the German underworld was an underworld of outcasts' being formed by vagrants and itinerants, the dishonourable and dishonoured, Jews and Gypsies and, at its centre, by professional criminals, bandits and robbers, thieves and murderers (Evans, 1988: 1-2).

Modern studies have, however, increasingly questioned the concept of an underworld and the cohesion of the crooks' network. According to Dirk Riesener (1994: 198), for example, it is today hardly possible to use the term 'gang' scientifically. In his opinion, none of the documented gangs comply with the criteria of a community of habitual criminals united by a hierarchical organisation and a structured division of labour (ibid.: 26). In 1988 Uwe Danker (1988: 292) demonstrated that the cooperation patterns of three early eighteenth century gangs, operating in

⁶ See, for example, Zschocke (1794); Bertrand (1806); Kurz (1854).

particular in Saxony and Upper Saxony, was far from continuous and systematic: the members of these gangs, in fact, merely set up joint, usually small, operational units just for the purpose of a single criminal enterprise. Given the wide variety of gangs' criminal activities, ranging from petty theft to cold-blooded murder, in 1998 Wolfgang Seidenspinner (1998: 114) called for a more differentiated characterisation of the very concept of crooks' gangs.⁷ Finally in 2001, Andreas Blauert and Eva Wiebel (2001: 76) went even further, provocatively asking if gangs of robbers existed at all. To find it out, they suggested that some methodological procedures should be followed which would constitute the basis of a new approach: in their opinion, the gang members and their social environment as well as the gangs' strategy and procedure, organisational structure and offences should all be examined in a more detailed way.

In the following sections, the above mentioned points are taken into due account to analyse carefully the materials drawn from historical sources (Lange, 1994: 3-13). In my opinion, in fact, a reliable answer to the questions raised by historians in the last 15 years can be given only at the local level, after retrieving and analysing first-hand documentation. In the second section, I will review the social background and position of bandits. The following section will be devoted to the analysis of the gangs' internal structure and *modus operandi*. The fourth section will single out the most important characteristics of gangs' criminal activities. In the concluding section, I will critically review some of the most important interpretations of early modern gangs in the current historical debate.

2. The Social Background and Position of the Bandits

Due to insufficient source material, the reasons for collective crime during the eighteenth and early nineteenth century cannot be precisely determined. Current knowledge on this matter primarily relies on the statements of the defendants during investigations and trials. These statements were, however, made under a lot of psychological and physical pressure and were often distorted and false. For prisoners under interrogation it was a common practice to reinvent – or at least reshape entirely – their biographies. Only the reports of their fellow detainees made them ultimately tell the truth (Wiebel, 2000: 764). Even the descriptions of the fugitives' on the 'wanted lists' were usually based on the statements given by arrested crooks. These sources are nonetheless not useless: as Blauert and Wiebel (2001: 49) point out, during police interrogations and court testimonies crooks

⁷ Seidenspinner writes: 'Entsprechend (wegen der außerordentlichen Uneinheitlichkeit des Phänomens Bandenkriminalität) ist der Begriff der Bande im jeweiligen Verwendungszusammenhang neu zu definieren'.

must have made much use of ‘authentic details from their criminal environment’ if they wanted to seem credible.⁸

To investigate the social and economic causes of early modern collective crime, a further weakness of defendants’ statements is given by the fact that law enforcement officers and judges usually paid no attention to the social origin and circumstances of the criminals. When they interrogated the defendants, their only aims were the prosecution and punishment of the crimes committed and the arrest of other criminals.⁹ A third shortcoming is possibly even more relevant: trial papers show no neat differentiation between organised crooks, accomplices, petty bandits and even innocent vagrants. They give no clear proof of their legitimate professions nor document whether their professions were merely used to cover up their illegal activities (Lange, 1994: 100-1).

Despite the weaknesses of our sources, the following is what we know about the social background of this early form of organised crime in the eighteenth and nineteenth centuries. Gangs of robbers were largely a phenomenon of the lower classes. Underprivileged or badly integrated people, such as vagrants, constituted the majority of gang members. In one of the gangs analysed by Danker, whose members were tried in Coburg (today part of Franconia) in 1736, 65 per cent of the members were Jewish vagrants. However, it is not true – as long believed – that vagrants almost exclusively represented the source of gang members’ recruitment. For example, two other gangs studied by Danker – the gang of Nickel List, whose members were arrested in Celle (in contemporary Lower Saxony) in 1699, and the Saxon bandits headed by Lips Tullian, who was executed in Dresden in 1715 – had a mixed social background. Many of their members, in fact, were farmers, hosts and artisans with a fixed residence (Danker, 1988: 240-6; 2001: 143).

As itinerants made up an average 5 per cent of the entire population, they were clearly overrepresented in gangs. This is clearly shown by the data synthesised in Table 1, which shows facts and figures regarding four gangs operating in the second half of the eighteenth century and in the early nineteenth century.¹⁰ About 60 per cent of the members of these organisations were itinerants. Forty-one per cent of them were peddlers, i.e. they earned a living by selling small goods, such as porcelain, lace, baskets, clasps, buttons, sieves, pipes, brushes and combs, while discreetly looking for opportunities for theft, or for selling stolen goods. The itinerant trade was

⁸ For the methodological problems posed by the defendants’ statements, see Lange (1994: 109); Eibach (1996: 710-11); Seidenspinner (1998: 132); Riesener (1994: 194).

⁹ The authors of the *Aktenmäßige Geschichten* also lacked a ‘sociological view’ (Riesener, 1994: 210). Nonetheless, their documents can give a lot of detailed information, if the historian is prepared to read between the lines.

¹⁰ Information on the four gangs was drawn from *Actenmäßige Nachricht* (1753); Becker (1804); Pfister (1812); Von Grolmann (1813).

Table 1. Membership and professions of four gangs

	<i>Diebsbande</i> (Band of Robbers) 1753	<i>Schinderhannes</i> Gang, 1804	<i>Odenwälder</i> Gang 1812	<i>Vogelsberger & Wetterauer</i> Gang, 1813	Total	Per cent
Vagrants	58	39	68	65	230	57.5
– itinerant trade	40	27	48	49	164	41
– itinerant service	11	3	14	9	37	9.25
– itinerant entertainment	7	10	6	3	26	6.5
Dishonest professions	18	10	10	1	39	9.75
Other lower class professions	11	15	7	4	37	9.25
Soldiers	7	5	6	14	32	8
Artisans	5	9	6	12	32	8
Farmers	–	13	–	–	12	3.25
Unemployed	–	4	3	2	9	3
Others	–	5	–	–	5	1
Total	55	94	113	88	350	

a good 'front profession' for gang members. In addition to peddlers, there were itinerant service-providers (9 per cent), such as knife-grinders, tin-founders, rat-catchers, painters, watchmakers, root-diggers, stone-cutters, sawyers, rag-pickers and tinkers, and 'itinerant entertainers' (18 per cent), such as musicians, jugglers and puppeteers. Beggars, tramps or 'people without profession' also belonged to the category of itinerants.

The so-called 'dishonest professions' made up 10 per cent of the total gang members and included servants of knackers, ushers of the court, herdsmen, shepherds, millers, barbers and linen-weavers. The category of 'unskilled labourers' (*Sonstige Unterschichtenberufe*), which also made up 9 per cent of the sample, included agricultural workers, such as day-labourers, small holders, carriers, vermin-killers, field-guards and threshers. Once soldiers (8 per cent) and the unemployed (3 per cent) are added, lower-class people composed 87.5 per cent of the members of these four gangs. Artisans, representing 8 per cent of the sample, are the only clear exception in this picture. However, their true economic situation, like the wealth of the farmers listed, are not precisely described by the eighteenth and nineteenth-century sources. In particular, in my opinion, there is no empirical basis to stress the high social status of the Schinderhannes gang's members, as was done by Danker (2001: 143). According to the documents of the time, 13 per cent of the members of Schinderhannes gang were farmers and 9 per cent artisans; however, a careful reading of the sources shows that accomplices, such as fugitives' hosts and receivers of stolen goods, were included in the membership list, though they did not necessarily belong to the gang.

What conclusions can be drawn from these facts? On the one hand, poverty drove many people into criminality. Early modern European society was characterised by the scarcity of resources, the regular provision of which was further endangered by agricultural crises and wars. For the majority of people life meant a fight for survival, and hunger was an everyday experience. Members of the lower classes could often not nourish themselves, even if they had a full-time job. The lives of most of them were thus characterised by the exercise of several professions at the same time, the seasonal shifts from one occupation to another in compliance with the demands of the labour market, and the joint struggle of all family members for subsistence. An example of the living conditions of many bandits is given by the biographical notes of Philip Heeg, who was sentenced for forging passports and seals. According to Pfister (1812: vol. II, 219), Heeg 'for quite a while earned a living with puppet-shows and painting farmers' houses. Then he knocked around as a hunter, dentist and watchmaker.' For many lower-class people in early modern Germany, changing residence was necessary and temporary travel often turned into constant itineration. In addition, begging and the theft of food were basic survival techniques (Lange, 1994: 25-45).

Public authorities' handling of itinerant people also prompted many of them to become criminal. The 'estate society' (*Ständegesellschaft*) of early modern

Germany was characterised by a distinct inequality in its membership, strict and rigid hierarchies, and the strenuous effort of the upper classes to maintain the social status quo. As descent and ancestry determined individual destinies, the lower classes were de facto excluded from effective membership of society. Most of them merely lived at its margins, without fully participating in social life. The most important preliminary condition for being recognised as a member of society was having a permanent residence: itinerants were a priori excluded from participation (Seidenspinner, 1998: 42, 90-1; Roeck, 1993: 7-10; Lange, 1994: 47-72). Since the late Middle Ages, and increasingly during the seventeenth and, above all, the eighteenth century, public authorities morally condemned and prosecuted beggars and tramps. This attitude fostered a suspicious attitude *vis-à-vis* all non-local poor people in the general population. Whereas the local poor were exempt from discrimination, non-local vagrants were avoided and marginalised without knowledge of their economic and social background (Lange, 1994: 41-5).

The lifestyle of itinerant people helped justify their marginalisation: itinerants, in fact, hardly respected many of the conventional behavioural norms that had to be inspired by virtue, discipline, diligence and the so-called 'usefulness' (*Nützlichkeit*). The very existence of large numbers of people without permanent residence was additionally inconsistent with the sovereignty claim made by the local government authorities. Formally, itinerant professions were tolerated only for a short period of time, after having been approved by local authorities. Those moving around from one place to another without carrying a written allowance were regarded as criminals and had to face legal prosecution. Vagrants who were arrested for the first time were forced to leave the territory and go back to their home towns, as far as these were known. If they were caught for a second time, they were supposed to be branded and expelled from the 'state' borders. The mark they were branded with determined their fate if they were caught a third time: they were, in fact, bound to be punished with death, even if there was no clear proof of their guilt (Lange, 1994: 66-8). As shown by trial papers, the very fact of vagrancy was then considered an 'offence against property' (Wettmann-Jungblut, 1990: 144).

Given these draconian prescriptions and prohibitions, one may wonder how vagrants could at all survive in the eighteenth century. Vagrants' survival was made possible by the discrepancy between the written norms and their actual enforcement in the early modern period: In hardly any of early modern Germany's 800 states and mini-states were regulations and sanctions consistently applied. To avoid inflicting the death penalty, for example, many law enforcement officers did not brand vagrants when they arrested them for a second time (Lange, 1994: 68). For the same reasons, public officers occasionally desisted from initiating a full criminal trial, merely imposing a sentence on the delinquents themselves (Schnabel-Schüle, 1995: 78). Once caught by government authorities, however, vagrants could anticipate serious punishment: the authorities executed or neglected the law arbitrarily. Every arrested vagrant could receive the maximum sentence provided

for by the law if the officer decided that the vagrant's punishment had to serve as an example for other offenders (Seidenspinner, 1998: 102; Schlumbohm, 1997: 661; Danker, 2001: 262). Even if they were occasionally treated mildly, vagrants and other members of fringe groups could in principle and a priori all be subject to severe punishment: this very fact contributed to their stigmatisation, which often became a 'self-fulfilling prophecy' and pushed many vagrants into real criminality. Once caught into the law enforcement net, vagrants accepted the role that public authorities gave to them (Lange, 1994: 108; Danker, 2001: 314).

To a large extent, vagrancy and gang membership were passed on from one generation to another. The official reports concerning the Vogelsberger and Wetterauer gangs, for example, show that their members very often came from vagrants' families. Only 20 per cent of the registered bandits, in fact, were born in families with a solid structure; 45 per cent had a clear vagrant origin. Seventeen per cent of bandits' parents earned a living by an itinerant trade and 28 per cent of them were registered as beggars, robbers and tramps. Most other bandits' parents were herdsmen (classified as people with a dishonest profession) as well as soldiers and unskilled labourers, such as day-labourers, stone-masons and brick-makers. The majority of the bandits was basically born 'on the road' and had no real home town.¹¹

It is worth mentioning here that people with dishonest professions were usually very poor, as most of them, such as herdsmen, were usually merely employed as seasonal workers. The economic aspect was moreover accompanied by a social one, as they were usually ostracised by ordinary people (Lange, 1994: 47-52; Roeck, 1993: 106-17; Nowosadtko, 1995: 166-7). This marginalisation implied not only legal but also significant social restrictions, such as the a priori exclusion from guilds, civil rights and public posts of honour.

In the early modern period, soldiers were also an endless reserve of prospective vagrants and gang members, as they could only accept seasonal jobs after returning from war. Due to their poor living conditions after their dismissal from the army, their war experiences and the high desertion rates, the government authorities considered all soldiers potential criminals. And many, indeed, became gang members. In the two early eighteenth-century gangs analysed by Danker, those of Nickel List and Lips Tullian, 38 per cent of the members were ex-soldiers (Danker, 1988: 242-3).

Poverty and social ostracism were also experienced by the members of religious and ethnical minorities, such as Jews and Gypsies.¹² It is hence no coincidence

¹¹ These data are summarised in a table in Lange (1994: 110). The family backgrounds of the Odenwalder bandits are strikingly similar to those of the Vogelsberger and Wetterauer gang members. On the former gang, see Pfister (1812: 109).

¹² For the situation of Jews and Gypsies in early modern Germany, see Lange (1994: 54-60).

that the members of these two communities were overproportionally involved in gangs. Jew and Gypsies both formed their own non-Christian gangs and carried out marginal functions for Christian criminal groups. Provided with some few privileges, Jewish communities were usually able to take care of their own poor, but their social system almost collapsed when German Jewish settlements had to accommodate the rising numbers of Jewish refugees who had been expelled from eastern Europe in the wake of the 1648 Cossack rebellion in Poland. As a result of this significant migration flow, Jewish vagrants and beggars began to travel in hordes from one community to the other. Between 1790 and 1805, for example, the Große Niederländer (Great Dutch) gang and its several sub-units caused a great sensation, as they mainly consisted of Jewish members who operated in the area of the lower Rhine as far south as Mainz.¹³

Unlike the Jews, Gypsies were almost completely outlawed as early as the beginning of the sixteenth century. They were prohibited from residing and passing through a town by threat of the death penalty. Although the execution of this brutal decree was rarely practised, 17 Gypsy women were executed in 1724 without proof of having committed a crime (Lange, 1994: 56). Gypsies' mobile lifestyle and their professions (tinkers, blacksmiths, horse-traders, fortune-tellers), in combination with the widespread popular superstition, led to their persecution. To defend themselves and to survive, many Gypsies became members of gangs. The Großer Galantho gang, which was active in Hesse in the 1720s, was almost entirely composed of Gypsies. As the Gypsy bandit Störzinger put it, 'the poor Gypsies also want to have the right to live' (quoted in Weissenbruch, 1727: 120). Even more than Christians and Jews, Gypsies had no qualms about openly opposing the authorities. To free the arrested members of the Großer Galantho gang, Gypsies blackmailed several public servants and even killed a high-ranking officer, the lieutenant Emeraner at Hirzenhain in 1725. Despite these efforts, the trial against members of the Großer Galantho gang was held in November 1726 and ended with draconian sentences. Five of the gang members were broken on the wheel, eight were hung, and nine (six of them women) were beheaded (Weissenbruch, 1727: 59-64).

Gang members' social background and position are an important, but not sufficient, factor to explain their drift into criminality. The harsh economic and social conditions described above, in fact, affected millions of people, the great majority of whom did not become members of criminal gangs. Individual life-paths need also to be considered (Danker, 2001: 172). Many of the arrested bandits had not only experienced poverty and marginalisation since birth, but also came from broken or incomplete families, that had been torn apart by war, invalidity or debts (Lange, 1994: 111). Early modern society was also rather intolerant of people born out of the wedlock, who were marginalised from birth.

¹³ For Jewish gangs, see Glanz (1968).

Many of the arrested gang members were also raised in families with established criminal traditions and were socialised to illegal activities at a very young age, so much so that they hardly had a chance to conduct an honest life. The description of the Vielmetter family as a 'dynasty of crooks' takes up four pages in Von Grolmann's report (1813: 228-31). As shown by Blauert and Wiebel (2001: 50), many gang members could often rely on a widespread family network in the underworld. The choice of a spouse was also very important. Engelröder Dick, for instance, became a thief after marrying the daughter of the notorious Heinrich Vielmetter. When he separated from his wife, however, he returned to his work as a bricklayer and never committed a crime for the rest of his life (Von Grolmann, 1813: 108-9).

Criminal careers were also promoted by the public prosecution and criminalisation of individuals – usually for petty crimes, such as theft – early in their lives. A veritable 'vicious circle' was, thus, inadvertently set in motion. The prospect or certainty of draconian punishment (until the eighteenth century even the death penalty was provided for an offence against property) prompted offenders to become fugitives and thus lose their social roots. The physical punishments and subsequent expulsion from the country that the authorities often imposed on criminals also frequently marked the debut of a criminal career. As a result of their sentences, offenders often lost their social contacts and economic support. The famous bandit Schinderhannes (the nickname of Johann Bückler, 1783-1802), for example, declared that public thrashing, following the theft of some pieces of fur in the house of his landlord, prompted him to become a criminal (Becker, 1804: vol. I, 2).¹⁴ There was yet another consequence of the early modern penal system. At that time, serious and less serious offenders were all put together in one prison, where they had time to learn from each other's experiences and skills, and to develop social networks that would later help them to pursue their criminal careers.

Some psychological traits of the offenders might also have prompted the beginning of a criminal career. Hints of these traits may be found in the *Aktenmäßige Geschichten*, which, however, primarily reflect the point of view and prejudices of the examining officers. Clichés of the time are frequently repeated, such as the lack of education and the condemnation of the offender's extravagance and dissolute lifestyle along with conclusions drawn from the offender's attitude *vis-à-vis* the law enforcement authorities. Von Grolmann, for example, distinguishes three categories of offender: the completely corrupt one, for whom there is no hope

¹⁴ His favourite territory was the Hunsrück. He became famous by practising extortionary robbery. He was finally arrested in 1802 and guillotined in Mainz, which became part of the Napoleonic Empire in 1803. Many legends exist around Schinderhannes, ascribing to him political rebellion (against the French occupiers), anti-semitism (defending the local population against Jewish money-lenders) and social engagement (taking from the rich to give to the poor), but there is no historical proof for this.

of improvement; the cunning ones, who had some valuable disposition; and the repentant sinners, who were willing to confess and were thus treated more mildly (Lange, 1994: 117).

3. The Internal Structure and the *Modus Operandi* of the Gangs

In the eighteenth and nineteenth centuries (as much as today) many people assumed that robber gangs constituted conspiratorial communities with strong and recognised leaders. However, only one gang seemed to come close to this widespread myth – Krummfingers Balthasar's gang, that was active in the first half of the eighteenth century. This gang had a strict hierarchy, the leader was called 'king' and was supported by lower 'noblemen', there were symbols to manifest the king's power and the gang membership as well as a written codex of norms and sanctions. If the sources are considered reliable – and Seidenspinner (1998: 290-4) recently called their authenticity into question – Krummfingers Balthasar's gang represented a perfect parody of the existing establishment.

Virtually no other gangs had such a formal organisation (for an overview of the major gangs analysed here see Table 2). Their structure was marked by three deficits: the lack of permanent members who would always participate in the gang actions; the lack of an elected permanent leader; and the lack of elaborate statutes (Lange, 1994: 121-4). As far as the gang members are concerned, it is important to differentiate between the looser circle of supporters and accomplices and the hard, though variable, core of individuals who participated, more or less regularly, in the gang campaigns. The latter are called, in cant, *Chawrussen*. To define them, Danker coined the term 'temporary companionship' (*temporäre Gesellung*; 2001: 139). In fact, the gang members convened irregularly, sometimes they operated and lived together for some time, sometimes they joined forces merely to commit a single crime. A longer cooperation was likely only if the members were relatives or if they liked and trusted each other. In any case, the entrance into a gang was fairly straightforward, as there were no initiation ceremonies. The 'temporary companionship' of the *Chawrussen* was made possible by the existence of a loose network of people, who knew the gang members, its usual meeting places as well as past and current gang activities.¹⁵ People belonging to this larger network did not perceive themselves as real gang members, though they were sometimes considered to be so by law enforcement officers in official reports and court papers. Indeed,

¹⁵ Arrested bandits often gave information about crimes they did not participate in. Seidenspinner (1998: 144), doubts that the members of the Odenwälder gang all knew each other; however, we must note that he assumes that there were about 300 persons loosely associated with this gang.

Organised Crime in Europe

Table 2.

Gang	Period of Activity	Location	Members	Methods, Crimes	Spectacular Campaigns
Nickel List's gang	Until 1700, when Nickel List was executed on the wheel	Upper Saxony up to the rivers Weser and Elbe	Jews and Christians	In 86 % of the reported cases secret burglaries with the help of duplicate keys	Theft of the <i>Gill-dene Taffel</i> and other jewels and gold from the 'Michaelisk-loster' monastery, 1698
Lips Tullian's gang	Until 1715, when Tullian was executed on the wheel	Saxony (Kur-sachsen), parts of Bohemia	Christians	Mostly secret burglaries	
Großer Galantho's gang	From 1718 to 1726, when some of its bandits were executed on the wheel	Vogelsberg and Wetterau regions in Hesse	Gypsies	Armed robberies and violent offences, including murder, resistance against police patrols	Murder of lieutenant Emeraner at Hirzenhain in 1725; robbery and murder of pastor Heinsius and his wife at Dörsdorf

Gangs of Robbers in Early Modern Germany

<i>Gang</i>	<i>Period of Activity</i>	<i>Location</i>	<i>Members</i>	<i>Methods, Crimes</i>	<i>Spectacular Campaigns</i>
Hoyum Moyses's gang	Until 1736, when Hoyum was hanged	All regions of Germany	Jews	Mostly secret burglaries without violence	Burglary at the gold and silver factory in Coburg in 1733
Krummfingers Balthasar's gang	Middle of the 18th century	Thuringen and Franconia	Christians	Armed robberies; violent offences including murder; burglary; strict hierarchical organization	
Bockreiter	1740-1770	Netherlands; area around Aachen	Unknown	Secret burglaries; rapid sale of the booty at the markets in Mersen	
Bayerischer Hiesel (Klostermayer)'s gang	1761-1771, when Hiesel was executed	Area around Augsburg in Bavaria	Christians; farmers	Poaching; social banditism	
Hannikel's gang	Until 1787	Swabia and surroundings	Gypsies	Armed robbery including violence; mostly Jewish victims	

Organised Crime in Europe

<i>Gang</i>	<i>Period of Activity</i>	<i>Location</i>	<i>Members</i>	<i>Methods, Crimes</i>	<i>Spectacular Campaigns</i>
Große Niederlande gang	1785 until about 1805	Middle and Lower Rhine; all German territories; area around Paris	Mostly Jews; <i>progenitor</i> : Jacob Moyses; <i>leaders</i> : brothers Bosbeck, Picard, Fetzter, Damian Hessel, Adolph Weyers, Carl Heckmann	Armed robbery by “Ren- nbaum”; violence where necessary; long distance journey; cover as soldiers	Robbery at the post office at Würges, united with Schinder- hannes
a) Brabant gang	Until 1796	Brabant		At first secret burglary without any violence, later on method of the Niederlande	
b) Holland gangs	1792-1798	The Netherlands, area around the Rhine			
c) Mersener gangs	1796				
d) Krefelder gang; later on unification with the Mersener gang and formation of the Neusser gangs	1790s	Rhine, first of all Lower Rhine	Vagrants; knife- grinders Leader: Fetzter		
e) Neuwieder gangs	1797 until about 1803	Bergisches, Märkisches Land Middle and Lower Rhine; Hesse	Mostly Jews	Robbery like the Niederlande	

Gangs of Robbers in Early Modern Germany

<i>Gang</i>	<i>Period of Activity</i>	<i>Location</i>	<i>Members</i>	<i>Methods, Crimes</i>	<i>Spectacular Campaigns</i>
Mosel gangs	Since Seven Years' War	Mountains of Mosel, Sohnwald, Eifel, Hunsrück	Christians	Robbery, theft of horses, burglary	Armed robbery and murder of priest Krones and his family at Sprink
Schinderhannes's gang	Until 1803 execution of Schinderhannes and 19 of his comrades	Hunsrück Mountains	Christians	Theft of horses; mugging; extortionary robbery; writing out of security cards in case of payment	
Odenwälder gangs of Hölzerlips	Until 1812 execution of Hölzerlips and 3 of his comrades by beheading	South of Hesse; Franken and Baden	Christians; no admission of Jews	Mostly burglary and theft; mugging; few robberies	
Vogelsberger and Wetterauer gangs	Until 1811-1812	Vogelsberg and Wetterau; Hesse	Christians; no admission of Jews	Mostly secret burglary; theft, few mugging and robberies	

prosecutors and judges were most often the first to draw the gang boundaries, by clearly listing its members. Most of the time public authorities even invented the gang name (Seidenspinner, 1998: 141).

The loose organisation of most gangs is also proved by the lack of permanent leaders, a new one being selected for every new crime. Here the decisive factor was experience, along with ability, reputation and special criminal skills. Due to his criminal skills, for example, Nickel List was often recruited by different groups, though he was not inevitably chosen to be the leader (Danker, 2001: 142). On the contrary, the Brade gang, which committed burglaries and thefts in Lower Saxony around the year 1800 and consisted of both Jewish and Christian members, was regularly headed by Brade, because he had enormous technical abilities and was able to use over a hundred different picklocks (Riesener, 1994: 195). Although there was no distinct hierarchy within gangs, a few of them developed some sort of ranks reflecting the bandits' skills. The Große Niederländer gang had the most elaborate structure, as it differentiated between chiefs, potential leaders, 'spies' (*Baldowerer*), 'veterans' (i.e. experienced robbers) and young, inexperienced bandits, who were engaged for single projects and for their knowledge of a certain locality. In most gangs, the leader commanded the gang during an action and, if it failed, he had the authority to punish faults and violations of his companions. Apart from these cases, there were no fixed hierarchies or written regulations. Being a gang member was a relatively free and independent experience (Lange, 1994: 123-4).

Some unwritten norms had of course to be respected, as they guaranteed the security of the members and the whole gang. Violations of these norms, and in particular the betrayal of fellow gang members, were severely punished. If the former companions were able to catch the traitor, he had to face thrashing, mutilation or assassination. Despite the severity of these punishments, arrested bandits often cooperated with law enforcement authorities, who intimidated detainees with torture, which was practised throughout the eighteenth century, or with psychologically sophisticated interrogation techniques. Defections were also prompted by the hope for amnesty or by the desire to take personal revenge on fellow bandits.¹⁶

¹⁶ A stunning example of bandits' cooperation with judicial authorities is given by Konstanzer Hansz. Born Hans Herrenberger near Kloster Allerheiligen, his father was an itinerant shoemaker and teacher, and his mother a basket-maker and beggar. Hans sold devotional objects and came into contact with criminals aged 18. He was arrested in 1778 for theft and sent to the imperial armed forces at Günzburg, but succeeded in deserting at his third attempt in 1779. From that time onwards he moved around with a small group of vagrants, including his parents and younger sister. He earned a living by burglary, favouring the Black Forest region and the upper Rhine towards Switzerland (Zurich, Graubünden and Schwyz). Hans helped the authorities to compile a list of bandits by naming 468 persons he was acquainted with. Hans even supported the

Another reason for internal conflicts was the division of stolen goods. Generally, the booty was divided according to fixed rules – either all members received the same quantity, or the goods were distributed on the basis of each individuals' effort. There is also some evidence of a rudimentary social welfare system, as the wives and children of the arrested members, and the bandits who were not able to participate in the action or who had lost their share, also received a share of the booty (Lange, 1994: 125). However, the division of the booty occasionally elicited cheating and even theft by single members. Such incidences often had a fatal outcome. A member of the Vogelsberger and Wetterauer gang, Hunds Velten, was badly tortured for his embezzlement of two thalers and eventually died from his injuries.¹⁷ Sometimes gangs split up, as in the case of the Brabanter gang, as a result of internal cheating (Lange, 1994: 126). In general, personal arguments quickly escalated since bandits were accustomed to an illegal lifestyle, with its consequent violation of norms and the constant fear of being caught. This naturally caused an atmosphere of mutual mistrust even in closely connected circles (Wiebel, 2000: 771).

Despite loose membership criteria and occasional conflicts, most gangs developed communitarian feelings and a clear collective identity. As a result, they often tried to avoid the penetration of another gang into their territory, even though they allowed, and occasionally even invited, skilled bandits belonging to other gangs to participate in their actions (Lange, 1994: 130; Danker, 2001: 141). Gangs usually felt bound to a specific territory and its inhabitants. As already mentioned, the small operational units that were set up for the purpose of a criminal action needed supporters and potential participants, most of the time settled people who did not actively participate but who tolerated them by not betraying them, for example. These people made up a 'criminal infrastructure' (*räuberische Infrastruktur*), which can be best described with the cant term 'trusted people' (*Kochemer*, the vagrants and gang members living at the margins of society) (Küther, 1976: 61). Without these contacts, the mere existence of collective criminality, and the survival of marginalised bandits, would not have been possible.

The scarce presence of law enforcement forces in rural areas also strengthened the links between local inhabitants and gangs. Until the eighteenth century, only a single layman deputy watched over a rural area. Due to the low police presence, bandits could easily find suitable hiding places in rural areas, which were

investigations of the chief inspector Scheffer, who, with the help of Hans's list, was able to identify the famous bandit, Hannikel. Because of his cooperation, Konstanzer Hansz was finally pardoned and was even allowed to quit the bridewell to stay at a poorhouse in Ludwigsburg (Blauert and Wiebel, 2001: 95, 105).

¹⁷ See the vivid description in Von Grolmann (1813: 245-6).

consequently much preferred to urban locations. Bandits particularly favoured remote places close to 'state' borders. Thus, if necessary, bandits could quickly flee the pursuing deputy who would first have to get in contact with other authorities in order to catch them. As inter-state cooperation was not highly developed, the cumbersome actions of the authorities gave a temporal advantage to the bandits (Lange, 1994: 92-3).

Bandits did not always choose to live in the regions in which they operated. Jewish gangs, in particular, were known for the attacks they made several hundreds of miles away from their hiding places or temporary homes. What made these actions possible was the spread of Jewish inns throughout the whole territory of the Old Empire. This facilitated long journeys with overnight stays at the various inns. On the contrary, Christian bandits tended to rely more on local knowledge. The operating area of the Odenwälder gang, for example, extended from Heilbronn in the south to Fulda in the north, and from the marsh at the Rhine in the west to the outskirts of Würzburg in the east: this is an area of approximately 157 by 240 kilometres. The centre of the gang's criminal action was the area of the Bergstraße, Odenwald, Bauwald, Dreieich, Wetterau and the Kinzigtal. To hide themselves after a criminal enterprise, Odenwälder gang members preferred the poorly inhabited areas of the Odenwald, such as the Winterhauch region (Seidenspinner, 1998: 142).

Safe accommodation was vital for short-term hiding places, meeting points for discussions, celebrations and the division of the booty, as well as the long-term residence for aging and sick bandits, and women who were about to give birth. Some of these safe hiding places were frequented for many years, such as the inn Zum Weißen Ross in Stedten, Saxony. This inn was an abode for Nickel List and his fellows in the late seventeenth century and, 50 years later, for Krummfingers Balthasar's gang (Danker, 2001: 157). In general, inns gave regular accommodation to vagrants and criminals. The inn owners not only tried to make a lot of money out of these 'special' guests, but also sought contact with criminals and occasionally supported them, because they also often belonged to fringe groups, descended from dishonest families or were former soldiers or crooks themselves. The itinerant lifestyle was expensive – accommodation had to be paid or worked off – and the high cost of living prompted new criminal actions within a relatively short period of time.¹⁸

¹⁸ The life-story of Alte Lisel and her fellows, who were active in the area of the Lake Constance, clearly shows how this vicious circle was set in motion (Blauert, 1993). Alte Lisel, born Elisabetha Frommerin, was head of a gang of itinerants who earned their living by begging, petty theft and pickpocketing at inns and markets. Lisel led the group because of her experience of life, having lost three husbands by execution. Lisel was arrested in 1732, aged about 40. She was the last of her gang to reveal her true identity during interrogation. She was executed in Salem in August 1732.

Even private homes offered shelter to many bandits. Usually these private hosts were people ignored by their village communities, because they were of dishonest stock themselves. Farmers and artisans also occasionally offered shelter. They usually did so, because they were either relatives or friends of bandits, or because they wanted to earn some extra money and were, in case of refusal, afraid of burglary, arson or physical violence in regions with poor police presence (Lange, 1994: 134-5). By offering shelter to bandits, however, the rural population risked punishment by accommodating strangers without official permission (Wettmann-Jungblut, 1990: 159). In general, however, the relationship between the settled rural population and vagrants (and bandits) was rather problematic. On the one hand, farmers and artisans employed vagrants as touring traders, wandering artisans, seasonal helpers on a farm, or entertainers. On the other hand, they were afraid of vagrants and occasionally took the law into their own hands if they witnessed theft.¹⁹ Sometimes farmers and artisans participated in police patrols and even actively hunted vagrants (Seidenspinner, 1998: 117).

However, there were also far-reaching contacts between criminals and members of the established society that culminated in the establishment of so-called 'crook villages'. The foundation of these villages resulted from the idiosyncratic policies of the many kingdoms, duchies and independent cities that composed Germany in the *Ancien Régime*. As government authorities received a sum of money from each new resident, they not only settled Jews without formal safe conducts but also criminals and vagrants. After having paid a fee, these new citizens were provided with passports and allowed to live in a specific village, if they promised to obey the laws of their new home country. As they usually had no (or very little) real estate, they were forced to go begging and stealing in neighbouring states. Well-known examples of these 'crook villages' in Hessen were Abterode, Reichensachsen, Romsthal and Eckederoth.²⁰ Here, bandits could be easily warned by the local population when police patrols arrived in the village (Lange, 1994: 91; Danker, 2001: 158). Aside from the occasional cooperation with superior civil servants, such as bailiffs, bandits had frequent connections with low-level government employees. Subordinate civil servants who were badly and irregularly paid, had a vested interest in levying a charge for issuing passports, while caring little about the applicant's identity. Moreover, there was a social bond between vagrants and bandits, on the one hand, and, on the other hand, subordinate civil servants, such as

¹⁹ Many cases of petty theft never came to the court but were settled spontaneously. At Easter 1731, Alte Lisel and her accomplices, for example, were thrashed by a tradesman and a tanner who caught them *in flagranti* stealing cloth (Blauert, 1993: 42).

²⁰ See also the description of 'hawker villages' in the Black Forest and Franconian Alb made by Seidenspinner (1998: 111).

beadles, subordinate ushers of the court, summoners and mendicant bailiffs, who were regarded as dishonest themselves. Circumstances permitting, there was not only corruption but solidarity between these civil servants and the bandits (Lange, 1994: 88-92; Danker, 2001: 159).

In addition to shelters, criminals needed accomplices to carry out minor tasks. Successful burglaries and robberies usually required the so-called *Baldowerers* (scouts who looked out for profitable and secure opportunities). To this aim, bandits were supported by farmers, beggars and vagrants, but also by the women who were part of their community (Blauert and Wiebel, 2001: 68; Lange, 1994: 131). Most of all, a *Baldowerer* was needed for carrying out actions in places unfamiliar to the bandits.²¹ Some robberies were even carried out upon explicit request of Jewish traders or Christian civil servants (Danker, 2001: 137; Lange, 1994: 92).

If the booty was not money or goods for personal use, it had to be resold somewhere. After minor thefts had been committed, vagrants (including women) acted as hawkers in an attempt to sell the stolen goods. If the risk of the goods being recognised was too high, receivers of stolen goods were needed, in which case landlords offered a helping hand. Members of the Jewish minority, in particular, were involved because the authorities traditionally pushed Jewish people to the margins of legitimate trade and many of them were used to dealing in goods of uncertain origin. But there were also 'well-integrated' Jews who ordered stolen goods, such as Salomon Michel from Abterode, a silversmith supplying the *Hessische Silbermünze*. Sources corroborate bandits' complaints about exorbitant sums claimed by the receivers of stolen goods which left only a fraction of the booty value for the bandits – for example, a Jew from Münzenberg handed out only 143 florins to the Wetterauer bandits for goods he had received after a mugging near Klein-Rechtebach. It is believed that the stolen goods were worth over 2,000 florins.²²

Bandits usually had a lifestyle, a *Kochemer* subculture, appropriate to the conditions of illegality in which they lived. A key element of this subculture was the secret communication codes, which allowed safe communication among the *Kochemer* and strengthened their togetherness. Secret communication codes also

²¹ Hannikel and his Gypsy gang, for example, were able to rob the house of the Jew Liebmann Levi at Marienthal in the earldom of Wartenberg, 50 km from Pirmasens, thanks to the support of two local farmers. They not only informed the bandits of the opportunity but also led them for a distance of 30 miles to Levi's house (Viehöfer, 1995: 69).

²² Such exorbitant exploitation was not always the case. Danker (2001: 160), for example, calculated that Salomon Michel made a profit of only five or six thaler per pound of silver that he received. This meant a profit margin of 40 per cent.

sharply distinguished and separated bandits and their accomplices from the so-called *Wittischen*, who lived in accordance with the law and were regarded as ignorants. The most important of all means of communication was the cant (*Rotwelsch*). The *Kochemer* used it most often when they were in prison in order to agree upon a collective statement in a trial or to deceive their victims. The *Rotwelsch* grammar and syntax had a clear German origin; however, the words were drawn from several dialects, foreign languages and, above all, Hebrew. Differing slightly from one region to the other, the cant was composed of 150 to 350 secret terms, which were enough to indicate the main objects and activities of bandits' everyday life (Lange, 1994: 136; Danker, 2001: 73-4; Jütte, 1988: 27-8).

Secret communication also included the so-called *Zinken*, i.e. visual signs such as gestures and movements, or sounds such as beating codes during imprisonment, and graphic symbols such as drawings on walls or squares and marks on trees (Lange, 1994: 137-9; Seidenspinner, 1998: 127). A third element of communication was the nickname. Every *Kochemer* had a nickname, which his fellow bandits all knew. The name revealed the main characteristics of each bandit, who never changed it or gave it up. Nicknames did not necessarily express the bearer's honourable traits (Seidenspinner, 1998: 129). For example, Mathias Weber was given the nickname 'Fetzer' (a person who tears people into pieces) after his behaviour during a hold-up. Nicknames usually portrayed the outward appearance of a bandit, his afflictions, characteristics or his professional and regional origin (Lange, 1994: 139-40; Blauert and Wiebel, 2001: 80). The age-old tradition of story-telling, describing the remarkable exploits of well-known crooks, also strengthened the bandits' togetherness (Blauert and Wiebel, 2001: 99).

The relative seclusion of the crooks' world is also proved by the fact that the *Kochemer* only sought human interaction in their own circle. They selected their partners primarily on the basis of their 'professional' qualifications – their cunning and ability to steal and *baldower*. Physical, but also psychological strength was considered essential for the illegal everyday life, as the latter provided a certain reliability and solidarity for the hard times. In comparison with these characteristics, outward appearance was of minor importance (Schöll, 1793: 233).²³

As public authorities only acknowledged marriages that gave account of the couple's financial situation, *Kochemer* partners usually lived together in an unmarried state. This caused the indignation to the investigating officers, who

²³ Monika Machniki (1995: 146) describes the women who were sought in the 'wanted' lists as being marked with scars resulting from illness and insect bites. Men must have looked just as bad, as nicknames like *Krummfingers Balthasar* (whose fingers were crooked from torture using the notorious thumbscrews), *Stumpfarmiger Zimmermann* (who had lost part of one arm, leaving just a stump) and *Schrammbackiger Jörg* (whose cheeks were scarred and scratched) testify!

often denounced the bandits' alleged immorality (Schöll, 1793: 236, 240, 262; Becker, 1804: vol. I, 22). However, a closer look at the sources makes clear that the *Kochemer* usually maintained monogamous relationships. Particularly in hard times, quasi-marital relationships gave them a feeling of relative stability, although there is some proof of violence against women.²⁴ These relationships frequently ended with the arrest or execution of the male bandit, after which women often looked for a new partner in order to avoid a lonely existence on the road.²⁵ If former partners were dismissed from prison, they often took bloody revenge on the 'new husband'. After being released from prison, for example, Iltis Jakob, a member of the Mosel gang, killed two rivals as well as his faithless wife. In their turn, abandoned women often took revenge on their husbands by handing them over to the authorities (Lange, 1994: 140-4).

Recent research has unearthed the fact that women were not 'mere supernumeraries' (Wiebel, 2000: 799), as was long believed. Women were, above all, in charge of the daily nourishment of their families and the smaller groups they were living in. Women also worked as hawkers, beggars and were engaged in minor criminal activities, such as pickpocketing and robberies on markets, and occasionally also burglaries (Blauert and Wiebel, 2001: 57, 67-8; Blauert, 1993: 23-4; Wiebel, 2000: 762-3; Danker, 2001: 118, 151-2).²⁶ Bandit women thus sought to finance not only the purchase of food, clothes and accommodation, but also their husbands' drinks in pubs (Blauert, 1993: 24). When they were involved in criminal activities, however, most women merely had ancillary functions – for example, they were in charge of lookouts in burglaries and robberies – the criminal action itself was usually dominated by men. On the other hand, women did contribute to the group's cohesion with their communicative skills. Jewish robbers and crooks, for example, were mostly married and left their women at a fixed place of residence. These women were not informed about their husbands' activities, protected them and provided their husbands with the alibi of an honest life (Lange, 1994: 141; Glanz, 1968: 188-92; Danker, 2001: 152; Machniki, 1995: 149).

Women in the gangs also took care of their numerous children who accompanied their parents and who contributed to the family income at a very young age by

²⁴ On this point, see the statement of Lisel's daughter incriminating her mother's partner in Blauert (1993: 44, 49) and Wiebel (2000: 778).

²⁵ Alte Lisel lost no less than three partners by execution (Blauert, 1993).

²⁶ Schwarze Lis (Black Lis), for example, was accused of 299 thefts and burglaries, 71 per cent of them being picking of pockets (Wiebel, 2000: 775). Her parents were also supposed to be vagrants. Shortly after her marriage the couple began an itinerant life. Lis worked together with other women in committing thefts. She was arrested several times, for the last time in 1787, and was beheaded in July 1788.

begging and committing petty thefts.²⁷ Children quickly learned the required techniques of stealing, partly from their parents but also through a kind of 'criminal apprenticeship' (Lange, 1994: 146). If they needed to escape, bandits' children had to prove physical strength, endurance and speed. Mental flexibility was also required to prepare the young offspring for an arrest or interrogation. The training of these skills was part of a *Kochemer* child's educational goals, as well as toughening in order to stand torture (Lange, 1994: 147). As a consequence, lessons in reading, writing and arithmetic came off badly!

4. The Characteristics of Criminal Activities

Though many robbers and crooks specialised in certain crimes and criminal techniques, the bandits' scope of different criminal activities was extraordinary. Even within one single group, carefully planned and brutal crimes were committed next to petty thefts, such as stealing cattle, fruit or clothes from farms, thefts at markets, in shops or inns, pickpocketing, thefts from the poor-box and cheating of all kinds. Bandits liked to be close to places full of traffic and strong economical concentration, where there was a lucrative business. They frequently joined fairs, markets or pilgrimages.²⁸ The seasonal breakdown of their crimes shows that bandits timed their actions to coincide with such occasions. Accordingly, most of the crimes were committed in spring and autumn, as the short summer nights would have hindered their secret activities, and the winter was ruled out because of bad weather conditions.²⁹

Although bandits favoured the countryside, it was by no means their only place of criminal activity. The three gangs, who were sentenced in Celle, Dresden and Coburg in the early eighteenth century, committed more than the half of their crimes (261 in all) in urban areas. Those criminals who could afford to make long-term

²⁷ Schwarze Lis had at least seven children who occasionally boarded with settled people (Wiebel, 2000: 775).

²⁸ This orientation towards fairs and markets is typical especially of the small vagrant groups of the German south-west. These groups moved from one such public event to another and took advantage of the crowds of people milling around, by taking merchandise from stands and picking pockets. They usually resold the stolen goods on the spot (Blauert and Wiebel, 2001: 58-60; Wiebel, 2000: 778).

²⁹ Seidenspinner (1998: 142), for example, has demonstrated that the Odenwälder gang committed an overproportional number of crimes in the month of September. Many fairs and markets were, in fact, held in the autumn. Danker (2001: 132) correlates the large number of crimes committed in the autumn with the increasing cost of living during the cold season.

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elaborate preparations and use special, inconspicuous techniques, did not worry much about city walls or gates. Nickel List, for example, was a master of secretly opening locks without the use of force, by either using picklocks or duplicate keys that he made from wax imprints. As a consequence, his thefts from churches or private houses were usually not discovered immediately and Nickel List and his gang had enough time to leave the town of the crime unchallenged through the city gate. Occasionally he could even pass himself off as the aristocratic Herr Von Mosel (Danker, 1988: 227-33).³⁰

Gangs' starting conditions and capabilities varied considerably. A high level of security was, however, of major importance for all of them and this requirement often determined their *modus operandi*. That is why open robbery, the most spectacular of crimes and the most often ascribed to historical gang criminality, was by no means a typical crime of the time. Open robberies were carried out only by perfectly organised groups in very favourable circumstances. For example, the sub-units of the Große Niederländer gang that specialised in armed robbery profited from the collapse of state authority resulting from the Napoleonic wars and the slow establishment of the occupying power on the left bank of the Rhine. The Niederländer looked for profitable opportunities long before any crime was committed, then selected ten or more members who eventually elected one or more leaders, and split up in small groups to travel to an agreed spot near the location of the planned crime. During their advance, the bandits deceived the local population by camouflaging themselves as patrolling soldiers, while taking safety precautions against night-watchmen and their dogs. Having reached the crime location, they posted several guards in front of the building, usually a private house. The remaining bandits stormed it with the help of a tree trunk used as a battering ram (*Rennbaum*). They bound and gagged the inhabitants and forced them to reveal where their valuables were hidden. If officials, neighbours and others arrived at the location, the bandits either fled or put up some resistance. After a march of several hours, they divided the booty according to each individual's contribution to the crime's success (Lange, 1994: 159-63).

Although the Niederländer gang was most famous for its sophisticated *modus operandi*, there were predecessors and successors who also used this style of robbery, such as the Großer Galantho's Gypsy gang, which was active in the early eighteenth century in Hesse, and the Gypsy gang headed by Jakob Reinhardt, called Hannikel. In the 1770s, Hannikel's gang committed eight major robberies and burglaries using the Niederländer method within 50 km of Pirmasens (in contemporary

³⁰ A Jewish gang operating at the same time as Nickel List reached an even higher level of professionalism, as the burglary at the gold and silver factory at Coburg in 1733 demonstrates. This burglary required a preparation of more than one year, and criminals travelled to Coburg from a distance of 150 km (Danker, 1988: 234-6).

Rhineland-Palatine). Later, in the early 1780s, the gang went on to commit another series of well-prepared, highly secret and successful burglaries. Hannikel's gang was so skilled and cautious that it evaded legal prosecution for almost 20 years. Erich Viehöfer (1995: 69-70), who wrote an *ad hoc* essay on this gang, puts its success down to the careful preparation of the crimes, the safe accommodation and the strong solidarity ties among Gypsies (see also Lange, 1994: 163-4).

Another crime that was safe to commit only under both politically and geographically favourable circumstances was mugging. The most frequent locations for mugging were uneven streets in rough grounds only lightly controlled by the authorities. Though spontaneous unplanned attacks were sometimes carried out, as a rule the streets were carefully staked out in preparation for an attack. This crime was seldom committed in districts that boasted a more professionally organised administration and had well-functioning cooperation with neighbouring states (Lange, 1994: 157-9; Danker, 2001: 120).

The most typical crime committed in the eighteenth and early nineteenth century was burglary. Burglaries were the criminal activity favoured by Nickel List's gang (representing 86 per cent of all their crimes), Lips Tullian's gang (84 per cent) and the so-called Hoyum Moses gang operating in the early eighteenth century (83 per cent). In the early nineteenth century the proportion of theft including burglaries came up to 67 per cent for the Odenwälder gang, and 82 per cent for the Wetterauer gang. In assessing the latter data, however, we need to consider that the offences against property attributed to gangs were most diverse, extending from the above-mentioned minor petty thefts to the secret intrusion into open houses, the so-called 'violent burglary' (relying on ladders, drills and crowbars for opening windows, doors and locks on chests and cupboards) and special non-violent stealing techniques, such as the manufacture of duplicate keys. Two common traits of all these crimes, however, were the secrecy of operation and the avoidance of violence against people. If the bandits were disturbed, they immediately ran off (Lange, 1994: 154-7).

A special subset of this crime was burglaries in churches. In this case, the location of the crime could be accessed quite easily and there was a reasonably low probability of being caught in the act. Burglars did not only seek out a church's silver relics but also secular goods that were hidden there or, if all else failed, the poor-box. One in four of the crimes committed by the three above-mentioned gangs operating at the beginning of the eighteenth century (Nickel List's, Lips Tullian's and the Hessian Jewish gang) was church robbery, whereas the Niederländer gang and the gangs of the early nineteenth century rarely committed this type of crime. Reasons for the growing rarity of such thefts might be the severity of punishment, on the one hand, and respect for the church as a holy place, on the other (Lange, 1994: 152-4).

Three factors need to be considered to assess the damage resulting from a collective crime – the violence that criminals imposed on their victims; the booty; and the

overall consequences for the victims. In general, it is remarkable how the brutality of gangs declined. Two groups of the early eighteenth century – the Gypsy gang of Großer Galantho in Hesse and Krummfingers Balthasar’s gang in Saxony – systematically imposed brutal violence on their victims. Violence, indeed, constituted the most characterising trait of their activities: Großer Galantho’s and Krummfingers Balthasar’s gangs often used violence on victims and occasional witnesses with no apparent necessity and seemingly for its own sake. Saxon bandits, for example, robbed a group of people in a forest (including a young girl) and then simply shot their victims in cold blood. They were provided with modern pistols from an armament factory located in the district of the gang.³¹ Later on, in the late eighteenth and early nineteenth century, gangs such as the Niederländer and Hannikel’s Gypsy gangs used violence only if it was necessary – for example, when they carried out a robbery or mugging. In such cases, they sought to minimise the victims’ resistance by binding and gagging them, but then deliberately tortured their victims in order to force them to confess where their valuables were hidden. Victims had also to face severe consequences if a *Baldowerer* had overestimated their property’s value, which then did not come up to the other bandits’ expectations. While these mostly offensive criminals had pistols or rapiers, the gangs of the nineteenth century (for example the Odenwälder and Wetterauer gangs) were only armed with branches and cudgels. They rarely used pistols, which in any case were of rather poor quality, were loaded improperly and often failed to function at all (Lange, 1993: 6-7).³²

The gangs operating in the late eighteenth century and in the early nineteenth century differentiate themselves from the bloodthirsty gangs of the early eighteenth century by the predominance of non-violent and secret crimes they usually carried out, as opposed to the offensive robbery crime and the almost expedient use of violence of their predecessors. From the middle of the eighteenth century there was, indeed, a certain humanisation in the gangs’ *modus operandi*. Apparently, the change in the commission of criminal activities reflected a general change in

³¹ As mentioned earlier, the Großer Galantho’s Gypsies did not even have scruples to murder a high-ranking police officer, the lieutenant Emeraner in 1725. As far as the use of violence is concerned, the gang of Lips Tullian stood out among the three gangs of the early eighteenth century analysed by Danker. See the description of the armed robbery committed by Lips Tullian’s gang in 1704 in Danker (2001: 123-4).

³² In an essay (Lange, 1993), I make detailed comparisons between the gangs of the early eighteenth century (such as the Großer Galantho’s and Krummfingers Balthasar’s Gypsy gang), those active at the end of the eighteenth century (such as Hannikel’s and the Große Niederländer gangs) and groups operating at the outset of the nineteenth century (the Odenwälder gang and the Vogelsberger und Wetterauer gang) concerning the above-mentioned aspects.

the evaluation of violence. Until the late seventeenth century, offences against property were considered much more serious than bodily harm. As a consequence, the punishment of property was much more severe than the penalties for violent offences, such as manslaughter. These could usually be settled with a penitent or expiatory sacrifice in agreement with the victim's family, without the necessity of a trial (Schwerhoff, 1992: 402-4). During the eighteenth century, however, attitudes toward crime changed with the beginning of the Enlightenment and the formation of the civil society. Expressions of violence as irrational brute force receded in different parts of society and state (Pröve, 1999: 804-6; Danker, 2001: 126-7). A consequence of this process was the cessation of physical violence on delinquents in the penal system. Physical punishment was increasingly replaced with imprisonment, and the principles of education and re-socialisation substituted deterrence and retaliation as the main aims of punishment. This change often produced a mere displacement of violence – although the application of torture in interrogation was reduced, psychological methods of questioning brought about another kind of violence (Danker, 2001: 806).³³

As for the lucrativeness of gang crime, there was usually a correlation between kind and value of the booty and the gangs' *modus operandi*. Open robbery was ideally suited to force victims to hand over money and valuables. Two-thirds of the booty amassed by the Neuwieder gang (a subdivision of the Niederländer gang) consisted of money and valuables that could be easily resold. Likewise, Hannikel's Gypsy gang is believed to have committed robberies worth many thousand florins (Lange, 1993: 8; Viehöfer, 1995: 70). Church robbery and highly elaborate thefts were also very profitable. Between 1696 and 1698, for example, Nickel List got away with an annual income of about 765 talers. This sum was more than four times the salary of a pastor in the Saxonian city of Leipzig (see Danker, 2001: 145).³⁴ However, such indications of worth must be judged with great caution. Offensive robberies required a large number of participants who had to receive their share of the booty and who had to sell stolen goods on to receivers. These actions were often loss-making enterprises. Likewise, in case of easily recognisable stolen silver from a church, bandits also needed a furnace in order to melt down and resell the silver (Danker, 2001: 129). Regular profits from crime, such as Nickel List's ones, were exceptional. Even successful gangs had every now and then to commit minor thefts or deceptions when times were hard. It must also be considered that money

³³ The theory of a general decline of violence during the eighteenth century must be regarded with caution. On the matter, see Schwerhoff (1992: 410); Wettmann-Jungblut (1990: 144).

³⁴ A pastor at this time earned about 190 talers or florins per year. At the beginning of the nineteenth century, a poor soldier from Gießen was earning one taler per week.

and valuables were not the typical spoils. A well-documented comparison of the booty collected by the Odenwälder, Vogelsberger and Wetterauer gangs shows, for example, the following: the bandits looted mainly textiles, especially clothes, but also cloth and bedding (30 and 27 per cent respectively), followed by domestic appliances (12 and 21 per cent), food (15 and 13 per cent), and cattle (8 and 13 per cent). Only 10 per cent of the Odenwälder, and 5 per cent of the Wetterauer booty actually consisted of valuables or money (Lange, 1994: 175-6).

Analysis of the files additionally provides interesting information about the actual value of the bandits' ill-gotten gains. Sixty-six per cent of the Odenwälder booty had a value under 100 florins and 52 per cent was worth less than 50 florins; 72 per cent of the Wetterauer booty was worth less than 100 florins and 66 per cent less than 50 florins. Four-figure amounts were looted only in exceptional cases (Lange, 1994: 178). The Odenwälder gang was more successful than the Wetterauer and Vogelsberger gang because it carried out the more profitable crimes of robbery and mugging. These crimes were most frequently committed in the later phase of the gang existence, when the Odenwälder admitted notorious ex-members of the dismantled Niederländer gang.³⁵ The Vogelsberger and Wetterauer bandits were less sophisticated – over 80 per cent of their crimes consisted of burglaries and thefts – nor they were particularly picky in their selection of the booty. They usually chose to commit a crime according to the following criteria – the coup had to be done easily, without danger and without a great use of manpower. So they stole linen, bedding, clothes (from washing lines) and cattle from the pasture or the stable. Burglaries took place as unobtrusively as possible, during which they took everything in their reach, such as vats of brandy, washtubs, crockery, clothes and, above all, food. As a rule, they did not even attempt to gain access to the hiding places of valuables.

As for stolen textiles and food, some were sold on the markets or in itinerant trade but most were used for the bandits' own needs. The high amount of stolen food is an indication of the fact that many gangs stole, to a substantial degree, according to the principle of living 'hand to mouth'.³⁶ It is very likely that the actual

³⁵ Seidenspinner (1998: 145-7) connects the quantitative and qualitative rise of the crimes committed by the Odenwälder gang with the trends in the general economic situation. The first crimes of this gang were registered in 1802 and 1803, when famine was widespread throughout Germany. The number of crimes increased with the second agrarian crisis, which began in 1806 and reached its height in 1811, as continental European countries suffered most from the consequences of the British embargo on Napoleonic France and its satellite countries.

³⁶ The vagrant groups of the south-western part of Germany predominantly obtained the same kind of booty. They largely stole it for their own needs – for example Alte Lisel's accomplices took away a number of cloths after the birth of a baby (Blauert, 1993: 56;

percentage of petty thefts was even higher and many of these offences were not entered in the files. The remanded prisoner Johann Adam Heusner, for example, mentioned in his testimony that ‘even after additional interrogation for years he would not be able to assert that he quoted everything, because he could not at all recall every tiny detail of his crimes’ (Lange, 1994: 179).

It is fair to assume that many attempted robberies also went unreported. The *Aktenmäßige Geschichten* reveal that 33 per cent of the Odenwälder and 10 per cent of the Wetterauer gangs’ attacks failed without the bandits obtaining any booty. Crimes involving a high risk like robbery or mugging were especially prone to failure. Reasons for this were often the sudden appearance of witnesses, the resistance of victims, insufficient preparations prior to an attack, unreliable accomplices or even losing the booty on the way back (Lange, 1994: 179-81).³⁷

There was also a connection between the amount of the booty and the social standing and wealth of the victim. Bandits were naturally interested in wealthy victims, but they always had to consider security aspects and practicability. An analysis of the Neuwieder gang’s selection of victims shows that their targets were mainly salesmen, traders, bankers, followed by representatives of the authorities, landlords, millers and blacksmiths. Members of lower classes were rarely targeted (Lange, 1994: 183). Some gangs, like Hannikel’s Gypsy gang or the famous Schinderhannes gang, mainly concentrated on wealthy Jewish victims, especially when committing armed robbery. They counted on the passivity of the victims’ Christian neighbours – or even their support, as Jewish money-lenders were disliked by the rural population.³⁸

The records available on the Odenwälder and Wetterauer gangs show that they did not select their victims carefully. They even looted from their own social class. This ‘policy’ was also adopted by many other gangs of that time (Lange, 1994: 185-6; Danker, 2001: 125, 169). Many gangs, in fact, took every opportunity and did not care much about the harm they caused to others, and sometimes even targeted the *Kochemer* people. The so-called ‘inn robberies’ (*Herbergsdiebstahl*; a term invented by Blauert and Wiebel, 2001: 66) show that many bandits stole their landlord’s goods instead of paying their bills. Rarely, they showed some compassion if they were confronted by their moaning victims by returning some of the looted

Blauert and Wiebel, 2001: 266; Wiebel, 2000: 769). Lips Tullian even made trousers of a stolen altar-cloth (Danker, 2001: 130).

³⁷ Even the professional Niederländer bandits failed in some of their risky coups (Lange, 1994: 179-80).

³⁸ These assumptions did not always prove to be true. Hannikel and his accomplices had their hopes dashed when they attacked the Jew Levi at Marienthal. The neighbours put up armed resistance (Viehöfer, 1995: 70).

goods (Lange, 1994: 190-1). Bandits' 'visits' could cause devastating and ruinous effects on victims even if the booty only amounted to 93 florins and 28 kreutzer – the latter was, for example, 'a poor maid's savings of 7 years' (Pfister, 1812: 123). In a time where saving and passing on values were of great importance for social security, the effects of burglary were indeed very serious (Danker, 2001: 129).

5. Conclusions: Gangs in the Current Historical Debate

What conclusions can be drawn from this analysis of German collective criminality during the eighteenth and early nineteenth century?

The sources give little account of the total number and effective relevance of the crimes committed by gangs. These, however, were presumably only a small fraction of the criminal offences carried out in those years. The analysis of execution rates and records shows a high percentage of individual delinquents, especially when capital offences were concerned.³⁹ However, as mentioned earlier, gangs' participation in minor offences cannot be detected easily and the number of minor offences effectively carried out by gangs is probably much higher than the figures reported in existing sources.

It is probably even harder to assess correctly the qualitative relevance of organised criminality. There are many reports of bandits' pride in their outstanding careers and boasts of their own deeds and their gang's criminal activities (Lange, 1994: 190-1). In eighteenth and nineteenth century sources, we can also find statements claiming the legitimacy of bandits' activities, along with a differentiation between the violation of state law and sins in a religious, especially Christian, sense. When he was asked if he knew that stealing was a crime, the Wetterauer bandit Pohlengängers Hannes replied: 'I was very well aware of this but I did not care much. After all, I did not know that stealing was a sin' (Von Grolmann, 1813: 422). Likewise, a poem written by Mannefriedrich, the nickname of Philipp Schütz, a member of the Odenwälder gang, tried to legitimise gangs' activities by showing that these are prompted by the asymmetrical division of wealth and power: 'Many a lord is guilty, indeed, for many a poor man's dishonest deed' ('Die meisten Herrn sind Schuld daran, dass mancher thut, was er sonst nicht gethan') (Pfister, 1812: vol. II, 33).

Such statements should not be overrated because they were made during imprisonment or in the course of an interrogation. In fact, they reflect the prisoner's intention of justifying and exonerating himself before the investigating officers. However, they strongly influenced historical research on German robber gangs up to the early 1980s. The seminal study carried out by Carsten Küther in the 1970s,

³⁹ See Danker (2001: 142), who refers to an analysis by Richard Van Dülmen.

for example, clearly idealised the gang phenomenon by implying a conspiratorial intention against the oppressing established society. Küther did not consider eighteenth century gangs as rural groups of social bandits who embodied an early form of social protest, as Eric Hobsbawm had done in the 1970s. Nonetheless, he regarded their actions as an expression of a 'counter-society' based on permanent organisational structures and a mutual solidarity that also included solidarity towards the society's poor.⁴⁰ Bandits, according to Küther, formed an opposition to the establishment and to wealthy people.

Küther's views on the gangs' organisational structure, inner solidarity and goals, have repeatedly been criticised by other historians (Danker, 1988; Lange, 1994). Since Küther's work in the 1970s there have been attempts to describe the gang phenomenon using modern sociological theories. The *Kochemer* culture, for instance, has been characterised as an 'alternative subculture' by Uwe Danker (2001: 179). As shown earlier, this thesis has some empirical backing: the *Kochemer* culture, in fact, involved vagrants, bandits and people from the settled lower classes, who all called themselves *Kochemer* in order to distinguish themselves from the *Wittischen*. The *Kochemer* culture and cant strengthened their togetherness, while creating a communication system of its own, which was incomprehensible to outsiders. It is also true that the *Kochemer* lived at the margins of a society and had few qualms about violating most of the established social norms. However, their will to seclude themselves from society should not be overestimated. Their cultural achievements and own rules merely reflect the requirements of a life on the opposite side of the law. These requirements concerned primarily the security of the outlaw community and the avoidance of official prosecution. For all the matters not directly related with their dishonest life, the *Kochemer* predominantly respected conventional norms and values. For example, they did not question the value of monogamous relationships, and tried to arrange marriages. If they were not able to marry legally in front of representatives of the public authority, they sometimes held their own wedding ceremonies (Schöll, 1793: 237-8; *Actenmäßige Nachricht*, 1753: 27).

The attitude of the *Kochemer* towards religion also proves that they shared the basic values of their society. *Kochemer* used standard religious procedures for their specific purposes: they begged saints for support of their illegal projects, and

⁴⁰ Hobsbawm (1972: 11-14) distinguished between so-called criminal bandits and social bandits. Criminal bandits descended from vagrant backgrounds and committed crime just to make a profit. Social bandits, on the other hand, came from the settled rural population, were supported by them, and performed a pre-revolutionary form of protest. The concept of social banditry was recently and convincingly criticised by Seidenspinner (1998: 297-311). For him, the social bandits described by Hobsbawm were merely the product of a stylisation process carried out by the non-official public discourse in the nineteenth century.

occasionally even took vows to ensure the success of their criminal actions. The background for all these religious activities was the bandits' devotion to religion. This attitude also found expression when minor thieves attended mass and confessed their sins to a priest (Lange, 1994: 148-50).⁴¹ In general, it is believed that the *Kochemer* did not hold an atheistic view of life. They merely gave in to the general religious pressure for conformity in ancient European society (Danker, 2001: 39).⁴² Jewish criminals were reportedly even more religious than their Christian counterparts, as they strictly respected the religious dogmas even while conducting a life in crime (Lange, 1994: 149).

That is why the theory of an 'alternative subculture' only partially matches the *Kochemer* world. *Kochemer* were not a counter-society or 'a state within a state' (Kraft, 1959: 53). They were indeed in one way or another linked to the general society, though forced to live at its margins (Lange, 1994: 193-4; Danker, 2001: 75, 179; Seidenspinner, 1998: 98, 127-8). A thorough assessment of *Kochemer's* solidarity further proves it was not unconditional – when misery or the desire for enrichment became dominant, bandits even stole the goods of other bandits and vagrants. The theory of an alternative subculture is also not capable of explaining individuals' drift into organised criminality (Schwerhoff, 1992: 396). A link between 'subculture' theory and the 'labelling' approach is, in my opinion, more useful in this context. As was already mentioned, certain lower-class groups were excluded from early modern society and these marginalised people were often prosecuted just for trying to secure their means of survival. They were the only ones who were punished with the full force of the draconian penal system, while criminals from middle-class backgrounds were more likely to face mild punishment. The generalised stigmatisation of fringe groups' members, and the branding of their relatives, who were immediately regarded as suspicious and criminal, often led people into crime, depriving them of realistic alternatives (Seidenspinner, 1998: 128; Danker, 2001: 315; Blauert and Wiebel, 2001: 79). The extended network of the *Kochemer* offered integration, protection from legal prosecution and the advantage of a community for bigger or smaller criminal activities. It was exclusion from society that fostered the development of this kind of useful opposition – this was certainly not the product of an individual's personal decision. In short, the *Kochemer* society can be correctly considered a special purpose association that integrated

⁴¹ Superstitious ideas played a role, too. In 1722, for example, a group of church-robbers believed they would receive the Holy Communion by merely consuming the host (Danker, 1988: 341).

⁴² The Petry family was an exception. The father, Peter Petry, doubted 'if God really existed' and his son Andreas did not believe in God at all. He therefore refused to receive a priest before being executed (Pfister, 1812: vol. II, 189).

lower-class people marginalised from established society (Lange, 1994: 194; Blauert and Wiebel, 2001: 79; Seidenspinner, 1998: 123; Danker, 2001: 315).

To fairly assess the *Kochemer* world, we also need to take the weakness of the early modern state into due consideration. Government authorities officially claimed to control each and everyone, and even tried to completely dissolve fringe groups. In reality, however, these aims were never even approximately attained. The authorities lacked adequate means for observation and prosecution, and their representatives did not fully apply the existing draconian laws and provisions, when they arrested an illegal vagrant or a minor criminal. It was also as a result of these practices that the continued existence of the *Kochemer* society was ensured for such a long time. However, the publication and public proclamation of edicts against vagrants seriously endangered crooks and vagrants because these public documents undermined the *Kochemer*'s legitimacy and made their names and characteristics known to the general population. A vagrant was always dependent on the public authorities' arbitrariness in making full use of the existing legal provisions (Behringer, 1990: 122; Schlumbohm, 1997: 655-7; Schwerhoff, 1992: 388-9).⁴³

Legal practice also depended on the equilibrium between the traditional theories of law and the population's social interests. This correlation is also known as the 'second code', the unwritten norms and rules that determined how members of the society lived together (Wettmann-Jungblut, 1990: 135-6). The handling of poachers, for example, clearly shows the conflict between the law and the society's view. While nobles regarded poaching as a serious violation of the law and rigidly punished, farmers were glad to get rid of animals that endangered their harvests. Occasionally, farmers even told bandits where they could find a herd of deer (Lange, 1994: 152; Danker, 2001: 180-5; Behringer, 1990: 105). However, thefts of private properties were condemned by both the authorities and the general population. Whether and to what extent the offenders were punished depended upon the individual delinquent. If local people were guilty, a guarantor would often try to gain their release. In the case of strangers there was no intervening help. So both the authorities and society tried to attain maximal protection of property against homeless or people without possessions (Härter, 1999: 366-8; Behringer, 1990: 126; Danker, 2001: 302).

⁴³ Contemporary historical research emphasises the long-term effects of the publication and public repetition of arrest warrants and other provisions. The spread of these legal documents created the feeling that the pre-modern state cared for the solution of social problems. According to several historians, it is incorrect to assess the relevance of the edicts and arrest warrants in the early modern period by merely focusing on their implementation, as would be fair in a modern context (Schlumbohm, 1997: 658; Härter, 1999: 370).

The previous analysis of gangs' social background showed that they were usually loose groups of people recruited for committing one or more criminal actions. Basic criminal impulses were nurtured by the marginalisation of consistent portions of the population and the individuals' economic situation, as demonstrated by the way in which criminal activities, the division of the booty or the choice of victims occurred. Often bandits committed a crime in order to use the stolen goods for their own personal needs. Referring to the winter of 1805, the bandit Johann Adam Heusner confessed: 'We went out at night to get something – no matter what, if only it was some food' (Pfister, 1812: vol. II, 148). Does this imply that gangs of robbers can be equated to the vagrant groups that committed minor crimes and petty thefts, as the latest research claims?

Continued research is needed to get rid of the popular clichés of conspiratorial and hierarchical bandits' communities and the myth of the honourable bandit. To answer the above question, we also need to differentiate between gangs that resorted to primitive stealing techniques and those that committed sophisticated, unscrupulous crimes. The *Kochemer* were well aware of the difference between the two, as they distinguished between *Proscher* (thieves) and *Achproscher* (burglars and robbers) (Danker, 2001: 136).

Some groups were highly specialised in certain tasks, such as the preparation of duplicate keys (Nickel List is here the most prominent example), or the long-term search for suitable targets over vast geographical distances, as did the Hessian Jewish criminals in the early eighteenth century and the Große Niederländer gang at the end of the same century and at the beginning of the following one. Outward circumstances also had a significant influence on gangs' actions that largely reflected the signs of the time. So Hannikel's Gypsies whistled 'La Marseillaise' and passed themselves off as a troop of French soldiers. Moreover, gang operations always reacted to the security standards implemented by the authorities. Open robbery and mugging were only committed in places with a low police presence or in regions where governmental authority was temporarily lacking, such as the territories on the left bank of the Rhine during the slow establishment of the French occupying power. The Große Niederländer gang would have never been so successful if it had not had this political breeding ground. Other groups, like Hannikel's Gypsies, committed armed robbery only for a certain period of time. Later, they merely carried out secret, but very profitable, burglaries along with many minor thefts, when they realised that things were getting too hot for them. If the general framework was rather unfavourable, bandits often committed only single, unconnected crimes. Thus, the variety of collective crime in the eighteenth and early nineteenth century is so diverse that offensive gangs of robbers like the Große Niederländer gang cannot be equated to vagrant thieves, like the circle of Alte Lisel in the area of the Lake Constance. This lack of distinction would again reflect the attitude prevalent in the eighteenth and nineteenth century that treated dangerous criminals and harmless vagrants in the same way (Danker, 2001: 178).

Today it has also become undeniable that gangs of robbers – no matter which – ever posed a serious threat to the early modern state. They occasionally caused serious uproar, sometimes over a longer period of time, but eventually the authorities were the winning party. Very recent studies have, indeed, proven that in several parts of eighteenth-century Germany security standards were more highly developed than it was long assumed. The district of Kursachsen (in contemporary Sachsen), as well as the small state of Lüneburg-Celle, notched up a significant number of prosecutions and trials. Through widespread investigations, which relied on ‘international’ cooperation, the authorities were able to reveal intricate criminal networks and to arrest a great number of bandits.

Other regions, such as Bavaria, were also ruled by a well-developed authority in the eighteenth century. As a consequence, gangs did not stay there for long (Behringer, 1990: 122). The theory that only single and particularly energetic civil servants tried to fight criminality up to the early nineteenth century seems to be more and more obsolete from today’s scientific point of view. There is proof that even in south-west Germany – long portrayed as an ‘Eldorado for crooks and vagrants’ – the authorities succeeded in finding effective methods for controlling this section of the marginalised population. Officers handed out up-to-date ‘wanted’ lists that were generally complete in detail and were also passed on to other districts (Blauert and Wiebel, 2001: 84). As early as the eighteenth century, the authorities introduced passports, travel certificates, and trading licences. Though the modern state began to take full shape in the early nineteenth century, it did not start from scratch. The fact that the problems of gang crime and vagrancy were finally solved in the mid-nineteenth century is largely attributable to the Old Empire’s reduction of 800 kingdoms, duchies and independent cities to just 38 highly efficient modern states during and after the Napoleonic wars. In the new order, robbers and crooks had little chances of survival since many borders came down and the police and the bureaucracy became state-run facilities. The intensified control of the lower classes by the police succeeded in virtually eliminating vagrancy, although during the ‘pauperism’ of the first half of the nineteenth century, poverty again increased and the integration of fringe groups dwindled. The lower classes also became increasingly aware of the state power – criminals were imprisoned in a penitentiary and were observed by the authorities long after their dismissal. While the modern state was developing, criminals sought a more individual and urban way in which they could continue their illegal existence.

Despite the dissolution of gang crime, particularly in the nineteenth century, advancing civil society considered the lower classes a dangerous revolutionary force – but that is another story. The age-old dictum remained the same: ‘There is no doubt that crooks’ way of life grew together with civil life as much as a plant parasite sucks out an important and precious part of the plant strength’ (‘Gewiss steht fest, dass das Gaunertum wie ein Parasitengewächs mit dem bürgerlichen

Leben verwachsen ist und einen bedeutenden und edlen Teil seiner Kraft aussaugt'; Von Ave-Lallemant, n.d.: 113).

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Banditry in Corsica: The Eighteenth to Twentieth Centuries

Stephen Wilson

1. Introduction

We begin our survey with the incidence of banditry in modern Corsica. The struggle against the Genoese in the mid-eighteenth century fostered banditry, and it continued to be a problem during the Paoli administration (1755-1769), when draconian decrees against it were issued. Banditry was again prominent in the resistance to the imposition of French rule after 1768 and during the Revolutionary and Napoleonic periods. It declined steadily in importance from the 1820s and many writers in the mid-nineteenth century announced its demise. This proved premature, for banditry (like violent crime generally) regularly proliferated in periods of political instability or governmental weakness or inattention (around 1850, the 1870s, the First World War), and it became a problem of longer-term significance from the 1880s to the 1920s, when it was associated with a general undermining of the traditional economy and way of life (Wilson, 1988: ch. 12).

The French employed various measures against banditry in Corsica. These ranged from general 'development' to specific tactical actions, which tell us not only about official attitudes but also about the nature of banditry itself. The most obvious was the deployment of military or semi-military force. The military presence was very marked in the early nineteenth century. Residential stations of gendarmerie were built in or near many of the larger villages, especially in 'violent' areas. Increasing the numbers of such forces was commonly advised, but the authorities generally recognised that this could rarely be effective by itself, and emphasis was placed instead on specialist units and on concerted campaigns against bandits in particular areas. The Voltigeurs Corsés were set up in 1822 to track down bandits. This force included a high proportion of native Corsicans, who knew the terrain, the language and local customs. Many of them were motivated by having old scores to settle against bandits. The Voltigeurs reached a strength of 1000 men before they were disbanded in 1850. Later governments preferred localised and then more general military-style campaigns using gendarmes and regular soldiers. Two infantry companies were sent to deal with bandits in the Sartène region in 1882, and further campaigns of a similar nature took place in the late 1880s and mid-1890s. An expedition of 640 troops was despatched to Corsica in 1931 to end its last significant wave of banditry.

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The success of such campaigns depended on cutting bandits off from their lines of supply and support, and this could best be done by arresting or detaining their relatives and friends. This policy had been applied in brutal fashion in the earliest period of French rule, and it remained an important feature of governmental action against banditry throughout the modern period. A complementary policy was to provide money to induce local people to supply information about bandits or otherwise to cooperate in their capture or destruction. Large secret funds were made available for this purpose by successive governments. Then there were judicial measures. Bandits were fugitives from justice. Though physically beyond the influence of the courts and their agents, they could be tried in their absence. In the early nineteenth century, large numbers of bandits were allowed to go into exile in Sardinia and elsewhere and were never extradited. Banishment was still regarded then by the authorities as an acceptable alternative to prosecution. In the second half of the century, however, such 'executive' measures against bandits were largely abandoned. Fugitives were regularly prosecuted and given severe, even capital, sentences, and extradition seems to have become more common. Here one should remember that the courts in Corsica at this time were of limited effectiveness.

Another measure is the only one that can be called preventive: banning or controlling the carrying of weapons. Much of the population had been armed during the Wars of Independence and the French authorities had never, despite strenuous efforts, managed to disarm them. Only in 1853 was the authoritarian Second Empire able to impose a formal ban, which, the Republican prefect conceded in 1872, had given the island nearly 15 years of peace and prosperity. He called for a renewal of the ban, but local politicians were unanimously opposed to what they regarded as a derogatory 'exceptional' measure and the proposal was successfully blocked. Carrying guns was still customary in many parts of the island until quite recently.

Changes in policy through the modern period indicate serious differences of opinion over the suitability and efficacy of these various kinds of measure. For example, the prefect wrote in 1874 that the policy of offering rewards was useless against the really dangerous bandits, since no-one dared to take the money. The very entrenchment of bandits in Corsican society militated against the success of most governmental anti-banditry ploys. Moreover, nearly all of them were unpopular locally, for this and other reasons, and with liberal opinion on the 'Continent'. A typical article in *La Presse* in 1879 argued that the real remedy lay in good local administration and the development of the economy; other measures were palliatives at best and derived from misconceptions about the nature of banditry.

The basic misconception – and one of much wider currency of course – was to see 'banditry' simply as a variety of criminality. Braudel has written that banditry is 'an ill-defined word if ever there was one' (Braudel, 1972: vol. I, 102). The trouble is rather that it has precise but multiple meanings. In French usage from at least

the early eighteenth century, the term was employed to categorise certain kinds of violent or potentially violent behaviour in a pejorative way. So it might be applied to peasants in revolt or the Chouans as well as to ‘criminals’ in any narrower sense. And the behaviour in question was by no means necessarily regarded or perceived at the popular level in the same light as by the authorities. As Moss has explained in reference to Sardinia, banditry as a term ‘is part of the metalanguage of crime rather than a crime itself’ (Moss, 1979: 480-2).

At the élite and official level again, banditry may have stricter legal meanings equivalent to banishment, outlawry or the state of being a fugitive from justice. In Corsica, the essential element in the bandit’s condition was that he was ‘in the maquis’, though he remained a member of the local ‘moral community’.¹ Banditry here was a status that formed part of the two overlapping systems of sanctions operative in the island: the system of the police and the courts and the system of blood vengeance. At the popular level in Corsica, an echoing distinction was always drawn between the ‘bandit of honour’ and the ‘mercenary bandit’, or *parcittore* (literally, a collector of tax or revenue).

2. The Life of the Bandit

We will begin our discussion of the reality behind such definitions and distinctions by considering in what circumstances men became bandits and how they then managed to live.

Some Corsican bandits fit into Hobsbawm’s category of the man who offends against the law of the state but not that of the community (Hobsbawm, 1965: 15-16), in the obvious sense of coming into direct conflict with the authorities. Montherot’s guide told him in the late 1830s that he and a cousin had been wrongly accused of a crime in their youth; they had been arrested but had escaped from prison and had then spent three years in the maquis (Montherot, 1840: 66).

2.1. Becoming a Bandit

Resistance to conscription and desertion from the military seem to have been common avenues into banditry here. Teodoro Poli became a bandit in 1820 after killing a local gendarme who had had him arrested as a draft-evader. Domenico Sanguinetti deserted from the army in Toulon in 1909, returned to Corsica ‘in search of a refuge’ and became actively engaged in feuding in and around Venzolasca.² In

¹ Such terms as *macchiaiolu* or *macchiarellu* were used to describe bandits.

² Report, Procureur-général to Minister of Justice, 16 October 1912, ADCS I.M.231.

other cases, men became bandits following actions in defence of their personal or family honour. The distinction between these two ways into banditry was frequently blurred in practice. Conflict with the authorities was often related to the wider mesh of conflict in communities. Although Teodoro Poli's main initial quarrel was with the gendarmes, he had been denounced to them by a fellow villager, with whose family a feud subsequently developed. Antono Bonelli (Bellacoscia) became a bandit in 1848 after a quarrel with the mayor of Bocognano, whom he subsequently killed. The mayor had refused to supply false certificates to let him off military service and had demanded payment for the use of communal lands. The mayor had also turned down Antono's proposal to marry his sister (Saint-Germain, 1869: 220; Bourde, 1887: ch. XI; Vuillier, 1896: 197-200; Marcaggi, 1932: 21-2).³ Of course committing an act of vengeance was usually also to commit a crime against the state.

A third and far less common category is made up of those who were attracted by the bandit's life of apparent liberty, power and fame. According to Gregorovius, Giacomo, called Bracciamozzo, was 'intoxicated by the renown of the brave bandit Massoni and got it into his head that he would play a similar part, thus gaining the admiration of all Corsica. So he killed a man and became a bandit' (Gregorovius, 1855: 131-4). Marcaggi has suggested that some of those in this category were mentally ill and had a pathological attraction towards violence.⁴ This may be so, but more significant is the fact that Corsican society provided such men with a legitimate or quasi-legitimate role.

In their own perceptions, most bandits, including those in the last category, seem to have seen their predicament in passive rather than active terms. They and others expressed this via two related notions: 'disgrace', and 'destiny' or 'fate', the first idea being primarily social and the second personal and cosmic. In his lament, Colombani called himself 'the poor disgraced man' (*poveru disgraziatu*), and similar expressions were used by other bandits (Barry, 1893: 300-1; Marcaggi, 1898a: 322). Much later Andrea Spada told his brother: 'We did not become bandits from choice; destiny pushed us into it' (Bazal, 1973: 99).

Hobsbawm's observation that bandits were usually young is confirmed by the Corsican example, though it is less certain that they were also 'single and unattached' (Hobsbawm, 1965: 17-18; 1972: 31-3). No complete statistics are available of course, but a fairly random sample of 50 bandits, mainly from the period 1850-1930, indicates that well over half were under 30 when they became bandits or when they were captured or killed. Since ages at capture or death predominate in the older age-groups in the sample, it is clear that the normal age for becoming a

³ See also Report, Prefect, 30 October 1874, AN F⁷ 12849.

⁴ Marcaggi, 1932: 127 (Francesco Bocognano); 133-143 (Matteo Poli); 144-145 (Francesco-Maria Castelli); 188 and 200 (Giuseppe Bartoli); 197 (Francesco Bornea).

bandit must have been 25 or younger. The sample also suggests that banditry was virtually absent among mature adult men, though some older men were or became bandits. Female bandits are said to occur in some societies. The phenomenon is reported for Corsica but must have been extremely rare. Women might more commonly themselves avenge affronts to their honour, and this might sometimes be assimilated to banditry.

It has often been pointed out that Corsican bandits might well belong to the upper educated class of landowners, notables and officials. Teodoro Poli's family 'was one of the richest and most honourable in the region' (Faure, 1858: 212). Both Antonio Forcioli and Giulio Agostini, who became bandits in the course of the feud at Arbellara in the 1840s, were young men of high social position and good education. An extensive list of such upper-class bandits could be compiled. Nevertheless most bandits of the modern period were of less elevated status. Most members of Teodoro Poli's gang in the 1820s were poor men who did not belong to influential families, and scattered evidence from official sources suggests that the pattern was general. Reports from the later nineteenth century mention bandits who were cultivators, *lavatori*, artisans, muleteers or day-labourers. A higher proportion were herdsmen, a point to which we will return. Upper-class bandits could still be found in this later period, but it seems that the highest stratum of the élite had generally ceased to be directly involved in banditry as it had ceased to be involved in feuding. The leading bandits of the inter-war period all belonged to the middle stratum of Corsican society or below. Romanetti came from a family of small landowners but was poorly educated. Giuseppe Bartoli's family was important in the village of Palneca but he had no education beyond primary school. He engaged in the colonial infantry at the age of 18 and did not rise beyond the ranks. Andrea Spada's father was a Sardinian woodcutter and charcoal-burner. Spada also failed to progress beyond primary school and the height of his ambition, before he became a bandit, was to obtain a post as a customs officer (Marcaggi, 1932: 156-7, 188-92, 238).

Well before this, moreover, there is evidence of banditry being used as a weapon in local power struggles by poorer and less important families against their richer and more influential rivals. Gallochio had trained for the priesthood and later adopted an upper-class lifestyle, but he belonged to a family that was distinctly inferior to those of his enemies (Tommaseo, 1841: 34; Faure, 1885: vol. II, 11ff; Saint-Germain, 1869: 235-6; Versini, 1979: 85). The Multedo brothers, who belonged to Teodoro Poli's gang, were poor herdsmen from Calcatoggio engaged in a feud with the grand Pozzo di Borgo and the family of the justice of the peace for the canton of Sari-d'Orcino (Faure, 1858: 264; Bertrand, 1870: 178). Though present, this factor should not be exaggerated, for we shall see that important families more often used bandits, usually of lower client status, for their own purposes.

2.2. The Role of the Family

No quantifiable data on the precise family status of bandits is available to indicate, for example, whether they were predominantly younger sons. It was taken for granted however, that banditry ran in families. Paolo-Andrea Buresi of Ventiseri, convicted of homicide in 1862, was said 'to belong to a family of delinquents which has already produced two notorious bandits'.⁵ This is a reflection in official perceptions of a general and crucial association between bandits and their kin. We have seen that men frequently became bandits in the course of prosecuting feuds and here they acted as members of families or kindreds. Whether this was the case or not, once in the maquis a man's main source of support came from his kin. The Bellacoscia, who were at large for 40 years, were 'harboured and protected by an infinite number of relatives'.⁶ When Giuseppe Bartoli became a bandit in 1927, 'his whole kindred rushed to give him help and protection' (Marcaggi, 1932: 193-4). It is significant that very few bandits were foreigners, since foreigners would not usually have had extensive kin on the island. The policy of arresting and detaining the relatives of bandits was a direct response, of course, to this reliance on kin.

Relatives helped bandits in various ways. They served as scouts, messengers and look-outs. Female relatives might play an important part in these roles. The Nicolai brothers of Campi, called Bartoli, were skilfully supported by their male relatives but also by their sister, who not only provided them with food and shelter, but also acted as their scout. When A. Besignani of Venzolasca demanded 100 francs from the local excise collector in 1853, he sent his demand via his adolescent sister.⁷

Relatives also joined bandits in the maquis, and kinship was an important element in the formation of bandit gangs or associations in Corsica as it was elsewhere. Of 33 partisans of Pace Maria in the 1770s, 11 were definitely related to him, while 29 came from the same village. Teodoro Poli's gang was a supra-kinship organisation at its height but reverted to reliance on kin in its final difficult years. Certain kinship relationships seem to have been particularly significant in banditry, a reflection of their general importance in Corsican society. Of these the most obvious was the fraternal tie. At least 16 sets of bandit brothers may be identified in the century between the 1820s and the 1920s, and most common was the association between a pair of brothers, the simplest form of 'fellowship' in a kin-oriented society. The tie between uncle and nephew seems also to have been significant. Petro Giovanni,

⁵ Case, Assize Court, 2nd Session 1862, AN BB²⁰ 239.

⁶ Letter, Gendarmerie, 17 August 1893, ADCS 1.M.230.

⁷ Cases, Assize Court, November 1831; and April 1834. *Gaz. Trib.*, 1 January 1832; and 3 July 1834; and v. L.M. Besignani, 1st session 1854, AN BB²⁰ 170

for example, enjoyed the active support of three uncles, and Francesco Caviglioli was joined in the maquis in 1930-1931 by two nephews.⁸

In some cases bandits were clearly agents of their families and acted on instructions from elder relatives. A common pattern in the organisation of feuds, this was of wider significance and could have mercenary implications. It was alleged that 'the relatives of Teodoro Poli were the instigators of his robberies' and especially his uncle Lario, who was reported to have declared: 'My dog is on the loose, so anyone who gets on the wrong side of us should beware!'⁹ Gregorovius noted generally in 1855 that bandits 'enrich their relatives and friends with the money they extort' (Gregorovius, 1855: 143). Such contributions might also be in kind and of a comparatively humble nature, and they were openly appreciated. In a lament for Teodoro Poli, his wife declared that, thanks to him, 'She had not lacked meat or bread / Or slippers and fine stockings / Ear-rings and necklaces / Handkerchiefs of cotton / Muslin or Indian stuff'; while two female relatives of Cecco Mattei lamented after his death in 1885 'No more hams / No more sacks of flour' (Tommaseo, 1841: 26-7; Bourde, 1887: 234).

Conversely, the aid of related bandits might be invoked in quarrels. When the dispute between the Paoli and the Vignoli of Pianello became critical in 1841, for example, Simone-Paolo Paoli contacted his distant kinsman, the bandit Giacomoli Griggi, which seems to have prompted the Vignoli to take pre-emptive action against him.¹⁰ We have seen that kin might be detained to deprive bandits of their support. Attempts were also made to persuade relatives, who were often the only ones in a position to do so, to betray or to kill bandits. But this would rarely overcome the principle of kinship solidarity. Teodoro Poli's uncle, Uccelloni, accepted money to kill him and other related members of the gang. He shot one of these, but in circumstances which led to his being discovered. Teodoro and his brother then summoned and assembled their remaining kin and killed Uccelloni in front of them as a deterrent to further betrayal (Faure, 1858: 277-82).

2.3. Local Solidarity

Though aided primarily by their relatives, bandits also enjoyed more general support. 'In Corsica', the prefect reported in 1874, 'the killer who has taken to the maquis does not inspire the same revulsion as in France; people regard him as a person more to be pitied than blamed and they help him in every way. In the villages everyone acts as a look-out, warning the bandit of any move made against

⁸ Report, Gendarmerie, 24 May 1896. ADCS 1.M.230; Marcaggi (1932: 221-3).

⁹ Letter to Prefect, 18 June 1822, ADCS I.M.228.

¹⁰ Case v.D. Vignoli, Assize Court, 3rd session 1842, AN BB²⁰ 116.

him'.¹¹ Procureur-général Mottet noted in 1836 that the authorities were unable to enforce the confiscation of the property of bandits condemned by the courts in their absence, because no-one was willing to acquire or even to use such property (Versini, 1979: 183-4). Family enemies would not be included in this universal sympathy of course, and sympathy could be weakened or reversed by persistent hostile actions, recognition of which fact could act as a powerful check on mercenary bandits. Nevertheless a kind of support could be won 'through inspiring fear as well as [genuine] sympathy'. Marcaggi wrote that 'the terror which Massoni evoked led to demonstrations of sympathy wherever he went', and when he and his gang descended on the Balagna in 1850-1851, they were fêted in the villages and presented with gifts (Marcaggi, 1898b: 107, 263).

A further indication of local solidarity with bandits is the way in which they were able not only to remain in contact with their relatives but also in some cases to continue to perform their roles in the family and the community. Aurenche observed in 1926, with tongue slightly in cheek, that had bandits remained continuously in the maquis they would all have contracted malaria and rheumatism if they had not died of cold and boredom first, adding that they 'never failed to attend family reunions, baptisms, weddings and funerals, nor, or course, to participate in the elections' (Aurenche, 1926: 160).

A parallel indicator of solidarity with bandits is the fact that they were able to remain at large for such long periods of time. Of sentenced fugitives at large in 1822, 11 per cent had been at large for over 20 years (including seven for more than 25 years and one for 32 years); while 22 per cent had been at large for between 10 and 19 years. Thus one third of these bandits had spent over 10 years in the maquis or in exile.¹² For the period 1828-1930, our sources provide 25 examples of bandits who remained at large for 10 years or more. Of these, two were in the maquis for 30 years and two for over 40 years. All of this confirms the general view that 10 to 15 years in the maquis was usual (e.g. Flaubert, 1973: 320-5; Gregorovius, 1855: 143-6). It is also significant that a fair proportion of bandits eventually gave themselves up and were not captured by the authorities.

This local solidarity and dependence meant that bandits could normally operate only within fairly limited areas. Most probably stuck to the neighbourhood of their own villages, and their range very rarely extended over more than one or two cantons. Camillo Ornano, for example, operated in the cantons of Zicavo and Santa-Maria-Sicche from 1815 to 1829, and Domenico Santoni in the same two cantons around 1840. In the inter-war period, the leading bandits each had their own

¹¹ Report, Prefect, 30 October 1874. AN F⁷ 12849.

¹² List of fugitives, Report, Avocat-général to Ministry of Justice, 23 July 1823, AN BB¹⁸ 1095.

clearly demarcated 'fiefs', Bartoli in the canton of Zicavo again, Romanetti and then Andrea Spada in the Cinarca, and so on (Marcaggi, 1932: chs. IX-XII; Bazal, 1973: 86, 115, 144, 216). The relationship between bandit and local population changed very much when he moved or was forced away from his native territory. Away from home, the bandit could no longer rely on kinship or community ties. He had to fend for himself, which meant forming gangs and carrying out extortion, robbery and various kinds of intimidation. Nevertheless, there were supra-local elements of solidarity with bandits, expressed in the creation and propagation of legends about them, in the conferring of nicknames on them and in some actual networks of protection across the island.

Many bandits operated singly or in pairs, as we have seen, but gangs were also common. These never reached the size apparently found in some other societies, except possibly during the struggle for independence in the mid-eighteenth century. Gangs in the nineteenth and twentieth centuries ranged in size from four to twelve men with six as an average. In these larger groupings men formed associations with unrelated persons. It is not clear how this was done, though the 'companies' formed for transhumance of flocks and herds were probably a model. Cases of unrelated pairs are also found. Vuillier suggested that something akin to blood-brotherhood was involved here, writing that 'the bandits, who generally work in pairs, cement their partnership by a common crime, which then forms an indissoluble bond between them' (Vuillier, 1896: 191-3). However, these and other ties were not always stable and shifts in associations among bandits seem to have been quite frequent. The Colombani and the Achilli gangs, for example, had at one time formed a single unit. Teodori Poli's gang broke up in the face of police action against it. In the inter-war period, having acted as a scout for Andrea Spada for two years, Francesco Caviglioli then fell out with him and organised his own gang with his nephews and others (Marcaggi, 1932: chs. XII-XIII; Bazal, 1973: 234, 238). The larger gangs were autocratically run. Teodoro Poli was apparently formally elected leader of his, but his authority was clear. Romanetti was said to be 'a respected leader who imposed his will on his followers and was obeyed by them' (Bazal, 1973: 216). But authority in Corsica was rarely unquestioned, and the position of the bandit leader *vis-à-vis* his followers must have been analogous to that of the patron *vis-à-vis* his clients. 'The bandit has an entourage', Francesco Bornea explained in a letter to a local newspaper in 1930, and he had to keep that entourage happy by supplying it with benefits (Marcaggi, 1932: 163, 202).

It is difficult to substantiate claims that Corsican banditry *per se* represented 'a formidable organisation' (Malaspina, 1876: 352), though it could be an important adjunct to the political power of notables and important families, as we shall see.

3. The Traditional Bandit

3.1. The Bandit of Honour

The 'bandit of honour' became so following an action in defence of his personal or family reputation, and he maintained an 'honourable' mode of life. As many observers noted and as the local press, with its eye on tourism, insisted later in the period, 'true' Corsican bandits never attacked people indiscriminately and they respected the property of those with whom they had no particular quarrel. A widow's lament declared proudly: 'He was a bandit of honour / And harmed no-one (except his enemies)' (Ortoli, 1887: 236 ff). Petro-Ignazio Padovani avenged the seduction of his sister in the mid-1840s by killing both the seducer and the seducer's father. According to Marcaggi, 'he enjoyed general public esteem', after this and was regarded as a 'model bandit' – 'he only accepted food, munitions and clothing if he could pay for them', and he gave his services as a medical man freely. He was also a man of religious convictions (Marcaggi, 1898b: 187-9). At least two examples of formal bandit codes of practice are referred to in the sources. One supposedly written down by Feliciolo Micaelli in 1927 after 20 years in the maquis proscribed attacks on the honour of women, kidnapping, robbery and drunkenness (Marcaggi, 1932: 64-5). Exclusive reliance on kin or community was also characteristic of the bandit of honour. As a corollary to this, the bandit of honour usually avoided association with other bandits. The bandit of honour seems at first sight to have much in common with the 'noble' or 'social bandit' referred to by Hobsbawm and others (Hobsbawm, 1965: ch. II; Hobsbawm, 1972: 17-19, 22-4, 40; Lucarelli, 1942: 16-19, 35-7, 50 and passim; Levi, 1948: 138-9, 142-3; Braudel, 1947; 1972: I, 102; II, 738-9), but further consideration makes clear that the former was motivated primarily by adherence to the traditional values of blood vengeance and had little concern with social justice or protest in any wider sense.

Some actions of bandits were directed against the agents of the state – but largely in self-defence. The odd bandit does seem to have had a particular animus against the police, like Teodoro Poli, but in general very few police or gendarmes were killed by bandits. We have seen that conscription was resented and that draft-evasion provided recruits for banditry, but there is no evidence that this was regarded as a form of deliberate protest. The same is true of bandit attacks on the fisc. Tax officials were harassed and robbed, for example in the Fiumorbo in the mid-1890s, but the bandits concerned attacked tax officials because they had supplies of ready cash, and the local population continued to pay taxes in effect, but to the bandits rather than to the state.

Rich and influential persons were of course attacked and sometimes killed by bandits. But such acts can hardly be regarded as political and must be seen rather in the context of feuding or of extortion from the rich again because they had money to

pay. Similarly the common practice of placing the property of wealthy families under an interdict had little or no element of 'class conflict' in it. Rather it was a powerful weapon in the conduct of feuds and one that bandits were peculiarly well-placed to use. Furthermore, interdicts harmed the employees, tenants and clients of notables as much as the notables themselves. Giovan-Tomaso Lanfranchi of Aullène, for example, placed the property of Tomaso Lanfranchi under a general interdict in 1850 to try to force him to pay a large ransom. Towards this end, he threatened to kill 'the *coloni*, the herdsmen and the house-tenants of Tomaso Lanfranchi unless they abandoned the land which they cultivated for him, the flocks which they looked after for him and the houses in which they lived'.¹³

Some examples are cited of bandits who conformed to the 'noble' or 'social' type. Malaspina described Teodoro Poli as 'the Robin Hood of Corsica' (Malaspina, 1876: 352). But such characterisations derive almost entirely from popular songs and bandit laments, that is from legends about bandits rather than from direct experience of them. Moreover, bandits of a mercenary kind liked to be thought of as 'Robin Hood' figures. Romanetti is reported to have killed one of his scouts who had tried to extort money in his name, in order to demonstrate that he, Romanetti, was not a mercenary bandit. Francesco Bornea, who operated a protection racket with Giuseppe Bartoli in the Zicavo region, claimed in a letter to the local press that they only ever 'demanded money from those with plenty of it', with the implication that the poor were not molested (Archer, 1924: 203-4; Privat, 1936: 64).¹⁴ We will discuss such contradictions further below.

3.2. Land Rights

There is one sphere in which bandits do appear to have defended popular rights. This was in aiding local resistance to the policing of forests designated as belonging to the state, to the concession of felling and other rights to outsiders rather than to local people, and to the exclusion of livestock and people from forests in public and private ownership. But bandit interests or those of their relatives were often the primary concern here rather than the rights of the community or social justice *per se*. Threats to those with concessions and their workers could be the means for extortion or ploys in collusion with concessionaries to get better terms. Forests, too were often places of refuge for bandits, and they naturally resented invasion of them.

Bandit involvement in conflicts over agricultural land is very occasionally reported. Much more obvious was the link with pastoralism. A high proportion

¹³ Case v. G.-T. Lanfranchi, Assize Court, 1st session 1852, AN BB²⁰ 158.

¹⁴ *L'Eveil de la Corse*, 14 June 1930, cit. Marcaggi (1932: 202).

of bandits were herdsmen, and the identification was a commonplace of official reporting and of local guide-books, and predates the nineteenth century. It is not surprising that bandits and herdsmen frequently overlapped and associated with each other, since they both lived and operated in the same maquis, forests and mountains. Herdsmen were the obvious contacts, supporters and protectors of bandits, while shielings were obvious places of refuge. The shieling at La Punta in the Cinarca, for example, served as the headquarters of Romanetti and then of Andrea Spada in the inter-war period, and after La Punta had come under attack from the authorities, Romanetti moved to another shieling at Lava on the coast near Ajaccio.

In return for such aid and assistance, bandits used their power to protect or further the interests of herdsmen. The owners of La Punta were substantial herdsmen, the Leca, who benefited from having two well-known bandits as patrons and virtual members of the family – two daughters in succession were mistresses of Romanetti; one of them bore him a child and the other transferred her affections to Spada after Romanetti died. Thanks to the fear or sympathy that the two bandits inspired, the Leca were able to obtain pasture at low rents, to avoid any judicial or other consequences when their flocks or herds strayed and caused damage to crops, and to obtain and keep a valuable contract to supply the Roquefort cheese company with processed sheep's milk (Marcaggi, 1932: 161-2, 252; Bazal, 1973: 214-17). Similar examples may be cited from the nineteenth century. The Sardinian phenomenon of *abigeato*, or livestock rustling, is not found to any significant degree in modern Corsica, though it occurred in earlier centuries.

3.3. The Bandit as Administrator of Justice

The role of the bandit as a justiciar has been identified as another feature of social banditry, and here there is some overlap with the native notion of the bandit of honour. A number of Corsican bandits regarded themselves as righters of wrongs and were so regarded by others. There is some evidence too, that bandits might actually perform this role, though it is scant. First, bandits acted as arbiters and mediators in disputes. Faure related that bandits used their influence to restore harmony between spouses, to prevent or to end litigation, and to reconcile enemies (Faure, 1858: 21-2, 45, 75), and there is later testimony to this effect. However, examples may also be found of bandits refusing to accept local arbitration procedures. Related to this point, bandits acted to make sure that others adhered to local codes of conduct, though again they might flout them themselves. The most frequently reported type of intervention in this area concerns affronts to female honour. In the mid-1830s, Maria-Lilla Antonmarchi, a widow from Santa-Lucia-di-Moriani, became pregnant, and Diogene Bonavita, the father-in-law of one of her sons, Petro-Paolo, was said to be responsible. Petro-Paolo asked Bonavita to repair the situation by marrying Maria-Lilla, and backed up his request with a letter from the bandit Franchi Rinaldi, a friend of the Antonmarchi family. Rinaldo stated that

Bonavita's behaviour 'displeased him and was an insult to the women's relatives'. When Bonavita ignored these threats, he was killed by the bandit.¹⁵ Bandits were often here defending their own reputations and/or their family interests rather than simply upholding the honour of defenceless women in a disinterested way. Bandits, moreover, were themselves notorious offenders against female honour. Abductions and rapes by bandits were fairly common, and bandits frequently had mistresses, concubines and passing liaisons, as we have seen. The behaviour of bandits here conformed to one 'ideal' of male honour, the predatory conquest of women, but this aspect of their behaviour could make them vulnerable. Bandits were not infrequently betrayed or captured with the help of women, and their sexual exploits provoked hostility from men that could be disastrous. Romanetti was ambushed and killed in 1926 thanks largely to the efforts of a man from Bocognano whose wife he had seduced.

Corsican bandits were often reported to be 'religious', a phenomenon found elsewhere and one that might be taken as another sign of 'honourable' status. 'All bandits without exception', wrote Marcaggi, 'had a deeply rooted superstitious belief in scapulars, rosaries, crucifixes, holy medals, prayers sewn into their jackets or waistcoats, all in order to preserve them from being killed' (Marcaggi, 1932: 63). Bandit laments frequently invoke God and the saints and express religious sentiments. And there is abundant testimony of the religiosity of particular bandits from Teodoro Poli to the last 'great' bandits of the inter-war era. It is reported that both Andrea Spada and Francesco Bornea performed the role of the Grand Penitent in the Good Friday procession at Sartène.¹⁶ Bandits also displayed the normal concern not to die without the last rites. Most of these practices were intended to procure protection, if not invulnerability, as Marcaggi suggests. 'So long as we are in God's hands', Petro-Ignazio Padovani declared in the 1840s, 'we can walk about boldly and no bullet will harm us. But once God withdraws his holy protection from us, our eyes cloud over, our arms shake and our last hour has come' (Marcaggi, 1932: 144; 1898b: 189). Such beliefs are perhaps more magical than religious and relate to the notion that bandits possessed supernatural powers.

¹⁵ Case v. P. –P. Antonmarchi, Assize Court, 3rd session 1837. *Gaz Trib.*, 30 September 1837, No. 3763.

¹⁶ Bazal (1973: 86-7). This act of penance, always performed incognito, was a considerable physical ordeal and involved carrying a heavy wooden cross through the streets of the old town. Chains were attached to the penitent, he walked barefoot and nails were strewn in his path.

3.4. Banditry in Legend

The notion of banditry as a quasi-sacred status takes us on to banditry in popular myth or legend. The propensity to make bandits into legendary heroes seems to be almost universal and Corsica was no exception. According to a guide-book in 1881, ‘the word bandit was synonymous with hero for most of the population’ (Joanne, 1881: 470). This heroic view of banditry was expressed and preserved in an extensive oral literature. Muzzarettu recalled that ‘he had been brought up on stories of bandits’ and such stories, told at *veglia* and on other occasions are referred to in many other sources. There also existed a special genre of song or *lamento* composed by or about bandits and sung all over the island. The texts of a number of these have been preserved and we have quoted from them. They stress the bandit’s original innocence and the hardship to which his fate condemned him, as well as his boldness and bravery.¹⁷

The significance of bandit legends has been disputed – some like Hobsbawm taking them to reflect a real libertarian element in banditry itself, others regarding the reality of and the legends about banditry as distinct or related only in so far as complimentary legends served to disguise or legitimise the exercise of brute force (e.g. Lucarelli, 1942: 104-5; Brögger, 1968: 240; Pereira de Queiroz, 1968: 60ff, 113ff; Lewin, 1979: 118, 127). Here attention has been drawn to wide discrepancies between the real lives of bandits and their images in popular literature and other accounts, and Corsica provides some remarkable examples of such divergence. It is reasonably clear that Teodoro Poli was a mercenary bandit in his lifetime and there was public celebration when he was killed in 1827. But from that time, if not before, a myth of a ‘Robin Hood’-type hero was created via a series of popular songs and anecdotes, which are reflected in literary accounts. Faure could write in 1858 that Teodoro’s reputation in Corsica was only equalled or excelled by those of Sampiero, Paoli and Napoleon, and his ‘renown’ was still the object of notice in the 1920s (Faure, 1858: 298-9; Lorenzi de Bradi, 1928: 237-8). Much the same pattern is found with Gallocchio. He became a bandit for reasons of honour, it is true, and he was engaged in a feud; but he behaved with particular brutality and was reported to have killed 45 people. In the words of a lament sung at his funeral: ‘Hearing the name Gallocchio / Was enough to terrify everyone’. For this reason, according to Tommaseo, he could only be overcome by stealth and was killed in his sleep by a scout with the support of local people, who rejoiced when the deed was accomplished. After Gallocchio’s death, however, songs began to circulate which celebrated ‘his misfortune, his courage, his probity and his piety’. It is

¹⁷ Bazal (1973: 48, 52, 193). For examples, see Tommaseo (1841: 19-22, 24ff, 57-9); Southwell-Colucci (1933: 124-9).

significant that later accounts disagree about his status, some stressing that he was motivated by questions of honour, while others categorise him as a mercenary bandit (Tommaseo (1841: 35-7; Saint Germain (1869: 241; Cesari-Rocca (1908: 111-12; and Versini, 1979: 80-4).

The Corsican example suggests that bandit legend was an idealisation – usually posthumous – of bandit reality. ‘People forgot their exactions and their interference with everyday life’, Privat wrote in 1936. ‘and wanted to remember only their defiance of established things and their acts of kindness’ (Privat, 1936: 27-8). Nor did people fail to perceive the distinction, as this perhaps implies. To some extent, the legend asserted what bandits ought to be, the ideal of the ‘bandit of honour’ as opposed to what bandits were actually like. In a society where banditry was a reality, moreover, bandit legends also served as a natural vehicle for the declaration and discussion of social values. Like other folkloric heroes, the bandit of legend was ambiguous, both ‘feared and admired’, an atypical fictional creation *and* the embodiment of central and universally shared values (Dalmas, 1978: 47-8).

4. The Modern Bandit

Many in the later nineteenth and early twentieth century regretted the supposed decline of the bandit of honour. In 1896, the subprefect of Corte, for example, looked back nostalgically to an earlier period when bandits had lived frugally, respected property and acted chivalrously. ‘Today the situation is quite different. The bandit has become an ordinary malefactor, a brigand who holds up mail coaches, robs travellers and lives from theft and rapine’.¹⁸ Again, according to a bandit in the 1920s, ‘true banditry is in the doldrums. Some of the so-called bandits of today are just interested in money! They extort ransoms, they commit the worst robberies. They are famous, it is true, and the newspapers write all the time about them, but I am ashamed of these bastard bandits’ (Lorenzi de Bradi, 1928: 239). Albitreccia referred more generally to a ‘neo-banditry’ in Corsica after the First World War, distinct from the traditional kind linked to the system of blood vengeance and honour (Albitreccia, 1942: 211-12). The bandit of honour was still occasionally found in the twentieth century, but he was significantly often an old man following behaviour patterns of the past. Though some of them liked to be thought of in the old way, the bandits of the inter-war years were essentially *parcittori*, and *parcittori* on a new scale. In this period also the links between Corsican banditry and the continental French underworld were established, though these remain largely uncharted.

This fundamental change was reflected in the way in which bandits ended their careers. It was common in the early and mid-nineteenth century for bandits to give

¹⁸ Report, Subprefect, Corte, 5 February 1896, AN F⁷ 12850.

themselves up, after arrangements had been made with their enemies and with the authorities. This procedure was still sometimes followed in the 1880s and 1890s and even in the 1930s, but in the post-1870 period bandits were generally much more often reported to have been arrested involuntarily or to have been killed by the police.

The perception of a change in the nature of banditry undoubtedly reflected something real and was related to radical transformations in Corsican society, but an element of illusion enters into it too. Banditry had always been ambiguous and its honourable and mercenary aspects had co-existed. As Hobsbawm observed, 'one sort of bandit can easily turn into another' (Hobsbawm, 1972: 56). Driven from his own territory, separated from his network of support, the bandit of honour would be forced to attack travellers and to prey on local people in order to survive. Even if he did stay in his own region, he might well be drawn into 'non-honoric' actions. For example, Giovan-Agostino Nicolai of Levie became a bandit in the late 1840s after refusing to do his military service. His first 'crime' was committed in 1848 in support of his family's interest and honour. He came to help his brother who was in dispute over a water-course, shooting one of those with a counter-claim. Following this, however, he joined up with other bandits in the region and committed further mercenary crimes. It appears that he killed Giuseppe Paoli of Fozzano later in 1848, for which he was paid 4000 francs by the latter's enemies, and in 1849 he tried to extort money from two notables in Sartène by threatening to kill them.¹⁹ Here one can see the local bandit closely involved with his kin and its quarrels evolving into the bandit operating on a wider front with other bandits and being employed by members of the élite.

Very often, however, there is no obvious evolution as far as any individual is concerned. The bandit is both a bandit of honour and mercenary, depending in part on circumstances and on one's point of view. We have seen that Teodoro Poli gained a posthumous reputation as a 'Robin Hood' figure, but his victims presented a very different picture of a brutal bully, an extortioner and a womaniser.²⁰ We have observed that it was very much in the interest of bandits to cultivate an honorific image. The bandit's reputation for honour could be the means of sustaining support from a local population which he was in fact exploiting. The complementarity is neatly reflected in the phenomenon of pairs of bandit brothers, like Teodoro and Borghello or Antono and Giacomo Bonelli, one of whom had the reputation of being 'good and honourable', while the other was regarded as 'bad and mercenary'.

¹⁹ Case v. G.-A. Nicolai, Assize Court, 1st session 1854, AN BB²⁰ 170.

²⁰ Reports 1822-3, ADCS 1.M.228.

4.1. The Mercenary Bandit

We turn now to a fuller discussion of the mercenary side of banditry, which despite these caveats, can be distinguished as a type. By contrast to the bandit of honour, the mercenary bandit or *parcittore* paid only lip-service to traditional codes of behaviour. Rather than relying exclusively on kin and community support, *parcittori* also formed their own gangs and networks and acted as agents for the notables. They were notorious womanisers and often drunkards. They used their power to enrich themselves at the expense of the community through extortion and robbery, and some of them exercised deliberate reigns of terror. Though some may, nevertheless, have achieved legendary status, most were ‘the object of public execration’ (Marcaggi, 1932: 232). As we have seen, some observers believed that the mercenary bandit was a modern phenomenon, but mercenary bandits existed in all periods, though especially in times of economic and social upheaval when traditional ties were weakened or broken.

Corsican bandits frequently extorted money. Teodoro and his associates in the 1820s levied sums ranging from 20 to 300 francs or more from the clergy and other notables. ‘In the province of Vico / All paid tribute / Priests and herdsmen / Deans, *curés* and misers / Rich people, justices of the peace / Substitute judges and secretaries’.²¹ Many similar examples of extortion or attempted extortion could be cited from the mid- and late nineteenth century. By then and particularly in the inter-war period, the development of tourism provided a new target in the form of hotels and thermal establishments. Three bandits tried to extort 3000 francs at gun-point at the Hôtel de Bellevue in Ajaccio in 1886; Giuseppe Bartoli demanded 20,000 francs from the manager of the Grand Hôtel Continental there in 1931; while Francesco Caviglioli and his gang, having occupied the Hôtel Miramar at Tiucci, attacked the baths at Guagno in the same year, with similar intentions (Bourde, 1887: 220-1; Marcaggi, 1932: 133-5, 209-12, 223-32; and Bazal, 1973: 232-3, 238-9).

Extortion was backed up by serious threats, implicit and explicit. Bourde noted in 1887 that most landowners paid up levies to bandits when asked and then kept quiet about it for fear of reprisals. When the parish priest of Murzo refused to hand over the 20 francs demanded of him by Teodoro Poli and the Multedo brothers in 1822, the bandits removed all his furniture, bedding and other belongings and burned them in front of the presbytery, which induced him to change his mind. In some cases, reluctant victims were kept besieged in their houses; others were forced to leave home. Ex-prefect of police Pietri moved his residence from Sartène to Ajaccio after money had been extorted from him in 1886, and in 1895 the

²¹ Lament for Teodoro (Tommaseo, 1841: 26-7).

rich mayor of Ventiseri left the village to avoid paying a ‘ransom’.²² Kidnapping accompanied by a ransom demand was not uncommon. Borghello and Cipriani demanded 100 francs from mayor Colonna of Balogna in 1827. When he refused to pay, the bandits kidnapped his son and his cousin and only released them when a promise to hand over 600 francs was forthcoming. Agostini Stefanini kidnapped the mayor of Sari-d’Orcino in 1841 and kept him for over 40 days, always on the move, until his relatives had paid a ransom of 4000 francs.²³

Four members of the Ferracci family from a village near Bonifacio were convicted in 1835 of having kidnapped an English traveller and extorted money from him, but such attacks on foreigners both then and later were said to be rare. Spada’s ‘autobiography’ states that there was a strict rule among inter-war bandits against molesting individual tourists, though it did not apply apparently to the hotels they stayed in, as we have seen. This was in accordance with the traditional obligation to provide hospitality to strangers, but was also motivated by the well-placed fear that action against tourists, who were becoming one of the island’s main sources of income by this time, would prompt serious governmental intervention, which of course it eventually did. Although foreign visitors therefore were not usually victims of banditry, outsiders working in areas where bandits were active could well be. In 1895, for example, Colombani and Bartoli called at the house of a non-Corsican contractor at Prunelli-di-Fiumorbo, and ordered him to pay them 200 francs and leave the district. He left for Corte the next day.²⁴

As one would expect, these cases of extortion relate mainly to the wealthy, whether local people or outsiders. But by no means all the victims of bandits under this heading belonged to the élite. The bandits of the Fiumorbo in the 1890s took money and goods indiscriminately ‘from the herdsmen, peasants and small land-owners’ of the region, and the tax collector of Prunelli gave as the main reason for his failure to collect taxes in his area in 1896 ‘the profound poverty of the unfortunate inhabitants’ following three years of extortion and pillage by bandits.²⁵

In many cases, bandits received regular rather than *ad hoc* payments, whether from notables or the population at large. Gregorovius wrote that ‘the bandits levy contributions; they tax individuals, whole village and parishes, according to an assessment, and rigorously call in their tribute’ (Gregorovius, 1855: 143). The word

²² Bourde (1887: 219-21); and Report, Commissaire spécial, Bastia, 1895, AN F⁷ 12850.

²³ Letters, Subprefect to Prefect, July – August 1827, ADCS 1.M.228; Report, Gendarmerie, Ajaccio, 23 January 1842, 4.M.126.

²⁴ Reports, Gendarmerie, 12 June 1895, ADCS 1.M. 230; and Commissaire spécial, Bastia, 10 December 1895, AN F⁷ 12850.

²⁵ Note, Ministry of Justice, 29 November 1895, AN BB¹⁸ 1927; and Letter, Percepteur, Prunelli-di-Fiumorbo to Receveur des finances, 25 September 1896, AN F⁷ 12850.

parcittore, most commonly used to describe the mercenary bandit, means literally a collector of tribute, tax or revenue. Teodoro Poli's extortions from priests were part of a systematic levy imposed on the clergy and others, and force was applied only against those who refused to pay. At the end of the nineteenth century, it was reported that the parish priest of Isolaccio in the Fiumorbo was similarly required to pay part of his salary on a regular basis to the gang of bandits led by Giovanni, while Giacomo Bonelli 'taxed' all entrepreneurs engaged in public works in his area, including those building the railway between Ajaccio and Bastia. In a number of districts in the late nineteenth century, the inhabitants seem to have paid a kind of general tax to bandits, which sometimes replaced legitimate rents and state taxes for periods of a year or more, as in the Fiumorbo. There are also reports of tolls levied on roads, bridges and at shielings.

More details are available on the protection monies raised by bandits in the inter-war period, though information is anecdotal rather than systematic. According to Andrea Spada, 'we acted almost in the capacity of an insurance company. In return for an agreed sum of money, we gave our protection to the various shop-keepers, hotel-keepers and businessmen. So great was the power of Romanetti's gang that once a shopkeeper had paid his levy to Romanetti and come under our protection, the lesser gangs never dared to molest him.' He added that bandits like Romanetti never tried to get rid of the small bandits because they served the crucial function of frightening people into paying for protection. However, the big bandits also placed their own pressure on their protégés, as Spada's subsequent career, once he had served his apprenticeship with Romanetti, illustrates. During his last seven years in the maquis, Spada lived mainly on protection money obtained from those running the postal and carrier services between Ajaccio and Lopigna. In 1926 the concession for these services was awarded for one year to Delmo Franchi. Spada held up his vans and effectively suspended the service for three months, until Franchi agreed to pay the bandit half the postal subsidy of about 1000 francs per month. The concession came up for renewal in 1930 and was awarded to Francesco Sorbo, mayor of Lopigna, who refused to continue payments to Spada. In May that year, Spada and his brother held up the post van and killed the driver and two gendarmes who were supposed to be ensuring his safety. In December Sorbo abandoned the concession to a certain Malandri, who was in effect a stooge operating for Spada himself. When Malandri backed out a year later, he was replaced by another stooge, who paid Spada the whole of the subsidy. Similar and often much more extensive and lucrative protection rackets operated in other parts of the island, including Ajaccio itself (especially Darrell, 1935).

Theft was uncommon in Corsica and thieves were held in contempt. The bandit of honour eschewed stealing. The mercenary bandit, however, regularly carried out robberies, as a few fairly random examples will show. The bandit Feliciolo, called Bartolo of Tox, was killed in 1839 in the house of a merchant from Antisanti, that he was trying to burgle. Petro Bartoli, called Piriggino, from Isolaccio was sentenced to

hard labour for life after being convicted in 1846 of several robberies with violence. Later in the century, the bandits of the Fiumorbo were notorious for their hold-ups. Here and elsewhere in this later period, robbery from post offices and post officials was particularly frequent. The post office of Prunelli-di-Fiumorbo was robbed so often that it was eventually closed. Bandits also tried to derail a train in 1899 on the Ajaccio-Bastia line in order to rob the mail which it carried.²⁶

4.2. Other Activities

Extortion, kidnapping, robbery and the raising of protection money do not exhaust the range of activities of Corsican bandits. They also threatened jurors and witnesses, abducted women and proclaimed bans and interdicts. In this general context, official, press and other reports referred to bandits creating or inspiring 'terror'. This was in part a cliché reflecting the difference between official or élite and popular notions of banditry, but there is no doubt that terror was a part of the image of some bandits and acted as a basis of their power. We have seen that Gallocchio's reputation depended on the fear which he inspired. In a serenade collected in the early nineteenth century, a young man tried to impress his would-be fiancée with the boast: 'I want to become a fierce dog / A hundred times more cruel than Galeazzino [another well-known bandit]' (Bouchez, 1843: 88). Serafini and Massoni in the mid-nineteenth and Castelli in the early years of the twentieth century also fall within this category. All three broke the conventions that applied to vengeance killings, selecting as victims relatives, old men, women and those under age. All displayed a sadistic pleasure in killing, and all committed killings with the deliberate aim of causing horror.

4.3. Popular Resistance

Terror might cow local populations, but seeming acquiescence could conceal covert resistance. As we have noted, bandits did incur local hostility and this was the usual reason for their downfall. 'People feared him', Marcaggi wrote of Matteo Poli of Balogna, 'but he had no sincere support; everyone secretly wanted him to be destroyed' (Marcaggi, 1932: 142-3). Local people sometimes appealed to the authorities for protection against bandits. The mayor and municipal council of Loreto-di-Tallano wrote to the prefect in 1882, complaining that 'law, order and tranquillity in the village were under threat from local bandits' and asking for a

²⁶ *Gaz. Trib.*, 24 April 1839, No. 4250; Case, Assize Court, 3rd session 1846, AB BB²⁰ 134; Various Reports, 1895, 1899, AN F⁷ 12850.

detachment of gendarmes to be sent there.²⁷ A letter from San-Gavino-di-Fiumorbo in 1895 begged the prefect not to withdraw the gendarmes, lest the village be attacked by bandits and its inhabitants either killed or forced to leave.²⁸ Such appeals usually remained private and discreet, and advisedly so. An anonymous letter in 1911 called on the public prosecutor to protect ‘the honest and peaceful section’ of the population of the Casinca and especially of Venzolasca against the threats, intimidation and depredations of local bandits. According to the district prosecutor, this letter in fact came from mayor Moracchini of Venzolasca, whose life would have been in danger were his anonymity not protected.²⁹

Local people might then openly welcome the killing of bandits by the authorities after the event. A press report refers to demonstrative jubilation following the killing of Giacomolo Griggi by *voltigeurs* in 1842:

Such was the horror which this bandit inspired in the whole population, that once the news of his death was broadcast, there were celebrations and public demonstrations of joy in every village where had made his presence felt; and several municipal councils met to demand a reward for the members of the armed forces who had shown such bravery and tenacity in tracking him down.³⁰

An example from 1844 introduces another expression of hostility to a bandit who was an outsider to the region. After Giorgio, called Scarlino, from Venzolasca had been killed at Biguglia, ‘the horror which he had inspired in the local people meant that he was refused proper burial there. His body was simply placed in a shallow ditch and covered with earth and it quickly attracted birds of prey.’³¹

Going a step further, local people might aid the authorities in their campaigns against bandits. In other cases they took the law into their own hands, pre-empting official action. Barry wrote in 1893 that ‘the usual end’ of the mercenary bandit was ‘that of being trapped and shot by the inhabitants’, while Bourde noted that bandits reported to have been killed by the police had often in fact been killed by local people (Barry, 1893: 283; Bourde, 1887: 206). Cooperation between authorities and people often involved the exploitation of pre-existing enmities. It also involved persuading bandits’ associates to betray them. We have seen that the provision of funds for this purpose was an important element in governmental policy through the

²⁷ Letters to Prefect, 9 May 1882, AN F⁷ 12849.

²⁸ Report, Procureur-général, 11 December 1895, AN F⁷ 12850.

²⁹ Letters to Procureur-général, 1911, ADCS 1.M.231.

³⁰ *Gaz. Trib.*, 14 March 1842, No. 4659.

³¹ *Ibid.*, 5 January 1845, No. 5522.

nineteenth century, and bandits themselves were always afraid of being betrayed. They reacted very strongly, we have seen too, against those whom they believed to be traitors. Of course, there was great moral resistance in Corsica to the idea of betraying a bandit, especially for money, and sums offered in particular cases might find no takers. But in many instances such repugnance and the fear of bandits was overcome, and a number of notable mercenaries, including Teodoro, Gallocchio and later Giacomo Bonelli, were killed or captured by means of treachery. The herdsmen who betrayed Bonelli received money and wisely asked to be resettled in France or Algeria to avoid reprisals.³²

5. The Political Role

Having discussed different types of bandit, we turn now to the ‘political role’ of bandits in the broadest sense. Banditry did on occasion and in some areas become a predominant force. According to Marcaggi, Serafino Battini of Ota and his companion Dominiquello Padovani, ‘reigned as despots over the gentle and hardworking population of the Balagna’ in the years 1850-1851:

Serafino’s secret power was immense; he put pressure on the public services, intervened in court cases, settled disputes between landowners and peasants. A word from him scrawled on a scrap of paper was enough to break down any resistance, to weaken the toughest resolve. His wishes, his slightest desires, his caprices even, were catered for with servility. At the courts of Calvi and Bastia, he recommended prisoners to the benevolence of the judges, who showed themselves indulgent towards his clients and were afraid to incur his hostility.

Serafino, moreover, was often seen in the cafés of Isola-Rossa, where his mistress kept a grocery shop patronised by officials and notables, all anxious to curry favour with the bandit (Marcaggi, 1898b: 269-70). In the 1870s, the prefect reported that Fiaschetto and Germani ‘ruled’ in a similar way over the Castagniccia, while Casanova did so in the Evisa region.³³ In the mid-1890s, bandits were described as the ‘masters’ of many villages in the Sartène region, while the Fiumorbo and surrounding districts were ‘completely at the mercy’ of gangs led by Colombani, Achilli and Bartoli. As we have seen, the collection of taxes and other public

³² Various Reports and Letter, Prefect to Governor-General, Algeria, 29 November 1893, ADCS I.M.230.

³³ Report, Prefect, 30 October 1874, AN F⁷ 12849.

services were suspended in the Fiumorbo in 1895-1896. Again, it was reported from the same district in 1907:

Never, even at the time when the Colombani and Achilli gangs were at the height of their influence, have bandits exercised such a reign of terror here; the security and the life of travellers are seriously at risk, the local police look on, helpless and afraid and, in an unbelievable reversal of roles, it is not the police who set out to stop the bandits, but the bandits who harass the police.

The payment of taxes was once more 'almost entirely suspended' both in the Fiumorbo and in the cantons of Vezzani and Santa-Maria-Sicche.³⁴ A similar situation existed in some areas in the inter-war period, notably in the Cinarca and Palneca region.

Though it sometimes represented a temporary loss of control over bandit clients, such independent 'rule' by bandits was probably more often apparent than real and was rarely, if at all, achieved without the connivance and encouragement of local notables. Students of banditry elsewhere have remarked that it was frequently sponsored by local élites, and some have argued further that, far from acting as a force of 'popular protest', bandits were 'highly integrated with established power-holders', being used as instruments in their internal power struggles and also serving to defend the collective interests of the élites against movements from below on the part of peasants or against state intervention from without (e.g. Lucarelli, 1942: 155-6; Casey, 1979: 207ff; and Day, 1979: 195-7). Much of this fits with the Corsican evidence.

5.1. Political Support

There is no doubt that bandits very often enjoyed the support of important persons at all social and political levels, despite the existence of official policies designed to extirpate banditry. Some distinction should be drawn here at the governmental level between turning a blind eye or not pursuing local bandits who did no particular harm and might even be useful to the authorities, accepting the temporary and local predominance of bandits *faute de mieux*, and working with bandits in order to maintain the political order. The categories are not in practice always separable and much depended on the attitude of local people towards the bandits in question. There was divergence, too, between the attitude of 'continental' officials,

³⁴ Letters, Percepteur, Prunelli-di-Fiumorbo to Receveur des Finances, 20 September 1907; Président du Conseil to Prefect, 26 October 1907, ADCS 1.M.230.

like the prefect and the public prosecutor, and that of local officials, and policies also changed over time. Faure noted that in the early nineteenth century, popular sympathy for bandits was generally complemented by élite and governmental tolerance; whereas the fact that local officials habitually ‘tolerated’ bandits in their areas was a matter for complaint on the part of the prefect and others by the end of the century.³⁵ In the early nineteenth century, moreover, the authorities were prepared to ‘treat’ with bandits as they were prepared to sponsor peace settlements between feuding parties. The military, for example, negotiated with Pasquale Gambini and Gallochio in 1823 and allowed them safe passage out of Corsica on condition that they remained in exile. It was common in this period for Corsican bandits to be allowed to take refuge in nearby Sardinia, where they were even provided with land. More generally, official toleration later in the nineteenth century became less formal, less direct, less obvious, taking the form, for instance, of tacit agreements whereby bandits gave themselves up in return for lenient sentences. Some examples will illustrate this and other points.

We have already encountered the Bonelli or Bellacoscia brothers of Bocognano, who were probably the best-known bandits in Corsica in the second half of the nineteenth century. Antono Bonelli took to the maquis in 1848 after a quarrel with the mayor of Bocognano, as we have seen. The mayor was killed by Antono and his brother Martino soon afterwards. In 1849 Antono kidnapped the father of another girl whom he wanted to marry but who refused to agree to the union. When she later married another man, he was killed by Antono and his brother Giuseppe, who also took to the maquis in 1850. Immediately following their initial crimes, attempts were made to arrest the Bonelli, but soon ‘a sort of *modus vivendi* was established between the authorities and the wanted men’. Saint-Germain noted in 1869 that they were ‘very odd bandits; they cultivate their land quite openly; they sow their crops; pasture their flocks; and even play cards with the gendarmes whose job it is to apprehend them’. They travelled about freely, acquired large amounts of land and other assets, and were visited in their fortified headquarters at Pencia by continental celebrities, and even in 1871 by the prefect himself. In a report in 1874, another prefect explained some of the reasons for this official tolerance: ‘they work the forest and communal lands, maintain excellent relations with the notables of Ajaccio, are protected by departmental councillors, pay visits to them in town using their carriages for the purpose, and act as excellent electoral agents for them’. This policy lasted until the late 1880s when a special campaign was mounted against the Bellacoscia. Two of the brothers were captured or killed, but Antono gave himself up in 1892, was tried and acquitted.³⁶

³⁵ Report, Prefect, 23 December 1872, AN F⁷ 12849; Bourde (1887: 196-8).

³⁶ Saint-Germain (1869: 220); Report, Prefect, 30 October 1874, AN F⁷ 12849; Bourde (1887: ch. XI); Vuillier (1896: 197-200); Marcaggi (1932: 21-2).

The toleration of Serafini and the Massoni in the Balagna around 1850 reflected the well-established position of the first in the local power structure and the fact that the terror caused by the latter prevented the authorities from intervening. Both factors seem to have lain behind the passive behaviour of the authorities, at local and island level, *vis-à-vis* banditry in the 1920s. When Romanetti, for example, invited all the mayors of the canton of Sari-d'Orcino to the wedding of his illegitimate daughter, none of them dared to decline. The local press at this time regularly published bandits' demands and threats. Moreover, the protection rackets run by leading bandits depended on a fair degree of official compliance, notably in the granting of governmental contracts and concessions.

5.2. Links to the Elite

This brings us back to the links between banditry and local notables. The prefect wrote in 1872 that:

People appreciated the friendship of a bandit; he would be entertained at table, provided with clothing, food and powder in the maquis, for he was a means of exercising influence locally and of obtaining standing. So, he would be helped if he were brought before the courts, and, if he were convicted, a pardon would be solicited for him. All of this indicated that one had powerful connections and 'social credit'.

Earlier in the century, he added, 'bandits had actually been in the pay of influential families, who rewarded them in cash or with open protection'.³⁷ Fifteen years later Bourde indicated that this picture did not belong to the past: "He had a bandit at his service" is a very revealing Corsican expression. Since the law is powerless and justice scorned, the bandit replaces them. You feed and protect him, and the bandit puts his gun at your disposal. It is an exchange of services.' Thus bandits were used by notables to collect debts, to put off creditors, to enforce claims to property or pasture, to keep herdsmen and their animals off land, and so on. 'The bandit, in a word, is a kind of grand social regulator' (Bourde, 1887: 211, 214-16). A submission to a local committee of enquiry into banditry in 1896 agreed: 'The continued existence of banditry results from the fact that all bandits find the help and protection which they need from the village bosses and their masters; the encouragement, aid and protection which they receive put them beyond the reach of the law.'³⁸

³⁷ Report, Prefect, 23 December 1872, AN F⁷ 12849.

³⁸ Submission to Comité des patriotes tendant à la suppression du banditisme en Corse, December 1896; Letter to Prefect, 25 June 1896, ADCS 1.M.230.

This general view of banditry is confirmed by what we know of particular cases. Bandits usually had influential protectors or patrons. The mayor of Bastelica reported in 1824, for example, that since moving to La Rocca, Natale Gasparini had become the protégé of the Follacci family of Propriano, of ex-subprefect Bartoli of Sartène and of captain Casablanca of Arbellara. Very often such patrons themselves occupied local office as mayors or magistrates. The mayors of Casalabriva and of Bilia were arrested in 1896 for harbouring bandits. The mayor of Vescovato and other notables deflected attempts to enquire into the disruption caused in the district by the Sanguinetti and Paoli bandits. Achilli, deputy justice of the peace of Prunelli-di-Fiumorbo, was a relative of the Colombani bandits, and when he was removed from his post in 1895, he joined them in the maquis.

Specific examples may also be cited of notables drawing on the services of bandits in return for their protection. First, material interests might be directly defended by bandits. In a dispute concerning land in the Sartenais in the 1880s, both those who wished to maintain traditional grazing and those who wanted to promote viticulture hired bandits to support their cause. Secondly, bandits might act as agents in feuds which notables were unable or unwilling to conduct themselves. The general protection afforded to the bandits of the Fiumorbo in the 1890s, despite their extortions, was attributed in large part by officials 'to their usefulness to certain inhabitants whose vendettas they abet when they do not actually implement them'.³⁹ It is not always possible to distinguish between bandits acting as hired agents or as clients and bandit involvement in feuds through kinship obligation. As in other contexts, the networks of kinship and clientage overlapped. Distant kinship ties might 'cover' interventions of a mainly mercenary kind. It was reported in the 1840s, for example, that while some members of the Antona family were appalled by the crimes committed by the bandits to whom they were related, others profited from their activities and 'used them as agents in order to perform their acts of vengeance'.⁴⁰

Thirdly, bandits played a role, and a generally conservative role, in Corsican politics. In his report of 1872, the prefect noted that bandits were protected by 'the leading figures of all political parties', but especially by the Bonapartists. Bandits intervened in elections at all levels, either on their own account, or more commonly on behalf of these protectors. 'Since universal suffrage now plays so large a part in our political institutions', in the words of the same report, 'bandits have become electoral agents.'⁴¹ We have seen that the Bellacoscia were prime examples of this in the early years of the Third Republic. However, this phenomenon can be

³⁹ Note, Ministry of Justice, 29 November 1895, AN BB¹⁸ 1927.

⁴⁰ Case, Assize Court, 5-8 July 1847; *Gaz. Trib.* 18 July 1847, No. 6252.

⁴¹ Report, Prefect, 23 December 1872, AN F⁷ 12849.

traced further back, at least on the municipal level. According to the gendarmerie in the 1840s, Dr. Stefanini and his brother-in-law Padovani had been elected to the municipal council of Sari-d'Orcino 'solely through the influence of the bandit Stefanini, their relative'. Moreover, when municipal councils were temporarily granted the right to elect mayors in 1848, Stefanini was chosen as a result of pressure placed on the other councillors by the same bandit.⁴² Bandit interference in municipal politics remained important down to the 1930s.

5.3. Banditry and Elections

Many examples may also be cited of bandit intervention in departmental and general elections in this later period, where it fitted into the general way in which elections were managed (Wilson, 1988: 324-34). Bandit Benedetti interfered in the senatorial elections of 1885, making it known to the municipal council of Lugo-di-Nazza that he favoured a particular delegate to the electoral college. The departmental elections of 1895 were contested in the canton of Vezzani by Dr. Carlotti from Bastia, who owned some property there, and the sitting senator Fazinola. It appears that both candidates had bandits working for them, since Dr. Carlotti was warned by bandits not to meddle in the affairs of Vezzani, while Fazinola was robbed and held to ransom by another group of bandits shortly afterwards. Many of the leading bandits of the inter-war period were similarly involved. The perfumer, François Coty, a candidate in the 1923 senatorial elections, had a meeting in the maquis with Romanetti, at which he allegedly paid for the bandit's neutrality if not his support. Candidates in the 1924 legislative elections also bought Romanetti's support. Bartoli is reported to have received 100,000 francs from the millionaire Paul Lederlin, a candidate in the senatorial elections of 1930, and in return to have 'delivered' the votes of the five delegates to the electoral college from his 'fief'. Again, Spada was said to have aided the election of Jules Leca to the Senate in 1931.⁴³

6. Conclusions

Several points should be stressed in conclusion and two avenues for further research suggested. First, banditry was part and parcel of the system of blood

⁴² Letters, Gendarmerie to Prefect, 1840, ADCS 1.M. 86; Report to Prefect, 9 April 1858, ADCS 2.M.149.

⁴³ Bourde (1887: 216-17); Report, Commissaire spécial, Bastia, 10 December 1895, AN F⁷ 12850; Marcaggi (1932: 17-18, 167-8, 199-200, 209-10); Villat (1932: 152); Privat (1936: 69ff, 154).

vengeance which was still operative in Corsica down to the time of the Second World War. It was also embedded in the patronage system which dominated the island's social and political structure. Taken together they constituted an alternative to mafia or perhaps a version of it. Mercenary bandits had always existed but probably became more important as the traditional agro-pastoral economy was undermined. One area that requires further elucidation is the way in which insular mercenary banditry formed links with or nurtured continental organised crime through old and new channels of emigration from Corsica. Clearly, the close vicinity of the backward island and the large mercantile city of Marseille was a factor. Another avenue for research is the way in which kin-orientated banditry and feuding became transposed to the nationalist movements, using violence not only against the French state but also against each other. This pattern is not of course peculiar to Corsica but is found in many other parts of the world.

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From Thievish *Artel* to Criminal Corporation: The History of Organised Crime in Russia

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1. Introduction

The topic of organised crime is very fashionable (and commonplace) now. On the one hand, organised crime is a serious danger to society. Criminal organisations have riches and capital, and experience of collaboration with business, economists and even certain politicians. On the other hand, stripping the cloak of mystery and myths from the mafia and organised crime is usually a very difficult task. A study of the history of organised crime helps us to comprehend this. Before doing that, however, we should briefly discuss our contemporary understanding of organised crime.

The term ‘organised crime’ is not a strictly scientific one. First, the word ‘crime’ is relative – it is a conventional notion, a social construction. Secondly, all intentional crimes are ‘organised’ to a certain extent. Our definition of ‘organised crime’ reflects the ongoing debate in the sciences of criminology or sociology. These increasingly recognise organised crime as a form of business enterprise (Abadinsky, 1994; Albanese, 2000; Arlacchi, 1986; Block, 1994; Kelly et al., 1994), or as a series of ‘illicit enterprises’ (Smith, 1975).

Criminal business arises, exists and develops according to certain conditions:

- demand for illegal goods (drugs, arms and so on) and services (e.g. sexual);
- unsatisfied demand for legal goods and services (for example, the ‘deficit’ in the former Soviet Union);
- unemployment and other sources of exclusion as basis of social deviance;
- deficiencies in tax and customs policies and other government policies.

Drawing from the international debate, our definition of organised crime adds two elements to the dominant focus on criminal business activities: namely, organisations as the main subject of organised crime and their capability to influence government decision-making. In fact, we define organised crime as follows:

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Organised crime is the functioning of stable, hierarchical associations, engaged in crime as a form of business, and setting up a system of protection against public control by means of corruption.¹

Criminal associations are a specific type of social organisation consisting of several actors comprising a collective body and violating international agreements and/or the laws of the country in which they operate. The growth of the organisational aspect of crime is a natural process – it is a manifestation of the growth of the organisational aspect of social systems as well as of their sub-systems (the economy, politics, and so on). Furthermore, it is a worldwide process. Criminal organisations, like other social organisations, strive to exert influence on state power and to exercise control over it through lobbying, bribery or infiltration of their representatives into power structures. Moreover, organised crime can be said to be ‘organised’ only if it influences government decision-making.

The high degree of adaptability of criminal associations, resulting from such factors as their strict labour discipline, careful selection of staff and high profit margins, ensures their great vital capacity.

This article reconstructs the development of Russian organised crime, which today fully meets the conditions set by the above discussed definition. As we will see, this is not the case of many of the predecessors of contemporary criminal syndicates: since the seventeenth century criminal organisations have been active in Russia but before the early twentieth century one could hardly talk about organised crime in a strict sense, as defined above.

The key stages in the formation and development of criminal organisations and organised crime in Russia are:

- The roots of contemporary organised crime lie in the tradition of the thieves’ law and thieves’ slang (*blatnaya fenya*), which goes back to the fifteenth century. Criminal gangs were first reported to be active in the seventeenth to eighteenth centuries, most of them relying on the traditional social institution of the *artel* (cooperative). Such gangs flourished in most Russian cities during the late nineteenth and the beginning of twentieth centuries.
- The Revolution of 1917 and the Civil War, which marked the first years of Soviet authority, favoured the development of a multiplicity of criminal organisation and gangs. Some of these briefly enjoyed much power and high-level connections, to such an extent that they can be seen as a first

¹ As defined at the International Seminar on Organised Crime held at Suzdal, Russia on 21-25 October 1991 under the aegis of the United Nations. The proceedings have not yet been published.

manifestation of organised crime. The first decade of Soviet authority is usually known in the Russian literature as the ‘gangster period’.

- In the 1930s the first national form of organised crime was developed, namely the unique Russian community of the ‘thieves-in-law’, which is still active throughout Russia.
- From the late 1950s to the end of 1970s the social base of organised crime in Russia widened considerably. This was due to the appearance of a plurality of shadow economy entrepreneurs (the so-called *tsekhoviks*), some of whom accumulated great wealth and cooperated with high-level party and government officials. As most of their activities were considered illegal by the Soviet state, *tsekhoviks* were usually obliged to accept the protection of the thieves-in-law. This created the *roof* – the close intermingling of shadow entrepreneurs, traditional criminals, government and party representatives and officials.
- From the end of the 1970s onwards we observe the rise of a new generation of criminals (the so-called ‘sportsmen’ or ‘bandits’) and, more generally, the consolidation of contemporary organised crime. Its activities were initially related to traditional black-market racketeering – drugs, arms and weapons dealing, and control over the gambling and sex businesses. Thanks to the immense opportunities created by the implosion of the Soviet Union and the liberalisation and democratisation processes, by the end of the 1990s on there was a merging of organised crime with legal business and political structures.

The following section briefly describes traditional thieves’ law and sketches the development of outlaw gangs in the period between the fifteenth and the nineteenth centuries, what we call the ‘pre-history’ of Russian organised crime. The third section focuses on the gangsterism period, which encompasses the last declining years of czarist Russia, the Revolution and the Civil War. The fourth section reconstructs the origin and consolidation of the so-called thieves-in-law, a criminal fraternity that in the West was *tout court* equated with Russian organised crime. The bloody conflict between traditionalist and liberal thieves-in-law in the late 1940s and early 1950s and the expansion of black market workshops and firms after Stalin’s death and Krushev’s liberalisation attempts are summarised in the fifth section. The final section deals with the rise of a new generation of organised criminals (the ‘sportsmen’ or ‘bandits’) and singles out the main characteristics of contemporary Russian organised crime.

2. The Pre-History of Russian Organised Crime (Fifteenth to Nineteenth Centuries)

Criminal organisations (as opposed to ‘organised crime’!) were born in Russia some time during the fifteenth and sixteenth centuries.² Thieves’ traditions – thieves’ law and thieves’ slang (so-called *fenya*) – appeared in the seventeenth to eighteenth centuries. Rules pertaining to the collection of money for the thieves ‘brotherhood’ also originated in this epoch.

Peasants who ran away from their land-owning masters were the initial social basis for early criminal gangs. It is possible that in the sixteenth century about 200,000 peasants ran away every year, many of them joining gangs of robbers. Most often they made their way to the southern regions of the country, making forays into the central regions from there. Serfdom (the full physical and economic dependency of peasants on landowners) lasted in Russia up to the 1860s and was the mainstay of the social base for the runaway peasants – robbers, who became members of criminal gangs.

In the seventeenth century, Moscow became the centre of Russia’s criminal society. According to several researchers, the consolidation of professional criminality and its traditions took place during this period. In the 1740s, Moscow’s underworld was led by Vanka Cain (Ivan Osipov). Vanka Cain began his criminal career in 1731 with thefts from his master and general pickpocketing. His success in these crimes opened the doors of the Moscow’s criminal community to him. He was accepted in the thieves’ world, having paid a donation and sworn the thieves’ oath (*blatnaya fenya*). However, in 1741 Vanka Cain betrayed his colleagues and joined the police. The betrayal did not, however, mean the end of his criminal activity. This now concentrated on the extortion of former comrades by larceny, and of merchants by arson. For a time Vanka Cain controlled the whole criminal world of Moscow and used his relationships with both the underworld and the police for his own gain (Konstantinov and Dixelius, 1997: 27-33; Gurov, 1995: 82-4). This predecessor of modern ‘tough guy’ bandits left an autobiography entitled *Life of Vanka Cain, Told by Himself*.

At the same time Mikhail ‘The Bear’ Medved and his brothers also worked in Russia’s capital. Mikhailo ‘The Dawn’ Zarya’s gang was also well known. But the most famous predecessor of Vanka Cain was Kudayar, the early seventeenth century legendary hero. There are so many songs and poems about him that it is

² Information from the following books is widely used in this section: Gurov (1995); Dixelius and Konstantinov (1995); Konstantinov and Dixelius (1997); Ovchinsky et al. (1996); Chalidze (1990).

very difficult to separate the truth from fiction today: for example, even the famous Russian singer Fyodor Shalyapin included the song 'Kudeyar – Ataman' in his repertoire.

Russian researchers of organised crime hypothesise that the 'first' Russian criminal organisations were set up as an *artel* (Dixelius and Konstantinov, 1995: 49; Chalidze, 1990: 63-71; Ovchinsky et al., 1996: 167). This is an old Russian social institution, a cooperative set up to organise joint labour activity (in the agriculture, trade, construction and craft industries). Quite often *artels* were recognised officially (for instance, during the reign of Emperor Peter I). In the opinion of some authors, it is impossible to imagine Russia without *artels* (Grunwaldt, 1876): these were such an established form of organisation of joint labour that even the Soviet state officially defined *kolkhoz* (collective farm), the newly enforced form of agricultural association, as an agricultural *artel*.

The spread of *artels* was favoured by the traditional communal Russian lifestyle, which possibly also helped establish the communist ideology in Soviet Russia. This communal lifestyle not only promoted the ability to survive the awful conditions of 'communal' flats (in which several families, sometimes dozens of families, lived in a single apartment), but also group criminality (the criminal *artel*, gangs, the community of 'thieves-in-law', and modern criminal communities and organisations).

The main principles of organisation in a Russian *artel* are:

- a voluntary agreement (most often verbal) on the activities to be carried out together;
- the equality of all members of the *artel*;
- the principle of circular guarantee or sole liability (meaning that the *artel* is responsible for its own members, and each member is responsible *vis-à-vis* the *artel*);
- the election of the *artel* leader or chairman (variously called the head, senior, or *ataman*).

Members of *artels* often helped each other in private life (such as in the event of illness). A punishment system existed in *artels* for different misdemeanours and derelictions of duty – for example, a monetary fine or, in more serious cases, prohibition from working in the *artel* for a certain time.

From the middle of the nineteenth century onwards we start to see references in the literature to *artels* of thieves, and specifically horse-thieves (Grunwaldt, 1876). Unlike legal *artels*, any relationship with thieves' *artels* was forbidden – and this prevented thieves' secrets being divulged. Thieves' *artels* in the nineteenth and beginning of the twentieth centuries were not united by some general management, and a thieves' elite did not exist until some time later with the formation

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of new organised forms of criminal activity – the so-called thieves-in-law. There was, however, some interaction between criminal *artels*, as they negotiated – and sometimes fought for – the division of their spheres of operation.

At the beginning of the twentieth century, several types of criminal *artel* existed, which can be differentiated by the basis of the specialisation of their members:

- robbers: the most dangerous groups, who carried out robberies and murders, usually by means of the Finnish knife (a knife with a special groove for draining blood);
- professional thieves: the most widespread groups with multiple specialisation – including *medvejatnik* (safe crackers), railway thieves, shoplifters, burglars, pickpockets and horse-thieves;
- Ivans without kin (*Ivan, rodstva ne pomnyaschy*): professional beggars and vagrants, who collected alms and were involved in theft. The name derives from the fact that representatives of this type of *artel* usually had no identity papers and during detention by the police were named ‘Ivan [one of the most common Russian names] could not remember his next of kin’;
- swindlers: the criminal elite – among them there were *farmazonschik* (specialists in precious stones), card-sharps, fraudulent money-changers (in modern Russian *lomschik* means fraudulent currency exchange) and marriage brokers;
- forgers: members of these groups often had international relationships.

The criminal communities of horse-thieves were especially well organised. There was a strict hierarchy in them, including heads, assistants, horse-thieves, buyers and groups for protection and security. These communities operated in specific locations as bases for support and transfer, and had their own representatives on stud-farms and on the farms of rich landowners. According to Gurov, communities of horse-thieves fall into the category of ‘organised crime’ (Gurov, 1995: 96). However, in our view, these communities do not constitute a form of organised crime (though they undoubtedly were criminal organisations), because their activity was only local and they did not influence the economy and politics in Russia.

The emancipation of the serfs in 1861 had a profound effect on the history of organised criminality. Peasants now began to run away not from slavery, but for economic reasons. Though it abolished serfdom and the physical dependency of peasants on their masters, the emancipation did, in fact, ensure peasants’ economic independence. Many peasants thus ran to cities to work in factories, and many replenished the numbers of the criminal world.

The professionalisation and scale of criminality in the nineteenth century were already so high that, according to an early twentieth-century scholar, there was not ‘an aspect of public life to which the criminal world is not adapted for its profit’

(Breitman, 1901: 133). However, in the opinion of modern Russian criminologists, ‘an absence of the market and strong military-political state power in the Russian Empire hindered the development of the Russian mafia’ (Ovchinsky et al., 1996: 167). According to Vladimir Ovchinsky and his colleagues Vladimir Edminov and Nikolai Yablokov, however, a ‘trading/financial/industrial/bureaucratic’ type of organised crime emerged from the early twentieth-century economic and political crisis, thanks to Russia’s tradition of corrupted authorities (ibid.: 168). However, in our view, the activities and networks referred to by Ovchinsky and colleagues are best regarded as powerful white-collar crime, in that it was illegal activity within *legal* structures (Gilinskiy, 1998; Gilinskiy, 2002: 202-48). We understand ‘organised crime’ to be the activity of *illegal* (criminal) organisations.

In the 1870-1880s there appeared a well-run criminal gang, created by a woman, Sonka ‘Golden Hand’ Zolotaya Ruchka (original name Sheindlya Bluvstein). Her particular talents included sleight-of-hand (hence her nickname) and excellent management abilities. There was a well-defined sharing of duties in Sonka’s gang. So, two participants (‘getters’) sought out the victim, and two others (‘sellers’) disposed of the stolen goods far from the place of theft. Sonka managed the gang’s activities, and actively participated in thefts of valuables and money. Each member of the gang had several passports, as Sonka had reliable relationships with foreign ‘colleagues’. She attracted prospective thieves from Rostov and Odessa, while defeating her Moscow rivals (Konstantinov and Dixelius, 1997: 43-5).

At the beginning of the 1900s Rostov-on-Don and Odessa, located respectively on the Azov and Black Sea, were two criminal ‘centres’ in Russia, and were nicknamed ‘Rostov-pa’ and ‘Odessa-ma’. In Rostov, violence dominated the methods of criminal business. Connected with this is the fact that the Don region traditionally attracted runaway peasants, who formed the Cossacks and were always armed with firearms and discarded munitions.

Criminal gang activity in both cities is surrounded by many legends and has generated much original folklore and as well as thieves’ prison songs (*blatniye*).³ Prison songs and stories have long been part of Russian culture. Elements of *blatnaya* culture were used by the famous poets Sergey Esenin and Vladimir Mayakovsky in the poems ‘Hooligan’, ‘Confession of the Hooligan’, ‘And Again Drinking, Fighting and Crying Here’, ‘Robber’, ‘Song of the Old Man – Robber’ and

³ There are several meanings of the slang word *blat* as a noun and *blatnoi* as an adjective. *Blat* as a noun refers to a corrupt activity and, specifically, the rendering of services to natives, friends and familiars (Ledeneva, 1998). As an adjective, *blatnoi* language and *blatnaya* music are synonymous with thieves’ prison slang *fenya*. A *blatnaya* song is a song with a criminal or prison subject, or that was composed in a prison, or was just popular in the criminal world. A large number of these songs are anonymous. A *blatnoi* person is simply a professional criminal.

many others. *Blatniye* themes also occupy a significant part of the songs of Vladimir Vysotsky and Alexandr Galitch. Galitch's song 'Clouds' has long dominated the modern radio programme for convicts. A number of prison songs are assembled in the 1996 collection 'Black Raven' (a black raven, or *voronok*, has been the household name for the special convict cars since the 1930s). The *blatnaya* life of 'Odessa-ma' is reflected in the famous Odessa stories by the classic Russian writer Isaac Babel, who was later killed by the Stalin regime.

3. The Gangster Period: The 1917 Revolutions and the Civil War⁴

The beginning of the twentieth century was a crisis period in Russian history: the unsuccessful war with Japan, the failed revolution of 1905 and Russia's poor performance in its entry in the First World War fuelled the already serious crisis of the monarchy and the widespread discontent with the regime from all sectors of the population. The bourgeois Revolution of February 1917 could not solve all the accumulated social and economic problems. It is therefore little wonder that the bourgeois Revolution was followed by the 'proletarian' October Revolution of 1917. Against the backdrop of general crisis and discontent, the weakening of state authority, and the Civil War that began in 1918, the activities of criminal organisations intensified. In addition to the current members, these organisations recruited new followers among the peasants ruined by the war, deserters and criminals amnestied by the bourgeois Revolution of February 1917.

The majority of authors investigating the history of Russian criminality since 1917 stress the importance of the general amnesty granted by the Provisional Government in March 1917, which resulted in the liberation of thousands of criminals (Gurov, 1995; Dixelius and Konstantinov, 1995; Sidorov, 1999: vol. I). On seeing the results of the amnesty, the Provisional Government urgently created the Petrograd's Department for the Management of Criminal Investigations in April 1917, which basically consisted of the former employees of the imperial detective police.⁵ The work of detective police of the Russian Empire was highly professional – at the International Criminological Congress in Switzerland in 1913, the Moscow detective police was recognised as the best in the world. In response to the formation of the Department for the Management of Criminal Investigations a so-called *skhodka* (meeting) of criminal world authorities (thieves, robbers, counterfeiters and

⁴ For this and the two following sections, we have extensively used the materials from the volumes written by Sidorov (1999(I), 1999(II)), in addition to the earlier named references.

⁵ The city was called St. Petersburg from 1703-1914, Petrograd from 1914-1924, Leningrad from 1924-1991, and St. Petersburg again from 1991.

so on) was allegedly called, in which an urgent decision was taken to destroy the archive of the imperial criminal police, in which fingerprints, items of information on previous convictions and other sources of information about recidivists were kept. To carry out this decision seemed impossible, but then, in October 1917, there was a fire in the department, destroying most of the archive.

Organised crime in Russia at this time existed primarily in the form of gangsterism. The numerous gangs operated throughout extensive territory of Russia, chiefly in the central and southern regions. Gangs also terrorised the population of Russia's two largest cities, Petrograd and Moscow. Some gangs had an ideological or political character, acting on behalf of the 'white' (counter-revolutionary army), the 'red' (revolutionary armies) or the 'green' (independent, mostly peasant). Organisers and chiefs of the gangs would quite often change colour – the famous gang of Batka 'Father' Makhno was at war sometimes on the side of the red army, at other times on the side of the white army, or else acted as a 'third force'. Other gangs were purely criminal. In Petrograd, for example, the gang of Lyonka Panteleyev (Leonid Pantyolkin), a very courageous, dexterous professional robber, operated. His gang primarily plundered the rich, and was known to the lower classes of Petrograd, with a mixture of fear and admiration, as the 'cleaner of rich men' (Konstantinov and Dixelius, 1997: 58-9). From November 1922 to February 1923 Panteleyev killed 10 men, and his gang committed at least 20 street robberies and 15 armed robberies. In his long criminal career, Panteleyev served in the All-Russian Emergency Commission (usually known as VChK – Vserossiyskaya Chrezvychainaya Komissiya), the first Soviet security agency, which was founded on 7 December 1917 to combat 'counter-revolution, speculation and malfeasance in office' and was active until February 1922. Panteleyev was accepted into this new retaliatory service of the Soviet state, the forerunner of the KGB, by the founder and chief of the VChK, Felix Dzerzhinskiy. Thanks to his connections, Panteleyev even managed to escape from prison after having been arrested by the militia (Russian police). When he was again caught in a militia ambush in February 1923, he was executed by shooting, the danger of taking him into captivity now being clear.

In addition to Panteleyev's gang, several criminal groups operated in Petrograd. The gang under Mishka Panych, for example, engaged in safe-cracking, seldom resorting to violence (Dixelius and Konstantinov, 1995: 61). So-called 'jumpers' or 'living corpses' also worked in the Petrograd suburbs. They dressed in white shrouds and moved on stilts or springs (hence their names), frightening the occasional passers-by and robbing them. The group of Vanka 'The Dolly' Kukolka (Ivan Zatotsky) was also relatively non-violent and mainly engaged in pickpocketing in the shops of Petrograd. The gang of Vanka 'The Squirrel' Belka (Ivan Belov), on the other hand, distinguished itself for its cruelty to VChK employees and militiamen. As a result, the militia contrived to kill all the gang members at the moment of their arrest.

More than 30 gangs operated in Moscow. The criminal career of Sashka Seminarist began in Moscow in 1913, when his gang committed frequent armed robberies, which often ended in the murder of the victims (Konstantinov and Dixelius, 1997: 53-4). Sashka also distinguished himself for the special cruelty he inflicted on victims. He was hasty, impatient in the face of argument, and shot several members of his own gang over various disagreements. Sashka was eventually caught and sentenced to death by Russia's pre-revolutionary courts. The sentence was commuted to 20 years of hard labour. In February 1917 he was allowed to go to the war front, but on his return to Moscow he reverted to his former criminal activities. He personally killed all the members of his gang, who had acted as witnesses against him earlier. Then he was caught again and in 1920 was shot by a regional department (the so-called ChK) of the VChK. Another Moscow gang, that of Saban (Nikolai Safonov), was also well-known for its violence. On a single day (24 January 1919) the gang shot no less than 10 militiamen in Moscow.

A number of gangs operated in Rostov-na-Donu, including the Steppe Devils, White Masks, Black Masks, Medics, Bowlers and Pashka Pharaoh's gang (Dixelius and Konstantinov, 1995: 61). The leader of the Steppe Devils was Vasily 'The Immortal' Bessmertny. He was a murderer before the Revolution, then became an employee of the militia afterwards. During his militia service he began helping the gangsters. Then he was arrested, but escaped and headed a gang which operated until 1923. The gang attacked trains, robbed the general population as well as legitimate *artels*, and committed dozens of murders (Sidorov, 1999(I): 37-8).

In the years immediately following the Revolution, criminal gangs were active in all of Russia. The Vorobey gang operated in the Pskov area, close to Latvia, and numbered about 170 criminals. The gang of Sedlitsky operated in Khabarovsk Krai, the area around the border with China and Japan, and the gang of Abramchik Lekherea worked in Kherson, in south-western Russia.

This wave of criminality forced the new authorities to apply extreme measures in its struggle with gangsterism, sometimes with the participation of military divisions. Rather than go through any judicial process, the gangs were often wiped out at the scene of the crime or at their own headquarters. As a result, political criminal gangsterism was almost eradicated by 1927, and the criminal world underwent a great transformation (Gurov, 1995: 102).

After the end of the Civil War in 1920, the country gradually returned to a peaceful life, but new criminal groups rose in prisons and labour camps. Besides an increased quota of political prisoners ('enemies of the people' and their family members), there were plenty of 'old' and 'new' criminals in prisons and camps. In the late 1920s, a quarter of the prison population were professional thieves, many of whom had begun their career in pre-revolutionary times. Among their number, authority figures emerged who came to be known as *urka* or *urkagan* (a title given to professional thieves in the traditional underworld). In addition to 'traditional' thieves, there were also 'new' criminals, who were more ideological, and justified

their criminal behaviour as a disagreement with Soviet authority. They received a common nickname – *jigan* (before the October Revolution this was the name given to poor convicts, and to losers at cards) (Gurov, 1995: 102-4). Former officers of the imperial army also belonged to this second set, some of them having become gang leaders during the Civil War. For instance, a former staff captain, Aniskevitch, had headed a gang of horse-thieves in the Petrograd province, and former ensign Dudnitsky had supervised a gang of 35 members in the same province. In the opinion of Sidorov (1999(I): 66-9), former officials introduced a new rules to the criminal world, which became the core of the legal order of the thieves-in-law.

By the late 1920s, a war for the leadership had flared up between *jigans* and *urkas*. *Jigans* had more means and connections outside the penitentiary system, but *urkas* were stronger in prisons and labour camps. As of January 1929, there were about 37,000 professional thieves – or so-called ‘authorities’ – in penitentiary institutions (Sidorov, 1999(I): 112). They headed the war against *jigans* and won. This marked the beginning of the development of a form of organised crime that is closest to contemporary forms of organised crime in Russia – the thieves-in-law.

4. The Thieves-in-law: National Organised Crime

The well-organised association of thieves-in-law came into being in the early 1930s and was composed of several local thieves’ communities. A thief-in-law was a professional thief or swindler who chose crime as a permanent way of earning his living, was well-known in the criminal world, and obeyed the law of the thieves, a special code for criminals, which was primarily developed and observed in prisons. The community of the thieves-in-law is a unique form of criminal organisation and we shall discuss it in more detail. We start our discussion, by defining some key terms.⁶

A *thief* is literally one who steals; from ancient times, however, this word in Russia has signified more – criminals, on the fringes of the rules of law, irrespective of the kind of crime they are involved in. So, for example, even the leaders of the peasant revolts, Emelian Pugachyov and Stepan Razin, were labelled as thieves by law enforcement authorities. As much as a ‘normal’ thief, a thief-in-law could be not only a thief, but also a robber or a swindler.

Law is a normative act accepted by the supreme body of legislative authority. In a wider, household sense, it means any normative act or code of rules. But the word ‘law’ has a wider sense, and includes general rules of behaviour, as in ‘the laws of friendship’, ‘the laws of family life’, and so on. In this wider sense of the

⁶ The origin of words ‘thief’, ‘law’, *jigan*, *urka*, *blat*, and so on is considered in the book by Sidorov (Sidorov, 1999(I)). The author discusses various theories on the origin of these words, but all of them are disputable and open to debate.

term the word 'law' is used in the expression 'thief-in-law' – a man living according to criminal rules of behaviour, or norms accepted by the criminal community.

Thieves' law is a code of unwritten rules of behaviour, to which professional criminals and members of the criminal community of thieves-in-law submit. Thieves' law was not generated entirely anew in the 1930s. The 'rules' and 'concepts' formalised by the association of thieves-in-law in the 1930s had their roots in the '*varnak's* rules', which were followed by criminal world members even before the Revolution (*varnak* means dangerous criminal or convict; in private life even today people still occasionally use the expression 'Oh, *varnak!*'). Interestingly, some members of the contemporary galaxy of Russian organised crime (above all the so-called 'bandits' and 'sportsmen') follow new rules of behaviour called 'concepts'.

To live on *concepts* means to obey the rules of behaviour, which have been – or were – in force in the Russian underworld since the 1930s. Infringement of the thieves' law was traditionally punished by various sanctions from the requirement to apologise to the victim, a ritual slap in the face right up to the death penalty, which was often carried out during the *skhodka*.

Skhod or *skhodka* (a meeting) is a general assembly of all the thieves-in-law, at which issues concerning the whole thieves community were addressed – thieves' safety as affected by government crime policies, definition of the thieves' income share to be deposited in the *obschak*, initiation of new members (a 'coronation'), punishment of the guilty ones, management of international communications, and so on.

Obschak is the general thieves' cash department made up of the contributions of each member of the criminal community, by means of a share of the property stolen. The size of a share varies from community to community – 10 per cent was accepted at one *skhodka* in the 1980s. *Obschak* exists to help arrested criminals and convicts who obey the thieves' law. Money from *obschak* also goes to families and kinsmen of convicted or dead criminals. Money to help the people in *zone* (a penitential institution) is called *grev* (warm). There is a Russia-wide *obschak*, and an *obschak* in every *zone*. The keeper of *obschak* is a respected professional criminal appointed by the *skhodka*.

A *coronation* (or christening) is the final stage of procedure whereby a new member is accepted into the community of the thieves-in-law. Originally a person wishing to be accepted in the community undergoes a period of candidacy. For this time he is kept under observation to ensure he obeys the thieves' law. Then a special letter (*malyava*) is sent to each *zone* announcing the forthcoming coronation and inviting any possible objections to the candidate. If there are no objections at the next *skhodka*, the coronation takes place – a solemn reception into the community of the thieves-in-law.

From their very first days of existence, the thieves-in-law insisted they were apolitical, that they were ‘thieves with honour’. One of their basic tenets was to deny any merit to political criminals. They did not struggle with the Soviet authority, but only targeted *frayers* (an honest *frayer* is a lawful citizen), in other words, private persons not linked to criminal circles. They avoided murders or violent crimes, describing their operations as ‘work’. This had a practical side: the sentence for theft (secret plunder – Art. 162 of Penal Code of Russian Soviet Federated Socialist Republic (RSFSR) of 1926) was between three months and two years of deprivation of freedom (to a maximum of five years with aggravation). However, for gangsterism, murder or robbery the penalty was between ten years and the death penalty. Furthermore, the Soviet repressive bodies – the Main Political Directorate (Glavnoje Politicheskoe Upravlenije, usually shortened to GPU) and People’s Commissariat for Interior Affairs (Narodnij Kommissariat Vnutrennih Del or NKVD) – indulged *urkas* and thieves, while directing all their efforts to the struggle with political criminals (the *jigans*, i.e. the ‘enemies of the people’ and dissidents).

The basic rules of the thieves’ law were developed in the 1930s. The basic requirements of the thieves’ law of the 1930s-1940s were:

- Authority in the criminal world was to be granted only to the thieves-in-law, the *blatniye*, and, among them, to their elected chiefs;
- The criminal world was constructed on principles of rigid hierarchy: there were ‘castes’ (or *mast*, as they are called in the thieves’ slang, i.e. ‘suit’). The thieves-in-law were the highest caste, subordinated castes were *moujik* (i.e. unrelated citizens, the so-called *frayer*), ignominious castes were composed of *pidor* or ‘cocks’ (passive homosexuals), *krisa* (meaning ‘rat’ – a person stealing from members of the community), *chushok* (slovenly thieves, who committed mistakes endangering the group), *stukach* (‘informers’), and others;
- ‘Thieves’ were not under the jurisdiction of other criminals and convicts;
- All other criminals were to punish anyone who broke the traditions of the criminal world (*stukach*, *krisa*) and did not respect the thieves’ laws;
- All the *blatnoi* (*urka*, thief) should pay duties;
- A thief-in-law could not cooperate with the state;
- It was forbidden to participate in the work of state and public organisations;
- A thief could not work either in freedom, or in *zone* (i.e. prison or labour camp);
- A thief could live only from the revenue of criminal activities;

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- A thief was not allowed to officially marry (there were two main reasons for this rule: first, the marriage would distract the thief from his 'job' and, secondly, to enter a marriage was to 'cooperate' with the state);
- It was forbidden to engage in politics;
- It was forbidden to serve in the army;
- It was forbidden to have property or a permanent residence;
- It was forbidden to contact government officials or representatives, especially members of law enforcement bodies (militia or prison administration) or courts (except when compelled to appear in court as the accused) (Gurov, 1995: 107-9; Konstantinov and Dixelius, 1997: 64-5; Sidorov, 1999(I): 169-79).

In addition to these behavioural rules, other rules determined the election of the thieves' leaders, the way in which they were supposed to exercise their authority and how they should prosecute and punish guilty thieves. Rules of recognition were also foreseen by the thieves' law: to be accepted as a full member, a thief should have previous convictions, have a special tattoo and use *blatnoi* language (*botat po fene* – to speak *fanya*).

Tattoos had a special meaning. For example, a heart pierced by an arrow or an ace in a cross signified a criminal with a high level of authority. There were special places on the body where the tattoo could mean a high level of authority and respect. Thighs and elbows are for respected criminals. Any tattoo on the face or buttocks characterised a person as not worthy of respect. The making of the wrong tattoo could have far-reaching consequences, such as amputation and sometimes death.

The system of punishments according to the thieves' law comprised three steps or degrees depending on the seriousness of the offence: a mistake, unworthy behaviour and treachery (Sidorov, 1999(I): 209-10). The first degree for insignificant offences (a mistake, such as a sneer, an involuntary insult or a silly threat) required the offender 'to ask pardon like a brother'. The guilty had to apologise to the offended person, who would 'offer a brotherly hand' – i.e. a slap or punch in the offender's face. The second degree (unworthy behaviour, such as unpaid card duty, concealing unseemly acts from the community or dishonest sharing of profits) was punished by demotion and expulsion from the thieves' community (*dat' po usham* – 'to box one's ears'). The transgressor became a *frayer* or *porchenny* ('spoiled') and never could return to his old rank again.

The third kind of punishment, 'to ask like a vile creature', was reserved for treachery, cooperation with *ments* (the *blatnoye* name for militiamen, comparable with the American 'cop'; a stronger version is *musor* – literally meaning 'garbage'), or other forms of betrayal of the thieves' law, for which only the death penalty would suffice. For treachery or cooperation with *ments* the method of execution

was suffocation or shooting, for other hard crimes the transgressor would be stabbed to death.

There was an option to escape punishment by voluntarily leaving the community and renouncing the 'crown'. But the thief would be obliged to renounce criminal activity altogether (to 'depart' or to 'fasten'). It was impossible to return to the community of the thieves-in-law. If a former 'fastened' thief were then to commit a crime, in a *zone* he would be a simple *moujik* (i.e. he would be treated like an unaffiliated citizen).

The community of thieves-in-law was bound by a common idea and common rules of behaviour (the thieves' law), was based on communal principles recognised by all members, and a common cash department (*obschak*). However, it was not a strictly organised uniform group with a uniform chief and limited territory or sphere of activity. Neither was it a criminal organisation in the style of the mafia. Each member was, in fact, free to organise his own criminal activities as he preferred and, in doing so, could set up gangs or make alliances even with non-thieves. The number of thieves-in-law decreased from several thousand in the 1930s to several hundreds in the 1990s.

5. The 'Bitches' Wars and the Rise of Black Market Entrepreneurs

In the 1930s a new wave of gangsterism was fostered by the generalised confiscation of property, the imprisonment and execution of thousands of rich peasants (*kulaks*) and the resulting famine of 1931-1933. Increased activity of the gangs was recorded in Moscow, Rostov and other cities at this time. In Leningrad, the gangs plundered bakeries and shops. Huge numbers of homeless teenagers swelled the ranks of criminal organisations.

The epoch of mass reprisals and Stalin's Gulag began in 1934. In comparison with political convicts, who were deemed enemies of the people, *blatniye* became a convenient way to guarantee order in penitentiary establishments. Thieves began to dominate the *zone*. The officially recognised authority of thieves, however, did not last for long. The terrible reprisals of 1937-1938 and the mass execution of convicts (which were decided by administrative, not judicial bodies, with no legal justification) were meted out, not only to political prisoners and enemies of the people, but also to criminal authorities and thieves-in-law.

The Gulag's 'daily' routines were interrupted by the Great Patriotic War against Hitler's Germany – the Second World War. In 1941-1942 the Soviet army suffered defeat after defeat and the situation at the front caused the Soviet government to implement a series of extraordinary measures. They decided to offer convicts the chance to go to the front, and 'expiate their faults' with their own blood. Prior to this decision (in 1942-1943) hundreds of thousands of people were lost in the intolerable wartime conditions of the Gulag. As a result, even according to the official data,

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in 1941 over 100,000 convicts died in camps, rising to over 248,000 in 1942 (by comparison, in 1940 just over 46,000 died) (Sidorov, 1999(II): 18-19).

Political prisoners were not allowed to go to the front, as the state considered them unreliable. But *blatniye* faced a dilemma – an opportunity to survive at the front and to be released from punishment (the state imposed only one condition: in the case of a wounding in battle, transfer from a penal battalion to a regular unit, with one year in the army being equivalent to three years of the sentence imposed) or to die in the harsh conditions of the Gulag in wartime. Many criminals chose to go to the front.

The war ended in 1945. Former *blatniye* who had survived, returned from the front. Many of them had medals and awards, and some had become officers. But the Motherland met the defenders coldly. Former convicts had lost their homes and families, and, not having any profession (except thieving), came back with no means of existence. For many of them nothing remained but to go back to their pre-war ‘job’ – to steal, to plunder, to swindle. And when they ended up in prison, they tried to restore their former thieves’ rank. But there were plenty of so-called honour thieves in the camps of the Gulag at this time who had not broken the thieves’ law, which forbade thieves from taking up arms and serving the state. For them, the former thieves, who had come back from the war, were *suka* (‘bitches’), who had broken the thieves’ law.

So gradually up to 1947-1948, the penitentiary establishments of the Union of the Socialist Soviet Republics (USSR) accumulated plenty of honour thieves and *sukas* (*suchennye*). Sooner or later local conflicts between them could escalate into a war. Even more so, since the new legislation (the two Decrees of 4 June 1947) sharply increased the criminal liability for thieves’ crimes (theft, robbery and plundering). Under the Criminal Code of 1926 the punishment for theft was between 3 months and 2 years (with aggravation, up to 5 years). According to the Decrees of 4 June 1947, deprivation of freedom was increased to up to 10 years, and for crimes with aggravation (as part of a group, for a second offence and so on) up to 25 years! Having to spend longer periods of time in prison or Gulag, honour thieves and *sukas* found themselves at odds on several key issues (exercising authority in the *zone*, being allowed not to work, receiving help from the *obschak*, and so on), making war between them inevitable.

The administration of the Gulag decided to take advantage of the situation. The Gulag management planned not to interfere with rising conflicts, but to provoke a war in which both honour thieves and *sukas* would be decimated, or at least the entire thieves’ community sharply reduced and weakened. The Chekists (i.e. the members of the Soviet security services, the descendants of the VChK) reckoned they could only benefit from a massacre in the thieves’ world. The more criminals lost from both parties, the better. The result would be a much more peaceful situation both in camps and in society generally (Sidorov, 1999(II): 98). The administration of penitentiaries thus gave *sukas* the opportunity to eradicate the honour thieves.

And so began the notorious *suchyie* wars (the ‘bitches’ wars). The wars were fought with all means and lasted up to 1953 (Shalamov, 1996). During this time thousands of convicts were killed in bloody fights, but in the end there were no winners. Eventually, the *suchyie* wars died down. This was helped by the mass amnesty of 1953 on the occasion of Stalin’s death. Many surviving honour thieves and *sukas* were released from prison. The social base of the struggling masses was sharply reduced.

With the ending of the criminal wars, the criminal community of thieves did not disappear. The thieves’ language (*fenya*) continued to be updated, the meaning of certain tattoos changed, and the attitude of thieves to *moujiks* (who also suffered during the wars) improved. It became much more difficult to be received into the ranks of the thieves-in-law. Their number was reduced to increase quality at the expense of quantity by virtue of strict selection mechanisms, stringent checks, high requirements of intelligence and organising abilities. As a result there was a new generation of thieves, of whom even the camp heads concede:

They are, as a rule, talented people. They are magnificent psychologists. They are people who love authority and create it for themselves (Sidorov, 1999(II): 168-9).

Stalin’s death was not only a boon for criminals because of the amnesty. Several years of struggle for authority between the successors of the dictator resulted in a victory for Nikita Khrushchev, who became general secretary of the Communist Party. He sharply condemned Stalin’s style of politics (‘the cult of personality of Stalin’). There began a general thaw by virtue of the liberalisation of political and economic life. And one more new community appeared, which became an important element of modern organised crime in this new socio-economic atmosphere – the *artelschiki* who later became the *tsekhoviki*.

In the conditions of total domination of a state-planned economy in the USSR, there was only one supposed exception – public manufacture as *artel*, the most traditional of Russian institutions. It could be an agricultural *artel*, that is, a collective farm, or a fishing *artel*, or even a series of small industrial enterprises based on individual skills – a system of trade cooperation consisting of trade *artels*. The trade *artels* made consumer goods for the general public, such as clothes, footwear, furniture, paints, small metal products and other household goods. These systems of trade cooperation were of relatively minor importance when one considers the domination of the state enterprises, constant deficiency of raw materials for manufacture, outdated equipment and backward technology that complicated the activities of these trade *artels*. Still, trade *artels* were an outlet for those with entrepreneurial talent and industrial ability who preferred the relative freedom of activity in *artels* to work in state enterprises.

In a socialist planned economy, the entrepreneurial skills shown by the organisers of legitimate trade *artels* were mostly considered not a virtue but a dangerous defect by government and party officials. To make a profit or sometimes merely to be able to operate, *artel* managers were obliged to violate the Soviet law: the plundering and the illegitimate purchase of 'surplus' raw materials, the manufacturing of 'surplus' unaccounted goods, the bribery of officials, and so forth. All this resulted in the growth of illegal and semi-legal workshops based on legal trade *artels*.

Illegal workshops (*tsekh*) produced merchandise which they sold for cash by arrangement with the heads of the trade enterprises in the guise of 'surplus' goods, or sold illegally through private persons. Money from the sale of the goods was divided between the organisers of workshops and trade enterprises. So a new organisational form of crime appeared – that of the *artel* or workshop (*tsekh*) operating illegally under the conditions of Soviet state business.

The Soviet state tried to stop the illegal activity of workshop managers (the *tsekhoviki*) – appropriately defined by Gennady Khokhrykov as 'pioneers of the market economy' (1999: 358) – and, more generally, of all the *teneviks* (i.e. all the people engaged in shadow economy activities) by habitual, repressive measures. So, Article 153 of the Criminal Code of RSFSR (1960) decreed criminal liability for 'private enterprise activity with use of state, cooperative or other public forms' and 'commercial intermediary, carried out by private persons as a craft or with the purposes of personal enrichment' with punishment of up to five years of deprivation of freedom with confiscation of property, and, where especially large sums were involved, up to ten years of deprivation of freedom with confiscation of property. But any reprisals could not 'liquidate' enterprise activity that brought about considerable income, especially 'in very large sums'...

It is clear that both *tsekhoviks* and *teneviks* (including, for example, illegal money-changers of foreign currency – *fartsovschiks*) sought to continue their activities by means of bribing government and law enforcement officials. If this did not work and the participants of illegal businesses went to *zone*, then it was necessary to seek the protection of the thieves-in-law. For this, *teneviks* paid about 10-15 per cent of their income to representatives of the criminal world (Ovchinsky et al., 1996: 170). So the shadow economy came to be controlled by criminals or by persons completely dependent on them (Dolgova and Djakov, 1996: 23).

6. Current Perspectives

In the 1970s and 1980s a new generation of criminals grew up alongside the thieves-in-law – the 'bandits', or 'sportsmen' (many new bandits were in fact sportsmen). These criminals were young, energetic, physically gifted and well-trained. They sought a better lifestyle without the limitations of the thieves' law, aggressively tried to impose their power and eagerly resort to open violence, a behaviour that

was condemned by most thieves. Though these new criminals would fully show their power later, at the end of the 1980s and in the 1990s, their activity began in the pre-perestroika period of Mikhail Gorbachev.

'Yaponchik' (Vyacheslav Ivankov) began his career in the 1960s in the gang of Mongol (Gennady Korkov). The 'grandfather of Russian rackets' Fyoka (Vladimir Feoktistov) was Leningrad's *fartsovschik* (illegal currency dealer), also in the 1960s. He became famous because of an article in the German magazine *Der Spiegel* in 1980. The Lyouberetskaya criminal group became famous in Moscow in the mid-1980s. The Kazanskiye juvenile criminal gangs emerged in Kazan and other cities of Tatarstan a little earlier (Ageyev, 1991).

It was clear that sooner or later the conflict between thieves-in-law and 'bandits' was inevitable. It happened in open form after an abortive attempt to agree upon the peaceful division of Moscow in a meeting which took place in Dagomys (a Black Sea resort) on an unknown date. The war flared up in the early 1990s. The trigger for the beginning of the war was the murder of Kalina (Victor Nikiforov, foster-son of Yaponchik) in February 1992. But this is part of the 'new history' of Russian organised crime and is dealt with in Louise Shelley's article on contemporary organised crime in Russia in Part II.

From our point of view the main condition for the development of organised crime is the evolving alliance of old and new criminal worlds – thieves-in-law and 'bandits', *tsekhoviks* (*teneviks* in general) and corrupt state authority (Gilinskiy, 1997: 167; 2002: 153). Other authors have also reached this conclusion.

Alliances developed during the Khurschev era, and in Brezhnev's period of shadow economy structures, which were strengthened by the collusion of corrupt government officials and groups of traditional criminals and created the basis for modern organised crime (Ovchinsky et al., 1996: 169).

Scandals involving the illegal manufacture and sale of cotton, fruit, caviar and fish in the 1970s and 1980s revealed for the first time the close alliances that *teneviks* and partially traditional criminals had with executive staff and official leaders of the Soviet Republics (the first secretaries of the Central Committees of the Communist Party in Uzbekistan, Azerbaijan, Moldova, Georgia, Kazakhstan were all at some point involved in scandals), the central bodies of the Communist Party (first secretary of Moscow City Committee of the Communist Party), as well as government and law enforcement bodies (the Minister of the Interior Affairs of the USSR, Nikolai Scholokov and his first deputy Yuri Churbanov and other prominent figures were all involved in scandals). It is important to emphasise that contemporary Russian organised crime, with its influence on the economy and state politics, was formed before Gorbachev's *perestroika* at the beginning of the 1980s. Gorbachev's liberalisation of economic policy created the opportunities for private

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enterprise and most of all *volens nolens* opened the doors for real holders of capital – *teneviks*, criminal authorities, corrupt party bosses and state bureaucrats.⁷

History is not only about the past but about the present too. The present is substantially formed by the past as well as by contemporary actors. The history of Russian criminal organisations and organised crime permits understanding of its causes, its place in society and the present situation. Contemporary organised crime in Russia is the theme of Part II, but we can elucidate our point of view on the main trends of Russian contemporary organised crime here. It is something which:

- strives for the combination of legal and illegal forms of business and has indeed produced an amalgamation of legal and illegal businesses;
- involves criminals striving for influence over legitimate authority structures; they achieve this by directly entering government bodies (numerous high-ranking criminals are now elected to federal and regional power bodies), by lobbying and bribing government bureaucrats at all levels; and by financing the election campaigns of numerous politicians, who are, once elected, under the criminals' influence;
- creates a confluence of criminal, economic and political elites who – with no popular involvement or control – decide Russia's destiny;
- has not only undergone a rapid process of internationalisation but also enjoys an increasing cooperation and interaction with foreign criminal organisations.

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⁷ The most important acts of Gorbachev's liberalisation of economic policy are the Act of the USSR of 19 November 1986 'On Individual Labour Activity', the Act of the USSR of 26 May 1988 'On Cooperation', the Act of the RSFSR of 24 December 1990 'On Property in RSFSR', and the Act of the RSFSR of 25 December 1990 'On Enterprises and Private Enterprise'.

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Urban Knights and Rebels in the Ottoman Empire

Yücel Yeşilgöz and Frank Bovenkerk

Highwaymen live off love and fear. If all they do is inspire love, this is a weakness. If fear is all they generate, they are hated and have no followers.

Yaşar Kemal¹

1. Introduction

The appearance of Turks and Kurds in the international organised crime scene is fairly recent (1960s) and connected to the establishment of emigrant colonies in the European countries France, Cyprus, Germany, the United Kingdom, Belgium, the Netherlands and Spain. However, we can trace back to Turkey a well-established underworld with deep historical roots. Some specific cultural traits – courage, fearless manliness and a code of honour – can still be found in present-day Turkish mafia families.

In this contribution we describe three distinct criminal traditions. First, from the thirteenth century onwards, there are recurrent political and religious rebellions (prophetic movements) against the patrimonial bureaucratic political organisation of the Ottoman Empire. The figure of the *kabadayı* (urban knight) stands for a second tradition of informal leaders of urban neighbourhoods who sell forced protection, settle disputes and who protect the poor against oppressive administrations. The third tradition of rebels who took to the mountains after having been treated unjustly (*efe* or *eşkıya*) resembles the western type of Robin Hood folklore. It is not so simple to appreciate the double standards of the rebels as they sometimes act in favour of the poor and at other times collaborate with the government against them.

Once upon a time there were *kabadayı* in Turkey. They were men who protected a neighbourhood or a district in Istanbul. Brave men with a heart that was good, strong men who knew how to use a knife, experienced men who went to prison again and again to pay for their deeds. With their experience, they were able to keep disputes from getting out of hand. They preserved the peace and kept their area safe. Whatever they said went! (Bilginer, 1990: 15)

¹ Y. Kemal (1984), *Memed, My Hawk*. London, Fontana.

Bilginer, the Turkish journalist quoted here, is romanticising. Books of this kind tend to present a picture of the ‘serenity’ of the old underworld, when ‘real men of honour’ were still in charge. Everything used to be so good and honest, and nowadays it is all bad and dishonest.² In these nostalgic accounts, the introduction of the firearms that democratised the violence is always the watershed. This is clear from the words of Köroğlu, the hero of an old folk epic, *Silah icad oldu, mertlik bozuldu* (‘The invention of the gun was what killed honesty!’). There is not a country in the world without an urban underworld, and every language has a word with a similar meaning to *kabadayı*, *penose* in Dutch, *mob* in English, *le milieu* in French, and *Ganoven* in German. And all across the globe, people speak nostalgically of the good old days when ‘honest men’ could still fight with their fists.

On the grounds of fixed norms and unwritten rules, the *kabadayı* used to settle a wide range of questions among the residents of ‘their territory’. Their romantic image has a lot to do with their charmingly daredevil life style. Literature is filled with stories of the long nights they spent with gorgeous prostitutes, their sumptuous meals and bacchanalian revelry, and how they listened to exciting music and watched belly dancers. In Turkish literature, the *kabadayı* are presented as the immediate precursors of the contemporary crime bosses known as *babas*. Their world evokes associations with courage, lawlessness, honour, and defending the weak. Today’s *baba* is only too willing to refer to this noble tradition to justify his conduct. The books by Ulunay, Hiçyılmaz and others about the *kabadayı* do however also include passages that are considerably less romantic. Not that the misfortune they describe is met with by *kabadayı* themselves [...] instead it is the misfortune of the people they deal with. They might have been protective, but they were also violent extortionists, and the residents of the territory they protected paid the *kabadayı* in blood, sweat and tears. Although the first impression of the *kabadayı* is far more enchanting, the second one is no less realistic.

2. Revolts and Rebellion

In traditional accounts of kings, emperors and sultans, *kabadayı* are categorically described as ignoble and unscrupulous men, rebels or separatists who are a threat to law and order and deserve to be officially or unofficially prosecuted and punished. There is no place for them in the ‘history-from-above’ about the powerful rich, the despots and the men who run the country. However, the rise of a variant of social

² For more about the *kabadayı* we recommend *Sayılı Fırtınalar, Eski İstanbul Kabadayıları* by Refi’ Cevad Ulunay (born 1890), who spoke to several old *kabadayı*. Another well-known Turkish journalist who wrote about the underworld of yesterday’s Istanbul is Ergun Hiçyılmaz, see his book *Yosmalar, Kabadayılar* (1996).

history that is now about four decades old and makes a conscious effort to describe the course of 'history-from-below' has turned rogues, bandits and the underworld into a topic of serious study.

In the case of Turkey, it would be useful to go back in history to the time of the Ottoman Empire and examine the rebels and bandits who developed the cultural codes that still shape the conduct of today's underworld in Turkey. This is no simple matter with the dearth of good sources, but Turkish authors have saved a few of these men from oblivion.

Like the empire of the Seljuqs (1040-1244) that preceded it in the Asian part of Turkey, the Ottoman Empire (1299-1923) can be characterised as a society of peasants administered by the court in the fashion of a patrimonial bureaucracy. Power was in the hands of the sultan and a strikingly small group of courtiers and administrators for such a large empire. The grand cultural tradition was preserved at the court and, in the words of Ahmad, the strong and centralised state that is identified in theory with the nation was 'viewed as neutral, as standing outside society, and not as representative of any specific interest' (Ahmad, 1993: 17). The author feels this tradition was a factor in shaping the ideology of the modern Turkish state, which can be expected 'to intervene if and when the national interest seems to be threatened by small self-seeking interests'.

Sultan Osman, after whom the grand empire that existed for six centuries was named, was one of the Islamic monarchs who fought the holy war against the Christian Byzantine Empire and emerged victorious. In reality though, the vast area that stretched all the way from central Asia to Bosnia-Herzegovina was an infinite patchwork of peoples and tribes with their own languages, customs and 'small traditions' (Erdogan, 1999: 27-8). The theory of one nation is ideology, says political scientist Doğu Ergil in his numerous columns and lectures advocating a modern democracy for Turkey. In essence, the Ottoman Empire was the artificial product of military conquests (*Turkish Daily News*, 9 June 1997; Ergil, 1997). Despite the lengthy process of state formation and an all-encompassing assimilation policy in the modern period of the republic, Peter Andrews similarly has no trouble compiling an ethnological atlas for the present-day smaller territory of Turkey with so many combinations of languages, tribal frameworks and religions that there are no fewer than 47 different ethnic groups (Andrews, 1989). The distance between the small feudal administration apparatus and the 85 per cent of the population scattered over the vast countryside was enormous. The administration was extremely decentralised and, according to Erik Zürcher, local rulers were the ones who exerted the actual power (Zürcher, 1993: 19). A social and political constellation of this kind produced weak links in the power hierarchy, which contributed to the emergence of rebelliousness banditry. Who was there to defend the tenant farmers and peasants? Or whom were they keeping under control? Who was the connecting link between them and the large landowners and tax collectors?

In his book on *Dissidents and Capital Punishment in the Ottoman Period*, Riza Zelyut summarises the structural conflicts that led to the rebellions (Zelyut, 1986: 11). Firstly, material conditions played a role, such as exploitation by local rulers via a complicated system of land ownership, especially since there was so little to keep them from increasing the tax pressure. Then there was the resistance to forced Islamisation. The circles who were the first to accept Islam as their religion consisted of prominent wealthy Turks who chose the Islamic movement most advantageous for them, the school of Hanefist law. ‘It offered them the flexibility they needed for their administrative activities’, Zelyut writes (Zelyut, 1986: 10-11). The poor were not as quick to abandon their religions and customs. They did accept Islam, but in their own way.

The third structural problem had to do with the ethnic hierarchy that prevailed throughout the empire. In the Seljuq periods, the authorities viewed Georgians, Iranians and Slavs as the top ranking peoples, and Turks and Turkmens as the lowest. Turkish was a language only to be spoken by people of humble descent, and it is not difficult to find offensive and racist comments in the writings of Seljuq authors: ‘Bloodthirsty Turks [...] If they get the chance, they plunder, but as soon as they see the enemy coming, off they run’.³ Matters were not much different in the Ottoman period, even though the empire was governed by a small elite at the court, which was Turkish itself. According to Çetin Yetkin, one of the major Turkish authors on the Seljuq and Ottoman periods, ‘In the Ottoman Empire, though Turks were a “minority”, they did not have the same rights as the other minorities’ (Yetkin, 1974: 175). In fact the term ‘Turk’ was a pejorative. Ottoman historian Naima, who also wrote a book about the Anatolian rebels, uses the following terms for the Turks: *Türk-i bed-lik* (Turk with an ugly face), *nadan Türk* (ignorant Turk) and *etrak-i bi-idrak* (Turk who knows nothing).

3. Social Bandits or Oppressors?

There is ample resistance potential in all these contrasts, but the question is what significance should be attributed to concrete movements. Authors inspired by socialism – such as Eric Hobsbawm with *Bandits* in 1969 – have tried to turn early modern rebels who rose up against the wealthy into noble rogues promoting the interests of the oppressed masses and thus playing a proto-political role. Some authors have done the same with the mafia in Sicily. Discussion about this criminal organisation contains the same themes connected with bandits in peasant societies. Particularly in the extremely decentralised Ottoman empire, Hobsbawm (1969: 21)

³ Çetin Yetkin based this comment in *Etnik ve Toplumsal Yönleriyle Türk Halk Hareketleri ve Devrimleri* (1974:15), on the words of the Seljuq author Kerimeddin Mahmud.

writes, banditry flourished in the remote and inaccessible mountain regions and the plains where there was no network of good roads.

The most sympathetic outlaw is undoubtedly the Robin Hood kind who is active in peasant societies throughout the world. Those in power might view him as a criminal threat, but he is a man who restores social justice and 'steals from the rich to give to the poor'. This kind of outlaw violates the rules and regulations, but he obeys a higher law of good and evil. This noble rogue is expected to exhibit a fixed career pattern. He is a young man of humble descent who turns to a life of robbery after he himself is a victim of injustice and has to flee. No matter how notorious he is, the rules he lives by are still civilised ones. No one is ever killed except in an honest battle. This kind of Robin Hood is admired by the people, who are always willing to provide him with a place to hide. He is invisible and there is no way the authorities can find him. He is protest incarnate against an unjust social order.

Anton Blok exposes this depiction as a purely romantic one. In his book about the roots of the mafia in Sicily, he describes the men other authors have referred to as 'social bandits'. He however views them as unscrupulous accomplices of the large landowners and the troops who stifle the protest of the peasants (Blok, 1974). He demonstrates how the steward class of the large farming estates became independent in the second half of the nineteenth century and formed its own private armies.

Although the underlying economic and political causes of rebellion are the same in most societies, i.e. poverty, exploitation and oppression, there are two specific types of traditional Turkish rebels. The first is part of a social movement with prophetic aspects and a revolutionary nature. The force of this type of rebel lies in his ability to gather a sizeable following on the basis of a programme. The second type, the bandit, operates individually or in a small band of kindred spirits. In the city they are called *kabadayı* and in the mountains they are known as *efe* or *eşkîya*. With their individual agility, fearlessness and strength, they command the respect of everyone.

The social movement requires its members to obey very strict rules of conduct, but the bandits, in so far as they live in the city, opt for a more worldly life style. The two traditions are separate, and do not represent successive stages in one and the same development, revolutionary or otherwise. Even though the authorities do view the social movement as a criminal group, it is the bandits who constitute the real source for the modern underworld. They are motivated by revenge (it is striking how often their careers begin with a blood feud), and a desire for esteem and personal wealth. They serve a wide range of functions in the local community, but their basic activity is always extortion. In most of the accounts we have been able to find of the *kabadayı* and the *eşkîya*, it is striking that at some point in their career, they are bribed to start working for the authorities. So politically speaking, these predecessors of modern organised crime in Turkey would seem to represent a conservative rather than a revolutionary force. We shall briefly describe the social movement and banditry traditions, and give a number of examples to illustrate them.

4. Early Criminal Groups in the Seljuq and Ottoman Empires

4.1. The Seljuq Period

The earliest sources about Turkey pertain to the Seljuq period. The information is scarce, but the accounts are invaluable. In the literature on Anatolia, a number of primitive 'criminal organisations' are described that are typical of the socio-economic situation in a peasant society. These organisations always have a strongly religious aspect to them (Wertheim, 1974: ch. 2). They can sometimes almost even be described as prophetic movements.

There were for example the Batinis, whose philosophy had its origins in the Sabilik sect and was partially under Hebrew influence. They refused to accept the traditional concepts of heaven and hell. Their trademark was a small box of hashish on a string around their neck. Their famous leader Hassan Sabbah had a beautiful garden where they would smoke hashish and dance all day and night. Since they are viewed as the ones who introduced hashish to Anatolia, they are referred to as *haşhişin*, a term now used in Turkish for people who smoke hashish.

The Ayars were picturesque, the only garb they usually wore was a loincloth and a headpiece made of the bark of a date tree, and they carried a scimitar. The Kalenderis shaved their heads, and the Haydaris refused to acknowledge any law at all. All these groups would attack the rich, plunder their homes, and divide the spoils among the poor.

The popular uprisings named after the Babai sect, which helped end Seljuq rule, were undoubtedly the most important ones, and the sect still has followers in Turkey today. The aim was clearly to promote the power of the poor peasants *vis-à-vis* the usurpers, but there was also an element of religious protest. Babai could be recognised by their red head-dress and extremely simple attire. According to the authoritative encyclopaedia, they soon had numerous followers.⁴ We agree with Camuroglu (1999: 160-6) that sociological and economic factors have been equally important. In 1239 the Seljuqs attacked their leader *baba* Ishak and his 50,000 followers, and the battle went on for a year. Ishak's following in Anatolia grew from day to day, and his followers believed he was immortal. The Seljuqs finally captured him and hanged him near the city of Asmasya at the bastion, after which they cut him up into tiny pieces and scattered them over his followers to convince them he was really gone. As was often the case with prophets, his followers did not want to believe he was dead and assumed he had just gone off to consult with God about getting help.

⁴ *Sosyalizm ve Toplumsal Mücadeleler Ansiklopedisi*, 1730-1.

The Seljuqs won in the end though, especially since they had the help of French mercenaries. Four thousand *Babai* followers were beheaded and 1,000 were hanged. The movement nonetheless lives on. Poor villagers who could not read the Sunnite manuscripts written in Arabic and Persian – and did not wish to – would listen to Turkish translations of the texts. The *Babai* abandoned the strict rules of the Sunnites – they wanted to drink alcohol and dance and listen to music and pray to music. They did not go to the mosque, they refused to fast in the month of Ramadan or to treat women and children as second class citizens (Şener, 1989: 114). These are all more or less customs of the Alevites, who now constitute about a third of the Turkish population.

4.2. The Ottoman Empire

In the period after the thirteenth century, there were also uprisings for religious, social and economic reasons. According to various sources, Bedreddin was behind the first important rebellion against the Ottomans. A great deal has been published about it in Turkey. The internationally renowned Turkish poet Nazim Hikmet, who was a communist, paid homage to him in a famous epic poem. Bedreddin had a plan for the future, a political programme based upon the principles of honesty and equality. This is why he is depicted in left-wing and intellectual circles as Turkey's first 'socialist' rebel. Bedreddin lived at the end of the fourteenth and the beginning of the fifteenth century, and was well-educated and respected as a wise man (Yetkin, 1974: 175). In *Varidat*, a book that presents his thoughts, he expounded his materialist philosophy. When he came to have thousands of followers in the vicinity of Aydin and Manisa in western Turkey, the government in Istanbul grew concerned and decided to step in. The first two attacks by the government were successfully warded off by the philosopher's *müridler* (followers). But a third attack, this time on an even larger scale, was not, and the government troops hanged all his followers. Bedreddin himself was captured and hanged naked in the centre of Serez. In the memory of the local population, Bedreddin and his prominent *müridler* remain alive in many ballads.

The early sixteenth century was the time of the Alevite uprisings, such as the ones led by *şah* (Islam high priests) Kulu in 1511 and Sheyh Celal in 1518-1519. The followers of Sheyh Celal were called Celali, a term the Ottoman rulers later gave to all the rebellions. The most important of the Alevite rebellions was the one led by Pir Sultan Abdal at the end of the sixteenth century. He too still has followers in left-wing and Alevite circles. In Turkey as well as western Europe, there are associations, foundations and other organisations named after Pir Sultan Abdal. This leader of the people and poet from the vicinity of Sivas in Central Anatolia dreamt of a saviour who would liberate the common people from the Ottoman yoke. His hope was mainly focused on the spiritual leader Ali, Mohammed's son-in-law

and the fourth caliph, but in practice, he sought the support of the Shi'ite regime in Persia. Pir Sultan Abdal was hanged in 1590.⁵

Of course there were other uprisings besides the Alevite ones. One was led by Karayazıcı Abdulhalim, and is now also called the Celali rebellion. Most of Abdulhalim's followers were poor peasants, but a role was also played by some prominent people from Anatolia, who had their own multifarious objections to Istanbul. The uprising began in 1598 and spread throughout Anatolia. The Ottoman Empire had no choice but to recruit troops to defeat Karayazıcı, and the striking thing was that Anatolians were not allowed to enlist in the army for fear of their being Celali's followers (Akdağ, 1963: 119). The wars between Karayazıcı and the Ottoman Empire went on until Karayazıcı died a natural death, but his brother Deli Hasan (Crazy Hasan) carried on the resistance with his 30,000 men. Peace was finally established at the beginning of the seventeenth century, and Hasan and his fellow warriors were given prominent positions at the court. This did not mean an end had come to the political and social opposition in Anatolia. In any number of places, groups of various sizes continued the opposition up until the mid-seventeenth century, such as Kalenderoğlu's movement controlling the central region and Canbuladoğlu's controlling the south of Anatolia. The Ottoman grand viziers Kuyucu Murat Pasha (Gravedigger Murat) and later Ismail Pasha murdered tens of thousands of Anatolians and buried them in mass graves.

4.3. Uprisings in the City

After the fifteenth century, the rebelliousness seemed to be shifting from the countryside to the cities, and Istanbul witnessed these tendencies as well. By the sixteenth century, bands of criminals were already active in Istanbul, which was a vast city at the time in comparison with those in Europe. The *Suhteyan* movement has gone down in history as the first 'criminal organisation.' Suhte was a student at one of the religious academies, the *medrese*, and *Suhteyan* is the plural of Suhte. More students graduated from the academies than there were jobs for, and like modern-day students in so many developing countries, they protested and proclaimed themselves revolutionaries. They left the classrooms, formed groups that took to the streets, and started plundering shops and homes. Their targets were the wealthy and the officials and 'accomplices' of the government. They not only stole material possessions but murdered their victims, and earned a reputation for being extremely cruel and amoral.

The social uprisings in the empire always targeted Istanbul, but there were also considerable class differences within the city and, as was the case in Anatolia, ethnic

⁵ Mehmet Bayrak wrote an excellent study on the Alevite leader under the title *Pir Sultan Abdal*, in 1986.

differences as well. The court itself also had a tradition of intrigues, which usually involved military troops. Several sultans lost their lives in these armed skirmishes. The well-known food riot of 1730 was named after its instigator Patrona Halil, and another one was led in 1807 by Kabakçı Mustafa. In a later period, there were conflicts between the Western-oriented reform movement called *Tanzimat* and more traditional thinkers. In 1839, there was a *Tanzimat* victory and the mission statement was read out loud in public at the Square of the Rose Gardens, which is why the statement is called *Gülhane Hatt-ı Şerifi* (noble decree of the Rose Garden). At the rebellion of 1876, a group of leading Ottoman politicians replaced the sultan with crown prince Murad. He did not hold this position for long though, because when a constitution was promulgated a few months later, the new sultan was declared insane and locked up at Çırağan Palace on the shores of the Bosphorus, where he remained imprisoned for almost three decades.

5. The World of the *Kabadayı* and the *Eşkiya*

Mafia bosses like to talk about the kind of *kabadayı* we described at the beginning of this chapter. *Kaba* means crude and coarse and *dayı* means uncle or mother's brother. The word *kabadayı* had and still has a double meaning. It is a figure who is romanticised and in this sense the term has a positive meaning to people in Turkey. However, it also has a negative meaning that implies just the opposite.⁶ *Kabadayı mısın?* Or just *dayı mısın?* This would be the question, which in everyday usage means someone is unjustly demanding something of someone else: 'How can you be such a crude uncle that you would ask such a thing of me!'⁷

What is the social descent of the *kabadayı*? They come from the rather innocent ranks of voluntary firemen called *tulumbacı* or *tulumbacı kabadayısı*. In Istanbul one of the oldest and largest cities of the world where there was, and still is little space between the houses, firemen serve a vital function. Ergun Hiçyılmaz, a former police reporter and a fine story teller, has written some interesting books on this topic. He now sells knick knacks at one of the covered markets in Taxim in Istanbul. According to Hiçyılmaz:

⁶ A second category of *kabadayı* were called *külhanbeyi*. They were the lowest in the *kabadayı* hierarchy. 'Real' *kabadayı* only had one fear, and that was that people would call them *külhanbeyi*. People feared *külhanbeyi*, but there was no element of respect in this fear.

⁷ It should be noted in this connection that outside the world of crime, the word *dayı* is also used in a positive sense. If someone is helpful, people might say *dayı adamdır* ('That man is *dayı*'). There are also other meanings of the term *dayı*, but they do not lie within the scope of this contribution.

Organised Crime in Europe

Every district in the city had a group of *kabadayı* who worked as firemen. The people would pay them to put out a fire. They were known for their strength, their courage, and mainly for the fact that they could run so fast.

These *kabadayı* usually did not go in for a career in crime, they were just fulfilling a duty. There was a certain amount of competition among the various groups of *tulumbacı*. Who could run the fastest? Who could put out the fire first? Cevat Ulunay calls it a kind of sport, not unlike soccer today (Ulunay, 1994: 361-2).

To some people though, it did mean a career in crime. One important pillar of the Ottoman Empire had traditionally been the salaried Janissary infantry corps, but by the early eighteenth century it had degenerated and engaged more in terrorising the local population than defending the empire (Zürcher, 1993: 20, 28). There were Janissaries in the capital who supplemented their income by way of extortion or by serving as a superintendent who helped settle disputes in the neighbourhood. Some former Janissaries turned their sidelines into their main source of income and became *kabadayı* in the modern sense of bandits. However, since the power base of the military status of these neighbourhood tyrants was no longer there, new opportunities opened up for boys from the neighbourhood itself, who could do more justice to the social motif of promoting the neighbourhood interests. This abuse of power was one of the reasons for the military apparatus to be thoroughly reorganised under Sultan Selim III in 1794.

The *kabadayı* were known for centuries for their garb – shoes with golden heels and black cloaks worn loosely over their shoulders, so they could quickly draw the weapon from the strap topping their breeches. It was hard not to know when the *kabadayı* were around, since they would shout every so often to make their location known. Their special shout started with a long drawn out ‘*heeeeyt*’ followed by the text, so everyone knew which *kabadayı* was there.

The status of *kabadayı* was linked more to personal traits than membership in a group or gang. It was all a matter of individuals who had independently earned a reputation of being fearless. To become a true *kabadayı*, a man had to be known for acts of courage ever since his youth. This did not mean just stabbing someone or always getting into fights. A dauntless reputation involved performing courageous deeds, and not pointless violence. A brave man could command respect if he managed to win a fight with a well-known *kabadayı*, but only if it was a totally honest fight in keeping with the code of honour. ‘A *kabadayı* would never shoot someone in the back’, Hiçyılmaz says. And if shooting was not necessary, it would never happen. Knives were – and still are – only used to warn someone, or to cut off a piece of their ear, much as it would be done with a dog, the message clearly being that he is as low as a dog.

What was viewed as honest is clearly illustrated in the following story about a big black *kabadayı* called Reyhan the Arab.⁸ One day Reyhan was attacked by five men known to be skilled with their knives. To defend himself, Reyhan grabbed his chair and used it as a weapon, and the five men ultimately ran off. But Reyhan had lost face, and for two months he could not go to his favourite coffee house! His buddies frowned upon him for not defending himself with his bare hands, and for using a weapon (Ulunay, 1994: 5). A knife would not have been considered a weapon, since it was viewed as part of the body. Every good *kabadayı* had a set of special knives he could quickly draw and use with skill. Sometimes they also had pistols, but they served more as an accessory.

Prisons are the schools where they were trained, and the more experience the better. In the course of his career, a *kabadayı* would cross paths with the police again and again, and usually serve a couple of prison sentences. Although the prison sentence might have been designed to keep the *kabadayı* from committing another crime, in actual fact it educated him in the rules of the underworld and helped him build up a reputation. Once his reputation had been established, the police would also be respectful and whenever they arrested him, they would even forego the usual torture, since they had good reason to fear reprisals. For other *kabadayı*, a reputation was mainly founded upon the capacity to settle conflicts among others in a rapid and effective fashion. The same element has often been described in connection with Sicilian mafiosi. It is based upon the personal authority the Italians call *prepotenza*, which always includes an element of intimidation, a suggestion of the threat of violence (Schneider and Schneider, 1976: 85). Anyone who was able to settle an argument at the *gazino* (Turkish music café) with one simple gesture was a real *kabadayı*.

There were *kabadayı* who did not drink alcohol, like Abu the Arab at the beginning of the twentieth century, but most of them did drink quite a bit and like to associate with women who were entertainers or prostitutes. They were supposed to be able to drink a lot and at the same time keep their self-control, and this was not an easy combination. More than in other urban underworlds, in Turkey the show element seems to be linked to relations with women. There were women in Turkey's night life just as renowned as the most prominent *kabadayı*. For a price the women, who were Muslim and non-Muslim, offered their services to gentlemen. At the brothels, the *kabadayı* associated as equals with rich businessmen and pashas. Ms Manukyan of Istanbul, who died two years ago at the age of over 85, continued in this tradition as 'queen of the brothels', a businesswoman and a benefactor to the city's hospitals and universities. Everyone in Turkey knew her because for years she had been number one on the list of top tax payers.

⁸ In the Ottoman tradition, black people were usually erroneously referred to as Arabs.

In addition to its own slang, the world of the *kabadayı* also had its own clear code of honour. It is this code that stipulated the etiquette of interpersonal relations. The ordinary man in the street came to the *kabadayı* with his problems, but who did the racketeer and the illegal problem solver go to if he had a conflict with a colleague or rival? The solution was to consult *kabadayı* who were older and wiser, called the *racon kesmek*. The members of the *racon* parley were elderly *kabadayı* who were retired but still respected in those circles. They could be found at certain coffee houses in Istanbul. The elderly men of honour would listen to both parties and then pass judgment. The judgment only consisted of a well-founded suggestion, since the board of wise men could not exert any sanction or enforce any decision. Usually both parties listened to them, but sometimes they ultimately still disagreed with each other. If both parties disagreed with the decision, they could make that known, and then all they could resort to was the crude method of settling a dispute, i.e. the fist fight. In the event that one party stated he was willing to accept the judgment and the other one was not, the sanction was that from then on all the other *kabadayı* would avoid any contact with the one who continued to oppose the judgment of the council of elders (Ulunay, 1994).

The worst thing that could happen in the life of a *kabadayı* was to become *madra*, which is slang for losing face. Hiçyılmaz gives an example in an interview with the authors (Bovenkerk and Yeşilgöz, 1998: 102):

There was also such a thing as a ‘phony’ *kabadayı*. Someone who pretended to be a *kabadayı*, but when push came to shove, the first punch would have him flat on the ground and he lost face in front of everyone. Then the only thing left for him to do was quickly get out of the neighbourhood.

In a case like this the *kabadayı* has become *madra*. The terms *racon* and *madra* are now part of everyday usage in Turkish, just as many slang words have been incorporated into English or French, but their meaning is no longer the same. In the underworld, *racon* means rule or norm. *Madra* has been changed into *madara* and is now used for people who can no longer be taken seriously, people who have made themselves ridiculous.

It is clear what social role the *kabadayı* have played for centuries. In the power vacuum between the administration and neighbourhood residents, they informally served certain administrative functions, which the local people appreciated because they did it in a more honest way than the authoritarian and repressive formal officials. The police were a state agency that in principle, did not do much more than suppress subversive activities. The police were seen as being ‘against’ the people and not as an agency they could turn to with their problems. The *kabadayı* were the ones who were there to restore justice and settle disputes among neighbourhood residents. Willing to show the nice side of the underworld, Hiçyılmaz mainly views the *kabadayı* as a problem-solver:

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They were the referees of the street. Say there was some kind of disagreement on one of the streets. The *kabadayı* would come and pass judgment. He would say 'you are wrong and you have to apologise'. People would listen to him. So that was the good *kabadayı*. (Bovenkerk and Yeşilgöz, 1998: 103)

What we view as extortion can also be seen as a form of 'regulating the market'. After all, entrepreneurs can only flourish under conditions of relatively predictable market shipments. If official agencies cannot provide these conditions, it is only understandable that entrepreneurs should seek the protection of a patron. This is why authors with a positive approach, like Ulunay, might think of the *kabadayı* as a kind of urban knight. For centuries there has been a *modus vivendi* between the *kabadayı* and the police that seems to work to both of their advantages. The *kabadayı* is allowed a certain leeway to 'regulate' matters in the neighbourhood as he sees fit, but in the event of a serious problem or a real threat to the political order, he in turn is obliged to lend the police a helping hand.

There is no denying that in the underworld, a great deal has changed as a result of the introduction of firearms. The unscrupulousness accompanying international drug smuggling has also tarnished the heroic image of the old style underworld. But something of the code of honour has persevered, and the *baba* still like to rise up against injustice and help the poor by acting as the patrons of their less well-to-do clients. The most negative aspects of their own criminal activities are linked to this as well, since they are in effect providing protection against a threat they themselves have caused in the first place. This type of crime is referred to in criminology as a protection racket. It definitely was not always the case that the victims were the rich who were being robbed to benefit the poor, and they still are not today. Instead the victims were apt to be the owners of coffee houses, brothels and restaurants, in other words places where there was ample cash and where the entrepreneurs were in a vulnerable position as far as their reputation was concerned. The *kabadayı* had his own men working for him who would pick up a fixed amount on his behalf, and if the entrepreneurs did not pay up on time, they could expect to be 'taught a lesson'.

In a political sense as well, the role of some *kabadayı* has been far from progressive. Some of them were unofficially in the employ of certain individuals at the sultan's court, such as pashas or ministers (Bilginer, 1990: 18). There were also *kabadayı* who were used to infiltrate and spy on intellectual movements in the period of Abdulhamit, the last sultan. They were mainly Albanians and Kurds. There is much less information about their activities than about the 'nice' side of the *kabadayı* that has lived on in the popular romantic imagination and that the present-day underworld is so fond of using as a shining example.

6. Two Portraits: Chrisantos and Abdullah the Arab

All across the globe, the memory of rogues and bandits is kept alive by telling the tales of individuals. There are innumerable books and films about nineteenth-century American bandits like Jesse James and Butch Cassidy and their twentieth-century counterparts from the urban minorities like Al Capone and Arnold Rothstein (Kooistra, 1982). Every segment of the Turkish population, particularly in Anatolia, has produced its own social heroes, and two of them are presented below. Chrisantos and Abdullah the Arab both gained fame at the beginning of the twentieth century.⁹

6.1. Chrisantos, the Terror of the Istanbul Police

Chrisantos was a champion of the Greek minority in Istanbul in the early twentieth century, but was revered by Turks as well. He was a dauntless bandit who managed to always escape the authorities thanks to a combination of guile, boldness and the unconditional support of the common people. His conduct is symbolic of the latent resistance of the entire populace against the authoritarian administrations. Publications on the topic note that his nickname was Panaiyas, which means ‘holy’ in Greek and ‘God’ according to the Turkish sources, and it was clear that he was expected to avenge all the injustice done to anyone under him.¹⁰ He was definitely not a favourite of the Turkish authorities, and contemporary authors like Hiçyılmaz consider him a murderer. Ulunay does not feel any need to include him at all in his acclaimed book on the *kabadayı* (1994). Perhaps this is because Chrisantos deliberately shot and killed a number of Turkish police officers. His life is extremely well-documented because Teşkilat-ı Mahsusa, chief of the Turkish secret service at the time, devoted ample attention to him in his memoirs (Tansu, 1964). Regardless, Chrisantos met all the requirements for a fascinating *kabadayı*, and he was a man who could find hospitality anywhere he wanted in Istanbul – all doors were open to him. In our account of his life, we preserve the style used in the historical Turkish sources.

Chrisantos was born in 1898 in Istanbul. His father left when he was twelve years old and he grew up with his mother and a brother and sister. His older brother worked as a waiter at a café and undoubtedly introduced him to Istanbul’s night life. In the neighbourhood where he also worked at a café, Chrisantos launched a

⁹ During Ottoman times, such men were typically known by one name preceded by an adjective (e.g. Blind Mehmet).

¹⁰ Almost all the *kabadayı* had nicknames. Abdullah was not an Arab, but because of his accent and the fact that he was so dark, he was called the Arab. See the publications by Hiçyılmaz (1996).

new career as an extortionist. He was only 16 when he committed his first murder, slitting the throat of a shopkeeper who did not want to pay up. Chrisantos was arrested and sentenced to prison, but soon managed to escape. He then married Marika, who was to be his wife all his life, but his true love was Eftimya. Despite the efforts of other men to win her hand and the opposition of her brother Yani, Eftimya never stopped loving Chrisantos and remained faithful to him.

In one incident, officer Mehmet of the Taksim Square Police Station was chasing Chrisantos to arrest him for murder when Chrisantos put an abrupt end to the chase by shooting the officer four times. The Ottoman police set out to hunt him down dead or alive. But the police could not get their man, and even the secret service tried in vain. His adventures were the talk of the town and the reason why he was so hard to catch was probably because he would spend every night at the home of a different beauty. At any rate, he managed to remain out of sight of the police. A brave police officer by the name of Ismail wanted to personally take on the challenge and used the mafia method for luring his opponent out of hiding. Ismail told everyone around that he was going to find Chrisantos and kill him. When Chrisantos heard this, it made him so angry that he rushed to the police station where Ismail worked. No one could have predicted this bold step, and after Chrisantos gave a short speech for whatever police officers happened to be there, he left the police station in style and did as he promised when he said 'let a bullet serve as enough of a warning'. The Ottoman police did not know what had come over them, the chief of the secret service later recounted (Tansu, 1964: 258).

Chrisantos was already famous by then, and the hero of the Greeks. Every time he murdered someone, they would shout 'Great! Bravo! He is finishing off the police' (Tansu, 1964: 255). Chrisantos used a different approach for a police officer by the name of Muharrem. When Muharrem was relaxing at a popular *hamam* (Turkish bath) and enjoying a steam bath, it suddenly dawned on him that Chrisantos was reclining to his right on the warm stones. There was a moment of hesitation before the policeman decided to interrupt his pleasure and dash outside. This was not a wise decision. The fact that he was in such a hurry gave him away, and Chrisantos immediately reacted by following him. Chrisantos caught up with Muharrem on the street and asked him why he was in such a rush. 'I am not in a hurry at all,' the policeman replied, 'besides which I do not know you.' This was another error on Muharrem's part. He did not understand that it was too late to carry out his original plan and get his fellow police officers to help him out. He was all alone, and drew his pistol. But he was not fast enough to deal with Chrisantos, who first fired a shot in the air to extinguish the nearby light. With his next shot, Chrisantos killed Muharrem, his fourth policeman.

The police were enraged, but they were also powerless. Every time they thought they had Chrisantos, they would lose him again within a matter of seconds. Chrisantos had Hulusi, his inside informant at the Police Department. The information he got from Hulusi was always enough for some new feat. One evening he

took along a couple of friends and went to the Aynalıçeşme (well-with-a-mirror) Police Station. There were six police officers there and a commissioner, who were all disarmed and taken to the detention room. ‘The commissioner was the only one who wouldn’t give them his gun. He felt it was too much of a humiliation to endure’, the chief of the secret service at the time recounts in his memoirs (Tansu, 1964: 258). Following the only path he knew, Chrisantos only had one option – to kill the commissioner.

This picaresque story – because that is what it is – ended with an inevitable shooting, but this time our hero was hit. Not that he did not die in style. Because where does a wounded animal go? Chrisantos went to Eftimya, the woman who was his first and only true love. This was not a smart move, and he must have been aware of that. Was he tired and looking for a place to rest in peace? It was only a matter of a couple of days before he had to go out and look for a doctor, but he was already too far gone. By the time the police found him, he had virtually lost consciousness. The overwhelming turnout at his funeral showed how popular Chrisantos had been. This murderer was honoured as a *kabadayı* by thousands of mourners who followed the coffin, all clad in black mourning attire.

6.2. Abdullah the Arab and the *Racon*

The story of Abdullah the Arab illustrates the function of the *racon*, the parley that passes judgment on the grounds of the code of honour. Abdullah did not know exactly what year he was born in, but he did know he was born in Suleymanie, which was part of the Ottoman Empire at the time and is now in the border area with Iraq.¹¹ Judging from the peers referred to in the accounts of his life, his peak was in the late nineteenth and early twentieth century.

As an adolescent, he was sent to Istanbul to complete his education, but studying was not what he wanted to do. Every day, he would be at his regular spot at an Istanbul coffee house. His life was one of fighting by day and then enjoying the company of ladies of the night. It was not long before every other *kabadayı* knew how fast he could draw his knife. He spoke Turkish with a slight accent, which explains his nickname ‘the Arab’, and his friends called him Abu. Not that he had many friends or protectors, and he engaged in his extortion schemes on his own.

Hayk Anuş was an Armenian woman who worked as a prostitute. Abu had a short-lived romance with her, but they did not keep in touch afterwards. She went on to become quite a famous lady known as Hayganoş, who was courted by Istanbul’s finest gentlemen. This aroused Abdullah’s feelings for her, and he

¹¹ Bilginer (1990) and Hiçyılmaz (1996) both include passages about this *kabadayı* in their books, and Ulunay (1994) has written a long story about him and interviewed him.

proposed rekindling the old flame. But it was too late because a man by the name of Necip who had inherited a fortune, took Hayganoş to his home to 'make her his own'.¹² This impossible situation only served to intensify Abu's 'love'. He went to Necip and said to him, 'This is not the way we do it in the world of the *kabadayı*. You are living with Hayganoş now, but I had a relationship with her before you did and you know the rule. In that case no other *kabadayı* can live with her' (Bilginer, 1990: 25). Necip flew into a rage and said, 'I have no idea whether what you are saying is true. But even if it is true it does not change anything because I didn't know anything about it!' Abu's 'hands' (his knives) were itching to go, and Necip's 'friends' (his pistols) were ready for action. But the two men decided to be sensible and go to the *racon* and let them decide. 'They are going to prove you wrong,' Necip sneered, 'but we will do it anyway.' This was not so much a romantic dispute as a question of honour.

At Zehir Ali (Poison Ali), a coffee house in the Tophane district, three older *kabadayı* were willing to listen to both sides of the story. 'Necip,' they concluded, 'in principle you have no right to Hayganoş, but first we have to know for sure that Abu really did have a relationship with her before you.' Necip acted as if it didn't matter whether there had or had not been a relationship in the past, since Hayganoş was working as a prostitute at the time, and could have had a relationship with anyone. The *racon* ruled that neither of the men could associate with Hayganoş unless one of them wanted to demand his right by marrying her. Neither of the men was interested in doing that, nor was either of them interested in obeying the ruling. The men at Zehir Ali managed to keep the two men from attacking each other, but it is clear that a very tense situation was inevitable. First Abu sent a message to Hayganoş telling her to come and see him, but when she did not respond he designed a cunning scheme. He had a letter written in Armenian and signed with the name of Hayganoş' mother, telling Hayganoş that she had taken ill, and her last wish before she died was to see her daughter. Hayganoş broke out in tears and there was no way Necip could refuse to let her go and see her 'dying' mother. On the way, it was not hard for Abu to stop her coach and threaten her guard and coachman with a knife and kidnap her. When she had been with Abu for two days, he threw a big party so everyone could see that Necip's great love was with him. Then Abu sent her back to Necip.

The history books do not mention anything about how Hayganoş herself felt about being manipulated this way, but it was a slap in the face for Necip. This was the worst imaginable insult to his honour!¹³ Necip nonetheless took Hayganoş back

¹² Women of this kind are called *kapatma*. Men do not marry them, but they also do not allow them to have relations with other men.

¹³ As regards the codes of honour, see the PhD dissertation by Y. Yeşilgöz (1995).

into his home, since he was really in love with her and if she stayed with him, then in a way he would have won in the end. But even if he had wanted to forget what had happened, he did not get a chance to. Abdullah kept telling everyone what had happened, and he even devised a totally unacceptable visiting arrangement whereby Hayganoş would come and see him once a week. Necip sought revenge and wanted a chance to shut Abu up once and for all. Until that was done, he could not show his face. One day Necip and three of his friends ambushed Abu, but he lost and one of his friends was killed in the fight. This turned it into a matter for the law and Abu had to appear before the judge and account for his deed. He was counselled by an Armenian lawyer, who argued that it was a case of self-defence. Abu was acquitted, but from then on, Hayganoş stayed with Necip.

To us, the course of Abdullah the Arab's life is also interesting for another reason. He started as the 'protector' of his neighbourhood, but after he was acquitted, this bold man who knew no fear was appointed by the Ministry of Home Affairs to head the Kawas (honorary guard), and then he rose to the position of *pasha*, the highest rank in the Ottoman bureaucracy.

7. The *Efe* in the Mountains

For centuries there has been an Anatolian tradition of people who have been offended in some way going off to the mountains to organise a gang to combat social injustice. In the literature and folklore, there are always the same reasons for this kind of move, an unfair decision on the part of some judge or other authority, or the intolerable exploitation of a labourer or tenant farmer by a landowner.¹⁴ There are numerous examples. Often the person fleeing to the mountains has committed a punishable act, but always for a very respectable reason, for example to avenge the family honour. This is not the kind of thing the perpetrator is willing to go to prison for, especially since he was only doing his duty, so his only choice is to take to the mountains. Once they are there, fugitives have to fight off the government troops that come looking for them, and they manage to stay alive by extorting money from rich people or kidnapping them for ransom. By way of these acts, they earn a reputation in the vicinity and some of them are even known nationally. Because of why they became fugitives in the first place, the local population sympathises with them and the bandits in turn would never do anything to harm the people. The people feed the bandits and give them whatever information they need about the countryside and the movements of the police.

These desperados were also considered folk heroes. They were particularly active in the border regions of the Ottoman Empire where the power of the state is

¹⁴ In Turkish, they are called *ağa*, *beg*, *mir*, and so on.

weakest. They are the men today's smugglers are descended from. Quite a few of the *baba* now operating in Europe are from the border regions where these fugitives were most prevalent, and in fact they often have an episode as a member of a gang in their own personal history. Let us examine the different groups of fugitives in the various regions of Turkey.

In the western part of Turkey, especially in the region around the Aegean Sea, these men are called *efe*. The term is also used as a generic name for young men who are honest and brave. There is also some regional use of the term *dağlılar*, which means mountain people. Sometimes the authorities issue a general amnesty or allow certain *efe* to return to society. They surrender to the authorities and become *düze indi*, i.e. people who have returned to the plateau, and are then recruited to preserve law and order. Hiçılmaz refers to Çakırcalı Mehmet Efe as 'the most important and greatest' of these *efe*. Murad Sertoğlu has written two books about his life (Sertoğlu, 1955, 1956). It is clear from the foreword in one of them how difficult it is for the author to distinguish between the actual facts of Çakırcalı's life and stories traditionally told by the people. The author has spoken to numerous people and the soldiers who played a role in the investigation. He concludes that the existence of *efe* of this kind is the result of a century-old Ottoman policy that went against the interests of the peasants. 'Of course the villagers felt hatred and a desire for revenge against the [Ottoman] authorities, since all they did was levy taxes and plunder the people. This is precisely why the peasants were supporting a man like Çakırcalı who dared to stand up against the Ottomans' (Sertoğlu, 1955: 8).

Perhaps it is useful here to give a short account of the life of this *efe*, whose career as a bandit in Anatolia peaked around the turn of the century. Mehmet's father was also an *efe*, and when he surrendered via the usual amnesty procedure, it turned out the authorities had tricked him. The governor of Izmir had lured him to the plateau only to have him shot. Mehmet himself was brought up by his mother and some relatives to someday do his duty and avenge the murder of his father. After serving a prison sentence, he decided to head for the mountains, where he soon gained fame. His first important act of revenge was to kill the Ottoman officer who had murdered his father. Although he did not deviate from the tradition of stealing from the rich and helping the poor, the very sight of Mehmet brought fear to the hearts of one and all. There are thousands of stories about him, his biographer writes, and they recount far too many acts to have even been committed in one lifetime, so no one knows any more what is true and what is not. He would pop up all over, but no one could actually say they had seen him. There was growing concern on the part of local and national authorities alike about Çakırcalı. After having chased him in vain for years on end, the government drew up an amnesty measure especially for him with all kinds of guarantees. He accepted the term, and as was the case with Abu, the urban knight, he too was incorporated into the system. Çakırcalı was given five gold coins a month and granted the title of *serdar*, which means something like commander, and he was in charge of a special corps that would go to the mountains

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to track down the *efe*!¹⁵ You need to be one to catch one, the people higher up must have thought, and former *efe* were assigned to go out and find the men that used to be their buddies. His departure for the *diiz*, the plateau, now left some room for the rise of new *efe* (Sertoğlu, 1955: 85).

Çakırcalı met his end quite predictably in what looked like the result of a blood feud. An act of revenge by the brother of an Ottoman officer who Mehmet had killed made him leave for the mountains one last time. It was one of his own men who shot and killed him 'by accident'. The last command he gave from his deathbed was interesting. 'After I die, cut off my head and my hands and bury them somewhere so the Ottomans won't recognise me and they won't be able to say they killed Çakırcalı.' But it was to no avail. The Ottomans identified him anyway after one of his wives recognised him from a birthmark. His body was hanged from the front of the local government building to serve as a deterrent to others. 'Çakırcalı's fifteen years in the mountains ultimately cost more than a thousand people their lives', was Sertoğlu's final conclusion (Sertoğlu, 1956: 85).

In the region around the Black Sea, everyone is addressed by a nickname. Since so many of the people of this coastal area work at sea, the nicknames are virtually always related to some maritime function. *Kaptan* and the old word *reis* are the most common nicknames. Topal Osman was the most famous robber and rebel of the region, and his nickname was *ağa*. History also repeated itself in his case. Once a fearsome warrior and leader of a gang, he was appointed by Mustafa Kemal, Turkey's first president, to head the guards at his palace. The sad end to *ağa*'s life was later Mustafa Kemal's doing.

In eastern and southeast Turkey, regions mainly populated by Kurds, taking to the mountain was more of a tradition than anywhere else. *Eşkiya*, *asi* and *şaki* were only a few of the numerous terms used by the local peasants and authorities alike to refer to the fugitives. The government saw them as a threat to law and order, but the local people looked up to them and sometimes even venerated them. Their story is very similar to the one of the *efe*. One of the leading Turkish encyclopedias gives the following reasons for their leaving for the mountains:

The Kurdish peasantry constituted an obstacle to the implementation of the rules of the [Turkish] administration. Within the exclusive tribal life style of these peasants, they wanted to preserve their own norms and values. In addition to their tradition of smuggling, they wanted to go on breeding cattle

¹⁵ Former *efes* would be used to track down other *efes* in the mountains, and were then called *kır serdari*.

and farming. The differences between the wishes of the Kurds and the rules stipulated by the authorities are what produced 'social rebels'.¹⁶

According to this encyclopedia, thousands of people left for the mountains as recently as the 1960s and joined forces with gangs there. *Yön*, the popular opposition paper of the sixties, once noted in jest that according to official registration figures, there are even 180 *eşkiya* in a tiny town like Siirt. 'If every *eşkiya* has say about five followers, then we are dealing with a whole town of nine hundred *eşkiya*.'¹⁷

The most famous modern-day *eşkiya* is Koçero, who was shot and killed in 1964. Davudo and Kotto were similarly important. There were heated debates at the time about the positive and negative approach to the *eşkiya*. The authorities always viewed them as gangs of bandits and robbers, but there were also political 'trouble-makers' and romantic souls who liked to project their wishes on to *kabadayı* and *eşkiya*. They have been the subject of any number of films, novels and short stories. The internationally renowned novelist Yaşar Kemal took sides with the *eşkiya* and his masterpiece *Ince Memet* (Memet the Lean) is about one of them.¹⁸

8. Conclusions

The three traditions of political and religious rebels, urban knights and the Robin Hood-type *efe* now survive mainly in folklore, ballads and stories, but it is easy to show that many cultural features are still present in modern mafia families. Smugglers of drugs (especially heroin), traffickers of humans and various types of extortionists try to convey the ethos of the traditional *kabadayı*. They now fight with firearms instead of fists and their business ventures take them all over the globe, but the old spirit is still there to be treasured. However, the panorama of the Turkish underworld has changed dramatically from the moment the news came out that organised crime groups have been drawn into the secret war of the state with the help of the ultra-nationalist forces within the government (MHP, grey wolves) against first Armenian nationalists (1980s) and then especially the Kurdish movement for self-government in the 1990s. The days of independent criminal mafia organisations are over. The new developments require a new chapter on the further underworld story of Turkey.

¹⁶ *Sosyalizm ve Toplumsal Mücadeleler Ansiklopedisi*, 2117.

¹⁷ B. Ay, 'Mal-can güvenliği olmayanlar', in *Yön*, 2 September 1966.

¹⁸ *Ince Memet* has been translated into various languages including Dutch.

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Comparative Synthesis of Part I

Cyrille Fijnaut and Letizia Paoli

All things considered, not much historical research has been done in Europe on the background, manifestations and consequences of what are traditionally referred to as gang crime and the underworld. Particular branches of the Italian mafia, most notably the Sicilian ones, and a number of the criminal gangs operating in seventeenth- and eighteenth-century Germany, the Netherlands, present-day Belgium and France have, however, long attracted close scrutiny. Some phases in the history of specific forms of crime in cities such as Paris, London and Amsterdam have also been closely studied on more than one occasion. But large parts of the history of crime in Europe, such as crime in large German cities or gangs in the Spanish countryside prior to the French Revolution, have certainly not yet been the subject of extensive research.

It is quite unusual in historical circles to study collective forms of serious crime – as just referred to as either mafias or criminal gangs – in terms of ‘organised crime’. This is not odd in itself because, as mentioned in the introductory chapter to this Part, the term ‘organised crime’ was not used in Europe to refer to more or less organised forms of serious crime until a few decades ago. Applying the concept of organised crime to historical forms of serious crime does not, however, mean that anyone who does so, or intends to do so, is or would be guilty of a misplaced form of re-interpretation of criminal history.

Firstly, this is not the case for a reason related to knowledge theory: it may be very innovative to examine from a new perspective phenomena that have always been studied from other points of view. Secondly, it is not true because the benefit of using the concept was in fact proven years ago in practical historical research on pre-revolutionary gangs. This was done by Florike Egmond in her research on the major criminal gangs of Dutch history. In her study she made rewarding use of the concept of ‘organised crime’ and the academic polemics which the material content and actual application of this term have been evoking for decades.

Given most historians’ scarce familiarity with the very concept of organised crime and its related criminological debate, it is not surprising that little or no comparative research has been done on historical organised forms of crime in Europe. In order for such research to take place, it would be necessary that thorough studies of such forms of crime had already been undertaken at a number of places

for a number of years or that there were several researchers willing to do so in mutual consultation and in a systematic manner. However, neither of the two conditions is met at present. An attempt therefore needs to be made, subject to the necessary caution, to distil conclusions from the preceding contributions so that a contribution can be made towards a better understanding of both the history of organised crime in Europe and its impact on the present-day and future development of this form of crime.

1. The Difficulty and Importance of Historical Research, Comparative or Otherwise

It should be noted straightaway that although it is quite possible to provide a relatively detailed picture of historical forms of 'organised crime' above all on the basis of judicial materials, there is a need to be very cautious in using such sources, as Katrin Lange pointedly notes in her report on Germany. In fact, police and judicial documents were usually put together with a view to gathering evidence in criminal cases. And this implies not only a certain one-sidedness in the information recorded by members of the police and judicial authorities, but also a colouring of the information contained in the statements of suspects and witnesses. Judicial dossiers, in other words, cannot be regarded as reflecting the reality of what they are concerned with. They necessarily provide a limited 'criminal-law' picture of this reality and are therefore not capable of providing a definite answer to all the important questions relating to the organisation and action of organised crime in earlier times. They do not offer us an adequate level of clarity, but neither did they offer it to contemporaries. This explains why in the past discussions repeatedly arose on the nature of collective criminal phenomena, their extent and their effects on society and so on, just as they do today. Consequently, it is always difficult to reach a consensus on a definition of organised crime and it is difficult, if not impossible, to prove through any kind of research that a particular definition perfectly matches reality.

These problems, however, do not alter the fact that it is very important to undertake and continue to undertake historical research about forms of serious crime that can today be labelled as organised crime. This needs to be done both to obtain a clearer scientific picture of these forms of crime and to keep the non-scientific perception of these phenomena up to par as well. Various articles in this Part refer to how organised crime activities and in particular the main protagonists can easily be or become the stuff of legend. This in itself is a curious phenomenon: why are so many legends created on this topic? Why is there so often a certain degree of romanticising of villains and mafiosi? Is it because ordinary people want to emphasise in this way what limits even serious criminals must not exceed, as Stephen Wilson states in his contribution on Corsican banditry? Or is it because

such criminals themselves constantly try to boost their position in society in order to protect themselves from official repression?

Whatever the answer, the more important point here is that these myths, through the rosy description of organised crime and its perpetrators, obscure the view of the full reality of this phenomenon and completely overlook its evil aspects. As Yücel Yeşilgöz and Frank Bovenkerk point out, in any case there is a wide discrepancy between the hard reality of organised crime and its image and it is therefore very important to continue to conduct thorough historical research. This is one of the few ways in which it is possible to demonstrate the evil aspects of organised crime and thus to paint a realistic and more balanced picture of this crime.

The need for thorough research also applies to organised crime in the contemporary world. Sometimes to the great annoyance of the authorities, for example in the United Kingdom and in the Netherlands, there continues today to be a certain degree of glamorisation of serious crime and therefore an obscuration of the hard reality of this phenomenon. The media and popular success of organised and serious crime is to some extent due to the characteristics of the phenomenon itself. On the one hand, we find it repellent but on the other, we are attracted by the apparently unrestrained nature of major criminals, the resources they use to arrange and achieve whatever they want, the power they wield over others and so on. The shadowy sides of this phenomenon evidently cannot entirely eliminate its sunny sides. This discrepancy nonetheless has consequences. It does not just cause confusion in public opinion on the nature, extent and impact of serious crime, it can easily lead to hesitation among the authorities on what policy to adopt as well. However, both these side-effects are undesirable and, for this reason, there is a great need for responsible and balanced academic research on organised crime. It can ensure some stability in opinion-forming on such a problem and can provide a basis for the development of an effective policy to deal with it.

2. The Dynamics of the History of Organised Crime

The five articles presented in this Part of the book amply demonstrate that organised crime is not a static phenomenon. They show that besides carrying out a variety of illegal activities, in different historical and geographical contexts specific criminal groups succeeded in additionally seizing political power for themselves. This was due largely to changes in political relationships of power or was a consequence of states having insufficient ability to assert their own political power.

A dynamic of power shifts clearly emerges from the twentieth-century history of Russia. Here the establishment and collapse of political regimes or, at any rate, major upheavals in their organisation and operation have been linked with the development and disappearance of particular (new and old) forms of organised crime. The gangsters of the 1920s were, as Yakov Gilinskiy and Yakov Kostjukovsky

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write, followed in the 1930s by the so-called ‘thieves-in-law’, who in turn were displaced in the 1950s and 1960s by the *tsekhoviks* and these in turn were replaced by the bandits of the 1980s and 1990s.

In addition to the case of Russia, it is by now well-proven that politically unstable countries and more generally weak states (i.e., states that cannot enforce their monopoly of power in a sustainable and real way) provide ideal conditions for the growth of violent criminal organisations and groups. An obvious example of a weak state is the Ottoman Empire. According to Yeşilgöz and Bovenkerk, its government was totally incapable of asserting its authority in both the countryside and the neighbourhoods of large cities and was therefore constantly confronted with figures who – in many, usually criminal ways – filled this power vacuum, particularly through extortion.

Italy can also be considered a weak state for most of its modern history. As Gianluca Fulvetti writes, the unsuccessful unification of Italy in the nineteenth century led to the ‘democratisation of violence’ and the consolidation of mafia groups and the turn-around in relations during the time of Mussolini did not prevent mafia groups and their chiefs from regaining their position of power after the Second World War. The weakness of the Italian state at that time and protection by political parties and/or individual politicians, combined with the mafiosi’s willingness and ability, if necessary, to use brute force against opponents, enabled them to succeed again.

Despite the clear connection between weak states and organised crime, countries with a less turbulent political history have also faced manifestations of organised crime. A good example of this is the Netherlands. In the seventeenth and eighteenth centuries it was in general a relatively stable and reasonably prosperous country, but a country in which criminal groups of all kinds were active in the countryside and in the cities. And the same can be said to some extent about Germany. How can this be explained?

It can be inferred from the contributions by Egmond and Lange that exclusion from society for whatever reason, usually long-term poverty and/or ethnic origin, was the principal source for the constant formation of new criminal gangs. In these relatively peaceful countries as well, political conditions and particularly the effective authority of state bodies had a relevant impact on the rise and consolidation of criminal groups. The weakness of the state at least partially explains why a number of the gangs were able to operate successfully over a prolonged period of time. For years and sometimes even for decades, there were a few better organised gangs that were given free rein in some more remote corners of the countryside. It was not until the time when the police system was modernised and the criminal justice system consolidated that even in northern Europe adequate resources became available to combat these gangs effectively. The survival of the mafias in southern Europe must therefore be chiefly attributed to the fact that the state-building process here did not lead to the establishment of solid police and judicial structures.

Even this brief comparative analysis of historical patterns of organised crime is sufficient to show that changes undergone by this crime closely reflect the development undergone by society as a whole. This is another reason why it is important to look closely at the historical and contemporary manifestations of organised crime. They do not just reveal very clearly what changes this crime itself undergoes but also under the influence of what changes in society they have taken place. It is therefore particularly regrettable that in research on organised crime to date there has been such a clear split between those who study the history of this crime and those who are interested in its present-day manifestations.

One of the important and open questions is still what links exist between the historical patterns of organised crime that manifested themselves in different forms in Europe until well into the nineteenth century and the contemporary patterns of the same phenomenon. To what extent are there family links and, even more specifically, are the same families involved (whether in the narrow or broad senses of the word)? Or are there merely structural links: social, political and economic conditions as well as demographic and geographical characteristics, which favour the organisation of organised crime?

In his contribution, Wilson raises in particular the question of whether, and if so what, links exist between violent mafia practices in the past and violent political resistance to French administration in Corsica at present. This is not only an entirely legitimate question but also one that could be asked with respect to other parts of Europe that have long had to contend with persistent political violence.

Following from this there are other more actual questions that arise, which are equally worthy of closer study but fall outside the scope of this book. To what extent is there a connection between organised crime and terrorism? Under what circumstances can it happen that terrorist groups abandon their political goals and develop into criminal groups for which monetary gain is the principal motive in committing serious crime?

3. The Necessary Embeddedness of Organised Crime in Society

Another way of stating the above is to acknowledge that organised crime does not manifest itself outside of society but forms an intrinsic part of it. However, the reports of this Part show the societal embedding of criminal groups could historically take place at different levels of the community. Mafia groups enjoying the support of higher societal circles and political authorities cannot be simply equated in this respect with rural gangs that could only count on the support of the population strata that were themselves on the margins of society. It was common to both categories, however, that their existence was unthinkable without the community around them. Consequently, neither was it easy to combat them effectively, particularly in the case of weak or inadequately organised states, because both mafia groups

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and other criminal gangs enjoyed the protection and support of their immediate surrounding population.

This obviously does not mean that they merged entirely with this surrounding population and could not, as it were, be distinguished from it. Nor is it possible to prove the opposite, that criminal organisations in the old Europe formed impenetrable criminal subcultures. As criminal groups consisted of people who systematically committed crime, they differed from the surrounding population on a number of points and had to differ from it, if they were to prevent their illegal activities being discovered by the authorities and being punished with varying degrees of severity.

The somewhat separate position of serious criminals is clearly proven by the partially specific subcultures that they developed. The development and use of a kind of secret language is a good illustration of the mafiosi's and gangsters' separate position. A 'thieves' slang' was a way of shielding oneself from the police and the judicial authorities and of avoiding eavesdropping by them. Another example is some mafia groups and some gangs requiring their members to take an oath of allegiance. This custom also makes it very clear that a dividing line ran between the broad community of which a person formed part and the criminal group to which this person belonged within that community. The fact that nicknames were commonly used to refer to members in criminal groups and that these nicknames were often related to their illegal activities is also to some extent indicative of their separate position in society.

4. The Diversity of Organised Crime in the Past

It is already apparent from the above that organised crime cannot be regarded as a monolithic phenomenon either from a historical point of view or, as we will see in Part II, from a contemporary perspective. All contributions included in this Part stress that organised crime has many manifestations. There is no single type of organised crime, nor has a single type of organised crime ever and exclusively dominated a specific area or has one form completely succeeded to another in any given territory, as time has passed. The opposite indeed took place and several forms of organised crime can be singled out in a particular territory at any given time. This was most clearly the case in the Netherlands, for example, but it also occurred in Turkey and Italy.

Relations between the criminal gangs involved in the various forms of organised crime also differed widely. In some cases, as in the Netherlands, gangs generally lived in peace alongside one another and there were no actual contacts between them, let alone alliances. In other cases they fought tooth and nail to gain control of particular black markets, as in Russia.

It must also be mentioned in this context that it is generally impossible to make hard-and-fast statements on the reality, or rather the realities, of organised crime in a particular country and in a particular period of time on the basis of research that focuses on particular types of such crime. Almost all the authors point out that in reality a single type of organised crime in itself could comprise many different forms. In other words: one gang is not the same as another! They could, for example, differ substantially in size or in ethnic composition.

This simultaneous diversity of organised crime obviously explains why contemporaries often found it difficult to establish a clear picture of the nature, extent and development of organised crime in a country or in a district or city. And not just contemporaries then but contemporaries of today as well.

In addition, it must be emphasised here that the diversity of organised crime is not in any way at odds with the fact that particular types of organised crime did not occur at all in particular parts of Europe and did occur in others. What form or forms occurred when and where in Europe obviously depended heavily on societal conditions at a particular time in a particular country. The fact that the mafia clans in nineteenth-century Italy and Corsica routinely enjoyed the support of local elites, while eighteenth-century criminal gangs in the Netherlands and Germany mostly had to survive with the help of other people on the margins, can only, however, be explained by the state-building process having gone awry in Italy and Corsica, whereas in the Netherlands and Germany public administration was organised in a relatively more vigorous manner.

However, it should be noted in passing that the differences between the southern clans and the northern criminal gangs in Europe were not absolute across the board, as is sometimes thought. The authorities in northern Europe were usually weakly organised in the countryside, or at least were far less strongly organised than in the larger cities, and in this way certainly also fostered the upsurge and growth of gangs in the outlying areas. Some northern gangs generally speaking did not enjoy any support from social, economic or political elites, but often benefited from dubious relations with officials and other influential individuals to shield their illegal activities. It also needs to be borne in mind that organised crime, as stated previously, was also in the past a dynamic phenomenon and that at a particular time different forms of organised crime could occur that made it even more difficult to distinguish types of organised crime clearly from one another.

Another factor that could be involved was that criminals, for example in Corsica, deliberately sowed confusion as to the type of organised crime they were involved in. The mercenary bandits in Corsica did so, for example, by trying to pass themselves off as bandits of honour. Thus, even the members of criminal gangs could not be divided into particular categories at first glance. Background knowledge about them was required to be able to do this properly.

5. Some Building Blocks for a Historical Classification of Criminal Groups

Ideally, it would be advisable to fit all forms of organised crime discussed here into a clear classification, but it is still too early for such an operation to be performed. It necessitates more detailed research. A number of items can, however, be identified on the basis of the preceding contributions, which can provide the building blocks for a historical classification of forms of organised crime. A classification of this kind is not just important in making it possible to compare the mafias, gangs and bandits that have been discussed so far. It is also important in shaping possible future comparative historical research on organised crime in Europe.

There are two main criteria – or dissimilarities – for classifying historical forms of organised crime.

The first criterion comprises the dissimilarities relating to the embedding of gangs and bandits in the society around them. Reference has already been made to routine protection by political, economic and administrative elites: to what extent and for what reasons gangs and gang leaders do or do not enjoy such political protection. There is a second closely related point. To what extent did gangs and bandits strive for political power themselves and did they, for example, become directly involved in elections? Following from this, there is the third point: to what extent and in what role did members of upper classes themselves take part in gangs?

If the question of the embedding of gangs and bandits in society is not looked at from above but from below, a fourth important point needs to be added to the enumeration above: to what extent and why did gangs and bandits have the support of the ordinary population in the districts and cities and towns in which they operated? And just as in the case of protection by political or other elites, a fifth point can be added here: under what circumstances did gangs, in one case or another, lose this vital support?

If the contributions in this part of the book are re-read on the basis of these five aspects, the differences between the gangs that have been looked at immediately become apparent. Compare, for example, the gangs in the Dutch and German countryside with the urban mafias in Italy, Turkey and Russia, to take an extreme example. Dutch and German rural gangs had a completely different position in society than the urban mafias in the latter countries. Where the former gangs almost literally operated on the fringes of society, the latter mafias by comparison were right at the centre of society.

The second criterion on the basis of which historical forms of organised crime can be distinguished from one another relates to the organisation of the gangs. As Fulvetti points out in his contribution, organisation is a key element in organised crime, because it governs the type of crimes in which gangs want to and are able to develop. It is therefore very important in the historical study of organised crime

to provide as clear a picture as possible of the organisational aspect of the criminal groups involved.

The dissimilarity relating to the 'organisation of the organised crime' can be looked at to begin with. It is evident from the various contributions that this could differ widely. At one extreme, we find gangs composed of very few people and led by one or two leading figures; at the other, we have extensive networks linking several key groups, with the intermediate form of extensive, tightly, almost militarily organised gangs, such as those that operated in the eighteenth century in the South of the Netherlands and in the twentieth century in Russia. The second dissimilarity is very closely related to the first one: the territorial scale on which gangs operated. Some gangs and gang leaders operated very locally – in a particular neighbourhood of a city or in a specific region – and therefore did not need a network structure to be successful. Other gangs, because they operated over large distances, could not survive at all without a structure of this kind.

A third dissimilarity can be identified following from these first two: the tightness of the internal organisation of gangs. It can be deduced from the contributions of Egmond and Lange, and also from that of Yeşilgöz and Bovenkerk on the one hand, and from Gilinskiy and Kostjukovsky's chapter on the other, that their tightness could vary appreciably, from hierarchical structures in which all the members were included to loose networks, the members of which cooperated with one another almost on a project basis.

The next two dissimilarities are closely related to this third one. The fourth dissimilarity is as follows: to what extent did gangs or gang leaders seek refuge in rituals, such as the pledging of an oath on a single occasion or repeatedly, to emphasise the internal loyalty of the group or network? Or to express it in broader terms, what was the specific culture of the mafia and gangs and how was this manifested not just in the shaping of the mutual relationships but also in the ways in which the crimes were committed?

The fifth and last dissimilarity that can be mentioned refers to the composition of gangs: to what extent were gangs from an ethnic or political point of view or in other, social and economic, respects homogeneous or heterogeneous? In the case of the Netherlands it has been demonstrated that on the one hand, there were ethnically homogeneous gangs, such as the Jewish gangs and Gypsy gangs, and on the other, gangs whose members came from all directions. The question is whether this diversity was an exceptional situation resulting from the location of the Netherlands in Europe or whether it occurred in other countries and regions as well. This question can probably be answered in the affirmative for Germany. In the final analysis, some of the gangs Egmond has studied also operated on German territory. In view of the embedding in society of organised crime in Italy, Turkey and Corsica, it seems more appropriate to answer the question in the negative for these countries. And this difference between the countries emphasises once again how many faces organised crime had in the past.

6. The Illegal Activities of Gangs and Bandits

Reading through the contributions in this part of the book gives the impression that organised crime in the past traditionally comprised two large categories of illegal activities. On the one hand, particularly in the traditional gang system in northern Europe, it mainly involved various forms of violent or non-violent property crime. On the other hand, in southern Europe, including Turkey, it mainly involved various forms of systematic extortion with respect to the local population.

This tempting two-way division must not, however, close our eyes to the fact that both the Italian and Russian examples demonstrate that in and around the Second World War organised crime started to become established on black markets and went on to grab hold of parts of legal economic activity. With regard to these black markets, a distinction can be made between markets that had arisen as a result of the scarcity of legal goods, such as the food markets in Russia, and the markets emerging from the scarcity of illegal goods, such as the drug markets in Italy. It is chiefly in Italy that organised crime, by being interwoven with political parties, has been able to make the transition to controlling complete legal industries in 'its' territory, whether it be the building industry or waste treatment.

It almost goes without saying that in countries where the latter developments have occurred or are occurring, organised crime can no longer be regarded as a secondary phenomenon in society but is to be regarded as a significant source of economic and political power. Criminal groups here are no longer groups possibly protected by powerful elites in order to be able to successfully carry out criminal activities, they have started themselves to form power elites or part of power elites. Despite their political and social rise, it must be stressed that these criminal groups do continue to use traditional means of acquiring and exercising power: on the one hand, by corrupting people who hold positions of power in the world around them, and, on the other, by using violence against those who oppose their hold on power.

All the contributions show that the use of violence has long been a characteristic feature of any form of organised crime. The gangs of the seventeenth and eighteenth centuries were so feared because they frequently made use of violence in perpetrating their crimes but also employed violence with equal ease against those who were willing to help the authorities in the fight against them. It was only when gangs used exceptional levels of violence that victims and others were prepared to collaborate with the authorities, for example by providing information. Whether their cooperation proved successful obviously also depended on whether the authorities did or did not make a strong commitment to tackling serious crime head-on. In countries where this was done and where tough criminal justice was built up, the gang system was substantially repressed.

One final point needs to be made. In the countries where organised crime during the course of the twentieth century gained a place at the centre of power through

the control of black markets and parts of the legal economy, it is obviously far more difficult to combat it effectively than in countries where this development has not occurred or has not occurred to the same extent. This is true for the simple reason that criminal groups, due to the combination of political and economic power on the one hand and the use or threat of the use of violence on the other, can counter tough intervention by the authorities far more strongly than the gangs that in the seventeenth and eighteenth centuries operated in northern Europe. The mafias that during the nineteenth century developed in southern Europe and enjoyed the protection of local power elites without becoming themselves part of them formed an intermediate phase in the history of organised crime in this respect: these mafias still needed the power of others to build up counter-power against the state.

As we will see in the next Part, common trends but also significant differences – in terms of the group composition, illegal and legal economic activities as well as political power – have continued to characterise the patterns of organised crime in Europe to the present day.

PART I
THE HISTORY OF ORGANISED CRIME

Introduction to Part II: Sources and Literature

Cyrille Fijnaut and Letizia Paoli

Despite the fact that the problem of organised crime in the last ten years has moved steadily higher on the political agenda of the European Union and the Council of Europe and many of their Member States, there is no comprehensive and regularly updated overview of the nature, extent and development of this problem in Europe. Anyone wishing to study this problem in depth consequently faces a stern task. Firstly, interested scholars, practitioners and, even more so, common citizens encounter the problem of having to look for the available sources at various levels and in various places, and find at the end of this search that many aspects of organised crime in Europe are not discussed in the sources or are not discussed adequately and that, for example for linguistic reasons, possibly highly relevant sources will remain inaccessible to them. Secondly, they face the difficulty that widely differing sources are involved in terms of both form and content, and that it is therefore hardly possible to put together a properly substantiated and wide-ranging general picture of the organised crime situation in Europe on the basis of the existing sources.

As explained in the general introduction, the awareness of these difficulties has inspired the project of which this book is the result. Systematic, comparative research on organised crime in Europe can no longer be undertaken by individuals. It has, by necessity, become the work of cross-border networks of researchers or of multi-national and multi-disciplinary research teams.

To sketch a picture of the sources available and of their contents about the nature, extent and development of organised crime in Europe is a task in itself. As an introduction to the reports on contemporary organised crime patterns in twelve European countries, we have decided to focus on the relevant official sources: i.e. the reports and/or studies on organised crime that have been produced by or on behalf of supra-national and national government institutions. This means primarily the Council of Europe and the European Union, on the one hand, and the government institutions of their 45 and 25 Member States respectively, on the other.

Reports of important worldwide institutions wholly or partially concerned with problems of organised crime in Europe (such the World Bank and the International Organisation for Migration) are therefore not considered here at all. This brief introduction unfortunately does not provide space to examine their reports, however

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significant some studies may be (see for example Laczko and Thompson, 2000). Although Interpol, usually through its European Regional Conference, has been involved in all kinds of policy initiatives in Europe in previous years, this institution has not published any reports on problems of organised crime in Europe.¹

Unofficial sources – i.e. reports, books, and articles produced by research institutions and/or individual (academic or journalistic) researchers – are in the main not considered. They are only touched upon in order to point readers in the direction of the existing literature. This neglect is due to several reasons. Firstly, a serious discussion of the existing academic literature in Europe is not possible within the confines of this introduction. Secondly, a discussion of this literature would necessarily be highly selective owing to the limited list of languages familiar to us, namely French, German, English, Italian and Dutch. Partly with a view to tackling this problem, we have tried to bring together researchers from various countries and language areas within the framework of this project. They have been explicitly requested to devote the necessary attention in their papers to the existing literature in their respective countries.

In the following sections the publicly available official sources are presented not on the basis of their authors' and collators' type (distinguishing for example, between public institutions, services, research teams and individuals) but on the basis of the politico-geographical area of the promoting institutions. This means that reports of the Council of Europe and the European Union on organised crime are examined in the first two sections of this chapter. These are, indeed, the most significant reports on organised crime at the European level. Because the Organisation for Security and Cooperation in Europe (OSCE) through its concern with the fight against trafficking in human beings in South-East Europe is only involved in an indirect way with a single aspect of the problem of organised crime, reports on this topic are not considered.²

Reports touching on the problems of organised crime affecting particular regions of Europe, such as the Baltic Sea Region and the South-East European Region, are then discussed in the third section. In the following one reference is made to the organised crime reports produced by agencies in individual European countries. The examples of Italy, Germany, the Netherlands, Belgium and the United Kingdom are singled out in particular. However, only passing reference is made to these sources, as country reports specifically analyse the organised crime

¹ See the overview 'Interpol's Involvement in European Cooperation Initiatives' on its website <<http://www.interpol.int/Public/Region/Europe>>.

² See the OSCE website <<http://www.osce.org/documents/odihr>> for an overview of programmes and projects (*Democracy and Human Rights Assistance. OSCE ODIHR Programmes and Project Outlines 2004-2005*).

situation in the above-mentioned countries. The significant literature on organised crime in countries that do not publish any official annual reports on this problem, in particular Russia, is not touched on in this context either.

The same classification is followed as far as possible in the discussion of unofficial sources, which are briefly mentioned at the end of the assessment of official sources for each geographical area. This has been done in particular so that a general picture of the situation at the different geographical levels can be outlined. As we will see in the following sections, the academic and journalistic literature has at least as many limitations as official sources. Scientific research on organised crime, in particular, has not yet really taken off in Europe. There are many different reasons for this: in some European countries organised crime was not a public topic of discussion at all until recently; the term itself was unknown or the existence of the problem was denied; there is by no means everywhere a tradition of criminological research nor are there everywhere scholars interested in carrying out empirical research in this field; and those who are interested sometimes encounter great problems in obtaining access to the necessary written sources held by the authorities (Fijnaut, 1997).

We hope that this book will not only contribute to raising public awareness of the problem of organised crime in Europe but will also increase interest, both among governments and among academics and journalists, in commissioning and undertaking research in this field.

1. The Level of the Council of Europe

The Council of Europe has been involved in many different ways in the analysis of and the fight against organised crime in Europe since the early 1990s. The initiatives taken by the Council of Europe since then to contain the problem of organised crime in Europe more effectively, alone or in conjunction with others, particularly the European Union, are discussed in the introduction to Part III.

With regard to the analysis of the organised crime problem, April 1997 is a significant date. In that month the Committee of Ministers set up a Committee of Experts on Criminal Law and Criminological Aspects of Organised Crime (PC-CO), which in 2000 was replaced by the Group of Experts on Criminological and Criminal Law Aspects of Organised Crime (PC-S-CO). Under the authority of the European Committee on Crime Problems (CDPC), the new bodies were required to perform three tasks:

- To produce an annual report on the situation with regard to organised crime in Europe;
- To assess measures taken in Europe to deal with this type of serious crime, and;

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- To consider ways of increasing the effectiveness of the national and international fight against organised crime.³

The activities of the PC-CO/PC-S-CO in the latter two fields will be discussed in Part III. The annual reports on organised crime – the so-called *Organised Crime Situation Reports* – which the PC-CO/PC-S-CO has been compiling since 1998, are particularly relevant here.⁴

In order to have a good understanding of these reports it is important to draw attention to the method by which the PC-CO/PC-S-CO collects the data. This principally consists of sending a fairly detailed questionnaire to the Member States. In addition, use is made on a limited scale of reports on organised crime produced by other international institutions, academic and journalistic literature and press reports.

On the evidence of its methodological comments in various reports, the PC-CO/PC-S-CO is itself aware that the empirical basis of its reports is fragile. There are several reasons for this. Firstly, significant methods, such as interviews with key individuals and analysis of dossiers, are not used. Secondly, Member States sometimes do not respond to the questionnaire or respond too late or only fill them in superficially. And, thirdly, the review of the scientific and grey literature is very limited in design and scope. The PC-CO/PC-S-CO is therefore usually reluctant to make strong statements and draw firm conclusions. The lack of depth in the reports perhaps explains why they are not used on a large scale in Europe, either by policy-makers or by academics. On the other hand, their wide scope makes them unique in Europe and certainly suitable for providing a general idea of what is happening in terms of organised crime in Europe.

Until recently, the questionnaire focused in particular on the structure of the criminal groups involved in organised criminal activities in the countries concerned and on particular forms of organised and serious crime. To ascertain which groups are involved, the PC-CO/PC-S-CO adopts a definition in which eleven criteria play a significant role: four essential criteria (including collaboration between three or more people, with a view to obtaining money and/or power) and seven optional criteria (including distribution of tasks between group members, use of violence and/or intimidation, and operating at an international level).

The criminal activities, which the PC-CO/PC-S-CO focused on, were initially quite limited. They related above all to drug trafficking, fraud, forgery, extortion, vehicle theft and trafficking in human beings. The scale of criminal activities to

³ For a more detailed description of the PC-CO, see the Council of Europe website: <http://www.coe.int/T/E/Legal_affairs>.

⁴ Apart from the report relating to 1997, these reports can also all be found through the website mentioned in the previous footnote.

which the PC-CO/PC-S-CO report relates has gradually been expanded. Firstly, a distinction is made at present between criminal activities on legal markets and such activities on illegal markets. Secondly, completely different forms of crime are now discussed within these two categories of activities than was the case in the late 1990s. In relation to the legal markets, reference can be made to the smuggling of tobacco products, and in relation to the illegal markets, to illegal gambling and arms trafficking. It is not surprising, therefore, that the reports are becoming ever more extensive.

The overall picture of the organised crime in the Member States of the Council of Europe, as put together by the PC-CO/PC-S-CO, looks quite gloomy. In its latest published report, relating to 2001, the PC-CO/PC-S-CO notes a worsening of the situation for several forms of serious crime and expects further worsening in the near future. At the same time, however, the Committee acknowledges that there are no grounds to state that the problem of organised crime is increasing in extent (some Member States are noting an increase, others are not), nor that this crime is only perpetrated on a transnational scale. The crimes that have recorded the most serious increases are human trafficking and cyber crime. According to the PC-CO/PC-S-CO, it cannot be said whether or not other forms of crime are on the increase, but the seriousness of existing problems is not in doubt, for example problems in the area of arms trafficking and in the area of the laundering of the proceeds of crime. Finally, it is not insignificant that the PC-CO/PC-S-CO refers to increasing blurring of the boundary between organised crime and corporate crime in the field of cigarette smuggling. This has become a question of 'organised crime networks exploiting opportunities and weak control structures, and colluding with tobacco companies' (*Organised Crime Situation Report 2001*: 123).

Attention to organised crime problems is also given in the context of other more specific Council of Europe programmes. An example of this is the action programme against corruption, and in the context of this programme, in particular the GRECO project (GRECO stands for Group of States against Corruption).⁵ This project, which was started in 1999, involves approximately 35 countries. These countries are visited by a committee, which does not just assess the anti-corruption policy conducted, but tries to obtain a picture of the problem of corruption as such on the spot. The evaluation reports published by these *ad hoc* committees (more than 20 had appeared by the end of 2003) sometimes also contain notable comments on the problem of corruption in the countries concerned and on the relationship between this problem and the problem of organised crime.

- The Albanian government in 2002 noted in the report on its country that although it was theoretically not out of the question that links existed between

⁵ Further information on this project can be found on the following website: <<http://www.greco.coe.int>>.

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(endemic) corruption and organised crime, ‘at present there are no concrete cases in Albania which prove a connection between these phenomena’ (*Evaluation Report on Albania 2002*: 6).

- The French authorities in 2001 did not rule out the possibility of links existing between corruption and organised crime but pointed out that organised crime ‘is a relatively marginal phenomenon in France’ (*Evaluation Report on France 2001*: 5).
- The Irish police in 2001 informed the evaluation committee that there is no trace of evidence of ‘any connection between corruption and organised crime’; the committee itself notes that ‘formal research and analysis was not provided to substantiate this claim’ (*Evaluation Report on Ireland 2001*: 5).
- The same applied to Spain in 2001: ‘there appears to be no connection between corruption of public officials and organised crime, other than some marginal cases publicised by the press’ (*Evaluation Report on Spain 2001*: 6).
- It was also stated in the report on the Czech Republic that the committee had been informed ‘that no link between organised crime and corruption was found in any criminal case that had been dealt with by the prosecution office’ (*Evaluation Report on the Czech Republic 2003*: 3).
- One of the few reports, in which it is acknowledged that there is a connection between the two problems, is the 2002 report on Romania: ‘links exist between corruption and organised crime in Romania but “no more than in other countries in the region, bearing in mind the cross-border nature of this crime and its recent proliferation”’ (*Evaluation Report on Romania 2001*: 5).

It is almost self-evident that against the backdrop of PC-CO/PC-S-CO reports on organised crime the outcomes of the GRECO evaluations on the relationship between this form of crime and corruption have little or no credibility. While organised crime traditionally, not without reason, is associated with corruption, it is as though these evaluations demonstrate the opposite, that is to say that no relationship exists between these phenomena or, even more strongly, almost suggest that there is actually no problem of organised crime in the countries concerned. The evaluations, as can be seen from the quotations, fortunately are very cautious in expressing their findings on this point.

If we take a look at the literature that exists at the level of the Council of Europe on organised crime in Europe, it is logical first to make reference to the publications that the HEUNI (the European Institute for Crime Prevention and Control, affiliated

with the United Nations) has issued in recent years on organised crime in Europe.⁶ There are reports, in particular, on trafficking of human beings and especially on the trafficking of women and children (Ulrich, 1995; Lehti, 2003).

However, HEUNI is not the only research institute in Europe to devote the necessary attention to problems of organised crime. Mention certainly needs to be made in this context of TRANSCRIME, the Joint Research Centre on Transnational Crime of the Università degli Studi di Trento and the Catholic University in Milan. According to its website, staff at this centre has carried out a number of projects related to organised crime and the fight against it in recent years. One of the best-known studies to have resulted from this is concerned with organised crime and money laundering (Savona and Manzoni, 1999).

A new research centre focusing entirely on the study of organised crime is CIROC (Centre for Information and Research on Organised Crime), attached to the Law Faculty of the Free University of Amsterdam. In one of its first major publications, not only is attention given to particular specific problems of organised crime in Europe, such as trafficking in human beings, but an attempt is also made to give a general outline of organised crime in some parts of Europe (Siegel, Van de Bunt and Zaitch, 2003). Finally it is widely known that organised crime and the fight against it is one of the key points of the research programme of the Max Planck Institute for Foreign and International Criminal Law in Freiburg.⁷ The present publication forms part of this programme.

Problems of organised crime in Europe have naturally also been frequently discussed in individual papers contained in academic publications. As in the case of the CIROC publication just mentioned, these are on the one hand books concerned with problems of organised crime *all over the world*, such as that edited by Felia Allum and Renate Siebert, *Organised Crime and the Challenge to Democracy* (2003) and that edited by Jay Albanese, Dilip Das and Arvind Verna, *Organised Crime. World Perspectives* (2003). On the other hand, books have obviously also been published in recent years in which individual papers relate solely to such problems in Europe. Mention can be made here, for example, of the publications edited by Adam Crawford, *Crime and Insecurity. The Governance of Safety in Europe* (2002), by Petrus Van Duyne, Klaus Von Lampe and James Newell, *Criminal Finances and Organising Crime in Europe* (2003) and by Petrus Van Duyne, Matjaž Jager, Klaus Von Lampe and James Newell, *Threats and Phantoms of Organised Crime, Corruption and Terrorism* (2004).

In light of the problems outlined above with regard to performing academic research on organised crime, it is not surprising that to date few extensive scientific

⁶ These publications can be viewed on the HEUNI website: <<http://www.heuni.fi>>.

⁷ See the Max Planck Institute's website: <<http://www.iuscrim.mpg.de>>.

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monographs, if any, have been published on organised crime at the level of the Council of Europe. One of the few to have been published is Vincenzo Ruggiero's *Organised and Corporate Crime in Europe* (1996). In addition, some journalists and politicians have attempted to describe how organised crime is developing in Europe. Examples of this are Francois D'Aubert: *Main basse sur L'Europe* (1994), Jürgen Roth and Marc Frey: *Die Verbrecher-Holding. Das Vereinte Europa im Griff der Mafia* (1992) and Roger Faligot: *La mafia chinoise en Europe* (2001).

2. The Level of the European Union

Of particular importance at this level are the reports on organised crime in the European Union that have been produced by Europol since 1997 under the auspices of the Presidency of the European Union. The decision for such reports to be compiled was taken by the European Council in November 1993. Agreement was finally reached in 1997 on a way in which the Member States would supply the data for these reports and how the data would then be analysed by Europol.⁸ This method consists in data having to be compiled, preferably on the basis of criminal investigations, and if this is not possible also on the basis of other sources, such as criminal intelligence. Information has to be provided on both people and groups of people suspected of being involved in organised crime and the principal forms of crime they commit, the location in which the criminal activities are undertaken (specifying whether it is in or outside Europe), the means employed to commit the crimes, the use of violence, the eventual exercise of undue influence on the police and justice systems, national authorities and/or businesses and the media and finally the involvement in money laundering.

In order to be able to talk of organised crime it was agreed, as in the Council of Europe, that organised crime is involved if criminal groups fulfil eleven criteria. Four of these are mandatory: 1) collaboration of more than two people and 2) over a prolonged period of time and 3) the suspected commission of serious criminal offences 4) for the purpose of profit and/or power. The other criteria are optional.

The empirical basis of the Europol reports basically is just as limited as that of the Council of Europe reports. Europol does not itself carry out any analysis of criminal cases in the Member States, nor does it interview key individuals. It is therefore completely dependent on what the Member States deliver in their national reports. For a number of reasons, these reports are highly varied in content. The Member States do not all define the crime problems, or some of these problems,

⁸ This mechanism 'for the collection and systematic analysis of information on international organised crime' is laid down in a European Union document: Enfopol 35 Rev 2, Brussels, 21 April 1997.

in the same way as problems of organised crime; the problems of organised crime are usually not the same in all the Member States; the Member States do not all give the same priority to the same forms of organised crime; and the criteria mentioned are not easy to apply in practice. Moreover, not all the Member States have sufficient material and intellectual means to make thorough analyses of the domestic organised crime problems or have they been willing to fully utilise the resources available for the purposes of the Europol reports.

In view of these difficulties, Europol organised crime reports must be treated with due caution. The difficulties encountered have led to a change in the nature of the reports at Europol itself. These were initially known as the *European Union Organised Crime Situation Report*. Because it became increasingly clear that the aspiration contained in this title is unattainable, in 2001 the title *European Union Organised Crime Report* was adopted instead. Omitting the word *situation* appears to be a small step. In fact, however, there is a world of difference between the two types of reports. Since the change was made, these reports no longer claim to provide a picture of organised crime in the European Union but are presented as informative *threat assessments* of this crime.

It would certainly be interesting to examine how the picture and threat of organised crime have changed in the Europol reports since 1997,⁹ but space does not allow for such an exercise here. The 2003 report is somewhat alarming:

The impact and influence of OC within the EU has been growing over the past 15 years. The advent of the free movement of goods, people, finances and services through the single European market and the opening of borders between the EU and its eastern neighbours are aspects, which have made it easier for OC groups to facilitate the movement of their illegal commodities and services into and throughout the EU (*2003 European Union Organised Crime Report*: 8).

This serious message is corroborated in particular by the fact that in 2002 the Member States came to the joint conclusion that there were 3,000 criminal groups (with around 30,000 members) active in the European Union and some 1,000 more in 2003: 4,000 with some 40,000 members. The huge increase of 1,000 criminal groups in one year is offset to some extent by the comment that in some cases the new figures have been the result of changes in methods of counting employed by the Member States. It is also pointed out that there is an impression that criminal groups 'are far more cellular in structure, with loose affiliations made and broken on a regular basis and less obvious chains of command' (*ibid*). But, it is explicitly

⁹ The reports for the last few years can be viewed on the Europol website <<http://www.europol.eu.int/index>>.

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emphasised, 'powerful hierarchical groups continue to occupy key positions in OC within the EU' (ibid.).

The international cooperation between criminal groups is allegedly continuing to grow and the geographical scale on which these groups operate is also increasing. There are not just close links between criminal groups in the Member States of the European Union and in other European countries but between criminal groups in Europe and other parts of the world as well. According to the report continued internationalisation of organised crime is also reflected in the composition of criminal groups. They are increasingly made up of individuals of different nationality and/or ethnic origin.

However, the 2003 Europol report also notes that the most influential criminal groups in the European Union are still domestic groups. They are well integrated in their countries, understand their political, judicial, economic and social conditions better and are therefore more difficult for the police to identify. Yet, most attention is by far given to groups from outside the European Union: Albanian criminal groups, criminal groups from the former Yugoslavia and from Russia, as well as Turkish, Moroccan, Nigerian, Colombian, Chinese and Vietnamese criminal groups.

The forms of crime which the report focuses on most are: drug trafficking, trafficking of human beings, fraud and forgery, laundering of the proceeds of crime; organised assaults, illegal trafficking in arms and trafficking in stolen vehicles and finally environmental crime. Not surprisingly this list shows a significant overlap with the list adopted by the Council of Europe reports. Ultimately, these particular forms of organised crime occupy a key position in the questionnaire and the analysis in both cases.

From time to time Europol also publishes fact sheets on particular forms of organised crime and other forms of serious crime. Reports concerned with drug trafficking, vehicle theft and illegal immigration can be found on its website. With specific reference to drug trafficking, Europol reports and data should be viewed alongside those of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), based in Lisbon, Portugal. While Europol principally focuses on the drug supply, the EMCDDA, which is one of the European Union's decentralised agencies, looks at the European illegal drug markets from the point of view of the users.¹⁰

The reports of the European Union on the fight against crime and fraud, in which the financial interests of the European Community are at stake, should not be ignored either. At least in the recent past, it has been steadfastly claimed in these reports that a significant proportion of this crime and fraud is committed by organised criminals in Europe. In the reports from previous years this was emphasised to a

¹⁰ See for example *The Annual Report 2003. The State of the Drugs Problems in the European Union and Norway*: 36-40.

far lesser degree, and the illegal activities concerned were referred to as forms of cross-border or transnational fraud against its financial interests. Consequently, it is now no longer possible to ascertain how high the European Union itself judges the proportion of organised crime in cross-border and transnational crime to be. It is nevertheless firmly established that this type of crime has a role to play here, for example in the area of large-scale smuggling of cigarettes. The reports referred to are firstly the reports published annually by the European Union on the protection of the financial interests of the European Community and secondly the activity reports produced annually by OLAF, the European Commission unit responsible for combating the illegal activities represented by infringement of these interests.¹¹

More extensive literature looking solely at the problems of organised crime at European Union level is extremely sketchy. Firstly, this has much to do with the fact that the political boundaries of the European Union do not coincide with the boundaries of the territory on which organised criminals are able to successfully operate. On the contrary, passing beyond its borders is often one of the reasons why a profit can be made with organised crimes in particular fields, for example with trafficking in human beings and cigarette smuggling. Secondly, the scarcity of literature is also due to the fact that, as already indicated, it is impossible for individual academics to obtain an overview of the problems of organised crime in the European Union in its entirety.

The European Commission has not done a great deal in recent years to overcome this severe shortage of academic research on organised crime in the European Union. The funding that could be obtained for research of this type through programmes such as Grotius, Oisin, Stop, Hippocrates and Falcone was very limited and was in any case disproportionate to the political interest attached to the containment of organised crime in the European Union. It remains to be seen whether the recent programme (Agis), which includes all the programmes mentioned, will de facto offer more scope for academic research in this area. 'Studies and research' do appear in the listing of activities for which funds can be requested.¹²

It is, in any case, almost impossible to obtain a clear picture of the academic research that was performed under the previous European Commission programmes in the field of organised crime. The first reason why this is so is that the research has not led to proper publications in a number of cases. The second reason is that

¹¹ The latest European Commission report (*Protection of the Financial Interests of the Community and Fight against Fraud*) is that of 2 December 2003, COM (2003) 445 final/2. The latest OLAF annual report (*Report of the European Anti-Fraud Office. Fourth Activity Report for the Year Ending June 2003*) dates from the second half of 2003. The OLAF and European Community reports can be viewed on the OLAF website: <<http://www.europa.eu.int/olaf>>.

¹² See the text of the programme in *Official Journal*, C 308/42-54 of 18 December 2003.

there are no overviews of the publications resulting from such research. For these reasons too, it is here only possible to quote a few examples. In 2001 a group of researchers of the University of Palermo Institute of Criminal Law and the Max Planck Institute for Penal and International Criminal Law in Freiburg published – both in German and Italian – a first assessment of organised crime patterns and control policies in Germany, Italy and Spain, which had been sponsored by the Falcone programme (Militello et al., 2001a and b). In the area of drug trafficking, reference can be made to the report of the Gruppo Abele on *Synthetic Drugs Trafficking in Three European Cities. Major Trends and the Involvement of Organised Crime* (2003). A report of interest with a view to research on cross-border police cooperation in combating organised crime is that of Monica Den Boer and Toine Spapens: *Investigating Organised Crime in European Border Regions* (2002). And partly in view of the great priority the European Union intends to give to the fight against trafficking in human beings, mention must be made of the study of Nathalie Siron et al.: *Trafficking in Migrants through Poland* (1999).

3. The Level of the Regions: The Baltic Sea Region and the South-Eastern European Region

Organised crime is no more a European problem than a problem of individual states. In view of the transnational dimensions peculiar to some forms of this crime, it is obviously also a problem manifested at the regional level of Europe. The first region in which steps have been taken towards a joint approach to tackle organised crime problems is the initial Schengen region (Germany, France and the three Benelux countries). A number of measures included in the Convention Implementing the Schengen Agreement (1990) were also intended from the outset for a more effective fight against organised crime. Remarkably enough, however, this significant initiative has not led to the development of a coherent policy for the whole region in this area. Attempts are currently being made to get such a policy off the ground in the Euregio Meuse-Rhine, which is situated at the crossroads of Belgium, Germany and the Netherlands and includes the cities of Aachen, Hasselt, Liège and Maastricht.¹³

As no attempt was made in the 1980s in the original Schengen region, it is not surprising that there are only a few regions in Europe in which steps have been taken in recent years to formulate and implement a common policy with regard to organised crime. These are, in particular, regions where major political tensions to a greater or lesser degree exist or may exist. In the light of the history of organised

¹³ Cyrille Fijnaut is closely involved in this project.

crime in Europe, it is not odd that potentially troubled regions have recently developed initiatives to establish coherent policies against organised crime. The political instability of areas, and particularly of border areas, is a strategic condition for the growth and upsurge of this kind of crime. The fight against organised crime, itself considered a form of instability, is regarded as a significant contribution to the political stabilisation of such regions. This also explains why such policy has not undergone further development in the Schengen region: there is no political instability or threat to stability in this region.

The first region in which organised crime was defined as a common problem and in which attempts have been made to conduct a coherent policy to deal with this problem is the Baltic Sea Region. In May 1996, the heads of government of Denmark, Norway, Sweden, Finland, Lithuania, Estonia, Latvia, Russia, Iceland, Poland and Germany took the initiative to bring together representatives of their respective countries in a joint task force, which was to draw up and implement specific actions to combat organised crime in the region. In recent years, this Task Force on Organised Crime in the Baltic Sea Region has taken several policy initiatives in various areas, but in particular in the area of trafficking in women, drug trafficking, corruption and trafficking in stolen vehicles.¹⁴

The reports drawn up by expert groups in these fields often only give an impression of the nature, extent and development of these problems; they are usually concerned far more with policy than the problem this is intended to address. In a report on a fact-finding mission concerned with trafficking in women from Lithuania, Latvia and Estonia, for example, it is stated that such trafficking undoubtedly takes place, but that its extent cannot be established ('there are a considerable number of women working and being exploited as prostitutes outside of the borders of the Baltic Sea Region'). In a November 2001 report 'on the return of stolen vehicles', no attempt is made to estimate how many cars 'disappear' per year in the region and how many of them are stolen by more or less professional gangs with a view to smuggling them to other parts of Europe or the world. This report does not go beyond a discussion of the legislation relevant to prevent and repress vehicle theft. The same applies to the report of May 2002 on the situation in the region in the area of corruption. Here too only the relevant legislation is addressed, whereas the problem itself is not discussed.

The European region where the greatest investment is currently being made to contain organised crime more effectively is south-eastern Europe. This is not

¹⁴ For the reports on this, see the task force's website: <<http://www.balticseataaskforce.dek/library>>. In the context of the preparation of the congress of the International Association of Criminal Law in Budapest in 1999, a conference was organised by the Swedish branch of this association on *Organised Crime in the Baltic Sea Area* (Toulouse, 1998).

without reason considering the course and outcome of the recent wars in the Balkans. In 1999 the European Union, in cooperation with the Council of Europe and the United States, made this region one of the targets for its policy to bring about secure stability (*Stability Pact for South Eastern Europe*) in the Balkans, that is to say in the area comprising Albania, Bosnia-Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia.¹⁵ Concrete policy measures were singled out especially in the Stability Pact Initiative against Organised Crime in south-eastern Europe of 5 October 2000 (SPOC) and were laid down in the London Statement on Defeating Organised Crime in South Eastern Europe of 25 November 2002. Implementation has been entrusted to a number of working groups of what is known as Working Table 3 ('Security Issues'), particularly in the field of 'organised crime' and 'trafficking in human beings'.

In the relevant documents, no secret is made of the fact that organised crime poses a genuine threat to attainment of the aims of the Stability Pact, the flourishing of the economy in the countries concerned and their integration into the Euro-Atlantic institutions. It is even stated here and there in the documents that 'organised crime has infiltrated some government structures during the 1980s and 1990s' in south-eastern Europe or that 'organised crime groups [...] have infiltrated high level political positions'. In the second annual report on the Stability Pact there is an undisguised statement that 'organised crime and corruption are endemic in the region, negatively affecting institutional and economic development. The commitments of the countries to tackle these problems have not been sufficiently translated into concrete measures' (*The Stabilisation and Association Process for South East Europe. Second Annual Report 2003*: 8).¹⁶ However, a search through the documents for any detailed analysis or even a thorough description of organised crime and corruption in the countries concerned will prove to be in vain. They are almost all concerned in particular with opportunities and obligations for doing something about these problems in policy terms.

Something similar is true of the reports produced by the Council of Europe in the framework of the programmes – PACO (Programme against Corruption and Organised Crime in South-Eastern Europe) and SPAI (Stability Pact Anti-Corruption Initiative) – intended to implement the Stability Pact in relation to the fight against organised crime and corruption in this region. These reports too, on trafficking in

¹⁵ *Council Regulation No. 2666/2000 on Assistance for Albania, Bosnia and Herzegovina, the Federal Republic of Yugoslavia and the Former Yugoslavian Republic of Macedonia* (*Official Journal* L 306/1-6, 7 December 2000). See in particular Article 2, 2 (b): 'the strengthening of legality and of measures to combat organised crime'.

¹⁶ The report (COM (2003) 139 final), published by the European Commission in March 2003, can be downloaded from <http://www.weforum.org/pdf/SEEurope/Commission_Report>.

human beings, corruption, money laundering etc., are concerned solely with the measures, which the countries concerned have already taken and/or may take.¹⁷

This one-sided focus on policy questions is less pronounced in the documents produced by the SECI (Southern European Cooperative Initiative) Regional Center for the Combating of Trans-Border Crime in Bucharest. This centre was set up in 1999 on the initiative of the European Union and the United States. The core group consists of 15 liaison officers from the nine countries concerned. In view of the operational nature of this centre, it is perhaps logical that mention is made on its website of regional actions and the results of such actions to deal with organised crime, in which the police and customs authorities have taken part. There are reports for example on actions to deal with trafficking in women, vehicle theft and drug trafficking.¹⁸

In the light of the above, it is easy to understand why there is so little on organised crime at the level of the regions in the journalistic and academic literature. These problems are not studied at this level. There is, however, one exception: eastern Europe and south-eastern Europe in particular in the broad sense of the term. It is evidently thought that the dangers of organised crime for western Europe come from this region in particular. A somewhat alarmist book in a journalistic style on this risk was recently penned by the journalist Udo Ulfkotte: *Grenzenlos Kriminell. Die Risiken der EU-Osterweiterung. Was Politiker verschweigen* (2004). In 2004 the Dutch National Criminal Investigation Department also published an analysis of 'crime without frontiers', that is to say crime in eastern Europe and eastern European crime in the Netherlands, in which a far more circumspect tone is struck on the role that criminal groups from eastern Europe can or will play in organised crime in western Europe. In 1998 the journalist Nicolas Miletitsch wrote a book on organised crime in the Balkans that was also somewhat alarmist in its tone. According to him, in fact, organised crime poses a real threat to states in the Balkans – but it should not be forgotten that this conclusion is still subscribed to in European Union reports. Partly for this reason, it is unfortunate that few or no detailed and coherent analyses exist in relation to problems of organised crime in each of the countries concerned or in parts of the regions concerned. One of the exceptions is the book published in 2004 by Jim Finckenauer and Jennifer Schrock on the Ukraine.

¹⁷ The PACO reports and SPAI reports can be viewed on the Council of Europe website: <<http://www.coe.int/T/E>>.

¹⁸ The documents concerned with this can be viewed on the SEC website: <<http://www.secinet.org>>.

4. The Level of Individual States: Germany, Italy, the Netherlands, Belgium and the United Kingdom

The previous overview has made clear that the official reports on organised crime published by the Council of Europe and the European Union are very general and that similar reports produced at the regional level often leave the problem itself out of consideration. The journalistic and academic literature dealing with organised crime in Europe offers greater insight but does not fully make up for the great lack of in-depth knowledge that actually exists with regard to the problem.

Nor is this shortage made up for by the official reports and other sources of information produced by the individual European countries. The simple reason for this is that in many countries, for whatever reason it might be, reports are not regularly published on the nature, extent and development of organised crime. And where such reports are published, they differ widely. In the case of Germany, Italy and Belgium, for example, the investigations carried out represent the starting point, while in the United Kingdom the official organised crime report is merely a threat assessment. In its turn, in the Netherlands only a monitoring of the development of organised crime has been published in recent years, although preparations for the publication of a threat assessment have almost been completed. Consequently, it is not just impossible to compare the organised crime situation in the Member States of the European Union and the Council of Europe on the basis of the reports submitted to these two supranational agencies, but it is also virtually impossible to do so even for those European states that on their own initiative regularly publish more in-depth national reports. The only comparison that can be defended from a methodological point of view is that between the reports produced by the German, Italian and Belgian police authorities. In fact, these three national reports use the outcomes of criminal investigations as their point of departure.

Germany is the European country with the longest tradition in publishing annual reports on the organised crime situation within its borders. Since 1991 the Bundeskriminalamt (BKA) has been publishing *Lagebilder Organisierte Kriminalität* (Situation Reports on Organised Crime), or at least *Kurzfassungen* (Summaries) of these reports, the basis of which is formed by organised crime-related criminal investigations.¹⁹ The BKA reports provide a strong statistical picture of these investigations themselves, the suspects they were/are concerned with and the criminal activity undertaken by these individuals. The BKA stresses the fact that these reports say more about the efforts made by the German police in containing organised crime than about the nature, extent and development of organised crime. Nonetheless, the reports also contain significant information on the problem itself, as shown by Jörg Kinzig and Anna Luczak's chapter on organised crime in Germany

in this Part. An added value is also given by the fact that the BKA reports have been published for over a decade.

It also needs to be borne in mind that Germany is the country in Europe with the most extensive journalistic literature on organised crime. Dozens of journalistic books could be listed, the best-known of which are those of Dagobert Lindlau (1987), Werner Raith (1989) and Peter Scherer (1993). In recent years this has also become true for publications written from an academic standpoint. Examples of scholarly studies on organised crime are those of Christoph Mayerhofer and Jörg-Martin Jehle (1996), Norbert Pütter (1998), Thomas Schweer (2003) and, most recently, Jörg Kinzig (2004). A study that has meanwhile achieved classic status is that of Ulrich Sieber and Marion Bögel (1993).

The Italian Ministry of the Interior began to publish *Rapporti annuali sul fenomeno della criminalità organizzata* in 1993, though since then the reports have occasionally been published with considerable delay. The most recent report currently available for example concerns the year 2002.²⁰ Unlike their German counterparts, the Italian reports hardly contain overall statistical data but mainly provide qualitative analysis of the organised crime situation in the different Italian regions and, particularly, in southern Italy. Due to delays in the publication of the annual reports, a more updated view of the Italian organised crime situation can be drawn from the bi-annual reports of the Direzione Investigativa Antimafia (DIA), a police force specialised in fighting organised crime, established as part of the Italian Ministry of the Interior in December 1991. Though these reports primarily concern the DIA's activities and operative results, their first part usually illustrates the national organised crime situation on the basis of the investigations recently concluded by the DIA. Due to the poor cooperation among Italian police forces, however, the DIA reports do not take the investigations of the other Italian police agencies into account.²¹

Several hundreds of books and articles have been published since the late nineteenth century on the Italian and, particularly, the Sicilian mafia, which is often identified with organised crime itself. Strictly speaking, scientific research on the topic began in the 1960s with the seminal works of Henner Hess (1973) and Anton Blok (1974). These have been followed by numerous publications written primarily by Italian social scientists. To quote just a few of them among those that have appeared in English, one can mention the important works of Pino Arlacchi

¹⁹ These reports can be viewed on the BKA website: <<http://www.bka.de/Kriminalitaetsberichte/OK>>.

²⁰ These reports can be downloaded from the website of the Italian police: <<http://www.poliziadistato.it/pds/online/documentazione/dipartimento.htm>>.

²¹ The *Bi-Annual Reports on the DIA's Activities and Operative Results* can be downloaded from <http://www.interno.it/dip_ps/dia/semestrali.htm>.

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(1983, 1986) and later those of Christopher Duggan (1989), Diego Gambetta (1993) and, finally, the recent book of Letizia Paoli (2003). In addition, more and more journalistic books of all kinds have appeared right through to the present on the Italian mafia, such as those by Tom Behan (2000) and John Dickie (2004).

In the Netherlands, attempts have been made by the police since the late 1980s to survey organised crime by counting the criminal groups involved in this form of crime. However, studies carried out in 1995-1996 in the context of a parliamentary inquiry into special methods of investigation in relation to organised crime in the Netherlands sent this form of reporting in a totally different direction (see Fijnaut, Bovenkerk, Bruinsma and Van de Bunt, 1998). Since then, the Wetenschappelijk Onderzoek- en Documentatiecentrum (Research and Documentation Centre) has published a monitor every few years on the nature and development of organised crime in the Netherlands, which is chiefly based on a through analysis of an average of 40 criminal investigations (see Kleemans's contribution in this Part for more information). This monitor attempts not just to survey what various forms of organised crime – both in terms of illegal activities and in terms of people involved in it – are actually present in the Netherlands, but also to establish why organised crime takes on particular forms in the country and what national and international factors are behind them (Kleemans, Brienen and Van de Bunt, 2002).

In addition, a large quantity of other literature on organised crime has appeared in the Netherlands. On the one hand, there is a small circle of journalists who regularly publish on this subject. The doyen among these is without doubt Bart Middelburg (1998, 2002), who by now has a whole series of books on this topic to his name. On the other hand, all kinds of academic studies have appeared in recent years. One of the best-known authors is without doubt Frank Bovenkerk with studies, alone or together with others, on Colombian-Italian drug trafficking (1995), the Turkish mafia (together with Yeşilgöz, 1998) and cannabis production in the Netherlands (together with Hogewind, 2003).

The Belgian federal police began in 1997 to compile and publish annual reports on organised crime. The latest report they have issued is the *2003 Annual Report*, which relates to criminal investigations into organised crime in Belgium in 2002. Unlike the German and Italian reports, the police investigation findings about organised crime are presented according to a particular analytical pattern: the background factors influencing the nature, extent and development of this type of crime; the organisation, manning and operation of the criminal groups involved, the illegal markets and legal markets they are active in; the strategies they employ to screen and defend their illegal activities, and the impact of these groups and activities on Belgian society.²²

Alongside these informative official reports, there is some journalistic literature on organised crime in Belgium, though not as much as in the Netherlands (but see for example Cortebeek, 1994; De Pauw, 1998; and Bottamedi, 1997). However, academic research is very limited. In a sense, more has been written about the way

in which such research must be done than has actually been written in the way of research. One of the few general publications in which the overall problem of organised crime and the fight against it in Belgium is discussed is that of Fijnaut, Van Daele and Verbruggen (1998).

Remarkably enough, there is almost no academic literature on organised crime in the United Kingdom. Studies on this topic can be counted on the fingers of one hand (see for example Dorn, Murji and South, 1992). The splendid start made by Mary McIntosh (1975) on research in this field in the 1970s has not been emulated since. Journalism, on the other hand, has kept up its end. As well as the almost endless stream of somewhat nostalgic books on the empire run by the Kray twins in the mid-twentieth century (Fry, 2000), a large number of other books in this field have been published by journalists (see for example Molley, 1991). How peculiar this situation is becomes immediately clear on reading the *UK Threat Assessments. The Threat from Serious and Organised Crime*, which have been produced over the last few years by the National Criminal Intelligence Service (NCIS).²³ A rather threatening picture of the situation is painted. The 2003 report begins as follows:

Serious and organised criminals engage in a wide range of criminal activities. They are quick to adapt to opportunities and challenges, and take steps to extend their criminal businesses and protect their interests. The overall threat is high.

The activities then discussed include dealing in illegal drugs, trafficking of human beings, fraud, money laundering, illegal possession of weapons, sexual offences, armed assaults, organised theft of cars and lorries and environmental crime. It might be expected that such an identification of problems would lead to an upsurge in academic research on organised crime. For whatever reason, however, this has not happened. British criminology has nevertheless built up a certain tradition in the field of research on serious (professional) and economic crime, as well shown by the works of Dick Hobbs (1995a and 1995b) and Mike Levi (with Gold, 1994; 1999) respectively. Indeed, these criminal activities are increasingly considered part of organised crime and the selection of these topics and labels is indicative of a certain persistent uneasiness in the British academia with the very concept of organised crime (but see Hobbs, 1994 and Levi, 2002).

If we finally look at the literature (and restrict ourselves in the context of this publication to the literature in English!) in Europe on organised crime that is not associated in one way or another with one of the countries just discussed, it is

²² These reports are only available on request from the Federal Police. This is unfortunate, because they are among the best official reports to be produced in Europe.

²³ These reports have been published on the NCIS website: <<http://www.ncis.gov.uk>>.

noticeable that this is in general extremely sketchy. To our knowledge, there is only one exception to this: Russia. Since the break-up of the Soviet Union organised crime in Russia and the other post-Soviet countries has increasingly been the subject of journalistic and academic research. How could it not be? A superpower that disintegrates creates vacuums that are a paradise for criminal groups. How these vacuums are exploited has been described in recent years by Varese (2001) and Volkov (2002), among others. In addition, journalists have also written a great deal about organised crime in Russia (see, for example, Handelman, 1995; Roth, 1996; and Schmid, 1996).

5. Organised Crime in Europe: A Jigsaw Puzzle with Many Missing Pieces

At the start of this introduction it was pointed out how difficult it is to put together an in-depth picture of organised crime in Europe. The listing of the official sources of information and the scientific and grey literature given here makes it clear that this is no exaggeration. Anyone wishing to put together a proper picture is like someone who has to complete a jigsaw puzzle in which a large proportion of the pieces are missing or where not all the pieces at hand fit together. This naturally has the consequence that many puzzles can be completed with the available pieces, depending on the point of departure or the target aimed at: anyone can, so to speak, create their own puzzle as things stand. And this also happens in reality: pictures of the seriousness of the problem of organised crime in Europe differ widely. A group of experts might well succeed – by assembling all the existing data into a limited number of plausible pictures – in limiting this variation to some extent, but the uncertainty is bound to remain very high. Too much data is simply lacking on too many types of organised crime at too many levels.

In view of alleged threat of organised crime and the political relevance of this issue, it is important to ask how this is possible. Why do many Member States not produce thorough annual analyses of this problem? Why is not more research on organised crime in European regions carried out? Why are so few, if any, comparative studies conducted on organised criminal activities in the major European cities? Why does the assistance lent by a number of Member States to the preparation of analyses at Europol and the Council of Europe still leave much to be desired? Without a preliminary assessment it is hard to give well-founded answers to these questions. Without any doubt, however, these answers have to be sought in the widely different estimates of the European Union and Council of Europe Member States about the seriousness of their national organised crime problems, in the resulting different control policy priorities as well as in the different criminological research traditions and university research resources across Europe.

Whatever the precise answers to the above-mentioned questions are, it is clear that the blurred and sometimes controversial pictures of organised crime in Europe not only lead to great difficulties in formulating and implementing an effective control policy but they also create great confusion in public opinion on this issue. A coherent research programme on the nature, extent and development of organised crime would therefore have to form a significant part of a European strategy to contain this form of crime. It is only by following this route that it will be possible to plug the holes in our present-day picture of organised crime in a systematic way. And as stated at the outset, this is not a task to be given to isolated individuals. Only multi-national and multi-disciplinary research groups can carry out such a task with depth and authority.

Our initiative to ask a number of researchers in Europe to describe the situation in their own countries on the basis of one and the same research protocol is no more than a first, albeit significant, step in this direction. It is significant because greater insight can be gained through these analyses at the level of the single European state into the specific manifestations of organised crime on their territory and also into the public and academic discussion under way. And anyone who compares the analyses presented here with the reports produced by the Council of Europe and the European Union will see immediately how much more colourful, but also more complicated the situation in Europe is in this field than the official reports tend to suggest. But this study too is only a first step. In future studies a larger number of European countries need to be involved and more attention needs to be paid to cross-border and international dimensions in the illegal activities organised by criminal groups and gangs.

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Organised Crime in Italy: Mafia and Illegal Markets – Exception and Normality

Letizia Paoli

1. Introduction

In Europe and elsewhere, southern Italian mafia organisations have long been considered a paradigm of organised crime or *tout court* identified with it. In the core sections of this article (4 and 5), the specificities of the southern Italian mafia phenomenon are singled out and the other protagonists of organised crime active in the country are briefly described. (The comparative synthesis at the end of this Part will show that the Italian mafia is an inadequate paradigm for what is today understood as organised crime in Europe.) Before analysing Italian mafia organisations and other criminal groups, the second and third sections of the article briefly reconstruct the Italian discourse on organised crime and review official sources of information.

Following the two bulk sections on the main manifestations of organised crime in Italy, the sixth section briefly presents some estimates and the key protagonists of Italy's illegal markets, showing their normality *vis-à-vis* other illegal markets in Europe. The seventh and eighth sections single out two further specificities of Italian mafia organisations: namely, their extensive infiltration of the legitimate economy and the political sphere. Some concluding remarks follow.

2. The Public and Scientific Discourse about the Mafia: Four Key Concepts

To a larger extent than in any other European country, organised crime has been a relevant topic of the public and scientific discourse in Italy since the mid-nineteenth century. True, the expression '*criminalità organizzata*' (organised crime) became common only in the last 40 years of the twentieth century and is still nowhere precisely defined in the Italian legislation. Since the unification of the country in 1861, however, the government crime policies have been based on the assumption of the existence of stable criminal organisations in southern Italy and, particularly, in Sicily. Since then the criminal groups of the latter region, collectively labelled as mafia, have been most intensively focused on by the Italian media, public opinion and government authorities and have been considered an ideal-type of delinquent

association and, later on, of organised crime itself (see Paoli, 1997: ch. 1, [2000] 2003b).

The association of the mafia with organised crime has not gone unchallenged. At least three main other conceptualisations of the mafia have been proposed and have at different times dominated public or scientific debate. These three other understandings of mafia can be referred to with the keywords of ‘secret society’, ‘individual attitude and behaviour’ and ‘enterprise’ and will be synthetically reviewed here together with the fourth identifying mafia with a criminal organisation.

2.1. Secret Society

The idea that Sicily was home to a well organised and powerful secret society called ‘Mafia’ began to be circulated by the media right after country unification in 1861 (see Fulvetti’s report in Part I). This conceptualisation found great impulse in the publication – first in 1908-09 in instalments on a Palermitan newspaper and successively as a book – of the novel *I Beati Paoli*, which was written by Luigi Natoli under the pseudonym of William Galt (Natoli, [1908-09] 1993). The plot, which drew from rich folk material, was about a secret sect – the *Beati Paoli* – active in the early eighteenth century, which administered justice in a situation of weakness and corruption of public authorities, a sort of collective Robin Hood that opposed short-sighted legalistic conceptions and avenged the sufferings of oppressed people (Eco, [1971] 1993). Natoli’s novel obtained enormous success and was read by all social classes from the aristocracy to the landless peasants (La Duca, [1971] 1993). In Sicily the *Beati Paoli* came to be seen – both in the popular imagination and in the ideology of mafia groups – as a proto-manifestation of the mafia.

In other re-elaborations of this image, the mafia was likewise presented as an almighty, invincible, secret society but its legitimacy was either questioned or denied. The spread of this view was primarily the result of the activities of ‘moral entrepreneurs’, who published newspaper articles and romanticised reports on the mafia. From the late nineteenth century, the latter heedlessly mixed popular legends and ethnic stereotypes with information drawn from mafia criminal cases, their only aim being the satisfaction of public curiosity on such an intriguing theme. In the 1890s and again in the fascist era, for example, the *Giornale di Sicilia* regularly held a column on mafia criminal proceedings. Popular criminal cases were also summarised and simplified in serialised novels. For the Amoroso case, one of the most important proceedings held at the end of the nineteenth century, the *Giornale di Sicilia* also published the official court hearings in special issues (Hess, [1970] 1973: 96-7). Moreover, the events disclosed in that case were re-elaborated in a thrilling and sentimental novel published under the title of *La Cavalleria di Porta Montalto o La Mafia Siciliana (The Cavalry of Porta Montalto or the Sicilian Mafia; Scalici, 1885)*.

2.2. Criminal Association

The view of the mafia as a powerful secret society was occasionally exploited by law enforcement agencies to give empirical content to the official definition of mafia. In the official discourse of the late nineteenth century and early twentieth century, in fact, this was mostly identified with the associational offences defined by the Italian penal code, thus losing its geographical and social peculiarities. During the rule of the so-called 'Historical Right' (1860-76), for example, the term 'mafia' was virtually used as a synonym of *associazione di malfattori* (that is, association of evildoers), which was the offence inherited from the Piedmontese Penal Code and allowed for summary imprisonment. Depending on the political influences at work and the priorities of public order, the label of mafia could thus be applied to very different social manifestations, ranging from movements of political opposition to peasant revolts, from union unrest to terrorist groups (Pezzino, 1987: 913 ff.; Brancato, [1972] 1986: 128-30).

The understanding of the mafia as a criminal association exempt of any cultural legitimacy became once again dominant during the fascist regime. As Cesare Mori, the 'Iron Prefect' in charge of mafia repression in the 1920s, wrote, 'whatever form it takes and however it acts, the mafia, by its very nature, constitutes [...] the typical configuration (*la figura tipica*) of the criminal association' ([1932] 1993: 32). This concept was officially stated in the 1930 Fascist Penal Code. This defined anew the offence of *associazione per delinquere* (criminal association) that had been introduced by the first unitary Penal Code (Art. 248) in 1889. Rarely used in the liberal age, the offence of criminal association became a centre-pillar of the repression of the mafia carried out by the fascist regime. Given its indefiniteness and ductility, the new Article 416¹ allowed law enforcement agencies to prosecute individuals not charged with specific crimes, but who could be arrested and convicted simply on the grounds of being mafiosi (Ingroia, 1993: 12-13). Criminal association, in fact, constituted a sort of permanent offence and suspects could be arrested and held as if they had been caught in the act (*in flagrante*) (see Mori, 1993: 314).

However, for the same reasons Article 416 was rarely or unsuccessfully applied after the restoration of the democratic regime in 1945. Since then courts and legal scholars maintained that the guilt of each defendant could no longer be automatically deduced from the conceptualisation of mafia as a criminal association but had to be proved in each single case. As a result of these higher standards, anti-mafia

¹ In the first two paragraphs still valid nowadays, Article 416 states: 'When two or three people associate in order to commit several crimes, those that promote or establish or organise the association are punished, only for this, with imprisonment from three to seven years. For the mere membership of the association, the penalty is from one to five years'.

investigations charging this provision usually ended up with the acquittal of most defendants for insufficiency of proof in later court verdicts (Turone, 1984: 3-31; Ingroia, 1993: 10-54).

In September 1982, under the pressure of a series of murders of high-ranking state officials in Sicily, Article 416*bis* was added to the Italian Penal Code. This can be seen as the culmination of a strand of discourse that has been fostered by large parts of the law enforcement community since Italy's unification: namely, the idea of the mafia as a criminal association. At the same time, however, by transforming a meta-juridical concept – that of mafia – into a juridical category, the new provision specified and restricted such a claim and defined with precision what was meant by *associazione a delinquere di tipo mafioso*. The new bill integrated proposals of the communist member of Parliament Pio La Torre, who had been murdered by Sicilian mafiosi in early 1982, and rulings of the Corte di Cassazione and is therefore usually called the La Torre Act. According to Article 416*bis*, a mafia-type delinquent association consists of three or more persons, and

those who belong to it make use of the power of intimidation afforded by the associative bond and the state of subjugation and criminal silence (*omertà*) which derives from it to commit crimes, to acquire directly or indirectly the management or control of economic activities, concessions, authorisations or public contracts and services, either to gain unjust profits or advantages for themselves or for others, or to prevent or obstruct the free exercise of the vote, or to procure votes for themselves or for others at a time of electoral consultation.²

The mafia was thus defined as a criminal organisation of a specific type and the applicability of the related penal provisions was restricted, putting an end to the tradition of elasticity and arbitrariness that had so long characterised anti-mafia law enforcement action. With its references to the concepts of mafia and *omertà*, in fact, Article 416*bis* can hardly be exported outside the southern Italian context. However, the wording chosen by Italian law-makers is somewhat vaguer. The last paragraph of Article 416*bis* states: 'the dispositions of the present article apply also to the camorra and other criminal associations whatever their local name, pursuing aims similar to those of mafia-type delinquent associations by exploiting the power of intimidation afforded by the associative bond'.

² The last clause concerning the exercise of vote was added in 1992, after the *Mani Pulite* (Clean Hands) investigations of the early 1990s had revealed extensive corruption networks including mafia members (Barbacetto, Gomez and Travaglio, 2002).

2.3. Individual Attitude and Behaviour

Since the late nineteenth century the association of the mafia with a criminal organisation was challenged by the ‘Sicilianist’ movement with a fair degree of success. This was a cultural and political movement that was promoted by Sicily’s ruling strata and developed in order to oppose what was perceived as an indiscriminate criminalisation of all Sicilians by the Italian law enforcement apparatus and Italian public opinion as a whole (Marino, 1988; Pezzino, 1990). In the eyes of the *sicilianisti*, the mafia was merely an attitude, the product of a particularly fierce Sicilian reaction to the foreign powers, which had dominated the island for centuries (see Giuseppe Pitrè’s famous definition of the mafia in Fulvetti’s chapter on the history of organised crime in Italy in Part I).

The Sicilianist view of the mafia deeply influenced the social scientists carrying out the first field studies in Sicily between the 1960s and the early 1980s. For them the mafia was simply a sub-cultural attitude as well as a form of behaviour and power. That is, they asserted, there were mafiosi, single individuals, who embodied determined sub-cultural values and exercised specific functions within their communities, but no mafia organisation existed as such (Hess, 1973; Blok, [1974] 1988; Schneider and Schneider, 1976). Still in 1983, Pino Arlacchi’s successful book, *La mafia imprenditrice (Mafia Business)*, opened with the following statement: ‘Social research into the question of the mafia has probably now reached the point where we can say that the mafia, as the term is *commonly* understood, does not exist’ ([1983] 1988: 3, emphasis in the original; see also Catanzaro, [1991] 1992).

Whereas the strictly non-corporate view of the mafia held by this first generation of scholars looks today outdated, the systematic analysis of the social and economic conditions that favoured the development of the mafia – as Henner Hess calls it, ‘the phylogenesis’ of mafia power (1973: 43) – constitute the most durable part of their works. Later historical research has however proved that mafia methods were spread not only in the large estates of the Sicilian inland but also in the so-called ‘golden valley’ (Conca d’Oro) of fertile citrus groves surrounding Palermo, where ownership was scattered and intensive agriculture the norm (Lupo, 1993).

2.4. Enterprise

From the mid-1980s on, when judicial investigations started to provide clear and solid proof of the existence of well-structured mafia groups, attention shifted towards the entrepreneurial features of mafia actors. Contrasting the ‘culturalist’ view more or less openly, the mafia was conceptualised as an enterprise and its economic activities became the focus of academic analyses.

The new paradigm was established in the early 1980s by Arlacchi, who was the first scholar to talk about the ‘entrepreneurial mafia’, highlighting the mafiosi’s growing involvement in licit and illicit economic activities (1988). As shown in

the introduction to Part I, this economic conceptualisation of the mafia dominated the scientific debate until the early 1990s. Most scholars pursuing this approach, however, tended to deny Arlacchi's idea of 'entrepreneurial transformation' of mafia groups, usually ascribing a primarily economic-oriented behaviour even to traditional mafiosi and neglecting the impact of traditional imprinting on the behaviour of contemporary mafia entrepreneurs. Thus, in this latter work, traditional mafiosi have been identified *tout court* with the few figures who showed a clearly modern acquisitive attitude in the traditional economic and social system of western Sicily and southern Calabria and presented as the true expression of the local bourgeoisie. In their turn, contemporary mafia groups have been assimilated into the model of legal business firms (Catanzaro, 1992; Santino, 1988; Santino and La Fiura, 1990; Pezzino, 1993; 1987; 1988; Recupero, 1987; Lupo, 1988; 1993; Pizzorno, 1987; for the shortcomings of this interpretation, see the introduction to Part I).

A variant of the long dominant enterprise approach was proposed in the early 1990s by Diego Gambetta. According to him, the mafia must be seen as 'a specific economic enterprise, an industry which produces, promotes, and sells private protection' (1993: 1). By shifting attention away from traditional licit and illicit entrepreneurial activities, Gambetta's work points to one of the most important functions historically played by Sicilian and Calabrian mafia groups and paves the way for a reassessment of the political dimension of mafia associations. His interpretation was, however, criticised for his one-sided emphasis on protection, which can be justified only by a very selective reading of past and present sources (Nelken, 1995; Paoli, 2003b).

2.5. Towards the Development of a New Paradigm?

Drawing from Gambetta's contribution, more recent analyses have focused on the political dimension of mafia power (Santino, 1994; Paoli, 2003b; Santoro, 1998, 2000). Emphasised by mafia defectors, the cultural codes and symbols that constitute the canopy of mafia apparatus of legitimation, have also been investigated anew (Siebert, 1994; Di Lorenzo, 1996; Di Maria and Lavanco, 1995; Dino, 1998; Paoli, 2003b; see *infra*). Codes and symbols are however no longer seen as attributes of single individuals, as was the case in the first pioneering studies carried out by foreign scholars in the 1960s and 1970s, but as means employed by mafia groups to build their own collective identity and legitimise their power. This shift is due to the incorporation, with five to ten years of delay, of the findings of police and judicial investigations into scientific reflection on the mafia. Since the mid-1980s, in fact, these have proved beyond any reasonable doubt the existence of two large and structured mafia organisations in Sicily and Calabria – Cosa Nostra and the 'Ndrangheta – and a variety of more ephemeral mafia and pseudo-mafia groups in several parts of southern Italy.

3. The Official Sources of Information

Since the late nineteenth century the Italian Parliament has set several *ad hoc* committees of inquiry to investigate the problems of public order and the mafia, first in Sicily and later on in the whole of southern Italy. The first commission of inquiry was established five years after Italy's unification, in 1866 (Pezzino, 1987). However, parliamentary interest in the mafia has by no means been constant. On the contrary, it usually rose when public unrest and sensational mafia murders attracted national attention to the mafia problem or when government agencies – on their own initiative or, more frequently, reacting to serious crimes – staged large repressive campaigns in Sicily and other regions of the Italian Mezzogiorno (literally Middy, a term used to refer to southern Italy).

3.1. The Commissione Parlamentare Antimafia and Other Committees of Inquiry

Reflecting the popularity of the different conceptualisations of the mafia sketched in the previous section, sudden turns have also characterised public and political discourse on the mafia in the decades following the end of the Second World War. Despite the precise reports made by some left-wing politicians, during the 1950s and early 1960s national public opinion and even government and parliamentary bodies showed only a very limited awareness of the mafia phenomenon. The word 'mafia' hardly ever appeared in Italian newspapers, and a dismissive attitude was widespread among law enforcement officers (with very few exceptions), journalists, and politicians.

Following the bomb explosion on the outskirts of Palermo in June 1963, which killed seven policemen, the Parliamentary Commission to Investigate the Mafia Phenomenon in Sicily finally managed to get off the ground. It had been created for the first time in 1962, after 15 years of unsuccessful requests by communist and socialist members of Parliament. Two days after formally installing the commission, however, the Parliament was dismissed, and this bicameral committee would probably not have been re-established if the explosion had not drawn the attention of national public opinion to the problem of the mafia in Sicily (CPMS, 1976: 3-39; Barrese, 1988: 5-54).

After publishing its final report in 1976 (CPMS, 1976), the parliamentary body was re-established in the 1980s under the new name of Commissione parlamentare d'inchiesta sul fenomeno della mafia e altre associazioni similari and has since then de facto become a standing committee of the Italian Parliament. As the new name shows, the committee's competences have been extended to include other mafia-type criminal groups outside of Sicily.

Notwithstanding its quasi-permanent status, the quality and quantity of the activities and products of the so-called Commissione parlamentare antimafia have

been far from homogenous. On the contrary, they closely depend not only on the degree of attention granted by the national public opinion to the mafia problem but also on the committee's political composition and the alacrity of its president. Informative reports and courageous denunciations were produced especially under the chairmanships of Gerardo Chiaromonte in the late 1980s (see for example, CPM, 1988 and 1989) and, even more so, of Luciano Violante in the early 1990s.

Under the latter's chairmanship during the eleventh legislature (1992-1994), the Commissione parlamentare antimafia heard several important mafia defectors, making their hearings available to the general public (CPM, 1992a, 1992b, 1992c and 1993a), and published numerous reports, after conducting field visits in several parts of Italy and hearing numerous law enforcement and other government representatives and anti-mafia activists (1993c, 1993d, 1994a and 1994b). In 1993 the committee even published a report on 'mafia and politics' (CPM, 1993b), which was the first official document to recognise the relationship existing between the Sicilian mafia and vast sectors of the political and institutional establishment. Reflecting the ebbing interest in the mafia, the parliamentary anti-mafia committees of the following three legislatures have been much less active and supportive of anti-mafia law enforcement action (see for example, CPM, 2001; CPCO, 2003).³

Information on mafia infiltration in the legitimate economy and the political sphere can also occasionally be drawn from the hearings and reports of other parliamentary committees of inquiry installed to investigate specific topics of interest. Among the most relevant are there the so-called Commissioni Sindona (1982) and P2 (1984). The first investigated the false kidnapping and murder of the Sicilian financier Michele Sindona, who granted his services to both high-ranking Italian politicians and Sicilian *capimafia*. The second tried to reconstruct the composition and activities of the secret Freemason lodge P2, which in the 1970s and early 1980s brought together politicians, civil servants, entrepreneurs and members of Sicilian and Calabrian mafia organisations. More recently, since the mid-1990s a bi-cameral committee investigating the 'waste cycle' and its related illicit activities has also been active, producing reports on waste disposal in each of the largest southern Italian regions and on the so-called *ecomafie* (i.e. mafia and criminal groups involved in waste disposal) (CPR, 2000b; 2003).⁴

³ The reports of the Commissione parlamentare antimafia of the thirteenth and fourteenth legislature can be downloaded from: <<http://www.parlamento.it/Bicamerale/1/13/sommario.htm>>.

⁴ The reports of the Commissione parlamentare d'inchiesta sul ciclo dei rifiuti e sulle attività illecite ad esso connesse active in the thirteen and fourteen legislatures can be downloaded from: <http://www.camera.it/_bicamerale/1/14/riporti/13/13_rifiuti/home.htm>.

3.2. The Ministry of the Interior and the DIA

Since the early 1990s other state bodies have joined the Commissione parlamentare antimafia in regularly publishing information on organised crime in Italy. The Italian Ministry of the Interior began to produce *Rapporti annuali sul fenomeno della criminalità organizzata* in 1993, though since then the reports have occasionally been published with considerable delay. The most recent report currently available for example concerns the year 2002.⁵ The reports provide qualitative analyses of the organised crime situation in the different Italian regions and, particularly, in southern Italy. More general information on crime and its control can also be drawn from the *Rapporti sullo stato della sicurezza* in Italia, which are published by the Ministry of the Interior more regularly.⁶

Since 1992 bi-annual reports on organised crime are also published by the Direzione Investigativa Antimafia (DIA), a police force specialised in fighting organised crime, established as part of the Italian Ministry of the Interior in December 1991. Though these reports primarily concern the DIA's activities and operative results, their first part usually illustrates the national organised crime situation on the basis of the investigations recently concluded by the DIA. Due to the poor cooperation among Italian police forces, however, the DIA reports do not take the investigations of the other Italian police agencies into account.⁷

Official sources of information complement a huge amount of journalistic and scientific literature on the mafia, which has grown at a very rapid pace especially since the mid-1980s. Due to its vast volume, this literature cannot in any way be reviewed here. The key scientific studies, which have had a lasting impact on the understanding of the mafia phenomenon, have however been mentioned in the previous section as well as in the introductions to Part I and II.

⁵ These reports can be downloaded from the website of the Italian police: <<http://www.poliziadistato.it/pds/online/documentazione/dipartimento.htm>>.

⁶ These reports can also be downloaded from the website mentioned in the previous note.

⁷ The *Bi-Annual Reports on the DIA's Activities and Operative Results* can be downloaded from <http://www.interno.it/dip_ps/dia/semestrali.htm>.

4. The Peculiarity of the Italian Mafia: Cosa Nostra and the 'Ndrangheta

Contrary to what most scholars maintained up to the early 1980s, judicial inquiries carried out since then have proved that formalised mafia groups do exist. Cosa Nostra (Our Thing) in Sicily and the 'Ndrangheta (Society of Men of Honour) in Calabria are the largest and most stable coalitions and are each composed of about 100 mafia groups. Their members are estimated at about 3,000 and 5,000 males respectively.

Though it is not possible to establish clear lines of continuity, recent historical research has demonstrated that antecedents of the contemporary mafia associations existed in the 1880s, if not before. The discovery of new documents in archives and a more objective analysis of the already known papers have demonstrated the presence of mafia groups in Sicily and Calabria since the mid-nineteenth century. As the historian Paolo Pezzino puts it, 'if it is true that these sources have to be examined with great prudence, it is also true that the statements on the existence of well structured associations are so many, and finding confirmation in several judicial proceedings, that it would be difficult to deny their reliability' (1987: 954; for a similar opinion see Lupo, 1988).

4.1. Secret Brotherhoods

Cosa Nostra and the 'Ndrangheta possess the distinguishing trait of organisations (Weber [1922] 1978: 48): independent government bodies that regulate the internal life of each associated family and that are clearly different from the authority structure of their members' biological families. Starting from the 1950s, moreover, super-ordinate bodies of coordination were set up – first in the Cosa Nostra, then in the 'Ndrangheta as well. Composed of the most important family chiefs, they are known as 'commissions'. Although the powers of these collegial bodies are rather limited, the unity of the two confederations cannot be doubted. In fact, it is guaranteed by the sharing of common cultural codes and a single organisational formula. According to a model very frequent in pre-modern societies, in fact, the Cosa Nostra and the 'Ndrangheta are segmentary societies (Smith, 1974: 98): that is, they depend on what Emile Durkheim called 'mechanical solidarity' ([1893] 1964: 176-7), which derives from the replication of corporate and cultural forms.

The unity of Cosa Nostra and the 'Ndrangheta is underlined by contemporary mafia defectors. Although they recall the greater autonomy enjoyed by single mafia families before the establishment of superior bodies of coordination, they emphasise the idea that each family belongs to a larger whole; indeed, they take it virtually for granted. 'Substantially', a former member of a Palermitan mafia family recalls, 'Cosa Nostra, as the phrase itself states, is a single and unitary organisation [...] I am therefore staggered by reading in newspapers that there is somebody who

still doubts this elementary truth that each of us learns the moment he enters the organisation' (TrPA, 1989: 63).

Neither the Cosa Nostra nor the 'Ndrangheta can be assimilated to Max Weber's ideal type of legal-rational bureaucracy, as was suggested by Donald Cressey in the late 1960s with reference to the American La Cosa Nostra (1969). Far from recruiting their staff and organising the latter's work according to the criteria and procedures of modern bureaucracies, mafia groups impose a veritable 'status contract' on their members (Weber, 1978: 672). With the ritual initiation into a mafia *cosca* (i.e. group), the novice is required to assume a new identity permanently – to become a 'man of honour' – and to subordinate all his previous allegiances to the mafia membership. If necessary, he must be ready to sacrifice even his life for the mafia family. The Catania witness Antonino Calderone, for instance, recalls that during his own affiliation he was told that 'Cosa Nostra [...] comes before everything. It comes before your father and your mother. And before your wife and your children' (Arlacchi, [1992] 1993: 68).

The 'men of honour' in Sicily and Calabria are obliged to keep secret the composition, the action, and the strategies of their mafia group. In Cosa Nostra, in particular, the duty of silence is absolute. Secrecy constitutes, above all, a defence strategy. Since the unification of Italy in 1861 mafia groups have been at least formally criminalised by the state and, in order to protect themselves from arrest and criminal prosecution for their continuing recourse to violence, they have needed to resort to various degrees of secrecy.

The ceremony of affiliation additionally creates ritual ties of brotherhood among the members of a mafia family: the 'status contract' is simultaneously an act of fraternisation (Weber, 1978: 672). The new recruits become 'brothers' to all members and share what anthropologists call a regime of generalised reciprocity (Sahlins, 1972: 193-200): this presupposes altruistic behaviour without expecting any short-term reward. As F. Lestingi, chief prosecutor for the king, pointed out in 1884, mafia groups constitute brotherhoods whose 'essential character' lies in 'mutual aid without limits and without measure, and even in crimes' (1884: 453). Only thanks to the trust and solidarity created by fraternisation contracts does it become possible to achieve specific goals and thus satisfy the instrumental needs of the single members.

As secret brotherhoods using violence, southern Italian mafia associations have remarkable similarities to associations such as the Chinese Triads and the Japanese Yakuza (Murray, 1994; Kaplan, 2003). With their centuries-old histories, articulated structures, and sophisticated ritual and symbolic apparatuses, all these associations – and the American descendant of the Sicilian Cosa Nostra – have few parallels in the world of organised crime. None of the other groups that systematically traffic in illegal commodities have the same degree of complexity and longevity (Paoli, 2002).

4.2. The Will to Power

Cosa Nostra and the 'Ndrangheta share another important peculiarity with the Chinese Triads and the Japanese Yakuza. Unlike other contemporary organised crime groups, they do not content themselves with producing and selling illegal goods and services. Though these activities have acquired an increasing relevance over the past 30 years, neither the trade in illegal commodities nor the maximisation of profits has ever been the primary goal of these associations.

As a matter of fact, at least in the case of southern Italian mafia coalitions, it is hardly possible to identify a single goal. They are multifunctional organisations. In the past 100 years, their members have exploited the strength of mafia bonds to pursue various endeavours and to accomplish the most disparate tasks. Already in 1876 the Tuscan aristocrat Leopoldo Franchetti pointed out the 'extraordinary elasticity' of the Sicilian associations of *malfattori* (evildoers): 'the goals multiply, the field of action widens, without the need to multiply the statutes; the association divides for certain goals, remains united for others' ([1876] 1993: 100).

Among these tasks the exercise of political domination has always been pre-eminent. The ruling bodies of Cosa Nostra and the 'Ndrangheta claim, above all, an absolute power over their members. They control every aspect of their members' lives, and they aim to exercise a similar power over the communities where their members reside. For a long time their power had a higher degree of effectiveness and legitimacy than that exercised by the state. In western Sicily and in southern Calabria mafia associations successfully policed the general population, settling conflicts, recovering stolen goods, and enforcing property rights.

As late as 1955, the complementary nature of mafia and state power was acknowledged by one of Italy's most influential magistrates. When Calogero Vizzini, an important *capomafia* died, the chief prosecutor in the Corte di Cassazione, Giuseppe Guido Lo Schiavo, wrote,

It has been said that the mafia despises the police and the judiciary, but this is incorrect. The mafia has always had respect for the judiciary and for justice, it has accepted its sentences, and has not obstructed judges in their work. In the pursuit of bandits and outlaws it even sided with the forces of law and order [...] Today, we hear the name of an authoritative successor in the position held by don Calogero Vizzini in the secret consortium. May his action aim to the respect of state laws and to the social improvement of all (1955).

Even today, although most of mafia rules are no longer systematically enforced, mafia families exercise a certain 'sovereignty' through a generalised system of extortion. As a state would do, they tax the main productive activities carried out within their territory (Paoli, 2003b: 154-72). Moreover, whenever mafiosi are asked to mediate conflicts, guarantee property rights and enforce rules compatible with

their own legal order, they do not hesitate to intervene. Despite the much-discussed transformation of the mafia to entrepreneurial activities, contemporary 'men of honour' still take these duties seriously. This point for example is clearly emphasised by Giovanni Brusca, the man who was supposed to become Toto Riina's successor in Cosa Nostra leadership, but who in fact became a mafia witness after his arrest in 1994. Brusca has recounted that he 'helped lots of people recover their cars'. If the stolen vehicle had already been taken apart, his men would steal another that was the same model and colour, in order to satisfy whoever had asked for Cosa Nostra's help (Lodato, 1999: 73).

The political dimension of mafia power is also proved by the fact that in the second half of the twentieth century southern Italy's mafia associations have participated in at least three plots organised by right-wing terrorist groups. Moreover, since the late 1970s Cosa Nostra has assassinated dozens of policemen, magistrates, and politicians. The mafia challenge to state power reached a climax in the early 1990s. In 1992, Cosa Nostra murdered the Palermitan Judges Giovanni Falcone and Paolo Borsellino in two spectacular bomb explosions. In 1993, in an effort to demonstrate the national power of the mafia, a series of terrorist bombings occurred – for the first time out of traditional mafia strongholds – in Rome, Florence, and Milan (Stille, 1995).

4.3. The Incomplete Entrepreneurial Transformation

Despite their power, mafia fraternities have not been able to guarantee themselves a monopoly in any sector of the illegal economy outside of southern Italy. In the early 1980s, Cosa Nostra families played a pivotal role in the transcontinental heroin trade from Asia to the United States via Sicily. But in the second half of that decade, the Cosa Nostra lost this position after being targeted by law-enforcement investigations and replaced in the United States market by a plethora of Mexican, Chinese, and, more recently, Colombian heroin suppliers (Paoli, 2003b: 215-16).

In the case of Cosa Nostra, its power is not unchallenged even within its strongholds. Given the extreme rigidity of their recruitment policies, in fact, Cosa Nostra families often find themselves in a minority position with their local competitors and are hence unable to control the whole underworld. This difficulty was admitted even by Giovanni Brusca:

Many believe that Cosa Nostra heads all criminal activities. That in Palermo or in Sicily every illegal activity is controlled by the mafiosi. People believe that prostitution and burglaries, bank robberies, and car thefts are all entries in the budget of the Mafia Inc. Those that I have just listed are external activities, known about, tolerated, and controlled by men of honour. But they are separate worlds, which only rarely come into contact with each

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other. In some cases, there might be some collaboration, but this is only in very special cases (Lodato, 1999: 67).

Despite the growing relevance of economic activities, ‘the mafia has not become a set of criminal *enterprises*’ (Becchi and Turvani, 1993: 156). Its history as well as its cultural and normative apparatus prevent this transformation and today constitute a constraint as much as a resource. By building a strong collective identity, shared cultural codes and norms enhance group cohesion and create trustful relationships among mafia members. The reliance on status and fraternisation contracts, which are non-specific and long-term, produces a high degree of flexibility and makes the multi-functionality of mafia groups possible. The same shared cultural codes and norms also represent, however, a powerful brake on entrepreneurial initiative. The prohibition on exploiting prostitution, for example, which exists in both confederations (Falcone, [1991] 1993: 115), has blocked the entrance of the Sicilian and Calabrian mafia groups into what has become one of the most profitable illicit trades: the smuggling of humans and the exploitation of migrants in the sex industry.

Especially constraining is one of the preconditions for recruitment: only men born either in Sicily or in Calabria or descending from mafia families can be admitted as members. This rule has long prevented Cosa Nostra and ’Ndrangheta families from adding new members with the experience necessary to compete in the black markets for arms, money, and gold. Rigid recruitment criteria have also hampered the geographical expansion of mafia power. Cosa Nostra, for example, prohibits settling families outside of Sicily. This self-imposed rule, which aims to strengthen the cohesion of the mafia consortium, has limited its involvement in the international narcotics trade – currently the largest of the illegal markets. ’Ndrangheta families, thanks to their extensive branches in northern Italy and abroad, played a larger role in narcotics trafficking in the 1990s, importing large quantities of cocaine and hashish from Latin America and North Africa; today, however, the ’Ndrangheta faces new competition from foreign and Italian traffickers with more direct connections to drug-producing and transit countries (Paoli, 2003b: 217).

The ‘will to power’ of the mafia associations also negatively affects security and business decisions, as a leading Palermitan prosecutor pointed out in 1992:

The true goal is power. The obscure evil of organisation chiefs is not the thirst for money, but the thirst for power. The most important fugitives could enjoy a luxurious life abroad until the end of their days. Instead they remain in Palermo, hunted, in danger of being caught or being killed by internal dissidents, in order to prevent the loss of their territorial control and not run the risk of being deposed. Marino Mannoia [a former mafia member now cooperating with law enforcement authorities] once told me: ‘Many believe that you enter into Cosa Nostra for money. This is only part of the truth.

Do you know why I entered Cosa Nostra? Because before in Palermo I was Mr. Nobody. Afterwards, wherever I went, heads lowered. And to me this is priceless' (Scarpinato, 1992: 45).

As a result, since the early 1990s Cosa Nostra and 'Ndrangheta families have extracted a growing percentage of their income from entrepreneurial activities that depend on the exercise of regional political domination. They practice systematic extortion in their communities and, thanks to intimidation and collusion with corrupt politicians, they have struggled to control the market for public works (see *infra*).

Unlike other western forms of organised crime, the meaning (and danger) of Sicilian and Calabrian mafia associations cannot be limited to their involvement in illegal markets. Their peculiarity lies in their will to exercise political power and their interest in exercising sovereign control over the people in their communities.

5. Other Forms of Organised Crime in Italy

In addition to the Sicilian Cosa Nostra and the Calabrian 'Ndrangheta, two other clusters of crime groups are usually referred to as organised crime in Italy: 1) the 'galaxy' of mafia-like and gangster-like groupings in Campania, collectively known as camorra and 2) the multiplicity of criminal groups, gangs and white-collar criminal networks operating in Apulia.

5.1. The Camorra

The camorra consists in a variety of independent criminal groups and gangs. Some of them are well-established family businesses that, as much as Sicilian and Calabrian mafia groups, claim to exercise a political dominion over their neighbourhoods and villages and systematically infiltrate local government institutions, at some point enjoying the protection of high-level national politicians as well. Other camorra groups are less lasting formations that have developed around a charismatic chief, usually a successful gangster. Finally, there are also loose gangs of juvenile and adult offenders, which – according to police sources – rather belong to the sphere of common crime than to that of organised crime (Ministero dell'Interno, 2001a: 60-5).

To strengthen their legitimacy and cohesion, many of the above groups frequently resort to the symbols and rituals of the nineteenth-century camorra. This was an organisation sharing several cultural and organisational similarities with its Sicilian and Calabrian counterparts, though it distinguished itself on its concentration in the city of Naples, the capital of the region Campania, and its plebeian background.

Unlike Cosa Nostra and the 'Ndrangheta, however, the contemporary Campanian underworld does not directly derive from its nineteenth-century forerunner. As Isaia Sales puts it, 'if camorra means a criminal organisation that ruled over Naples' popular and plebeian strata, we can safely say that it started and ended in the nineteenth-century' (2001: 468).

The camorra was 'born again' in the 1960s thanks to the expansion of smuggling in tobacco and later, in drugs. In the 1980s, several camorra groups and short-lasting coalitions of groups (above all, the Nuova Camorra Organizzata and the Nuova Famiglia) then gained great wealth and power with the appropriation of the public money flows invested in Campania after the earthquake of 1980 (Sales, 1993; Monzini, 1999). Despite their extensive infiltration of the legitimate economy and the public administration, however, contemporary camorra groups have not succeeded in establishing stable coordination mechanisms such as those of the nineteenth-century camorra or of the Sicilian and Calabrian mafia associations. As a result, Campania has had the highest rate of murders and violent crime in all of Italy for more than a decade.

The heterogeneity and anarchy of the Campanian underworld is also proved by the great variety of entrepreneurial activities the local crime groups are involved in. The most powerful camorra clans are still able to condition the local legitimate economy, despite the devastating investigations conducted by law enforcement agencies in the 1990s. The smaller groups and gangs engage in all sorts of illegal activities – from extortion to fraud, from drug trafficking and dealing to loan-sharking, from counterfeiting to the exploitation of prostitution – and are ready to resort to violence whenever they see their 'turf' and activities being threatened (Ministero dell'Interno, 2001a: 60-75).

5.2. The So-Called Apulian Organised Crime and Other Groups

The development of Apulian 'organised crime' goes back to the 1970s when the region became Italy's major import point for smuggled cigarettes and was 'colonised' by neighbouring mafia and camorra groups. In the following years, indigenous crime groups and gangs sprang up in different parts of Apulia. The most successful of these entities was for a long time the Sacra Corona Unita, a consortium of about ten to fifteen criminal groups and gangs from southern Apulia, which was founded in 1983 (Massari, 1998). Contrary to the accounts of the media, the Sacra Corona Unita never controlled the whole Apulian organised crime; despite its imitation of the 'Ndrangheta's structure and rituals, its cohesion and stability have always been much lower. Today, after the defection of some of its leaders and the arrest of most of its members, the Sacra Corona Unita no longer exists as a single viable organisation (Ministero dell'Interno, 2002: 57-64).

Notwithstanding the decline of the Sacra Corona Unita, illegal business activities go on. Up to the early 1990s tobacco smuggling was the main source of revenue

for most Apulian criminal enterprises. Since then, however, these have diversified their investments, exploiting their strategic geographical position to smuggle drugs and migrants from the close Balkan countries. In the last few years, as the improved cooperation of Italian and Albanian police forces resulted in an intensified repression of tobacco smuggling, Apulian crime groups have also started to engage in extortion, usury, robberies and counterfeiting, to compensate their loss of revenues.

A few other criminal coalitions and gangs located in eastern and southern Sicily and in northern Calabria, such as the Stidda in the Agrigento and Caltanissetta provinces or the Laudani, Cursoti and Pilleria-Cappello in Catania, are also occasionally referred to as organised crime or mafia. Their internal cohesion and political and economic resources are much lower than those of Cosa Nostra or 'Ndrangheta families, though Sicilian groups have been from time to time able to threaten the supremacy of the local Cosa Nostra families due to the larger number of members and their readiness to use violence (Ministero dell'Interno, 2002).

5.3. The New 'Foreign Mafie' and Inconspicuous Players

The expressions 'organised crime' and '*mafie*' are also increasingly used to refer to foreign criminals operating in Italy. For example, the last bi-annual reports on the activities of the Direzione Investigativa Antimafia, a police body specialised in the fight against organised crime, all contain a chapter devoted to '*criminalità organizzate straniere*' (foreign organised criminalities) (see Ministero dell'Interno, 2001b, 2001c and 2002).

Since the early 1980s, Italy has indeed undergone a process of internationalisation and ethnicisation of its illegal markets. This trend, which started in other western European countries in the 1950s, took place very rapidly in Italy from the mid-1980s on, when Italy also became the destination of considerable migration flows. All over Europe, the internationalisation of illegal markets was strongly accelerated in the 1990s by the European integration process and the abolition of border controls as well as by the radical transformations that occurred in what was once called the 'Second World': the former Soviet Union and eastern Europe. Paradoxically, in Italy the internationalisation of illegal markets was also favoured by the successes of the law enforcement forces that in the 1990s dismantled the most consolidated branches of mafia groups in the centre and north of Italy. The empty spaces, once controlled by the powerful clans of the Calabrian 'Ndrangheta and the Sicilian mafia, are today occupied by various groups and gangs of different ethnic origin and make-up (Paoli, 2000: ch. 4).

As a result, today in Milan like in Rome, Frankfurt, London or Amsterdam, illicit goods and services are offered and exchanged by a multiethnic variety of people. Next to mafiosi and local criminals, one finds illicit entrepreneurs coming from

all parts of the world. A few of these 'ethnic' criminals – in particular, the Chinese ones – tend to exercise a sort of political power within their own communities (Suchan, 2001) – much like the Sicilian and Calabrian mafiosi in their strongholds. However, most of the foreign criminal groups and actors active in Italy have no claim to exercise a political authority. They merely content themselves to make fast money by trading in illicit commodities and/or reinvesting dirty money from their home countries in the European Union and, specifically, in Italy.

Their internal composition is also much different to that of southern Italian mafia families. Foreign crime groups and gangs active in Italy hardly have the longevity and organisational complexity of southern Italian mafia associations. Some of them are family businesses or organisations cemented by profit-making or by shared revolutionary or ideological goals; many more are loose gangs, founded on ties of friendship and locality. These are usually small, ephemeral enterprises that can be most correctly described as 'crews': loose associations of people, which form, split, and come together again as opportunity arises. In crews, positions and tasks are usually interchangeable and exclusivity is not required: indeed, many crew members frequently have overlapping roles in other criminal enterprises (Paoli, 2002; Gruppo Abele, 2003).

Illegal market groups and crews are by no means composed exclusively of foreigners. Besides the members of mafia and pseudo-mafia groups, at all levels of Italy's illegal markets we also find people belonging to the mainstream population with no previous underworld connections. It is enough to say that two of the largest cocaine importers in the late 1990s were not mafia members, nor foreigners, but Italians who merely belonged to the sphere of white-collar crime. The first was a Milanese, who invested money earned from loan-sharking in the drug business and was able to import 600 to 800 kilograms of cocaine directly from Colombia each time. The second one was a former bank manager from Naples, who was responsible for several 400 to 700-kilogram cocaine shippings. Both of them supplied a plurality of wholesale traffickers, including members of southern Italian mafia groups, who resided in several parts of the country (Paoli, 2000: 110-15).

As such, the 'new' illegal market players better fit into the 'entrepreneurial' definitions of organised crime that are *en vogue* in northern and central Europe than into the mafia-centred understanding of organised crime that is widespread in Italy. Despite the lack of empirical proof, however, foreign illicit entrepreneurs are all too frequently labelled as mafia and believed to be organised in the same way as Cosa Nostra and the 'Ndrangheta. Sooner or later – in Italy and elsewhere – we will have to discuss seriously these assumptions and the opportunity of employing the instruments developed in anti-mafia campaigns in the fight against this 'other' form of organised crime, which – if we take the Italian understanding of the concept as a parameter – is not as organised as it is very often made out to be.

6. The Normality of Illegal Markets

As all modern societies, Italy too has a criminal economy. As much as the underground economy of which it is a part, the criminal economy is a by-product of the state's efforts to regulate, tax, and supervise the economic activity carried out within its territory. The criminal economy, in particular, involves the production and circulation of illegal goods and services as well as the illegal production and distribution of legal commodities that are heavily regulated by the state.

6.1. Sectors and Figures

The production and sale of only two goods are – with few, limited exceptions – outlawed by most states and international bodies: some psychoactive drugs, and human beings. As a consequence of state and international bans, all exchanges of these 'commodities' are bound to take place on the 'wrong side of the law', and illegal markets have therefore developed.

Following international trends, a national illegal market in cannabis developed in Italy in the late 1960s. In the following decades, heroin, cocaine, and, more recently, ecstasy have also been consumed and traded on a large scale. The drugs market most probably represents Italy's largest illegal market (Paoli, 2004). According to Guido Rey's estimates (1992; see also Becchi and Rey, 1994), in 1990 the turnover of the heroin market exceeded ITL 7,000 billion (€ 3,500 million at the current fixed exchange rate). Wholesale and retail trade in cocaine allegedly produced a turnover ranging between ITL 1,200 and 4,800 billion (€ 600-2,400 million), whereas the value of the cannabis market was estimated at ITL 380 billion (€ 190 million). As cocaine and cannabis consumption has considerably increased since then, the current turnover of the two drug markets is most probably larger than the figures presented by Rey (Paoli, 2004).

The smuggling of human beings became a flourishing business in the early 1990s. Italy's long and relatively unguarded coastline as well as its closeness to eastern European and Middle Eastern countries have made it a convenient landing place for thousands of migrants smuggled into the European Union from the former Second and Third World. Some of these migrants – though it is impossible to say exactly how many – are then forced into prostitution or otherwise exploited in both the criminal and informal sectors of the economy (Monzini, 2002; Monzini, Pastore and Sciortino, 2004).

Additionally, many other goods and services – ranging from arms to toxic waste, jewels, and counterfeited merchandise, from prostitution to gambling to money laundering – are marketed daily in violation of specific trade regulations and restrictions. Still others are exchanged without paying excise taxes: for example, tobacco has been smuggled on a large scale into Italy ever since the 1960s. In 1994 the Guardia di Finanza (customs police) estimated that the yearly revenue

from smuggling tobacco was more than ITL 1,100 billion (€ 550 million) with a loss of about ITL 1,100-1,200 billion in taxes (value-added tax and excise taxes) (Ministero dell'Interno, 1994: 473-4).

Given the variety of commodities and suppliers involved, it is difficult to estimate the overall revenue of the criminal sector. Though exorbitant estimates can often be read in the press, the revenue from the criminal sector in Italy represents only a small fraction of the total revenue of the underground economy (which additionally includes the much larger informal economy). Italy's criminal economy is not significantly larger than that of other Western countries.

Some criminal activities – such as the smuggling of tobacco and human beings – do seem to be particularly prevalent in Italy, above all due to its extensive coastline and geographical position. Southern mafia associations and other organised crime groups also engage in illegal transfers of money – through extortion, embezzlement, fraud, or robbery, for example – that are not usually included in the definition of the underground and criminal economies, because they do not create value but merely transfer it from one person to another. Extortion practices, in particular, constitute one of the most important sources of revenue for southern Italian mafia and pseudo-mafia groups. According to estimates made by the Direzione Centrale della Polizia Criminale, extortion produces an annual revenue of at least ITL 1,400 billion (€ 700 million) (Rey, 1992).

On the whole, however, crime in Italy does not pay much, according to the most comprehensive and reliable estimates of the criminal economy. Working in cooperation with police forces and several other state agencies, in 1992 Guido Rey (1992; see also Becchi and Rey, 1994: 25), then president of the National Institute of Statistics (ISTAT), concluded that the total revenue from criminal enterprises was about ITL 30,000 billion (€ 15 billion) in 1990, with roughly 150,000 persons variously involved in these activities.

6.2. Illegal Markets Suppliers and the Constraints of Illegality

As already mentioned, southern mafia associations are far from being the only actors in the criminal sector of Italy's underground economy. Even though they control many (but not all) *contra legem* activities in the areas they dominate, they do not have monopolistic control over the national illegal markets. Apart from Cosa Nostra and 'Ndrangheta members, a variety of different groups, gangs and individuals participate in Italy's illegal economy. As in most other European states, this is open and competitive, as shown by the fact that most of its enterprises are price-takers rather than price-givers. That is, none of them are able to influence the commodity's price appreciably by varying the quantity of the output sold (Paoli, 2004).

The 'disorganised' nature of Italy's illegal markets is due to the fact that their enterprises are subject to the 'constraints of illegality' (Reuter, 1983) and thus tend to adopt a small and flexible organisation and to be ephemeral. (These constraints,

which are valid for all countries having a relatively stable and effective government, will be explained in the comparative synthesis of Part II).

Even southern Italian mafia families are subjected to the constraints deriving from the illegal status of products and, when they deal in drugs or other illegal commodities, they do not operate as monolithic productive and commercial units. On the contrary, their members frequently set up short-term partnerships with other mafia affiliates, or even non-members, to carry out illegal transactions. These partnerships are far from being stable working units that could be compared to the branch offices of a legal firm. Their composition frequently changes depending on the moment at which deals take place or on the availability of single members. After one or a few illegal transactions some teams are disbanded, while others continue to operate for a longer time, eventually changing their composition to some extent (Paoli, 2003b: 144-48).

Emblematic in this respect are the large-scale, transcontinental, heroin-trafficking activities reconstructed during the first Palermo *maxi-processo* (maxi-trial) in the 1980s. The descriptions provided by the media often suggest that this business was dominated by Cosa Nostra as a single organisation. However, a careful reading of the trial papers reveals that the various stages of the production and distribution process were organised by members of different families. The latter, far from considering themselves as part of a single economic unit, were very jealous of their own networks of clients or suppliers and of their particular specialisations. On this matter, the public prosecutors belonging to the first pool of anti-mafia investigators stated:

Inside Cosa Nostra, structures having de facto autonomy, but which are functionally linked, have been created to organise the different phases making up the complex drugs trade, while the 'men of honour' who do not have operational responsibilities in the trade may contribute to it financially, sharing profits and risks to different degrees (TrPA, 1985: 1887).

By creating a climate of trust, common membership of Cosa Nostra enhanced the development and consolidation of business exchanges. However, these can hardly be compared with the relationships between the departments of a normal corporation. Instead, they were transactions taking place between distinct enterprises in such a way that, despite the mafia brotherhood ties, compliance with the contracts was guaranteed by all the means typical of the mafia, including the threat and the use of violence.

7. Mafia Infiltration of the Legitimate and Informal Economy

Whereas Italy's criminal economy is not significantly larger than that of other western countries, Italian organised crime's infiltration of the legitimate and informal economy certainly is. This has to do with the very nature of Italian mafia groups and their claim to exercise a political dominion within their communities, which is mainly expressed today in the extraction of a 'protection tax' – the so-called *pizzo*.⁸ All the families associated with Cosa Nostra and the 'Ndrangheta and many camorra groups as well force – by fair means or foul – many (if not most) of both the licit and illicit enterprises that are active in their area of competence to pay this on a regular basis.

There are many different ways of paying the *pizzo*, though this usually takes the form of a (forced) transfer of money (known as a *tangente*, i.e. kickback). This can also be a payment in kind, for example, by forcing a company to take on a *guardiania* (i.e. protection services) that is then paid for by putting a 'man of honour', or a client of his, on the company's payroll, or the acquisition of supplies from firms controlled by the mafiosi. Sometimes the company subjected to extortion is also forced to accept the participation of mafia members or their associates in jobs for which it has a contract (PrPA, 1993: 219; TrRC, 1994).

According to the Lawyer General of Reggio Calabria, 'all business activities in towns or provinces [of Calabria] are subjected to the extortion racket: industrial firms, commercial businesses, farms, and even the professions' (CPM, 1993c: 8). In Sicily, Calabria and Campania, in particular, mafia and pseudo-mafia groups claim a percentage on every building project carried out on their territory. 'The rule', the Sicilian *pentito* (mafia defector) Leonardo Messina states,

is that any firm starting a job on the territory of a family must contact a man of honour of that family, in order to establish either the percentage to be paid to the mafia family, considering the overall value of the work to be accomplished, or the payment of a kickback – so as to say – 'in kind' (PrPA, 1992: 60).

7.1. The Involvement in the Construction Business

In the building sector, mafia and camorra groups do not usually content themselves with the extraction of a sum of money. The 'payments in kind' that Messina mentions are frequent, one of their functions also being to maintain the power of the

⁸ Literally a 'beakerful', the word '*pizzo*' originally referred to the right of the overseer to scoop from the grain being threshed by the peasants (see Fentress, 2000: 163).

organisations. Since the 1950s, for example, the Calderone brothers of the Cosa Nostra family in Catania protected the largest local building companies and, in addition to ITL 1 million monthly kickback gave work to thousands of people in the building yards (CPM, 1992a: 333-4).

From the 1950s onwards, Cosa Nostra groups also set up their own companies and pressed claims to become directly involved in both small and large building sites. By the early 1970s, judge Giovanni Falcone noted, the building industry in the city of Palermo was almost entirely in the hands of the mafia: 'Mafia organisations entirely control the building sector in Palermo – the quarries where aggregates are mined, site clearance firms, cement plants, metal depots for the construction industry, wholesalers for sanitary fixtures and so on [...]' (Falcone and Turone, 1982).

Starting from the late 1960s, the same kind of development also took place in Calabria. When large building projects were launched in the region by a Calabrian Minister for Public Works, the national building companies that won these tenders were immediately targeted by the mafia groups responsible for those pieces of territory, which claimed the payment of a 'protection tax' through intimidation and threats. Realising the high potential of this area of business to generate money, mafia groups did not restrict themselves to only collecting the *pizzo*, but also demanded more direct participation in the work itself. For example, they set up small building firms to gain subcontracts for the site clearances (PrRC, 1995: 279ff.). This strategy of infiltration in the building sector was largely successful and since the 1970s building companies owned by Sicilian and Calabrian mafiosi and Campanian *camorristi* have been able to gain subcontracts in many, if not in most, of the major public building projects taking place on their territories.

Mafia companies have also been active in the illegal construction business, building thousands of square metres without the necessary authorisations, in protected areas, or without respecting security standards. Unauthorised house-building (*abusivismo edilizio*) is a common activity, especially in southern Italy. Between 1994 and 1998 alone, for example, 232,000 unauthorised houses were built, with a surface area of over 32.5 million square meters and a real estate value of approximately € 15 billion (Ministero dei Lavori Pubblici, 2000).

Mafia companies are far from being the only or even the major actors of the *abusivismo edilizio*. Much of the unauthorised house-building is due to 'ordinary' Italians with no direct ties to organised crime. There is no doubt, however, that mafia building companies have profited considerably from the rooted disrespect of the law that characterises the whole building sector in large parts of southern Italy. Moreover, members of mafia and other criminal groups frequently earn money even if their companies are not directly involved in the construction of unauthorised buildings. Especially in Campania, but to a lower extent in the three other southern Italian regions most affected by organised crime, camorra and mafia groups control the sand extraction and the production of concrete and

sell this material at an increased price to all building companies in their areas of settlement (CPR, 1998).

Undoubtedly however, the building companies owned by mafiosi draw much of their profits not from the petty unauthorised house-building but from the manipulation of large-scale public tenders. The novelty of the 1980s and 1990s was, indeed, represented by the involvement of mafia representatives in the *comitati d'affari*, originally formed of politicians and entrepreneurs, which had controlled the bidding processes of large-scale public works all over the country for many years. As the judges of the southern Calabrian city of Palmi noted with reference to the construction of a power plant by ENEL (Italy's Electric Public Company) in the Gioia Tauro Plain 'the mafia has not only infiltrated into subcontracting, but into the direct management of the works [...] through liaison elements linking the private [building] firms, the state company afflicted by party kickback policies, politicians and the representatives of *imprese a partecipazione mafiosa* [companies in which mafiosi had a share]' (PrPL, 1993: 1987-8).

Thus mafia conditioning no longer takes place only 'downstream', at the end of the economic process of public investment (subcontracts and extortions), but also 'upstream' at the beginning of the process, with decisions made jointly by mafia representatives together with the state agencies and the large building companies that are particularly interested in obtaining large contracts for public works (ibid.: passim). In western Sicily, for example, a sort of 'duopoly' was established in the late 1980s and early 1990s: the public works market was subject to the complete top-downwards control of two strong subjects – Cosa Nostra and the *comitati d'affari* – which had joined forces in a kind of symbiosis cemented by silence and complicity (TrPA, 1991, 1993 and 1998; Ministero dell'Interno, 2001c: 15-6).

7.2. The Involvement in the Illegal Traffic in Waste

During the 1990s, as the state investment for large-scale public works rapidly decreased, mafia and camorra groups increasingly became involved in the waste disposal business. This activity, which is often carried out in full or partial disrespect of the law, is a big business. According to the Parliamentary Committee to Investigate the Waste Cycle and its Related Illicit Activities, 108 million tons of waste are produced every year in Italy and about 35 million of them are disposed of incorrectly or illegally, with an estimated turnover of about € 7 billion and a tax loss of at least € 1 billion (CPR, 2000b: 7-8). According to this parliamentary body, the weakness of the environmental criminal legislation and the mildness of the criminal sanctions have made the illegal waste disposal particularly attractive for organised crime groups (CPR, 2000a: 33).

Companies owned or protected by members of the Sicilian Cosa Nostra, the Calabrian 'Ndrangheta and the Campanian camorra are very frequently involved in the waste collection and transportation and the unauthorised or irregular manage-

ment of waste dumping grounds in southern Italy (CPR, 2000b: 15, 31). They are, instead, more rarely present in the most technically advanced sectors of waste recycling and thermo-destruction.

According to the Prefect of Naples, 90 per cent of all companies involved in the waste collection and transportation in Naples area have ties with organised crime (CPR, 2000b: 25). Illegal dumping grounds are, indeed, particularly widespread in Campania, which, according to the parliamentary committee of inquiry, has a bent to become 'Italy's trash can'. Quarries, holes in the ground and even open fields are used by camorra companies to hide waste of different types, including toxic and dangerous waste. In an investigation of the Naples Prosecutor's Office, the involved camorra group, the so-called clan dei Casalesi, turned out to have disposed of 11,000 tons of dangerous waste between 1994 and 1996. The camorra's involvement in illegal waste disposal is so intense that some camorra-related companies have started to 'export' waste to illegal dumping grounds in other regions, most frequently in Latium, Abruzzo and Basilicata (CPR, 2000b: 25; see also Ministero dell'Interno, 2001c).

In Campania, there is often a clear superimposition between the 'cement cycle' and 'waste cycle': i.e. camorra members and their front-men are involved in both the illegal construction and waste disposal businesses. In fact, the sand that is necessary to produce concrete is often extracted by camorra companies from illegal quarries, which are then filled with waste of different type, to try to hide the soil subsidence (CPR, 1998).

However, as the Commissione parlamentare d'inchiesta sul ciclo dei rifiuti e sulle attività illecite ad esso connesse notes, the waste business is by no means monopolised or controlled by organised crime:

It would be a serious mistake to relate all illicit activities in the waste disposal to the so-called '*ecomafia*', as the data gathered by the Commission in its hearings clearly demonstrate. There are, in fact, companies not related with organised crime that however seem to found all their activities on an incorrect management of waste. Forms of micro-crime are also widespread throughout Italy. Relating all illegality to the '*ecomafie*' would thus mean forgetting a great part of the illicit activities (CPR, 2000b: 10).

Even the investigations focusing on mafia-type organised crime show that camorra and mafia groups usually provide waste disposal services to legal companies willing to do business with mafiosi because they are able to spare considerable sums of money by getting rid of dangerous waste irregularly. In fact in most cases, as shown by the summaries of investigations recorded by Legambiente in its annual reports (2001 and 2002), the waste to be hidden in illegal dumping groups in the Mezzogiorno is produced in northern Italy by fully legitimate firms.

7.3. Mafia Infiltration of Other Sectors of the Legitimate Economy

Since the 1980s the families and members of both Cosa Nostra and the 'Ndrangheta as well as the most successful camorra clans have employed a significant portion of the money accumulated with illegal activities to buy – either directly or through fronts – a large number of small and medium-sized companies in their area of dominion. According to data collected by the Confcommercio in 1992, about 4,000 Sicilian retail shops – about 10 per cent of all those active on the island – are either run or directly controlled by members of crime groups. It is an estimate that is hard to verify. What did emerge very clearly in a survey commissioned by the association of the Youth Branch of the Confindustria (Italian Industrialists' Association) in 1993 was that 55 per cent of the owners of Calabrian, Sicilian and Campanian firms claimed that in their particular sphere of activity it is current practice for businesses to yield a quota of their ownership to a variety of people who are tied to illegal or suspect businesses (Ministero dell'Interno, 1994).

In some contexts, Cosa Nostra and the 'Ndrangheta families have even succeeded in establishing monopolies, which are not imposed through violence, but are built on the effective ownership of all the local firms in a certain area. For more than a decade, for example, the market for new and old vehicles in Reggio Calabria was controlled by front-men of a 'Ndrangheta family. Having no need to make any immediate profits and being able to rely on cash from illegal sources, the mafia-controlled firms managed to put other agencies out of business in a very short amount of time since these could not afford to give the discounts that the former offered (PrRC, 1995: 6318-405).

In other cases, both money and violence are employed – in variable combinations – to monopolise licit activities in a local context. This was, for example, the strategy of other powerful *'ndranghetisti*, the De Stefano brothers, who during the 1980s controlled virtually the entire Reggio Calabria wholesale meat market. Through intimidation and threats, they forced butchers and supermarkets to buy meat from their companies (TrRC, 1994: 124-6). The same combination of money and violence was also employed by three other *capimafia* – Francesco Serraino, the 'mountain's king', Rocco Musolino and Francesco Antonio Gioffré – to gain control of the wood industry in the Aspromonte mountain as well as by other *'ndranghetisti* to acquire many of the shops located in Reggio Calabria's principal avenue (CPM, 2000: 72-3). Lastly, largely neglecting profit maximisation strategies, the leaders of mafia families – especially in Calabria – have bought large pieces of land in their communities of residence (Paoli, 2003b: 153-4).

8. Mafia and Politics

Mafia infiltration of public administration and political institutions also has no parallel either in western Europe or probably in most eastern European countries as well. Though mafiosi's relationship with politicians and government officials has lost its rooting in a common *Weltanschauung* and is accepted by shrinking portions of public opinion, it is mainly due to these illicit connections and alliances that the recent decline of Cosa Nostra, 'Ndrangheta and camorra families has been slowed down.

8.1. The Long 'Cohabitation' and its Slow Delegitimation

Despite the progressive delegitimation of mafia values and norms since the end of the Second World War, the 'cohabitation' between state and mafia powers remained unabashed, at least at the local level, well into the 1960s and 1970s. Especially in Sicily, up to the 1970s many 'men of honour' were actively involved in political life and held important political positions at the city, regional, and even national levels. As late as November 2000, for example, the former Christian Democrat senator, Palermo's vice mayor and commissioner Vincenzo Inzerillo, was sentenced to a nine-year conviction as a 'made' member of a Palermitan Cosa Nostra family (*Gazzetta del Sud*, 22 November 2000).

The pool of politicians that was not ritually affiliated, but whom the Cosa Nostra families were able to influence, was even wider. Among them was Salvo Lima, who was mayor of Palermo between the 1950s and the 1960s, and Vito Ciancimino, who was first commissioner for public works in Lima's administration and then took over as mayor when Lima was elected as a member of the national Parliament in 1968 (Vasile, 1994; Santino, 1997).

Even when the superimposition of roles was not total, relations between Sicilian 'men of honour' and the more entrepreneurial politicians became closer and more equal beginning in the mid-1950s. This movement was favoured by the common social origins and shared will of these men to conquer power by all means available. Between politicians and mafiosi there was no longer a gap in social extraction, education, and lifestyle – factors that had separated most of the latter from liberal notables. In fact, the politicians who reached the top in the parties and local administrations in the post-war period were *homines novi* coming from medium to low, if not humble, backgrounds, like most members of mafia groups – and like the mafiosi they wanted to make careers at any cost (Paoli, 2003b: 196-7).

In Calabria electoral and business pacts between *capimafia* and state representatives were often underwritten in the shadow of the Freemasonry, into whose lodges – both the official and the secret, parallel ones (the latter being labelled 'deviated' in Italian) – the 'Ndrangheta bosses entered massively after 1970. Thanks to the powers

of mediation of the Freemasonry, even in Calabria the pacts between politicians and mafiosi became – as in Sicily from the 1950s – more ‘equal’ (ibid.: 198-9).

In both regions, the power of the politicians was apparently much stronger than that of the *capimafia* and basically consisted in their ability to condition the allocation process of state resources. In order to do so, however – and it was in this that their intrinsic weakness lay – they needed the votes that the mafiosi gathered for them during electoral competitions. In this respect, the ‘Ndrangheta’s blackmailing power is still today particularly high, even higher than that of Cosa Nostra. It has, in fact, been estimated that in the small and medium-sized southern Calabrian municipalities, the ruling mafia family can control up to 40 per cent of the votes, while this percentage decreases to 15 to 20 per cent in the larger towns (Arlacchi, 1988: 137-40). This assessment was also confirmed by the former mayor of Reggio Calabria, Agatino Licandro: in his opinion, among the members of the city council ‘there are at least 10 to 15 per cent who are consciously elected with mafia votes’ (CPM, 1993c: 58).

From the early 1980s on, the two power structures forming mafia and political elites have increasingly unified in Calabria. Instead of supporting external politicians, the major ‘Ndrangheta families have often mobilised their electoral weight to back mafia members standing for office, or people linked by close kinship ties to the family chief or high-ranking members. The men leading the De Stefano mafia group since the mid-1980s exemplify very clearly this phenomenon, which has been described as ‘the internalisation of representation’ (Arlacchi, 1988: 176-7). Since Paolo De Stefano’s death in 1985, this mafia family, the largest in Reggio Calabria, has been headed by his cousin, the lawyer Giorgio De Stefano, who represented the Christian Democrats on the city council for many years, and Paolo Romeo, a member of Parliament for the Social Democratic Party (PSDI) for several legislatures (PrRC, 1993, 1995).

In contrast, in Cosa Nostra, the overlapping of relations between the mafia and politics, which had been common practice since the 1950s, progressively broke down with the balance going mainly in the favour of the mafia until the early 1990s. Emboldened by the billions accumulated through heroin trafficking, Cosa Nostra chiefs increased their demands on politicians from the late 1970s on, trying to control the decisions of the public administration in an increasingly pressing and arrogant way and claiming favours of all kinds at the national level. And for the first time they also began to kill the politicians who did not honour the pacts underwritten with them, to punish their betrayal and to warn the remaining referents (PrPA, 1995b).

This open use of violence revealed not only a growing mafia arrogance, but also the deteriorating quality of relations between the mafia and political power. That is to say, post-war socio-economic and cultural modernisation processes fostered the dissolution of a broad mafia subculture that was previously shared by both mafiosi and politicians. In turn, this has led to a new paradigm of behaviour based

on utilitarian calculations. In other words, before entering a deal, each side now carefully assesses the financial, electoral, or judicial gains that it could draw from the other. This change has been accompanied, in Sicilian mafia families, by a growing distrust and lack of respect toward the political class (Paoli, 2003b: 200-2).

8.2. The Upheavals of the 1990s: Return to the Cohabitation?

The deterioration of relations between the mafia and politics is the result of a slow process of delegitimation that has invested mafia power during the whole post-war period. Initially prompted by small enlightened minorities, this change has recorded a sharp acceleration from the early 1980s onward.

A truly mass, interclass social movement against the mafia emerged for the first time in Italy's history in 1982. In September of that year, General Carlo Alberto Dalla Chiesa, who had been sent to Palermo in June as a high commissioner to combat the mafia, was killed, together with his wife and driver. The public reacted with outrage. Two weeks after the Dalla Chiesa murder, which followed the assassination of 15 other state officials and politicians over the previous three years, the La Torre Act was passed. As already mentioned, the new bill introduced the crime of delinquent association of the mafia type and authorised the seizure and forfeiture of illegally acquired property of those indicted under this article. Between 1982 and 1986 nearly 15,000 men were arrested throughout Italy for criminal association of the mafia type; 706 were brought to trial by investigating magistrates in Palermo; more than half of those accused, including several mafia chiefs, received long-term or lifelong convictions (the so-called *maxi-processo*).

The state's renewed anti-mafia campaign won widespread public support. Shocked by the murder of Dalla Chiesa and his young wife, citizens of Palermo participated in unprecedented public demonstrations, including a spontaneous candlelight procession in honour of his memory. Since then a 'protean and multifaceted' anti-mafia movement has taken root in Italy (Schneider and Schneider, 1994). In 1985 Leoluca Orlando, a member of a reformist, left-wing current of the Christian Democratic party who had taken a clear stance against the mafia, began to serve as mayor of Palermo. During his first administration, which lasted until 1990, city hall became a focal point for attacks on the mafia. For the multiplicity of activities that accompanied Palermo's *maxi-processo*, the mid-1980s were labelled as 'Palermo's springtime' (see Santino, 2000; Schneider and Schneider, 2003).

After a period of retreat and disillusionment in the late 1980s, anti-mafia movements recovered energy and vitality in the early 1990s. The shocking murders, committed in rapid succession, of the magistrates Giovanni Falcone and Paolo Borsellino moved large strata of the Sicilian civil society and of the entire country. Demonstrations of an unprecedented dimension took place in Palermo as well as in other parts of Italy. A march organised in memory of Giovanni Falcone 30 days after the Capaci massacre brought an estimated 500,000 people to Palermo.

State institutions also reacted to mafia violence with a strong counterattack, which produced the highest peak of anti-mafia activities since the fascist repression. A new anti-mafia act was passed in the summer of 1992. Seven thousand soldiers were sent to Sicily to help civil police forces, and anti-mafia investigations were beefed up. Since then, virtually all of the leading mafia bosses, some of them on the run for decades, have been captured and sent to special high-security prisons. Thanks to the creation of a Witness Protection Program, more than 1,000 mafiosi and gangsters have left their crime groups and have begun sharing their experiences with law enforcement officials (for more information on the results of the anti-mafia campaign, see La Spina's article in Part III).

Parallel to the corruption investigations of the Clean Hands Pool in Milan, several inquiries – mostly in Sicily, but to a lesser extent also in Calabria – started to reveal the extent of collusion of state representatives with Cosa Nostra and the 'Ndrangheta. Criminal proceedings were started for all the leaders of Andreotti's Sicilian supporters who had not been killed by the mafia or had not already died of natural causes. Indeed, even Andreotti, one of the most important politicians in the post-war period (he has been a member of Parliament since 1948, prime minister seven times, and a government minister countless times), was brought to trial on charges of belonging to a mafia-type delinquent association and of instigating a murder (PrPA, 1995a). In the end, however, the former Christian Democrat statesman was acquitted of both charges.

Despite the successes of anti-mafia repression, this progressively lost popular support in the second half of the 1990s. This weakening has been aided by the intrinsic limits of an anti-mafia campaign that has been exclusively entrusted to law enforcement agencies and has not been supported by a comprehensive programme to foster the social, economic, and cultural development of the South. Indeed, in the early 1990s all *ad hoc* measures (*intervento straordinario*) for the development of southern Italy came to a brusque halt. At the same time, to reduce Italy's huge public debt and to foster its entrance into the European Monetary Union, public investments were brusquely reduced (from 3.3 per cent of the GDP in 1989 to 2.1 per cent in 1995) and the whole welfare system was drastically cut, with the paradoxical result that yearly social expenses per inhabitant are today higher in northern Italy (about ITL 8.6 million, corresponding to € 4,500) than in the south (about ITL 6.3 million, or € 3,300; SVIMEZ, 1998).

It is, above all, the lasting problem of unemployment (in both Calabria and Sicily exceeding 25 per cent) that has sharply contributed to the weakening of the popular anti-mafia movement. Many of those who marched in 1992 to protest against the mafia today feel betrayed by the broken promises of national politicians, especially those belonging to left-wing parties that governed the country from 1996 to early 2001. In the political elections of May 2001, southern voters thus overwhelmingly supported the right-wing parties, most notably Silvio Berlusconi's alliance, Casa

delle Libertà. This last, for example, won Parliament seats in all of Sicily's 60 electoral districts.

Among Berlusconi's party-men in southern Italy, there are many politicians of the old guard, but also some new ones, suspected of being linked to mafia interests. It is meaningful, for example, that Silvio Berlusconi's former right-hand man and member of the European Parliament for Forza Italia, Marcello Dell'Utri, is facing trial in Palermo on charges of being member of a mafia-type delinquent association (PrPA, 1997). In turn, in 2001 a prominent Calabrian member of Parliament of Forza Italia, Amedeo Matacena, was condemned for giving his external support [*concorso esterno*] to some 'Ndrangheta groups (*Corriere della Sera*, 14 March 2001).

Berlusconi himself has been suspected of investing and laundering Cosa Nostra's money at the beginning of his career, hiring a 'man of honour' to protect his children, regularly paying a ITL 200 million 'contribution' (€ 100,000) to Cosa Nostra bosses, and colluding with the mafia in various ways. The investigation by the Palermitan Prosecutor's Office was, however, subsequently closed for the lack of any conclusive evidence (Veltri and Travaglio, 2001; Travaglio, 2001). Even if mafia defectors' statements on Berlusconi's accounts had no empirical basis, there is an objective convergence of interests between this media tycoon-turned-politician and the mafiosi. Ever since he officially entered the political game in early 1994, Berlusconi has been trying to block the anti-corruption and anti-mafia investigations that targeted him and several of his associates by staging delegitimation campaigns against law enforcement officials, calling their impartiality into question and consistently supporting legislative measures that sharpened defendants' rights and made investigations and trials more burdensome, slower, and less efficient.

Given the common interests, southern Italian mafia and other criminal groups have naturally placed their hopes of survival and recovery in Berlusconi's party. As a Calabrian *pentito* stated right after Berlusconi's victory at the national elections in March 1994, 'we believe that the new government will dismantle all the repressive legislation and go back to the "free state"' (PrRC, 1995: 5071).

9. Concluding Remarks

Whereas the new Italian and foreign entrepreneurs are likely to expand their activities on Italy's illegal markets, the future of the Sicilian Cosa Nostra and the Calabrian 'Ndrangheta is more uncertain.

Far from expanding toward the outside, Cosa Nostra groups and, to a lesser extent, even those of the 'Ndrangheta have since the early 1990s receded into their territories, avoiding international competition. Today they obtain a growing and preponderant quota of their revenues by manipulating the tendering process of public works and imposing generalised extortive regimes on all the economic enterprises of their areas. Instead of creating stable 'enterprise syndicates' (Block,

1983) capable of operating on international illegal markets, both Sicilian and Calabrian mafia families tend to fuse entrepreneurial action with the action typical of 'power syndicates' (ibid.) and thus to concentrate on those profit-making activities that are more directly advantaged by the control of a territory and collusion with politicians and government officials. The two largest mafia consortia and the once powerful camorra families have thus become ever more dependent on the decisions made by public, local, and central administrations. These administrators are today largely arbiters of both the judicial and the economic-financial lots of mafia and camorra groups.

It is, above all, to condition the outcome of the pending trials, to amend heavy first-degree sentences in appeal trials and to improve the detention conditions of the imprisoned members that the Cosa Nostra and 'Ndrangheta families need politicians and public officials to comply with them. The manipulation of state decision-making processes, however, does not merely have judicial goals, as mafia families count on their ramification in the state administration to improve their financial lot as well.

All Sicilian and Calabrian mafia families place their hopes for economic recovery in the gaining of public contracts, which have just started to be distributed once more, especially in the south, after the sharp drop following the Tangentopoli ('Bribesville', initially an allusion to Milan) inquiries. Between 2000 and 2006, Sicily and Calabria are respectively disposing of € 9 billion and € 5 billion coming from the European Union funds of Agenda 2000. Apparently, mafia families intend to acquire – directly and through front-men – a substantial portion of these funds and of the sums, which are being distributed by the central government and the local administrations. Unaware of being wiretapped, a Sicilian 'man of honour' recently stated: 'They say we should not make any fuss, they recommend that we all avoid making noise and attracting attention, because we have to get all this Agenda 2000 [...]' (*La Repubblica*, 6 February 2001: 15; see also CSM, 2001: 13-15).

What is at stake was clearly singled out in the report on the DIA's activities in the second half of 2000: 'if Cosa Nostra relies on dragging the public funds foreseen for large-scale construction works in order to recover definitively, preventing it from implementing this project could plunge it into one of the most serious crises it has ever known' (Ministero dell'Interno, 2001b: 16). Unfortunately, this awareness does seem to be shared by the cabinet headed by Silvio Berlusconi, set up in June 2001. As the Minister for Public Works, Pietro Lunardi, officially stated a few months afterwards, while talking about the huge public investments foreseen for the construction of a bridge over the Messina strait, 'in southern Italy there is the mafia and we need to come to terms with it' (*La Repubblica*, 23 August 2001: 2). Incompetence or mafia collusion? It is hard to say. There can be no doubt, however, about the following point: even more than in the past, mafia associations' survival now seems to depend on how their relationships with politics and different sectors of the public administration are set up in the future.

If mafia groups do not receive the political support they desperately need, in the long-term Italy might end up having the same type of organised crime that is widespread in the rest of western Europe: namely, a myriad of criminal enterprises selling prohibited commodities with no ambitions to exercise a political power of any sort.

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Crossing Borders: Organised Crime in the Netherlands

Edward Kleemans

1. Introduction

In the Netherlands the problem of organised crime was largely ignored until the early 1990s, despite the fact that in the previous two decades the nature of serious crime had substantially changed due to the emergence of the drug trade. It took quite a long time, however, before practitioners and policy makers became fully aware of this gradual transformation of the problem of serious crime caused by the huge quantities of drugs being bought and sold through the Netherlands.

The same holds true for academics. For a long time, many criminologists considered organised crime as a predominantly foreign phenomenon (see e.g. Fijnaut, 1984, 1985). Empirical research was largely non-existent, except for some pioneering work by the Central Criminal Intelligence Service and the Research and Documentation Centre (WODC) of the Ministry of Justice (Van Duyne et al., 1990). Widespread confusion prevailed about the definition of organised crime, corporate crime, professional crime and/or group crime (for an extensive overview of the public, academic and professional debate, see Fijnaut et al., 1998: 7-23).

In this contribution, the next section concentrates on the development of debate and research on organised crime in the Netherlands. The following section relates to the nature of the organised crime problem in the country – what form does it take, and how does it compare with the situation in other countries? The fourth and fifth sections look at the role of organised crime in illegal markets, and its connection with the legitimate economy. Finally, the interactions between the public authorities and organised crime are discussed, particularly in the context of policing.

2. The Development of Debate and Research

A turning point for policy and research was the Dutch-American Conference on Organised Crime in 1990, a meeting of members of the New York State Organised Crime Task Force and Dutch police officials, public prosecutors, and researchers (Fijnaut and Jacobs, 1991). During this conference, several differences between the problem of organised crime in the United States and the situation in the Netherlands were noted and alternative ways of combating organised crime were discussed. Partly as a result of this conference, the police chiefs of Amsterdam, The Hague

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and Rotterdam and the director of the Central Criminal Intelligence Service decided to devote further attention to the problem of organised crime.

In 1992 the problem of organised crime reached the national political agenda, in the form of an ambitious memorandum presented to the Dutch Parliament: *Organised Crime in the Netherlands: An Impression of its Threat and a Plan of Action*. With the benefit of hindsight, one may conclude that the problem of organised crime was somewhat overstated – organised crime was on the verge of infiltrating economic sectors and political institutions and was considered to be a major threat to the integrity of Dutch society. Consequently, a firm preventive and repressive approach was promulgated, laying the foundation for a number of changes in legislation in later years, e.g. regarding the confiscation of criminal assets and the reporting of unusual transactions by financial institutions. Furthermore, special (inter-regional) investigation squads were established and new investigation methods were introduced to combat organised crime.

In December 1993, however, the so-called ‘IRT affair’ emerged with the sudden dismantling of the Amsterdam-Utrecht Inter-regional Investigation Squad (IRT). According to the authorities in Amsterdam the IRT had been dismantled because of the use of unacceptable investigation methods. In the media, however, suggestions were made of a dispute regarding the jurisdiction over the team and even accusations of corruption in Amsterdam. The dispute between Amsterdam and Utrecht about the ‘real’ reasons for the dismantling of the IRT escalated further and resulted in a fact-finding committee of independent experts (March 1994), a fact-finding committee of the Dutch Parliament (October 1994), and eventually a full-fledged Parliamentary Inquiry Committee into Criminal Investigation Methods (PEO, December 1994).

One of the conclusions of the PEO was that the IRT had used unacceptable investigation methods – several tons of drugs had been imported under the supervision of the authorities, in the hope that some informers would ‘grow’ to the top of criminal organisations. In the end, it was questioned whether the authorities were ‘running’ the informers, or vice versa (PEO, 1996). According to the committee, this investigation method was unacceptable in a constitutional democracy, as the uncontrollability of the method constituted a serious threat to the integrity of government. Furthermore, the committee made a thorough inquiry into several criminal investigation methods – observation techniques, the use of informers, infiltration and intelligence. The main conclusions were that there was a legal vacuum concerning criminal investigation methods, that the organisation of the criminal justice system was inadequate, and that the command and control of criminal investigations should be enhanced. As a result of the report of the committee in 1996, there have been several reforms of the Dutch criminal justice system, including important legislation concerning the use of criminal investigation methods (see Henk Van de Bunt’s contribution in Part III).

A positive side-effect of the PEO was the encouragement to research organised crime empirically. Considering the (confidential) research that had been conducted until 1994, the committee concluded that an accurate description of organised crime in the Netherlands was lacking. Such a description, however, was deemed necessary for a sound discussion about criminal investigation methods. Therefore, the committee appointed an external research group chaired by Cyrille Fijnaut to make an inquiry into the nature, seriousness and scale of organised crime in the Netherlands. The extensive research report of the Fijnaut research group was published as an appendix of the report of the Committee in 1996 (Fijnaut et al., 1996) and was translated into English in 1998 (Fijnaut et al., 1998). The research findings modified the exaggerated image of organised crime of the early 1990s. According to the Fijnaut research group, there was no evidence of an octopus-like criminal syndicate in the Netherlands. Furthermore, it was also clear that no criminal groups at either a national or local level had gained control of legitimate sectors of the economy by taking over crucial businesses or trade unions (labour racketeering). Hence, the problem of organised crime in the Netherlands was viewed as essentially different from the situation in Italy or the United States.

However, the picture sketched by the Fijnaut research group was not that reassuring – extensive networks were involved in organised crime, the prevalence of certain immigrant groups in drug trafficking was worrying, and certain criminal groups had made substantial investments in real estate, in particular in the red light district of Amsterdam.

After the publication of the report of the Fijnaut research group in 1996, the Minister of Justice promised the Dutch Parliament to report periodically on the nature of organised crime in the Netherlands. Consequently, the WODC started the so-called ‘organised crime monitor’, an ongoing systematic analysis of closed police investigations of criminal groups. The aim of this research project was to increase the learning capacity of the criminal justice system and to construct a sound basis for preventive and repressive policy.

The first report of the monitor was published in early 1999 (Kleemans et al., 1998). It was based upon analysis of 40 major police investigations on criminal groups in the Netherlands. Furthermore, information was drawn from public and confidential reports, crime analysis reports and interviews with experts.

The second report was published in 2002 (Kleemans et al., 2002) and elaborated on the findings of the first report. Data were collected on another 40 major police investigations and, once again, use was made of public and confidential reports and interviews. Finally, all the available financial information of the 80 extensive case studies was used for an analysis of financial transfers, money laundering, and expenditures and investments. The research findings of both reports will be addressed in the following sections.

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The 'organised crime monitor' is a direct result of the parliamentary inquiry, creating a very fruitful environment for empirical research into organised crime. Compared to other European countries, law enforcement institutions in the Netherlands are quite cooperative regarding empirical research. Some special investigation squads have even developed strategic alliances with universities, resulting in public reports about, for instance, human trafficking (IRT NON, 1997) or eastern European organised crime (KT NON, 1999, 2001). Although most reports of law enforcement institutions are still confidential, there are more and more classified and non-classified versions.

Closed police investigations are the main source of information for empirical research into organised crime. Using telephone bugs, observation techniques and other special investigation methods, extensive police investigations paint a detailed picture of the doings and dealings of the parties involved. The advantage of analysing closed police investigations is clear, as the analysis is based upon quite reliable information which can be checked by the researchers themselves (contrary to, for example, criminal intelligence information or 'running' investigations). Hence, many researchers have used case studies to study organised crime – Van Duyne et al. (1990, 1995), the Fijnaut research group (Fijnaut et al., 1996, 1998) and the research group of the 'organised crime monitor' (Kleemans et al., 1998, 2002). Furthermore, analyses have been made of specific cases such as murders and liquidations (Van de Port, 2001) as well as analyses of specific aspects, such as revenues, expenditures and investments (Van Duyne et al., 2001; Meloen et al., 2003). Finally, both researchers and journalists have conducted detailed 'N=1' case studies. An important example of this line of research is the detailed analysis of a network of Dutch drug traffickers by Klerks (2000).

The case studies which are used for the 'organised crime monitor' can provide a sound basis for *qualitative* statements. What mechanisms lay behind organised crime? What forms of cooperation can be discerned? Can traditional representations be modified? The depth of the qualitative analysis and the empirical richness of case studies make answering these qualitative questions conceivable. *Quantitative* statements, however, are not so forthcoming. The most we can do is to assert that certain phenomena do occur; that they do occur more than once; or (as far as we know) that they do not occur. Consequently, all quantitative statements must be made within the context of the analysed cases. This problem is not fundamentally different, should we be able to analyse *all* police investigations. Even then, we still have a 'selective sample' (based upon police priorities), making generalised quantitative statements inconceivable.

A totally different rationale lies in the ethnographic studies into organised crime. A prominent representative of this line of research in the Netherlands is Frank Bovenkerk, professor at Utrecht University, who conducted several interesting ethnographic studies, including a biography of a Dutch female go-between in the drug trade (Bovenkerk, 1995) and a study of Turkish organised crime (Bovenkerk

and Yeşilgöz, 1998). Other representatives of this line of research are Zaitch (2001), who conducted ethnographic research into Colombian drug traffickers, and Siegel (2002), who conducted ethnographic research within the Russian community in the Netherlands. Compared to case studies, ethnographic studies have the potential of providing important complementary insights into organised crime.

3. General Overview

Organised crime in the Netherlands is a serious problem, but the nature of the problem is fundamentally different from ‘mafia-type’ organisations in Italy or the United States, which have gained control of certain economic sectors or regions, acting as ‘alternative governments’ (for an overview, see Paoli, 2002). According to the traditional view, organised crime is portrayed as a bureaucracy with a pyramidal structure – a strict hierarchy, with a clear division of tasks and an internal sanctioning system (Cressey, 1969). Controlling certain regions or economic sectors, criminal organisations are assumed to make a profit by using corruption, violence and intimidation. As a result, organised crime is supposed to reap the fruits of taking over two traditional state monopolies – taxation and controlling violence. This traditional view of organised crime was also common in the Netherlands until 1996.

An important conclusion of the Fijnaut research group, however, was that no criminal groups at either a national or local level had gained control of legitimate sectors of the economy by taking over crucial businesses or trade unions (labour racketeering) (Fijnaut et al., 1996, 1998). Also the follow-up studies of the ‘organised crime monitor’ provided no indication that criminal groups had taken over certain economic sectors or political institutions and acted like ‘alternative governments’ (Kleemans et al., 1998, 2002). In the case studies, there was hardly any evidence of protection, political corruption, illegal manipulation of political decisions, or infiltration in trade unions. Rather than controlling certain regions or certain sectors of the economy, criminal groups seem to join in with the legal infrastructure as well as with the legal commodity and money flows. As the Netherlands is an important logistical node in Europe (with for example the port of Rotterdam and Amsterdam Schiphol airport), this also creates an excellent opportunity structure for organised crime.

Many forms of organised crime in the Netherlands boil down to international smuggling activities – drug trafficking, smuggling illegal immigrants, trafficking women for sexual exploitation, arms trafficking, trafficking stolen vehicles, and other transnational illegal activities, such as money laundering and evading taxes (cigarette smuggling, European Community fraud, and so on). The nature of organised crime in the Netherlands might be described as ‘transit crime’ – criminal groups in the Netherlands are primarily involved in international illegal trade, using

the same opportunity structure which also facilitates legal economic activities. Furthermore, the Netherlands can be either a country of destination, a transit country, or, in particular for synthetic drugs, a production country.

Next to the excellent opportunity structure for illegal activities, the Netherlands also provides a good social opportunity structure, in particular for the international drug trade. A clear example is the involvement in international drug trafficking of immigrant groups in the Netherlands (Fijnaut et al., 1998: 83-7). It is an historical coincidence that the very countries from which so many people emigrated to the Netherlands in the 1960s and 1970s (Suriname, the Netherlands Antilles, Aruba, Morocco and Turkey), turned into the leading producers or transit dealers of the major drugs for the European market in the 1980s and 1990s. The bulk of the heroin now comes from Turkey; Suriname, the Netherlands Antilles and Aruba link Colombia and its cocaine to Europe; and Morocco has developed into the leading hashish producer. The social ties between the Netherlands and the old countries, which have been created by migration, constitute a fertile breeding ground for international drug trafficking.

The social logic of international drug trafficking is clearly demonstrated by the analysed cases of the 'organised crime monitor' – over and over again family ties as well as bonds of friendship turn out to be the foundation for international criminal associations (Kleemans et al., 1998; Kleemans and Van de Bunt, 1999). In the analysed cases criminal cooperation is not built so much on ethnicity as it is on social relationships between several individuals.

Thus, the overall picture is that the Netherlands plays a major role in the transnational drug trade. All this started with the contact between Dutch seamen and Pakistani hashish dealers off the coast of Dubai in the early 1970s (Fijnaut et al., 1998: 74). The Dutch ships were stationed there for hydraulic engineering projects, and the Pakistanis, with their trade in heroin as well as cannabis, were apparently being left alone by the Americans because revenues from their trade were going towards the battle against communism in Afghanistan. The result of these contacts was that several Dutch trailer camp residents funded large shipments of hashish to Europe and northern America. Later on, native Dutch offenders also became heavily involved in the production and export of synthetic drugs. Combined with the excellent infrastructure as well as the social links with Colombian cocaine, Turkish heroin, and Moroccan hashish, this might explain why the Netherlands might be viewed as an important transit country for drugs in Europe (see Kleemans et al., 2002; NCIS, 2001; Zaitch, 2001).

A second major difference between the situation in the Netherlands and the stereotype of 'mafia organisations' is that many active criminal groups in the Netherlands are fundamentally different from the picture Cressey (1969) sketches in his frequently cited book *Theft of the Nation*. Cressey portrays organised crime as a bureaucracy with a pyramidal structure – the strict hierarchy, clear division of tasks, and internal sanctioning system mentioned earlier. This 'bureaucracy model'

of organised crime is still very popular in the media. Police officials also repeatedly think and speak about organised crime in terms of pyramidal organisations, headed by a 'godfather' who gives orders to his 'lieutenants', who in turn give directions to specialised 'divisions'.

Such pyramidal organisations, however, are rather the exception than the rule in the 80 cases that we have analysed up till now (Kleemans et al., 2002). In many cases, the term criminal network is far better suited to characterise the structure of cooperation, in that offenders cooperate in certain projects, but the structure of cooperation is fluid and changing over time. This does not mean though, that there are no hierarchical or dependency relations between offenders. Some offenders are more important than others, because other offenders are dependent upon their resources such as money, knowledge and contacts. We observed that the same individuals often emerge as the main 'nodes' in networks of alternating composition. Furthermore, 'facilitators' such as underground bankers, money exchangers and forgers of documents, can also be considered as 'nodes' in networks, as several groups consistently use their illegal services. We repeatedly encountered the names of the same facilitators in different cases. Generally, these service providers are far removed from the crimes under investigation, and, as such, not identified as a primary target. Nevertheless, by providing crucial services, they do have an important function for several criminal groups.

The existence of such nodes within networks does not negate our main finding. The predominant trait of organised crime networks is their flexibility. This same flexibility forms the foundation for their development. People get in touch with organised crime through their social relations; over time their dependency on the resources of other people (such as money, knowledge and contacts) gradually declines; finally they generate new criminal associations, which subsequently attract people from their social environment again. In our view this 'snowball effect' better characterises the development of the analysed cases than the traditional view of 'recruitment' – criminal organisations recruiting 'outsiders', who start by doing the 'dirty jobs' and who are able to climb the hierarchic ladder by proving their capability.

So, social relations are very important for understanding organised crime (Kleemans and Van de Bunt, 1999). Time and again we find that family, friends and acquaintances work together and provide each other with introductions to third parties (Kleemans et al., 1998, 2002). In this way, offenders may find new opportunities, by making use of other people's resources, such as money, knowledge and contacts. Social relations can also be the solution to the problems of (co)operating in an environment dominated by distrust, suspicion and potential deceit. Cooperation becomes easier, if parties have information about one another, if they both have invested in their relationship, and if they know that they probably will meet again in the future (Raub, 1997; Buskens, 1999).

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Social relations do not emerge at random, but often follow the laws of social and geographical distance (Feld, 1981). The closer offenders live together, the more daily activities they have in common, and the less social distance exists between them, the more probable it is that ties emerge between these offenders. This produces a certain kind of clustering, based on factors such as geographical distance, ethnicity, education, age, and so on.

We find the same kind of clustering within criminal networks. However, many parts of criminal networks are very badly connected, due to salient geographical and/or social barriers:

- between different countries;
- between different ethnic groups;
- between the underworld and the legitimate world.

Because of these barriers, there are certain ‘structural holes’ (Burt, 1992, 2000; Morselli, 2000) and few people are in a position to bridge these structural holes. As the illegal character of the activities presupposes a high degree of mutual trust, offenders who are able to bridge ‘structural holes’ have all kinds of strategic opportunities to make a profit. In the cases we have studied, we found that offenders in strategic positions often operate on an international or inter-ethnic level, or somewhere between the underworld and the legitimate world. They are the ones that make the connections between networks that would otherwise have remained apart. Because of the importance of trust, these connections are often formed by family ties or other strong social bonds.

Literature on organised crime often assumes that criminal groups are separated by ethnic boundaries. In our studies, however, we found that ethnicity influences the composition of criminal networks through social relationships. It is not ethnicity that matters, but the fact that people are family or originate from the same village or the same region. This applies to both immigrant and native offenders. As ethnicity affects social relations, a certain degree of ethnic homogeneity is to be expected. Ethnicity, however, is not the key defining feature of the criminal groups that have been analysed in our research project. Many of the groups consist of individuals from various ethnic backgrounds. This finding might reflect an important trend towards an increased blending of ethnic groups in criminal networks. We expect the continuing integration of ethnic minorities into Dutch society to be mirrored by a more heterogeneous composition of criminal networks.

Furthermore, our case studies urge us to reconsider the traditional view that certain ethnic groups are specialised in particular kinds of drugs – native Dutch offenders trafficking in hashish and ecstasy to the exclusion of everything else, Colombians in cocaine, Moroccans in hashish, and Turks in heroin. Of course, it goes without saying that there is a logical connection with both the established contacts and the availability of particular kinds of drugs in the countries of origin.

Yet our case studies clearly show that sometimes the reality of Dutch organised crime is far more colourful than the picture of 'ethnic specialisation' suggests.

The last question to be addressed in this section regards deadly violence. Criminal groups operate within a rather hostile environment, as they face threats from both law enforcement and their own criminal environment, e.g. cheating (rip-off deals) or excessive violence arising from business disputes. In particular in cases concerning drug trafficking the financial stakes are high, as are the incentives for making a quick profit by cheating. Often it is difficult for offenders to determine whether mishaps are caused intentionally, or arise from, for instance, misunderstandings or misfortune. In addition, offenders have fewer resources to prevent or solve problems than law-abiding citizens (contracts, arbitration or the judiciary). For this reason, common mistakes and business disputes may easily escalate and all kinds of theft and deceit may cause a chain of violence.

Intimidation and violence is very frequently encountered in cases concerning drug trafficking and is almost by definition present in cases concerning trafficking women for sexual exploitation. The use of intimidation and violence is most frequently absent in cases regarding smuggling illegal immigrants, fraud and money laundering (Kleemans et al., 1998).

Deadly violence is the most extreme reaction to problems. For the police it is often very difficult to establish whether or not a murder is related to organised crime, as the background of these murders often remains unclear. According to the Dutch Central Criminal Intelligence Service the number of killings roughly ranges from 20 to 30 per year (in the period 1992-1998). Three-quarters of the victims are born in countries other than the Netherlands: Turkey (21 per cent), Suriname and the Netherlands Antilles (11 per cent), Morocco (7 per cent), China (7 per cent) and other countries (21 per cent).

Van de Port (2001) recently published a study about killings in the Netherlands in which he strongly opposes the traditional view of killings as the outcome of rational calculations. In his view killings are neither a manifestation of power nor a rational act to safeguard business interests. Based upon a qualitative analysis of 50 cases, he points at a totally different 'logic' behind these events, namely emotional satisfaction and the establishment of a violent reputation. In a world of fear, uncertainty, rumour and accusation, offenders are thrown upon their own resources and may try to hide by establishing a violent reputation (Van de Port, 2001).

Interpreting the study of Van de Port, one should be aware of the fact that the study is not restricted to organised crime. His selection of murder cases ranges from murders related to organised crime to escalations of violence between petty thieves and paranoid outcasts. The most interesting aspect of the study is that it shows how easily emotion, fear and distrust may lead to an escalation of violence. In this sense his statement about 'irrational' processes is certainly to the point. These escalations of violence, however, can be triggered by very clear and immediate causes (such as: theft and deceit), and offenders may end up in situations in which

they see no other option than the use of violence. In this sense his conclusion about the ‘irrationality’ of these processes is rather overstated.

4. Illegal Markets

The salient role of the Netherlands in the international drug trade has already been described in the preceding section. Here we will elaborate upon some other illegal markets – smuggling illegal immigrants, trafficking women for sexual exploitation, trafficking in arms and trafficking in stolen vehicles. Furthermore, special attention will be devoted to crimes related to former eastern Europe and Russia, as the focus of this book is upon ‘the European Union *and Beyond*’.

4.1. The Smuggling of Illegal Immigrants

According to Dutch criminal law ‘smuggling illegal immigrants’ and ‘trafficking of (wo)men for sexual exploitation’ are two different offences (NRM, 2002: 1-7). Although women that are forced to prostitute themselves have often also been smuggled to the Netherlands, the emphasis of the offence pertains to sexual exploitation (see 4.2, *infra*). This section focuses on the smuggling of illegal immigrants.

The image of smuggling illegal immigrants is heavily influenced by shocking incidents, such as took place in Dover in 2000 when 58 Chinese immigrants tragically suffocated to death while trying to reach the United Kingdom in a lorry. As these incidents attract a lot of media attention, smuggling illegal immigrants is often associated with ruthless offenders and helpless victims. Yet an analysis of ten police investigations from the ‘organised crime monitor’ shows that this illegal market is mainly based upon *symbiosis* between offenders, smuggled illegal immigrants, and their families (Kleemans and Brienen, 2001). Although we do not want to trivialise dramatic incidents and tragic cases of exploitation and violence (Soudijn, 2001), most cases are fostered by mutual consent and mutual benefit. In contrast to cases concerning trafficking of women for sexual exploitation, smuggled people are very often better characterised as clients than as victims. Although these clients are highly dependent and, thus, potentially highly vulnerable, smuggling rings have a clear interest in keeping their clients satisfied, as satisfied clients or their family members generate new business. In migrant communities, communication about trafficking is relatively open, and advertising by word of mouth is a common way of attracting new clients. Furthermore, traffickers are rather looked upon as ‘service providers’ than as criminals.

Smuggling rings provide a most wanted connection between poor and/or dangerous countries (such as Iran, Iraq, Afghanistan, India, China and several African countries) and rich, democratic countries such as the Member States of

the European Union, Canada, the United States and Japan. The main suspects in the analysed cases very often had social ties with both the countries of origin and the countries of destination. Traffickers and clients often share the same ethnic background and, before they started smuggling, many traffickers had been smuggled to the Netherlands themselves.

The Netherlands functions primarily as a transit country for the United Kingdom, Scandinavia, Canada and the United States (see also IAM, 2001: 26-7). Reasons for the attractiveness of the Netherlands as a transit country are for example Amsterdam Schiphol airport, the multi-ethnic character of the Netherlands, and the Dutch asylum policy (making – until recently – a temporal stay in asylum facilities very easy). However, starting a new life and making a living without being noticed by the authorities is quite difficult in a small and densely populated country with extensive registration for such things as housing, work and taxes, which have recently become increasingly interconnected (see also Engbersen et al., 2002). Therefore, the Netherlands is more important as a transit country than as a country of destination. People often enter the Netherlands by air (via Amsterdam Schiphol airport, but also via nearby Belgian or German airports) or by land, taking a mainly ‘eastern’ route (from eastern Europe, Austria and/or Germany) or ‘southern’ route (from Italy and/or France, and Belgium). The analysed cases show the importance of the so-called ‘blue borders’ (the Mediterranean, the Channel, and the Atlantic), and the borders between European Union and non-European Union Member States. In regard to smuggling illegal immigrants, the European Union is virtually ‘borderless’, apart from some ‘physically isolated’ countries such as Greece, the United Kingdom, and Ireland.

The cases analysed by the WODC reveal smuggling networks, in which the organisers of (sub)routings are the major players. The main suspects often connect the countries of origin to the countries of destination by their social ties. The cases also illuminate the crucial role of forged documents (see also IAM, 2001, 2002). Forged documents make the logistics of smuggling much less complicated, as smuggled immigrants can simply travel by aeroplane. The core of these smuggling rings can be quite small, consisting of people in the country of origin, (possibly) a transit country, and a country of destination. Many prime suspects are also closely involved in forging documents (Kleemans and Brienen, 2001).

Without forged documents, the journey is much longer and much more complicated, due to a variety of barriers, transfers, and stops. Hence, smuggling rings have to use local knowledge and local contacts in the transit countries, making the chain much longer, and the coordination between the links of the chain much more complicated. Sometimes these chains are coordinated from start to finish, but in other instances clients are also handed over between several groups that are only very loosely connected.

4.2. The Trafficking of Women for Sexual Exploitation

In the Netherlands a lot of research has been done on the trafficking of women for sexual exploitation or – in short – ‘forced prostitution’ (Fijnaut et al., 1996, 1998; Kleemans et al., 1998, 2002; IRT NON, 1997; NRM, 2002; Van Dijk, 2002). Van Dijk (2002) recently estimated that in the year 2000 there were about 3500 victims of ‘forced prostitution’, approximately 20 per cent of the total estimated number of prostitutes working in the Netherlands.

Another data source is used by the Dutch National Rapporteur on Trafficking in Human Beings, who has reported annually on this topic since 2002 (NRM 2002: 47-50). According to data from a national victim support organisation over the period 1992-2000, the majority of (possible) victims originate from central and eastern Europe (55 per cent), in particular Bulgaria, the Czech Republic, Poland, Russia, Ukraine, Lithuania and Romania. Other regions of origin are Africa (17 per cent), Asia (8 per cent), Latin America and the Caribbean (9 per cent), the Netherlands (5 per cent) and other western European countries (1 per cent). In recent years, the number of victims from Africa in particular (mainly Nigeria) has risen.

An overview of the offenders involved is given by Van Dijk (2002: 69-102), based upon an analysis of 521 suspects who were arrested in the period 1997-2000. Although 42 per cent of the suspects have Dutch nationality, only 28 per cent of the suspects were born in the Netherlands. Other countries of birth are Yugoslavia (13 per cent), Nigeria (8 per cent), Turkey (7 per cent), Bulgaria (4 per cent), Morocco (5 per cent), Albania (4 per cent), the Czech Republic (3 per cent) and Germany (3 per cent), with the remaining 25 per cent coming from elsewhere. Most suspects work together with offenders from various countries of origin and/or ethnic groups, although there are some groups with a clear ethnic profile (i.e. Albanians, Nigerians, and Turks). About a quarter of the suspects are female, and sometimes play a prominent role, in particular in Nigerian trafficking networks. Some have been victims of forced prostitution themselves in the past, before becoming involved as offenders (see also Kleemans et al., 1998: 48-51).

Van Dijk (2002) makes a distinction between three categories of offenders. The first category pertains to ‘solo offenders’, who have forced one or more girls into prostitution. Sometimes the girls are recruited abroad, but more often they are simply ‘bought’ from other pimps or recruited in the Netherlands. Solo offenders mostly operate a ‘solo business’, although in some cases they get some help from assistants. A substantial number of the ‘solo offenders’ are the so-called (mainly Moroccan) ‘loverboys’, who seduce vulnerable girls and gradually move them into (forced) prostitution (see also NRM, 2002: 61-4).

The second category is the ‘self-supporting criminal groups’ – groups that control the entire process, from recruitment to prostitution, and have no established contacts with other offenders or groups involved in trafficking women. The main suspects are often in charge of a brothel or sex club in the Netherlands. If victims

are recruited abroad, members of the group transport the victims themselves, mostly using a family contact of the main suspect or his/her partner living abroad. These groups can be described as 'ego networks', being built around active and entrepreneurial offenders (Klerks, 2000).

The third category might be described as 'criminal macro-networks' (Klerks 2000) – a fluid criminal infrastructure, in which many people are connected via one or more intermediaries, although there are clusters based upon geographical distance, family ties, friendships, commercial circuits and similarity in activities. In trafficking networks, clusters mostly evolve around recruitment in particular countries, sometimes around transport to the Netherlands (in particular the distributive trade), and around forced prostitution in the Netherlands. A great number of people are involved, in particular in the countries where victims are recruited.

Victims are bought and resold and the 'turnover rate' is high. Many victims report that they have worked in various cities in the Netherlands and in other countries of the European Union (in particular Germany, Belgium, Spain and Italy). In two police investigations, special 'distribution points' are mentioned – one in France, where Nigerian victims are traded, and one in the Netherlands, where Albanians buy and sell victims from eastern Europe (Van Dijk, 2002: 118-20).

In the police investigations that were analysed some victims were active in street prostitution or escort services, but most of them worked in brothels or in window prostitution. Forty clubs were owned by suspected traffickers, 27 clubs cooperated (the owners mainly 'turning a blind eye'), and 21 clubs were 'used' by traffickers (the owners being ignorant). People renting rooms for window prostitution were never directly involved in trafficking. They just rented rooms to pimps, without checking whether prostitutes were illegal or exploited.

New developments in the dynamics of trafficking are expected as a result of the new act implemented in 2000 lifting the ban on brothels. Brothels, in which adult prostitutes work voluntarily, are no longer prohibited. At the same time, legislation on unacceptable forms of prostitution has become more severe, and the government plans to exercise more control over the sex industry. A first evaluation of this policy change has been published, signaling a slight improvement of the position of prostitutes (Daalder, 2002). However, the punishable forms of prostitution might be displaced to the unregulated sector, though no confirmation for this assumed development has been found yet.

4.3. Trafficking in Arms

Until recently very little was known about trafficking in arms through the Netherlands. According to the Fijnaut research group the main reason for this lack of knowledge was the trend towards despecialisation in the 1990s, resulting in a lack of police investigation into the illegal arms trade (Fijnaut, 1998: 106-9). However, in 1999 certain new initiatives were launched including the raising of sentences for

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the possession of illegal fire arms and trafficking in arms, the (re)establishment of specialised regional units, and a European operation against illegal arms (Operation Arrow).

4.3.1. Quantity of Firearms

The Ministry of Justice also initiated three research projects related to this topic. The first project looked into, amongst other things, the number of firearms that were used to commit criminal acts in the period 1998-2000 (Spapens and Bruinsma, 2002a). It was estimated there were around 5,000 incidents per year and in 2000 an average of 30 incidents per 100,000 inhabitants. The police region of Amsterdam registered the largest number of incidents (72 per 100,000 inhabitants). The types of firearms most commonly used to commit criminal acts, were pistols and revolvers. Firearms were usually used to commit robbery (38 per cent of all criminal acts registered) and in about 80 per cent of the cases the use of the firearm was limited to threatening the victim.

Perpetrators who had been found in possession of an illegal firearm were mostly male (95 per cent) and on average 24 years old. Ethnic minorities, and in particular people born in the Netherlands Antilles, were disproportionately registered for fire-arm offences. About 20 per cent of all offenders had been previously apprehended for an offence involving a firearm. Forty per cent of the suspects were also involved in the production, trafficking or dealing of drugs.

The number of illegal firearms seized by the Dutch police increased gradually from 992 in 1995 to 2,576 in 1999. An average of 16 firearms per 100,000 inhabitants were seized in the year 2000. Most illegal firearms were seized in Amsterdam (58 per 100,000 inhabitants) and Rotterdam (34 per 100,000 inhabitants). Although the registration numbers of seized firearms are problematic, the total amount of weapons that are held in illegal possession in the Netherlands was estimated as being between 85,000 and 125,000.

When estimating trading figures, the authors make a distinction between actual firearms, blank-firing weapons (or arms firing gas-cartridges), and imitations. Although both blank-firing weapons and imitations cannot be used to fire bullets, they can be used to threaten victims. Possession of these types of firearm is not permitted in the Netherlands, but they can be legally bought in a number of European countries. The estimation of trade in illegal firearms is thus restricted to actual firearms, with the approximate number of illegal firearms being between 20,000 and 25,000 (Spapens and Bruinsma, 2002a).

4.3.2. Eastern Bloc Countries

The second study concerned the illicit trafficking of small arms from former Eastern Bloc countries to the Netherlands (Spapens and Bruinsma, 2000b). The study was based on the registration of confiscated illegal firearms, information

gathered from criminal investigations, and interviews with prisoners and police and custom officials.

It concluded that the most important countries are Croatia, Yugoslavia (until 1999), the Czech Republic and Hungary. In Croatia firearms are manufactured legally as well as illegally, whereas in the Czech Republic and Hungary, firearms are legally manufactured. An unknown number of these firearms are obtained by criminal groups and smuggled abroad. Arms production in Yugoslavia has been halted since 1999, due to the bombing of production facilities by NATO. As of that moment the smuggling of firearms from this country has virtually ceased.

In the Netherlands about 400-500 illegal firearms originating from former Eastern Bloc countries are confiscated every year (about 20 per cent of the total amount of confiscated illegal firearms). Based on several (quite heroic) assumptions, the authors estimate that each year 2,000 to 4,000 illegal firearms are trafficked from former Eastern Bloc countries to the Netherlands. The total number of firearms smuggled into the Netherlands is estimated at 9,000 to 18,000 each year.

The criminal groups who are responsible for the illegal trafficking of firearms are relatively small. The key figure in these groups is the 'importer'. This person is able to obtain illegal firearms in one of the former Eastern Bloc countries involved, and has a network of people in the Netherlands who sell these arms on the criminal market. The actual smuggling of batches of 5 to 30 firearms is done by couriers, who are recruited in the country of origin.

The profits that are made are relatively modest, in particular compared to the smuggling or production of drugs. It is noted, however, that involvement in the illicit trafficking of firearms enhances one's reputation in the criminal world. It is estimated that 15 to 25 importers are active in trafficking illegal firearms from former Eastern Bloc countries to the Netherlands. Most of the importers are also involved in other types of criminal activities (Spapens and Bruinsma, 2000b).

4.3.3. Interviews with Prisoners

The third study is based upon interviews with prisoners (Maalsté et al., 2002). In addition to various conclusions about the motives and backgrounds of the possession and use of firearms, the study concludes that the offenders are unanimous in their opinion that buying an illegal firearm is very easy in the Netherlands. Another conclusion is that trading illegal firearms is not very lucrative – 'middlemen' earn about € 25 to € 75 per firearm and 'large scale' traders about € 225 per weapon. These earnings are quite modest, especially when compared to the drugs trade. This might also explain why the people involved most often combine their trade with other illegal activities (in particular drugs). According to the respondents, both native Dutch criminals and offenders from the former Yugoslavia are involved in the arms trade.

4.4. Trafficking in Stolen Vehicles

As police investigations into trafficking in stolen vehicles have not had a high priority in the Netherlands, very little is known about this illegal activity. The Fijnaut research group estimated that 30,000 to 35,000 cars and lorries are stolen in the Netherlands every year. Although many are found by the police and returned to their legitimate owners, about 5,000 to 7,000 cars and maybe 200 lorries disappear permanently (Fijnaut et al., 1998).

The identity of the groups responsible for this is largely unknown. Most of the police files analysed by the Fijnaut research group pertain to Dutch groups of car thieves, and a few to groups from eastern Europe (Russia, Latvia, the Ukraine, and the former Yugoslavia). They show that the Dutch groups usually only work on a local or regional scale, and steal 10 to 15 cars per year. On average, the groups consist of four to five individuals. The tasks of stealing or driving cars, changing the vehicle identification numbers, switching parts and making cars unrecognisable, and forging registration papers are divided among the group. Though having no real leader, these groups often do have one central person who is in the legitimate car business, owning a garage or a junkyard. Compared to the Dutch groups, foreign groups are generally larger, consisting of five to eight people at the core who can call upon other individuals for specialised tasks (e.g. the export of cars) (Fijnaut et al., 1998).

Stolen vehicles frequently have to find their way back into the legitimate world, and therefore legal businesses are often involved. Analysing 355 police investigations regarding the involvement of legal businesses, Moerland and Boerman (1999) conclude that groups that are active in trading stolen vehicles are very strongly focused upon the legal car business (Moerland and Boerman, 1999: 155).

Although the studies mentioned above have provided some insight in trafficking in stolen vehicles, many questions about this illegal market remain unanswered. For this reason the WODC has commissioned a study into car theft and the involvement of organised crime, the results of which will be published in 2004.

4.5. Developments in Eastern Europe and Russia

Some years ago a successful Russian businessman was murdered in the Netherlands, resulting in a public awareness of the shady dealings of Russian businessmen and the threat of the Russian mafia. A personal intervention of the Prime Minister led to an extensive threat analysis made by a specialised police team (KT NON, 1999). The threat analysis, however, did not provide any clear indications that Russian offenders carried out criminal activities in the Netherlands. Reference was made to investments of Russian businessmen in real estate in some parts of the country, but the overall conclusion was that Russian crime was 'a serious, but limited problem' (KT NON, 1999).

In 2001, the threat analysis has been updated (KT NON, 2001). The report goes into the political and economic situation in several former Soviet republics and gives a 'profile' of the nature of the criminal activities carried out in the Netherlands. The conclusion is that it mainly involves financial and/or economic crime and that it is difficult to make a distinction between organised crime and corporate crime, as the distinction between legal and illegal business is often quite shady in the countries of origin (see also Siegel, 2002). The criminal groups are mostly fluid networks of offenders. Eastern European groups consist of offenders from various former Soviet republics, but they have relatively few members from a non-eastern European background. If non-eastern European offenders are involved in criminal activities related to the Netherlands, in most cases these are native Dutch offenders. Eastern European groups are not (yet) strongly connected to other criminal groups operating in the Netherlands.

The conclusion of the second threat analysis is more gloomy than that from 1999. Reference is made to the interconnection between legal and illegal structures in countries like Russia and the Ukraine, the attractiveness of the Netherlands (and the Netherlands Antilles) for Russian flight capital, cigarette smuggling (the Netherlands as a transit country for particularly the United Kingdom), trafficking in women for sexual exploitation, violence, the growing drug trafficking related to eastern Europe, and the rise of organised theft such as 'hit and run' robberies (see also Weenink and Huisman, 2003). Eastern European crime is considered to be 'a serious, and sometimes a big problem' (KT NON, 2001).

5. Organised Crime and the Legal Economy

With the benefit of hindsight, one may conclude that, when the problem of organised crime reached the national political agenda in the early 1990s, the problem was somewhat overstated – organised crime was on the verge of infiltrating economic sectors and political institutions and was considered to be a major threat to the integrity of Dutch society. One of the major goals for the Fijnaut research group (1996) was to assess the 'intertwining' between organised crime and the legal economy.

To assess this issue, the theoretically most vulnerable economic sectors were first singled out for auditing – those sectors that verge on the trade in illegal goods and services (transport, harbours, the automobile sector, slot machines, and the hotel, restaurant, night club and pub sector), and industries that are controlled by organised crime in other countries, such as the construction industry and the waste disposal industry. Attention was also devoted to the garment industry, the insurance sector, the wildlife sector, and the smuggling of nuclear material. In-depth studies were then carried out in Amsterdam and three other cities (Arnhem, Nijmegen and Enschede) to assess the situation at a local level. Finally, research was done into

money laundering and the role of specific professions (lawyers, notaries public and accountants).

The main conclusion reached by the Fijnaut research group was that no criminal groups at either a national or local level had gained control of legitimate sectors of the economy by taking over crucial businesses or trade unions (labour racketeering). The authors, however, noted that this does not mean that economic sectors are not subject to all kinds of fraud, causing a great deal of damage to governments and businesses. In the preceding decade, a lot of research has been done into value added tax fraud, evading taxes on highly taxed goods (such as oil, tobacco and alcohol), counterfeiting (e.g. textiles, CDs and CD-ROMs), European Community fraud (e.g. meat and dairy products), financial fraud, and so on (Aronowitz et al., 1996; Van Duyn et al., 1990, 1995, 2003; Fijnaut et al., 1996, 1998; Kleemans et al., 1998, 2002). Recently, a PEO investigated fraud and corporate crime in the construction industry (Parlementaire Enquêtecommissie Bouwnijverheid, 2002).

According to the Fijnaut research group, there were some indications of criminal infiltration in the transport sector. The transport sector plays a crucial role in the transportation of drugs by sea, air and road. Criminal groups hire, buy or set up their own haulage companies to import and export drugs, and use Amsterdam Schiphol airport and the port of Rotterdam for the same purpose. In particular at Amsterdam Schiphol airport, criminal groups get ample help from insiders. There was, however, no evidence that criminal groups play a permanent role of any significance in the transport sector, let alone that they have it under their control.

Furthermore, the hotel, restaurant, night club and pub sector was one of the few fields in which an organised crime pattern was observed that went beyond facilitating illegal activities. In some cities, in particular Amsterdam, criminal groups control or own many of the hotels, restaurants, night clubs and pubs in a way that can be termed racketeering. By investing in these establishments, criminal groups not only create a certain kind of private territory, but also an infrastructure for other illegal activities, such as selling drugs, laundering money, and installing illegal slot machines (Fijnaut et al., 1996, 1998).

The aforementioned conclusion of the Fijnaut research group was corroborated by follow-up studies of the 'organised crime monitor' (Kleemans et al., 1998, 2002). In these case studies, hardly any evidence was found of protection, political corruption, illegal manipulation of political decisions, or infiltration in trade unions. The main conclusion reached was that, rather than controlling certain regions or certain sectors of the economy, criminal groups seem to join in with the legal infrastructure as well as with the legal commodity and money flows. Economic sectors are used to commit or to conceal crimes or to spend criminal funds.

In the last report special attention was devoted to money laundering and the spending of criminal proceeds (Kleemans et al., 2002). Before criminal proceeds can be invested, they need to be exchanged, transported and/or laundered. Since legislation on identification of unusual transactions was introduced in the

Netherlands, offenders have started to change money abroad. Other risk-avoiding strategies include the use of third parties (who have no criminal record), the use of employees in the financial sector, investments in exchange offices, and the use of legal entrepreneurs to exchange criminal proceeds. After the money has been exchanged, in most cases transporting the money abroad is sufficient for investments in real estate or companies. In the majority of cases analysed by the 'organised crime monitor', the criminal proceeds are simply transported to countries where there is little chance that questions will be asked about the true origin of the money. In these cases, money laundering is not necessary – simply transporting the money will suffice. The analysed cases frequently show both physical transfers and bank and giro transfers. Fast, but relatively expensive money transfers (Western Union and American Express) are especially popular in cases concerning smuggling illegal immigrants as well as in cases concerning trafficking women for sexual exploitation.

Finally, money can be transferred by so-called 'underground banking systems' (Passas, 1999). These systems are attractive, because they are rather informal, anonymous and fast, and because substantial amounts of money can be transferred at a relatively low cost. However, case studies show that there is a lot more fiction than fact in most of the literature on underground banking, since underground banking systems are not so secretive as is often suggested. Underground bankers often use phones, faxes and official banking accounts. In addition, beneficiaries do not identify themselves by the oft-mentioned 'torn bank note', but by their own names or passport numbers. Another myth is the idea that underground banking leaves no traces. Underground bankers do leave traces, by using faxes and (mobile) telephones and by keeping accounts as well, as a result there are more opportunities for law enforcement than is generally assumed. Finally, the analysed cases show that underground bankers are able to transfer substantial amounts of money. Go-betweens, such as people changing money for criminal groups, play an important role in bringing criminal groups into contact with underground bankers from different ethnic backgrounds.

Criminal proceeds are spent on expensive life-styles and investment in valuable objects. The money is also invested in companies and real estate, with the purpose of making further profits, legal or illegal. Most of these investments are in sectors familiar to the criminal groups, such as bars and restaurants, prostitution, cars and transport (Kleemans et al., 2002: 124-36). Well-known examples are investments in Amsterdam's red light district and surrounding neighbourhoods, in real estate, catering and prostitution (Fijnaut et al., 1998). Both the nature and location of the investments is to a large extent influenced by the 'cognitive map' of the offenders, as they have a tendency to invest in their country of origin – the Dutch in the Netherlands, Turkish offenders in Turkey, and so on. In some cases money was invested in countries other than the country of origin, but this was always in places

where the offenders conducted criminal activities or where they had close personal contacts (see also Meloen et al., 2003).

The Fijnaut research group also devoted attention to the roles of specific professions (lawyers, notaries public and accountants) (Fijnaut et al., 1996, 1998). Professionals and persons providing consumer related services, such as lawyers, public notaries, accountants, real estate agents and banking institutions, may all come into contact with organised crime. Many of these contacts are inevitable. Providers of such services are not necessarily aware of the purpose of any contacts. A financial institution, for instance, does not always know if money is being deposited in a foreign account in an effort to relocate proceeds of crime. Increasingly, however, service providers are being expected to be wary of possible misuse of their services. Certain professional groups have drawn up guidelines specifying when to question the validity of the request or the credentials of a consumer, and when to deny access to their services. Also, laws have been promulgated, such as the Unusual Transactions Act, which require financial service providers to report unusual transactions to a central office. Certain professional groups, for instance lawyers and notaries public, have appointed consultation officers to whom one can turn if faced with doubts about the legitimacy of a client's request (see also Henk Van de Bunt's contribution on organised crime policies in the Netherlands in Part III).

6. Organised Crime and the Public Authorities

In the early 1990s there were several confrontations between criminal groups and the public authorities. After years of leniency, special police teams started investigations into the dealings of some major Dutch drug dealers, in particular in the vicinity of Amsterdam. The Fijnaut research group highlighted several 'counter-strategies' of these organised crime groups – counter-surveillance, intimidation, corruption, and, to a lesser extent, media manipulation and the use of influential people to counterbalance potential official intervention (Fijnaut et al., 1996, 1998). It was concluded that, in particular in Amsterdam, criminal groups had exerted various kinds of pressure on the criminal justice system. The counter-strategies, however, were apparently confined to executive employees in official agencies most directly involved in combating organised crime, particularly the police and customs. There was no evidence that groups had used either corruption or intimidation to gain control over any of the important government services, let alone the major official bodies or authorities.

The follow-up studies of the 'organised crime monitor' devoted attention to both counter-strategies and evasive strategies (Kleemans et al., 1998, 2002). It was shown that many criminal groups, especially those involved in smuggling illegal immigrants and trafficking women for sexual exploitation, tried to avoid

confrontation with the authorities rather than seeking it. However, where criminal justice intervention was strong and highly visible (in particular regarding some Dutch drug trafficking networks), several counter-strategies were employed such as counter-surveillance and corruption. In some analysed cases suspects were aware of the radio frequencies used by the police as well as the registration numbers of cars used by the investigating authorities. Furthermore, they were in possession of bugging equipment and technology for tracing bugs and tracking devices.

Corruption was mainly found in cases with a close connection between organised crime and the legal society, situations that resulted in a *need* for corruption. Three goals were discerned in the analysed cases – gaining indispensable resources such as licenses, visa or forged documents; evading surveillance (border controls, brothel checks, and so on); and getting information from the investigating authorities (such as ‘running’ investigations or imminent police actions). The background of these cases was more than incidentally the combination of social contacts and (partly) common interests (Kleemans et al., 1998).

A specific study into the informal exchange of police information with third parties, including ‘the criminal milieu’, was commissioned in 1997 (Van Ruth and Gunther Moor, 1997). One of the main findings of this study was that the informal exchange of information is very often embedded within existing social structures, such as family, friends, (sports) clubs, colleagues, ‘old boy’ networks and ethnic circles. Exchange of information with the criminal milieu was mostly influenced by family and friendship ties, and by bribery. Furthermore, the authors concluded that ‘risky contacts’ were also influenced by personal factors and hobbies of police officers. Finally, reference was made to two categories of police officers running a higher risk of corruption – foreign police officers and police officers working at Criminal Intelligence Units and Alien Registration Offices (Van Ruth and Gunther Moor, 1997).

Police corruption is not currently an issue in the Netherlands, and it has only incidentally been of public concern in the past (for an overview, see Van de Bunt, 2004). In 1993 Fijnaut investigated 14 cases of police corruption and concluded that there was no evidence that the problem was widespread (Fijnaut, 1993). Two recent studies have corroborated these findings (Lambooy et al., 2002; Nelen and Nieuwendijk, 2003).

The first study monitored the prevalence of integrity violations within the Dutch police force. In the period 1999-2000, Bureaux of Internal Affairs (BIOs) carried out approximately 1,600 investigations into a wide variety of police misconduct – offences relating to working conditions (absenteeism, calling in sick without proper grounds, misuse of equipment) (28 per cent), misconduct off duty (22 per cent), police violence/misuse of authority (21 per cent), unauthorised use of information (13 per cent), theft/fraud on duty (15 per cent), corruption (taking bribes) (1.4 per cent), and accepting gifts (0.2 per cent). It is interesting to note that the number of documented cases of accepting bribes is very low. Only 25 cases were

investigated by BIOs in the period 1999-2000 and only a few of them produced sufficient evidence to put these cases before the public prosecutor.

The second study analysed 145 investigations conducted by the Rijksrecherche in the period 1998 to 2000 (Nelen and Nieuwendijk, 2003). The Rijksrecherche is an independent investigative unit, mandated to handle allegations of corruption committed by public servants, and must be called in if other police forces cannot be expected to act independently and impartially. In the period 1998 to 2000 investigations were done into the police (38 per cent), prisons (23 per cent), ministries (15 per cent), local administration (14 per cent), tax authorities (7 per cent), customs (10 per cent), the judiciary (2 per cent), and public administration (1 per cent). The majority of the 145 investigations, however, did not produce sufficient evidence to justify a prosecution or even a complaint. Only 17 cases were prosecuted, six of which dealt with the police and one with customs.

Allegations of police corruption mostly concerned supplying confidential police information to criminals, involvement in drug trading and issuing temporary residence permits to foreigners. In the cases of customs corruption, people or goods were smuggled across the border while officers turned a blind eye. None of these cases took place in the large seaports – they were all connected to Amsterdam Schiphol airport (Nelen and Nieuwendijk, 2003).

In the last report of the ‘organised crime monitor’, a similar difference between airports and seaports was found, analysing the *modus operandi* in 15 cocaine cases (Kleemans et al., 2002). This difference was tentatively explained by the *need* for corruption, due to the strict passenger and baggage controls by individual custom officers at airports. In seaports, the hiding of cocaine in containers and trucks is effective enough in itself, and corruption does not seem to be a viable option (see also Zaitch, 2002).

Van de Bunt (2004) extended this explanation to the Dutch policy towards the regulation of vice. This regulation is liberal, but quite explicit and clear. Considering the traditional link between organised crime and the exploitation of vice, one might claim that without ambiguous law enforcement there is no real *need* for those who exploit vice to secure the operation of their businesses through bribery. Certainly in the case of transnational organised crime, smuggling illegal goods and people, offenders are even less dependent on police and customs corruption (Van de Bunt, 2004).

7. Conclusions

To a large extent, organised crime in the Netherlands boils down to crossing borders. Organised crime takes advantage of global differences in price, in prosperity, in opportunities, and in laws and regulations. It caters to societal needs that legitimate companies cannot satisfy. Many forms of organised crime in the Netherlands

concern international smuggling activities – drug trafficking, smuggling illegal immigrants, trafficking women for sexual exploitation, arms trafficking, trafficking stolen vehicles, and other transnational illegal activities, such as money laundering and evading taxes (cigarette smuggling, European Community fraud, and so on). Hence, the nature of organised crime in the Netherlands might be described as ‘transit crime’ – criminal groups in the Netherlands are primarily involved in international illegal trade, using the same opportunity structure that also facilitates legal economic activities.

‘Transit crime’ focuses on trade, on crossing borders. To be profitable and successful, it does not need to dominate certain regions or economic branches. Therefore, this kind of crime is fundamentally different from the kind of organised crime that can be found in the United States, Colombia or Italy. However, these foreign stereotypes still inspire much of the present containment policies in the Netherlands (see also Henk Van de Bunt’s contribution in Part III).

Another foreign stereotype assumes that organised crime is ‘ethnic crime’ and that criminal groups are separated by ethnic boundaries. Empirical research, however, shows that ethnicity influences the composition of criminal networks through social relationships. Actually it is not ethnicity that matters, but the fact that people are family or originate from the same village or the same region. As ethnicity affects social relations, a certain degree of ethnic homogeneity is to be expected, yet ethnicity is certainly not the key defining feature of criminal groups in the Netherlands. Many groups consist of individuals from various ethnic backgrounds. This finding might reflect an important trend towards an increased blending of ethnic groups in criminal networks. We expect the continuing integration of ethnic minorities into Dutch society to be mirrored by a more heterogeneous composition of criminal networks.

To make further predictions about the development of organised crime in the Netherlands, one should be aware of developments in both opportunity structures and the social fabric. In fact, many opportunities can only be grasped if the social fabric is present to take advantage of these opportunities. This might explain why a country like the Netherlands with large immigrant populations originating from drug producing countries, plays such a prominent role in the international drugs trade. It might also explain why many awesome predictions about the influx of organised crime activities from eastern Europe and Russia, did not come true, as the Iron Curtain had also frustrated the creation of social links with these countries. It may take some time before these borders can be crossed effectively.

Finally, making predictions assumes that the world of organised crime is in fact predictable. Yet who would have predicted the emergence of the business of smuggling illegal immigrants? Who could have anticipated the extent of ecstasy production and export from a small country like the Netherlands? And who could have foretold the recent trend of the large-scale cultivation of home-grown cannabis (Bovenkerk and Hogewind, 2003)? Police investigations time and again show that,

although there is much stability in major players and major activities, new developments often come as a surprise. Who would have anticipated the role of Israelis in the worldwide export of ecstasy from the Netherlands? And who would have predicted the influx of Albanians in the criminal milieu of Amsterdam? Sometimes the only way of uncovering these trends and new developments is to keep track of police investigations by systematic empirical research, crossing the well-guarded borders between the scientific world and the world of criminal justice.

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Organised Crime in Germany: A *Passe-Partout* Definition Encompassing Different Phenomena

Jörg Kinzig and Anna Luczak

1. Introduction

Organised crime did not become a topic of great interest in Germany until the 1980s. First arising in police discussions, the threat posed by organised crime rapidly became an increasingly important issue in the political and public debate during the following decade. At the same time, significant changes were made to the criminal justice system, which have affected both the legislative framework and the praxis of criminal prosecution.

Due to the broad official definition of organised crime and the fact that empirical research on the topic has been either conducted by the police or relies heavily on police data, the actual impact of organised crime in Germany cannot be established with certainty. In particular, the data presented by the Federal Office of Criminal Investigation (Bundeskriminalamt, hereinafter referred to by its acronym – BKA) in its annual Organised Crime Situation Report (Lagebild Organisierte Kriminalität) strongly influence the understanding of organised crime in Germany. As we shall see, however, BKA data have several shortcomings and therefore need to be treated cautiously.

Despite these shortcomings, the BKA Organised Crime Situation Reports do provide an overview of the offences classified as organised crime in Germany. Traditionally, drug trafficking and smuggling represent the most frequent organised crime activity in Germany, followed by economic and nightlife crime, property crime, the facilitation of illegal immigration, violent crime, forgery, arms trafficking and smuggling and, finally, environmental crime. The recorded cases do not reveal the existence of special strategies by organised crime members to infiltrate or unduly influence police and political authorities in Germany.

As the police themselves have started to admit, organised crime repression has until now largely focused on the most visible and less controversial illegal activities (such as drug-related crime) and offenders. From the available data, it is indeed hard to avoid the impression that much of what is termed organised crime in Germany can be more properly referred to as *Bandenkriminalität*, i.e. gang crime. Whether this form of crime justifies the numerous measures that have radically changed the criminal justice and the police system in Germany is an open question that should be answered by a serious evaluation programme.

The following section summarises the public, academic and professional debate on organised crime in Germany, outlining the emergence of the concept in the 1980s and briefly sketching the changes introduced since then to fight organised crime, both in substantive and procedural criminal law. The following section provides a general overview of the organised crime situation in Germany. The fourth focuses on illegal markets, assessing the role played by organised crime groups in such markets, while the following section analyses the alleged organised crime infiltration in the legitimate economy. The strategies used by organised crime actors to avoid prosecution are reviewed in the sixth section. Some concluding remarks with a forecast of future trends follow.

2. The Public, Academic and Professional Debate

2.1. The Emergence of the Concept

For several decades following World War II, organised crime was rarely discussed in Germany in either the police or scholarly literature. The periodical *Kriminalistik*, which held the leading forum for the discussion among criminal justice officers, did not consider organised crime a matter of interest for many years and, if mentioned at all, organised crime was only reported on in regard to the situation in the United States.¹ As a rule, the expression ‘criminal groups’ was used exclusively to refer to juvenile delinquency (Middendorff, 1958: 213; Hentig, 1959). Most reports concerning the mafia, camorra or La Cosa Nostra explicitly pointed out that there was no connection between these groups and Germany (Hoeverler, 1965). In a report published at the end of the 1960s, for example, Mätzler (1968) supports the above-mentioned view, stating that the organised crime situation in Germany is not in the least comparable to the one in the United States, even though he mentions a particular gang of organised pimps. According to Mätzler, two factors may favour an eventual expansion of organised crime in Germany: the liberalisation of border controls and the lack of international competences in search operations. An Interpol report, published in *Kriminalistik* in 1972, continued to deal exclusively with organised crime in the United States (Interpol, 1972). Likewise, in the early 1970s, the criminologist Hans Göppinger (1971: 383) noted that in Europe only the Sicilian mafia and other southern Italian mafia groups constituted large syndicates comparable to those in the United States.

¹ See, for example, the reports on the activities of American law enforcement authorities in combating organised crime in *Kriminalistik* 1951/17/18: 183, 1961/4: 182, 1966/6: 325. Also Schneider (1973).

In the mid-1970s, organised crime became the focus of debate and literature in the German police. Several conferences held by police organisations in 1974 prompted this, establishing organised crime as a relevant issue. The official title of a conference organised by the BKA, for example, was ‘Organised Crime Patterns and the Fight against Organised Crime’. The press was interestingly enough only permitted to attend the opening of the conference (Wehner, 1974: 533). Another seminar of the Polizeiführungsakademie (Police Academy), the main training centre for high-ranking police officers in Germany, was entitled ‘Organised Crime and Ways to Combat It’ (Heinhold, 1974; Polizeiführungsakademie, 1975). Likewise, the main focus of a third conference held by the German criminal investigation officers’ union (Bund Deutscher Kriminalbeamter) was the development of strategies to improve the effectiveness of the fight against organised crime (Gemmer, 1974: 530).

In the second half of the 1970s the subject of organised crime disappeared from the agenda of politicians and police, possibly as a result of the rising attention given to terrorist activities, in particular the shocking murders staged by the German terrorist group Rote-Armee-Fraktion.²

It was not until the beginning of the 1980s that the threat posed by organised crime was addressed again. Since then a whole raft of literature – from police texts to scholarly publications as well as media articles and reports – has discovered the topic ‘organised crime’ as being one of great interest (see *infra*). At the same time new provisions significantly extending the range of police competences, especially in the field of covert and pro-active policing, were introduced.

After a failed attempt by the state and federal police agencies to define organised crime in the early 1970s (Lampe, 2001: 109), in 1986 the Ministers of Home Affairs and Justice of the German federal states agreed on a common definition of organised crime as follows:³

Organised crime constitutes the planned commission of criminal offences driven by the quest for acquiring profits or powers. Such criminal offences have to be, individually or in their entirety, of major significance and involve the cooperation of more than two participants acting with a common intent for a longer or indefinite period of time on a distributed-task basis:

² In the meantime, however, there was an attempt to define organised crime by the so-called AG Kripo; for further information see Kinzig (2000: 191, 195).

³ Gemeinsame Richtlinie der Justizminister/-senatoren und der Innenminister/-senatoren der Länder über die Zusammenarbeit von Staatsanwaltschaft und Polizei bei der Verfolgung der Organisierten Kriminalität, published in Kleinknecht and Meyer-Goßner (2001), *Richtlinien für das Straf- und Bußgeldverfahren* (RiStBV), Anlage E, Punkt 2.1.

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- a) by utilisation of commercial or business-like structures;
- b) by application of violence or other methods suitable for achieving intimidation; or
- c) by exerting influence on politics, the media, public administrations, the justice systems, or commerce and industry.

There are three remarkable points regarding this definition:

First, there is no precise limitation of associations concerned – every group of at least three individuals committing crimes over a period of time can be regarded as an organised crime group. Secondly, the three final characteristics (business, violence and influence) do not have to be contemporaneously present to satisfy the conditions of the definition – one successfully proved will suffice. Thirdly, the acquisition of profits or power must be the main goal of the criminal activity, which is remarkable because, apart from emotional motives like jealousy, acquiring of profits or power are in general the only imaginable goals of crimes.

Obviously, this definition is very broad. It could include, for example, a gang of three individuals organising the theft of motor vehicles and their smuggling abroad. Every legal trading company would meet all the criteria of the above definition, except for the ‘planned commission of criminal offences’.

For a long period of time, this extensive definition has been the central focus of the professional and scholarly debate on organised crime in Germany. The centrality of this issue may result from the fact that this definition forms the basis of all official statistics and these are, in their turn, the main instrument to estimate the extent and impact of organised crime in Germany and also in the field of scholarly research. Yet the definition is not part of substantive law, but merely a practical guideline.

As will be discussed in more detail in the following section, the current German debate can be described as varying dialectically in its understanding of organised crime on which theoretical and practical points of view are based (Paoli, 2001: 163). On the one hand, the starting point of many reflections is that organised crime groups have a stable and hierarchical structure. On the other hand, organised crime is understood as ‘enterprise’ crime. No matter how they are organised, offenders involved in illicit markets for profit are seen to be the backbone of organised crime. The German debate has not yet recorded a concept of organised crime which can be uncontentiously agreed upon by all.

2.2. The Political Relevance of Organised Crime

Since the early 1990s, both criminal law and criminal procedural law have been substantially modified in Germany, allegedly to improve the fight against organised crime.

Initially, some special acts were introduced or amended: the Act to Fight Drug Trafficking and Other Forms of Organised Crime (usually termed as Organised Crime Control Act, in German known under the acronym of *OrgKG*), for example, was introduced in 1992. Two years later, a new bill to fight crime was passed by the *Bundestag* (German Parliament). In 1998, the Act to Improve the Fight against Organised Crime was added.⁴ Through these acts, several parts of the Penal Code (*Strafgesetzbuch*) were also amended.

In particular, new aggravating circumstances for business-like offences or those committed by gangs were introduced.⁵ However, quite remarkably, an aggravating circumstance for ‘committing a crime in an organised manner’ was not passed. The official justification for this omission is possibly even more interesting than the fact itself: namely, according to the German legislator, the definition of ‘organised crime’ is not sufficiently established enough to constitute an aggravating factor in the Penal Code.⁶

In addition to these changes, the offence of money laundering was inserted into the Penal Code and other technical measures were introduced to hinder criminals from making a profit from crime.

The changes concerning the Code of Criminal Procedure (*Strafprozessordnung*) are even more far-reaching. They include a wide range of new or extended investigatory powers – for example, interception of communications, undercover investigations and other covert surveillance methods.

The comparison of the traditional and the new policing methods recalls the earlier differences between policing methods and those of the secret services. In organised crime cases, the traditional ‘open’ methods – like witness questioning, collection of evidence and forensic examination – are increasingly supplemented by covert methods shedding light on a whole milieu rather than simply supporting the investigation of a particular crime.

The general changes in the penal system can be described as being of great significance. In particular, as a result of the organised crime debate, the system of crime prosecution has been entirely reorganised and police methods of investigation have become more covert and pro-active. The connection to organised crime is twofold. On the one hand, organised crime cases are hard to solve because, in

⁴ Gesetz zur Bekämpfung des illegalen Rauschgifthandels und anderer Erscheinungsformen organisierter Kriminalität, 15/07/1992, *Bundesgesetzblatt*, Teil I, 1302; Verbrechensbekämpfungsgesetz, 28/10/1994, *Bundesgesetzblatt* Teil I, 3186; Gesetz zur Verbesserung der Bekämpfung der Organisierten Kriminalität, 04/05/1998, *Bundesgesetzblatt*, Teil I 845.

⁵ In German: ‘*gewerbsmäßig*’ and ‘*Bande*’.

⁶ Begründung OrgKG, (Bundestagsdrucksache) BT-Drs. 12/989, 24.

contrast to traditional forms of crime, there are almost no victims with an interest in reporting offences. A consumer of drugs does not want to see his drug distributor in jail, whereas a person who has been robbed, will certainly want the robber to be arrested. On the other hand, the term 'organised crime' refers to a broad range of different phenomena which all share the fact that they are seen by the public as a great threat to society. On the basis of this angst, the 'fight against organised crime' is a very useful justification to introduce and adopt new policing methods and furthermore serves as a reliable footing for the presentation of political decisions as well as police effectiveness.

In general, one can say that the 'fight against organised crime' has prompted a radical shift in policing: namely, from an offence-oriented and reactive approach to an offender-oriented and pro-active one. According to this new approach, pro-active investigations are neither limited to solving crimes nor restricted to the mere 'prevention' of crime. Traditionally, German policing had two separate aims: on the one hand, the prosecution of crimes through methods that could possibly infringe suspects' rights and, on the other hand, general crime prevention. This second goal consists in averting dangers by adopting more general and less intrusive measures applying to wider sections of the population. In contrast to this traditional division, the new pro-active approach integrates both variants of traditional policing.

2.3. Existing Research

In order to present an overview of the existing research on organised crime in Germany, the following studies should be mentioned.⁷

As early as 1973, expert interviews were conducted by Hans-Jürgen Kerner (1973: 22) with 82 law enforcement officers, judges and scholars about professional and organised crime. According to his findings, 'professional organised crime' and, more generally, the crime industry in Europe could still be grasped and understood in terms of traditional crime. In his opinion, to speak of a special new manifestation of crime could only be justified when offenders start influencing ordinary social life and infiltrating politics and administration, industry and trade, employers' associations and trade unions directly (Kerner, 1973: 294).

In the mid-1980s, several researchers, mostly coming from police ranks, searched for more information on organised crime through extensive expert interviewing. On the instructions of the BKA, from November 1985 to June 1986, 66 police specialists on organised crime were questioned by Erich Rebscher and Werner Vahlenkamp. This survey led to the conclusion that organised crime in Germany

⁷ This compilation is restricted to criminological research based on empirical methods.

is almost exclusively limited to criminal networks. Besides these, there are very occasionally 'independent groups with a more or less rigid internal structure operating in Germany from abroad' (Rebscher and Vahlenkamp, 1988: 25, 31, 181). This restriction did not hinder the authors from referring to a 'cohesion inside the organisation' of these groups which was based on common interest and benefit (Rebscher and Vahlenkamp, 1988: 92, 183). In police practice, offenders are scarcely classified as being an individual offender, gang member, criminal associate or part of an organisation. Yet it is generally known both among the police as well as the offenders, who pulls the strings and who merely follows orders (Rebscher and Vahlenkamp, 1988: 186).

In 1990 Uwe Dörmann and other researchers (Dörmann, Koch, Risch and Vahlenkamp, 1990) interviewed 26 experts from the fields of science, media, judiciary and police according to the so-called Delphi-method with regard to the expected development of the organised crime situation before the turn of the century. In respect to this question, the experts assumed that 'without effective countermeasures the extent and impact of organised crime would increase continually' (Rebscher and Vahlenkamp, 1990: 21, 128). In particular, groups of foreign organised crime offenders were expected to assume a greater relevance in Germany (Rebscher and Vahlenkamp, 1990: 38, 129). Though the organised crime threat was considered small by most interviewees, some of them hypothesised that by the end of the twentieth century, a mafia-like structure would have emerged in Germany (Rebscher and Vahlenkamp, 1990: 130).

According to Eugen Weschke and Karla Heine-Heiß (1990), who interviewed 56 police officers in Berlin, organised crime in Germany proves to be 'a network of criminal groups and individual habitual offenders that can be termed as 'network-crime' and categorised as small groups, core groups and their associates, or large groups' (Weschke and Heine-Heiß, 1990: 30, 210). Particularly in the sphere of white-collar, economic and environmental crime the so-called leadership of these groups consists of very clever and sophisticated persons (Weschke and Heine-Heiß, 1990: 110, 211).

In 1993, Ulrich Sieber and Marion Bögel (1993) drafted a concept intending to represent the logistics of organised crime and reviewed it by interviewing 49 law enforcement officers targeting different organised crime activities, such as car theft, exploitation of prostitution, trafficking in human beings and illegal gambling (see also Bögel, 1994). According to this review, the named fields of delinquency in Germany were dominated by complex criminal groups operating in business-like fashion by using highly sophisticated logistics, subsequently resulting in their attainment of positions of wealth and power. Besides strictly hierarchical structured organisations, loose-knit networks of criminals were also found to exist (Sieber and Bögel, 1993: 287). In a later study on European Community fraud, Sieber (1997: 64) stressed that this activity, as well as other organised white-collar offences (particularly money laundering), differs from traditional forms of organised crime in

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that there are strong links between criminals and legal companies. As also concluded by his first research study, Sieber argued that law enforcement agencies and the judiciary operate correctly in the fight against organised crime (1997: 77).

After reviewing 15 organised crime cases in the south-western state of Baden-Württemberg, Johann Podolsky came to the conclusion that there are no organised crime syndicates in Germany. However, he observed the beginnings of more or less developed organisations in almost every field of criminality. Qualitative new features of 'organised crime' were the dimensions, growing international inter-connectivity, high degree of organisation and the increasingly professional behaviour of criminal groups (Podolsky, 1995: 90).

According to Gerhard Wittkämper, Peter Krevert and Andreas Kohl (1996: 168), on the basis of their interviews with 152 law enforcement officers, German organised criminals are mostly organised in networks. This characteristic differentiates them from alien criminal groups, which are predominantly mafia-like. Organised crime was additionally forecast to account for 13-14 per cent of all crimes and cause financial damage of ca. DEM 25 to 30 billion (€ 13-15 billion) by 2000 (Wittkämper et al., 1996: 416).

More recently Norbert Pütter, after interviewing 71 police officers and prosecutors, adopted a different perspective and came to conclusions that significantly diverge from the prevailing opinion. According to Pütter, in fact, much knowledge about organised crime is merely feigned and both the public debate and the various legal provisions concerning organised crime are plagued by terminological indistinctness and ambiguity. In his opinion, 'organised crime' is primarily a police construction (1998: 300).

In summary, the prevailing opinion concerning the structure of organised crime groups operating in Germany has virtually remained the same since Kerner's fundamental study of 1973. Back then, Kerner maintained that there is no fully developed system of organised crime in western Europe. Fifteen years later, Rebscher and Vahlenkamp state that there are hardly any lasting associations of offenders, Weschke and Heine-Heiß proclaim the non-existence of large, hierarchically structured and united organisations and Podolsky stresses the differences between German groups and American and Italian syndicates. As seen from the above review, most scholars use terms like 'networks' or 'interconnection' of criminals to describe German organised crime.

Interestingly, no study gives a substantiated answer to the question as to whether organised crime has the special potential to threaten society or not. In Kerner's opinion, organised crime can be described sufficiently in existing categories of crime and would only involve a new quality if it gained direct influence on the civil society, politics and the legal economy. Other scholars also mention that these spheres are not yet endangered by organised crime but warn that economic, political and social systems would soon be threatened if no suitable measures are implemented. Dörmann, Koch and Risch, in particular, fear that by 2000, mafia-like

structures would emerge in Germany, at least in particular fields of crime. Sieber and Bögel assume that a so-called 'second stage' of organised crime would soon develop, consisting of groups capable of unduly influencing public administration, police, politics and judiciary.

The above-mentioned studies all share the same weakness: namely, they are all essentially based on police-oriented research and thus reflect the specialised knowledge developed by the law enforcement units targeting organised crime. The dominance of police-oriented research results from two factors: first, the complexity and expense of empirical studies about organised crime and thus the frequent reliance on police funds; and secondly, the lack of accessible alternatives to police data. By relying on expert interviews, most of the inquiries merely reflect the knowledge and opinion of police officers and prosecutors investigating organised crime cases. There is hardly one systematic assessment of the nature and impact of these cases, nor are the judicial aspects concerning these cases usually considered. On the contrary, police-related publications usually attempt to answer the questions that are most relevant for the police, such as the extent and nature of connections between organised crime offenders, and the underlying structures which are characterised by a division of duties.

In this regard Pütter's study is the exception. He does not deal with whether organised crime exists and how one would best describe it but rather examines the police strategies. In his examination, Pütter criticises the far-reaching changes introduced in the penal system in reaction to the alleged special threat posed by organised crime in Germany.

Taking the same perspective, the extensive empirical research project *The Judiciary and the Phenomenon of Organised Crime: Processing Organised Crime Cases through the System*, which was completed by Jörg Kinzig in 2003 and will be published in 2004, focuses on how the police and the judicial authorities handle proceedings they assume to be organised crime related. This focus is particularly justified considering the fact that the impact on judicial practice of the penal reforms passed to better combat organised crime is unclear. Kinzig's study aims to investigate how the agencies responsible for criminal prosecution take up and deal with the phenomenon of organised crime. Furthermore, it assesses the implementation of the *ad hoc* substantive and procedural provisions introduced in the 1990s, such as those contained in the Organised Crime Control Act of 1992.

Applying several empirical methods the study examines, amongst other issues, 52 out of 153 cases that were classified as organised crime cases in Baden-Württemberg during the second half of the 1990s. Twenty-six of them involve very complex forms of criminality (as shown by different indicators such as the number of suspects, the number of offences, the methods of investigation, the international character of the operation and the illegal profits involved), whereas the remainder are characterised by a lower degree of complexity. The examination of criminal

cases was supplemented by interviews with offenders who were classified by the police as being organised criminals.

The study comes to various conclusions concerning the actual appearance of crimes which are classified by the police as 'organised crimes' as well as concerning the criminal proceedings resulting from these crimes. One of its most relevant findings concerns police action: namely, the research proves that in organised crime cases the role and conduct of the police diverges significantly from its role and conduct in traditional criminal prosecution. The main difference concerns the balance of power between the police and the prosecution service – in organised crime cases this is considerably shifted towards the police. Moreover, the starting point of the investigations was systematically anticipated in organised crime cases: this practice is called 'pro-activation' of policing. The peculiar methods used in 'pro-active' organised crime investigations are covert and deceptive – traditionally in normal criminal cases open methods such as interrogation and search are used.

The results concerning the reality of organised crime activities and associations are also remarkable. The study does not support the statements routinely repeated since the early 1990s by police officers, prosecutors and politicians alike that organised crime poses an extraordinary threat to German society. Only in a few cases could the existence of a veritable criminal organisation be deduced from the number of members involved, the length of criminal activities, the profits derived from these and the persistence of the group independently from its members. In no case were more than 20 suspects accused. In more than 40 per cent of the cases, charges were brought against only two defendants. When (very rarely) several offenders cooperated over a period of time sufficient enough to call their connection stable, they were linked by factors other than profit orientation. Those factors were predominantly membership of an ethnic or linguistic minority, but also friendship and family ties. The majority of the criminal groups analysed are based solely on the individual's striving for his (or, more rarely, her) economic profit and therefore cannot be described as stable organisations with common goals and aims.

In contrast to other forms of crime, the distinguishing features of the organised crime cases analysed are the commission of 'crimes without victims' (at any rate: crimes without persons willing to report them), the high proportion of foreigners and the suspects' international connections. The 'organised crime groups' presented in the sample are based on a certain division of labour, durability, planning, professionalism and conspiracy. Generally one can say that these characteristics are related to the surrounding illegal trade/market.

Altogether, the overall picture of organised crime in Germany includes a broad variety of phenomena, a patchwork of more or less loosely structured associations and serious criminals. This picture results from the gradual expansion of the official definition of organised crime in Germany since the 1970s.

Analysis of the court rulings and sentences shows that neither the official definition nor the term 'organised crime' are of particular importance for the judicial decision-making itself. In most rulings, organised crimes are categorised, if at all, as 'gang crimes' (*Bande*) or 'crimes for gain' (*gewerbsmäßig*), which are aggravating circumstances in the Penal Code. In practice, however, 'organised crime' cases can be differentiated from other cases in the way they are handled in the penal system. Despite their complexity, most of the organised crime cases save themselves a lengthy hearing through an (informal) agreement of the court (*Verfahrensabsprachen*) closing the case with the consent of the prosecution service and the defendant. The very complexity of the cases may indeed favour this 'short-cut', as courts would be overtaxed if they had to deal with every accusation down to the last detail.

2.4. Accessible Data

Before 1992 all existing data about organised crime had to be drawn from general crime statistics. To draw relevant information from this overall picture of crime, one had to decide which offences could be regarded as being organised crime related. Though drug offences, pimping or car theft are usually considered organised crime activities, the statistics offered no possibility to select the most serious, possibly organised cases from the overall total, for example, to differentiate organised trafficking in stolen vehicles from a single vehicle theft for the purpose of a joy-ride (Von Lampe, 2002: 7). As a result of these deficiencies, it was hardly possible to draw any information about the organised crime threat and trends from the yearly decrease or increase in the number of the above-mentioned offences.

To enable a more substantiated assessment of the organised crime situation, in 1992 the BKA began to draw up annual Organised Crime Situation Reports, in which organised crime related cases are summarised.⁸ The common definition of 1986 serves as a working basis for these reports. As mentioned above, this definition is very broad: the possibility that the reported incidents may be not particularly threatening should not be ignored.

Because of a lack of alternative data, the BKA Organised Crime Situation Reports strongly determine the understanding of organised crime in Germany. Politicians, law enforcement officers, media and even academic scholars often uncritically repeat and propagate the view of organised crime in Germany that is outlined in the BKA reports.

⁸ The public version of these reports can be downloaded from the BKA's website: <<http://www.bka.de>>.

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To the same extent that the official crime statistics suffer from shortcomings, the Organised Crime Situation Reports also have their shortfalls. For instance Klaus Von Lampe (2002: 16) criticises the fact that the number of related offences per case investigated varies widely, so that it makes a great difference whether one considers the number of offences or the number of cases. Kinzig's research (2004) also shows that the BKA data have to be treated very cautiously, at least for the three following reasons. First, the data published in each annual report refer to the 'organised crime' investigations closed or ongoing at the end of each year. The data is not revised later on, even if it became clear in the course of the subsequent investigations that some of the cases listed turned out not to be organised crime related. Secondly, state police agencies decide whether a criminal proceeding is an organised crime case or not. As the official definition on which these decisions are made is very broad, regional differences in the selection processes cannot be ruled out. Thirdly, the counting of offenders and offences is very problematic. Neither the official definition of organised crime nor police practice definitively establish if, for example, all the customers of 100 kg cocaine imported from Colombia have to be counted as co-offenders in the description of the case presented in the BKA annual report or not. Nor is it clear whether or not, in the same hypothetical case, each single purchase has to be considered an organised crime offence.

The BKA itself has recently admitted that the mere presentation of statistical data in its organised crime report may hinder a concrete assessment of the actual extent and impact of organised crime in Germany. Following this admission, the BKA published for the first time a so-called structural analysis of organised crime in 2002 in which the mere quantitative data are complemented by qualitative information. However, this new approach also lacks systematic analysis.

3. An Overview of the Organised Crime Problem in Germany

Taking into account these restrictions, the organised crime situation in Germany that emerges from the BKA annual reports is as follows. Table 1 lists the number of criminal cases (or police investigations) that have been considered organised crime related from 1993 to 2002. Annually 420-570 organised crime investigations are conducted nationwide; in particular, the number of cases has remained amazingly stable over the last five years. This figure contains both 'new' proceedings and proceedings 'inherited' from the previous year that are listed anew if additional information has been collected.

Out of the three optional characteristics listed in the organised crime definition, the first one – namely, the use of commercial or business-like structures – is most frequently observed. In fact, approximately 80 per cent of all cases record the use of commercial or business-like structures, around 50 per cent involve the use of violence or other means of intimidation. Only 20 per cent of the overall number

Table 1. Distribution of characteristics of criminal investigations conforming to the definition of organised crime (source: BKA 1993-2001)

	1993	1994	1995	1996	1997	1998	1999	2000	2001
Number of organised crime procedures*	534	569	520	no data	518	517	480	553	476
a) use of commercial or business-like structures	426 79.8%	429 75.4%	415 79.8%	no data 79.0%	409 79.0%	412 79.7%	369 82.5%	481 87.0%	403 84.7%
b) use of violence or other means of intimidation	282 52.8%	327 57.5%	249 47.9%	no data 46.9%	254 49.0%	293 56.7%	235 49.0%	247 44.7%	225 47.3%
c) involving influence exerted on politics, the media, public administration, judiciary and the legitimate economy	91 17.0%	102 17.9%	84 16.2%	no data 15.3%	96 18.5%	110 21.3%	88 18.3%	95 17.2%	87 21.6%

* I.e. the number of investigations that included information relevant to organised crime.

Table 2. Parameters of organised crime investigations (source: BKA, 1993-2001)

	1993	1994	1995	1996	1997	1998	1999	2000	2001
Number of offences	42,246	97,877	52,181	47,916	42,936	31,629	35,765	42,693	no data
Offences per investigation	75	160	91	77	71	53	63	67	88
Number of suspects	9,884	9,256	7,922	8,384	8,098	8,444	7,777	9,421	7,844
Number of arrest warrants		no data 24.3%	no data	no data 28.5%	2,190 27.0%	2,267 26.8%	1,995 25.7%	2,471 26.2%	2,131 27.2%
Proportion of alien offenders	54.5%	58.7%	63.6%	62.2%	60.1%	62.7%	58.4%	56.2%	52.1%

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of organised crime cases involve undue influence on politics, the media, public administration, the judiciary or the business sector.⁹

As shown by Table 2, the cases encompass about 40,000 individual offences yearly. The number of suspects varies from 6,800 to 9,900. Arrest warrants are issued for a quarter of these offenders. Approximately 60 per cent of all offenders are aliens. The offences most frequently committed by people suspected of belonging to organised crime are presented in Table 3. The most important offence is drug trafficking and/or smuggling, which is the main activity in nearly half of the cases.

In comparison with criminal offences in total, the proportion of organised crime offences is very small, as demonstrated by Figure 1. The 43,000 offences recorded in organised crime cases in 2000 represent, for example, 0.7 per cent of over 6 million offences reported in that year. Likewise the 9,400 suspects involved in organised crime investigations constitute just 0.4 per cent of more than 2,300,000 suspects targeted in 2000.

4. The Delivery of Illegal Goods and Services

As shown by Table 3, the illegal activities most frequently associated with organised crime are illegal drug trafficking and smuggling, nightlife crimes, the facilitation of illegal immigration and illegal arms trafficking and smuggling. Considering the deficiencies of the BKA reports already mentioned, the data concerning particular fields of organised crime have to be treated with special care. Nonetheless, police data are the primary source of information for particular fields of organised crime and – regardless of their reliability – are of crucial importance for the very understanding of organised crime in Germany. Moreover, police data give an unparalleled overview of all the different segments of the German illegal market. The only alternative sources are either very rare studies focusing on particular goods or services, that anyhow also rely heavily on police data (Sieber and Bögel, 1993) or local studies focusing on the illegal drugs market of a single town or shedding light on a special phenomenon (such as the trafficking in women).

In addition to the following four segments of the illegal market, the BKA reports include findings on trafficking of stolen goods and smuggling to avoid taxes and so on.

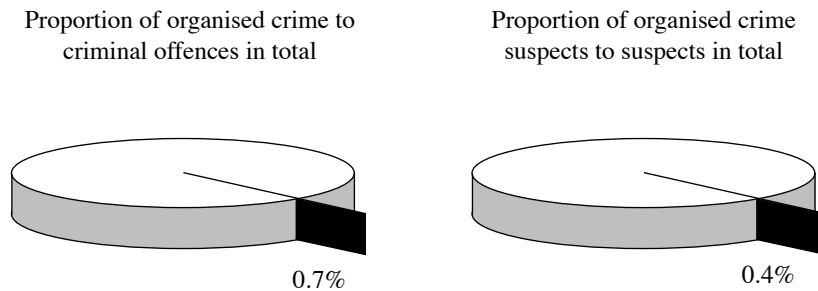
⁹ The total exceeds 100 per cent because an individual investigation may meet more than one criterion.

Table 3. Fields of organised crimes (source: BKA, 1993-2001)

	1993	1994	1995	1996	1997	1998	1999	2000	2001
Number of cases	569*	619	598	634	601	603	565	638	544
Drug trafficking/ smuggling		202	200	224	212	242	272	285	277
Crime associated with the business world		130	115	114	105	87	98	103	88
Property crime		188	177	157	148	135	95	93	107
Crime associated with nightlife		100	90	99	101	90	89	86	89
Illegal immigration		58	59	93	84	81	70	80	55
Violent crime		160	102	99	84	94	46	46	37
Forgery		135	89	89	90	98	33	36	31
Arms trafficking/ smuggling		51	40	35	33	37	8	15	9
Environmental crime		6	4	3	3	no data	3	3	3
Others		36	65	111	110	98	102	107	91
Sum					970	962	816	892	77

* no breakdown according to offences for 1993

Figure 1. Criminal offences and suspects in total and organised crime offences and suspects – 2000



Source: BKA, 1993-2003.

4.1. Drug Trafficking

Traditionally drug trafficking and smuggling are viewed as the main fields of organised criminal activity in Germany. Table 3 shows that the number of these activities has risen steadily since 1997. Differentiating between the various types of drugs, one can see that cocaine and heroin trafficking have been dominant recently, followed by trafficking in cannabis products and synthetic drugs.

According to the police findings, indigenous groups take up the prime position in cocaine trafficking and smuggling. Though Colombian and other Latin American countries are the source of all the cocaine sold in Germany, South American organised crime groups are sometimes involved in smuggling schemes but continue to play a subordinate role in German structures of distribution. The Netherlands are of great significance as a transit country for supply of cocaine in Germany.

Since the 1980s, heroin trafficking in Germany has been dominated by Turkish groups (most of which are of ethnically Kurdish origin). As far as foreigners are concerned, Turkish drug traffickers constitute the largest group, followed by Albanian importers and distributors and for the first time in 2002, Vietnamese. German groups are also involved in the heroin trade. Most of the heroin sold in Germany originates from Afghanistan and is smuggled into the country via Turkey.

The trade in cannabis products is largely run by domestic individuals and groups. The supply of amphetamine and amphetamine derivatives is almost exclusively carried out by Germans. The main country of origin of amphetamines and its derivatives is the Netherlands. Recently there have been several cases in which Germany was used as a transit state for smuggling ecstasy pills from the Netherlands to North America (BKA, 2001: 15; BKA, 2002: 20).

4.2. Nightlife Crimes

In 2002, a heterogeneous group of offences associated with the nightlife was also ranked highly in terms of the most frequent activities that are considered typical of organised crime. This includes exploiting prostitution, living on the earnings of prostitution, 'simple' and aggravated trafficking in human beings and illegal gambling. Amongst these offences, trafficking of human beings and the exploitation of prostitutes are the most important ones.

Police findings suggest that most criminal groups engaged in these activities have a heterogeneous composition. The cooperation between individuals of different ethnic origin is also very frequent, such as to recruit prospective prostitutes or, even worse, to exchange and 'sell' prostitutes among several groups. Today, as in the last decade of the twentieth century, the majority of prostitutes come from eastern Europe. In the last couple of years foreign offenders are increasingly forcing their way into this field of crime which is, however, still dominated by German groups. In terms of significance, German groups and gangs are followed

– at considerable distance – by Turkish and eastern European players. Regarding the ethnic composition of groups there is an observable connection between the routes of immigration and the groups involved. Very often different kinds of groups cooperate on a distributed task basis in recruiting women in their homeland, bringing them to Germany, taking them to brothels and exploiting them (BKA, 2001: 16-7, 2002: 22).

4.3. Facilitation of Illegal Immigration

The crimes listed by the BKA under the label ‘illegal immigration’ includes providing support for illegal entry and residence of foreigners in a profit-oriented, repetitive gang-type way as well as the smuggling of migrants in and out of Germany. Besides these core crimes, the police categorise a variety of other offences as ‘illegal immigration’, such as the illicit procurement of visas, the use of forged or falsified travel documents or no travel documents at all, as well as the arrangement of fictitious marriages.

In 2001 there was a significant decrease in the number of investigations in this field resulting in just 55 cases being investigated by the police – a trend which was confirmed in 2002 with just 59 cases being investigated. These represent the lowest figure of ‘illegal immigration’ cases since the presentation of the first Organised Crime Situation Report in 1993. One explanation for this development may be the stabilisation of the political situation in the former Yugoslavia, especially in Kosovo. Another factor has certainly been the tightening up of German asylum law in 1993. As migration offences and the number of recorded cases are closely connected to migration flows and these, in turn, are influenced by economic, social and political factors in both the source and destination countries (the so-called ‘push’ and ‘pull’ factors), the tightening up of the German policies may have resulted in larger flows of prospective refugees and migrants to other destination countries, such as the United Kingdom and the Scandinavian countries. The importance of the push and pull factors is underlined by the fact that in the 2002 organised crime report, Iraq as a war zone and the Ukraine as a very poor country were mentioned as the most frequent countries of origin for undocumented migrants smuggled into Germany. Increasingly being used as a transit country, Germany is often traversed by immigrants on their way to Italy, Spain or Portugal.

In the field of illegal immigration, a multitude of groups cooperate across borders and ethnicities. These groups usually divide the different tasks among members and partners and are characterised by a high degree of flexibility and professionalism (BKA, 2001: 21-2, 2002: 23-4).

4.4. Arms Trafficking

The category 'arms trafficking and smuggling', for which the number of reported investigations has decreased over the past several years, contains violations of the German Firearms Act (*Waffengesetz*) and the War Weapons Control Act (*Kriegswaffenkontrollgesetz*). The 2001 investigations, for example, focused on nine groups and networks whose main activity consisted of arms trafficking and smuggling.

According to the BKA, the reason for the relative insignificance of arms trafficking is that this offence is merely a peripheral phenomenon of organised crime. The small number and the professionalism of organised crime groups which are predominately engaged in arms trafficking suggests that in the sphere of organised crime, arms are mainly used as a means to create the impression of self-confidence or simply as a weapon while committing a crime. In most investigations, German organised crime groups and networks have been found to dominate this field (BKA, 2001: 23).

4.5. Police Focus on Groups

The above description of the four illegal market activities reveals that the police are primarily interested in singling out particular groups, their ethnic origin and the trade routes from foreign countries to Germany. This orientation of the police is questionable because scholarly research has demonstrated that networks of criminal individuals are more frequently found in Germany than structured groups. Nevertheless the BKA reports give an approximate overview of the illegal goods and services traded in Germany, advising of product origin and how the trade is generally conducted.

5. The (Alleged) Infiltration of Organised Crime in the Legitimate Economy

Police data on German organised crime infiltration in the legitimate economy emerges only from the data included in the category 'crimes associated with the business world' (here referred to as 'economic crime') of the BKA's Organised Crime Situation Report. This category includes a variety of offences such as fraud, embezzlement, bankruptcy fraud and violations of criminal law in the business sector. The criminal activities recorded by the BKA concentrate primarily on the offences of fraud (especially investment fraud, social security and insurance fraud, credit fraud, fraudulent failure to provide service as agreed and fraud in connection with stock exchange speculations) as well as illegal employment. In 2002 this field of crime ranked second on the scale of organised crime activities in Germany.

As in the past, economic crime is dominated by German groups and networks of perpetrators. According to the BKA analysis, organised crime groups engaged in economic crime are on average larger and last longer than those involved in other organised crime activities. Additionally, they mainly specialise in one of the activities mentioned above. The BKA report estimates losses caused by economic organised crime exceeding € 500 million in 2001, representing 44 per cent of all the losses recorded in connection with organised crime (BKA, 2001: 17, 2002: 21-2).

In September 1992, money laundering was penalised by introduction of Section 261 of the German Penal Code following the enactment of the Organised Crime Control Act. In 139 of the organised crime cases analysed by the BKA in 2001 (in 2000 there were 171), information relating to money-laundering offences was involved. In connection with 49 (2000: 69) of these investigations, 126 (2000: 306) suspicious transaction reports were filed by financial institutions in accordance with Section 11(1) of the Money Laundering Act (*Geldwäschegesetz*) of 1993 (BKA, 2001: 13).

In general, one can say that there are certainly segments of the legal financial and economic market that are exploited by criminals. Overall however, the number of illegal activities is minimal and one may assume that legitimate entrepreneurs do not voluntarily do business with fraudsters, as would be the case if ‘organised crime’ had indeed infiltrated the legitimate business world.

6. Organised Crime Strategies to Avoid Prosecution

According to the so-called ‘general indicators for organised crime cases’ (*Generelle Indikatoren zur Erkennung OK-relevanter Sachverhalte*)¹⁰ which are appended to the official definition of organised crime in the 1986 guidelines, there are three patterns of behaviour which can be subsumed as strategies of organised crime players to avoid prosecution: conspiratorial behaviour between offenders, corruption and public relations (*konspiratives Täterverhalten, Korruption, Öffentlichkeitsarbeit*).

‘Conspiratorial behaviour’ in this regard means observation of the investigators carried out by criminals, the groups’ sealing themselves off from others, the use of aliases and codes as well as highly sophisticated methods to circumvent the use of surveillance methods by the police.

‘Corruption’ includes such activities as paying bribes to public officials, blackmailing them by exploiting their addiction to either sex, drugs or illegal gambling or their usury debts, providing them with expensive ‘presents’, such as cars, apartments, holidays and luxury items.

¹⁰ Anlage E zu den RiStBV; see also Kleinknecht/Meyer-Goßner (2001).

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Table 4. Organised crime cases including corruption offences (Art. 331-4)

	1993	1994	1995	1996	1997	1998	1999	2000	2001
All organised crime cases	534	569	520	—	518	517	480	553	476
Involving offences of corruption (Art. 331-4)	—	28 4.9%	33 6.3%	29	36 6.9%	17 3.3%	15 3.1%	24 4.3%	23 4.8%

Source: BKA, 1993-2003.

As mentioned above, undue influence on politics, the media, public administration, the judiciary or the legitimate economy is recorded in about 20 per cent of the organised crime cases included by the BKA in its annual reports. Meeting this condition does not automatically imply the proof of offences according to Articles 331 to 334 of the German Penal Code, although these constitute the classical criminal offences of corruption. As a matter of fact, criminal offences of corruption were acknowledged merely in some 5 per cent of all organised crime cases, corresponding to approximately one third of the organised crime cases involving the exercise of undue influence on politics, media and the other above sectors. If undue influence is reported at all, it is mainly exercised on domestic or foreign public administrations. Influence on politics, the media and the legitimate economy emerges in only a few cases: there is no proof that it has ever been exercised in a systematic way. Further proof of this point is given by the Corruption Situation Report of 2001 (*Bundeslagebild Korruption 2001*), which was also prepared by the BKA. Only 0.4 per cent (five cases) of the total number of corruption cases listed had links with organised crime. It is thus fair to say, that according to the official data, there is no close connection between organised crime and corruption (BKA, 2002: 22).

A closer look at ten investigations focusing on organised crime in Baden-Württemberg in which the police and the district attorney had acknowledged undue influence on public bodies shows that three groups of cases can be distinguished. The first group includes the classic elements of corruption. In a second group, corruption is not the central aspect of the underlying criminal action, but merely serves as a means to achieve other, higher-ranking criminal objectives, such as for example exerting influence on border officials to ease border crossing for illegal immigrants. A third group of cases is characterised by the fact that police officers were contacted by offenders to obtain confidential information and, thus, minimise their own risk of detection (Kinzig, 2000, 2001).

However, in this context we should not ignore the fact that several complex cases of corruption have recently come to light involving politicians – or at least suspecting their involvement.¹¹ However, the prosecution of organised crime traditionally focuses on the classical field of drug-related crime.

The general indicators to identify organised crime cases list a third strategy which can be used by organised crime members to avoid prosecution: in German this is called ‘public relations’. Here tendentious publications are sponsored by offenders to divert suspicion or to unduly influence the decision-making of the public administration to their own advantage. There is little empirical proof of this activity in the organised crime cases listed by the BKA in its annual reports. Likewise, according to an evaluation of 36 organised crime cases carried out by the General Prosecutor’s Office in Düsseldorf, so-called ‘public relations’ was not able to be proved at all. In five cases, bribery and other forms of corruption were proved. The most frequent strategy to avoid prosecution was, however, conspiratorial behaviour (Generalstaatsanwaltschaft Düsseldorf and Landeskriminalamt Nordrhein-Westfalen, 2001: 93). According to the most recent study of Kinzig (2004), the findings of the Düsseldorf General Prosecutor’s Office can be extended to other German states: i.e. the recorded cases do not support the existence of special strategies by organised crime players to unduly influence police and political authorities anywhere in Germany. Of course, no analogous statement can be made on undetected cases.

7. Future Trends and Conclusions

Starting from the late 1980s, organised crime has often been used as a *passé-partout* to justify substantial changes to penal law, criminal procedure and the police system. Nowadays, the given impression is that of an organised crime threat decreasing in importance as an instrument to introduce and justify legal and institutional reforms. We predict that in the near future the fight against organised crime will lose this role entirely and be gradually replaced by combating terrorism. Whereas this is a concrete threat, the expression ‘organised crime’ and its related criteria have, at least in Germany, never unequivocally proven the special threat that should differentiate this form of crime from others.

Even the police agencies have begun presenting a more realistic assessment of organised crime in Germany and have started to concede that there was some

¹¹ One of these cases concerned the building industry. For more details, see: Generalstaatsanwaltschaft Düsseldorf and Landeskriminalamt Nordrhein-Westfalen (2001: 58). On the difficulties in investigating corruption cases involving politicians see Bannenberg (2002: 334).

overestimation of its threat in the past. A study of the State Office of Criminal Investigation (Landeskriminalamt) of Baden-Württemberg, conducted in cooperation with Kinzig, states that the police 'fight against organised crime' has until now been limited to the prosecution of offenders and crimes that are relatively easy to detect and apprehend (e.g. drug-related crime). Illegal practices in the domestic and international business sector and especially in the bidding of public contracts, which would most probably meet all the criteria of the official organised crime definition, have so far not been regarded as such and thus have yet to be duly investigated (Weigand and Büchler, 2002: 38).

As some police officers state, much of the recorded organised crime in Germany can be more properly classified as 'gang-crime' (Falk, 1997: 17; Weigand and Büchler, 2002: 29) and as such constitutes a form of crime which has existed and been acknowledged since the nineteenth century.

We hope that this more realistic point of view results in an evaluation of the provisions introduced in recent years to fight organised crime which have fundamentally changed the penal and police system.

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How Organised is Organised Crime in France?

Nacer Lalam

1. Introduction

In France, as in other European countries, organised crime is a relatively recent concept, though it is now referred to with increasing regularity. The expression 'organised crime' made its appearance in the French public debate in the early 1990s, in parallel with the end of the Cold War and the bipolar world view that this had engendered. Two assessments are implicitly associated with the concept of organised crime: that the existing law enforcement arrangements are inadequate to deal with this new form of criminality and that the process of globalisation created opportunities for the growth of organised crime. In other words, it is assumed that the upheavals in the various economies all around the world allowed criminal organisations to emerge or transform themselves.

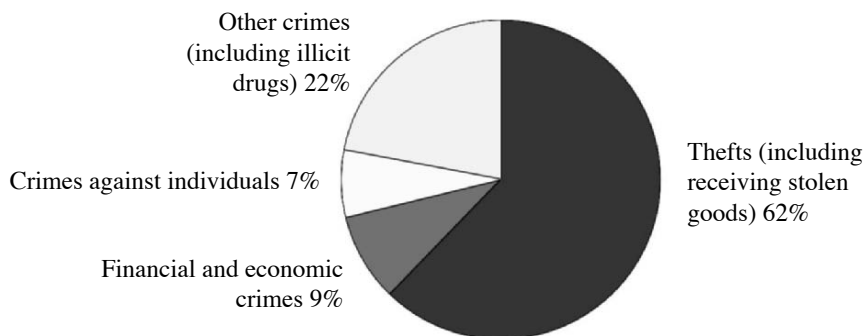
Despite the media and political attention, in France the subject of organised crime has never gained full legitimacy at the university level. This is due, above all, to the lack of reliable data and the paucity of links between the researchers and the law enforcement agencies responsible for cracking down on organised crime. Two other reasons, however, need to be mentioned to explain why organised crime is still largely ignored by academic scholars. First, the agencies responsible for fighting organised crime fear having their activities scrutinised and, secondly, some researchers still regard organised crime as a dirty and socially discredited subject.

The lack of reliable data is, indeed, a major problem that still seriously hinders analyses of the organised crime problem in France. Statistical data on delinquency and criminality have been gathered systematically in France since 1972, providing an annual overview of the offences recorded by the police and Gendarmerie essentially on an individual basis, which means that the collective dimension such as assembly, group, team or organisation are completely missing (Direction Centrale de la Police Judiciaire, 2002). The survey, which is commonly called *Etat 4001*, takes little account of the transverse nature and multiple skills of criminal organisations. This statistical document does not include an objective category for the concept of organised crime. Out of a total of more than 4 million yearly reported offences, the distribution shows that thefts predominate. The way that the data are collated by the authorities makes it difficult to analyse the phenomenon of organised crime.

The French Penal Code and Code of Criminal Procedure use expressions such as 'association of criminals' (*association de malfaiteurs*) and 'offences committed by

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Figure 1. Reported crimes in France – 2001



Source: Direction Centrale de la Police Judiciaire, *Aspects de la criminalité et de la délinquance en France*, La Documentation Française, 2002.

organised bands' (*infractions commises en bande organisée*). *Milieu* (underworld) and *grand banditisme* (which roughly corresponds to organised crime) are, however, the terms used by law enforcement officers, politicians and media alike to describe the criminal activities and groupings of professional criminals. The *milieu* is a term that first appeared in French in 1921 and, according to the dictionary *Le Petit Robert*, is 'a social group formed from a majority of individuals living off the earnings of prostitutes and the proceeds of theft' (1990). Even though there is no existing official definition of organised crime in the French public debate, it is by and large identified with foreigners and is considered a phenomenon that takes place or originates from somewhere else. This is demonstrated by the report of the member of Parliament, François d'Aubert, the very title of which leaves no room for misunderstanding: *Rapport de la commission d'enquête sur les moyens de lutter contre les tentatives de penetration de la mafia en France* [Report on the Means to Fight the Attempts by the Mafia to Penetrate France] (D'Aubert, 1993). The idea of organised crime tends to be inextricably tied up with the mafia, a term that is frequently associated with a specific ethnic group or country, such as the Italian, Russian, Chinese, Albanian and Turkish mafias.

However, this ethnically biased view of organised crime is not correct, as this article supports the thesis that there is also a French organised crime. To fully grasp this phenomenon, we have to look at its historical development, particularly the key moments that fostered changes in its structure, such as the most important wars

of the twentieth century and the decolonisation process. The 1960s, for example, appear to have been profitable years for the production and importing of heroin into North America – christened the ‘French Connection’. Since that period French criminals have been in contact with criminal organisations in the Near East, Italy and North America. Trafficking in illegal drugs has become one of the preferred sectors of activity for criminal gangs, alongside human trafficking, armed robbery, smuggling of various goods, and so on.

We shall study the main activities associated with organised crime with reference to the study carried out by Thierry Colombié, Michel Schiray and myself (Colombié, Lalam and Schiray, 2001) on behalf of the *Institut des hautes études de la sécurité intérieure* (IHESI, Institute of Higher Studies in Domestic Security). In the second section, the paper investigates the specific features of French organised crime, understood as the *milieu*; the third section sheds light on the main sectors of illegal activity. It is necessary to draw to the attention of the reader that these are preliminary results based on an exploratory study. The fourth section tentatively assesses the involvement of organised crime in the legal economy. Some concluding remarks follow.

2. Specific Features of the French Criminal Economy: The *Milieu*

Milieu (underworld) and *beaux voyous* (goodfellas) are two essential concepts in the French collective imagination. These two terms are often linked with the name of a variety of French cities. Table 1 lists the cities most frequently associated with different forms of organised and serious crime by the police officers, prosecutors and judges we interviewed for the study (over 100 interviews were carried out; see Colombié, Lalam and Schiray, 2001).

Milieu and *beaux voyous* are also frequently used to describe men known to the public for their illegal activities, both proven and suspected, their unshakeable respect for the gangsters’ ‘code of honour’ and their various escapades (novel hold-ups, connection with the nightlife or socialising with famous personalities from the world of sport, politics or cinema).¹ Even in the perception of law enforcement officers, in fact, the word ‘underworld’ often invokes the image of a ‘godfather’, ‘boss’ or ‘*consigliere*’ (*caïd*, *parrain*, *juge de paix*), as represented by journalists and film directors since the early twentieth century. This perception, moreover, reflects an idea originating from the public domain: that the underworld is a set of

¹ Indeed no woman has ever been known for her involvement in illegal activities as a leader of a group of gangsters. The world of the *beaux voyous* is exclusively masculine and highly coloured by machismo, according to the judicial files studied. Nonetheless, women are frequently closely involved with the leaders.

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Table 1. French cities or regions commonly associated with the underworld, according to the gravity of criminal activities. Results of interviews with law enforcement officers specialised in organised crime control

<i>High level criminality</i>	<i>Predatory criminality</i>	<i>Obvious collusion</i>	<i>Cases of exception</i>
Paris, Marseilles, Corse, Lyon, Toulon, Nice, Grenoble, Nantes, Lille	Bordeaux, Dijon, Sète, Perpignan, Béziers, Nîmes, Hyères, Bastia, Biarritz	Marseilles and Paris Lyon and Paris	The ‘Corsica – Marseilles – Paris’ underworld is located in several areas of France

Source: Colombié, Lalam and Schiray (2001:14).

individuals, often based in Marseilles, Corsica or Paris, who have opted for a career in crime. They appear to meet up ‘just by chance’, and rarely come together in a more organised sphere, let alone at the head of a real criminal organisation.² What is worse is that many reports on organised crime (D’Aubert, 1993; Campagnola, 1996) blithely ignore the existence of the French underworld and thus the possibility that such French groups might form networks with one another or with other transnational criminal organisations.

Thus, the first characteristic of the French criminal world, as described by law enforcement officers, appears to be a duality between underworld and criminal career. Within this duality, the underworld is associated with a specific territory, while the career extends over an undefined territory or even the whole world. The career of a goodfella may well appear to be the driving force behind significant criminal activity within a city – comparable to the activities of a managing director of a multinational company – particularly through the acts of violence and

² This attitude is clearly shown by the following statement of a Criminal Investigation Department (CID) officer, who made a clear distinction between the *beaux voyous* and the new gangs involved in criminal trades: ‘There are new gangs appearing in the urban areas that specialise in cross-border drug trafficking (primarily with Spain and the Benelux countries). These have nothing in common with the goodfellas and tend to occupy new areas of crime based on the model of the old bosses [...] In France, there is no mafia as the Italians would understand it. There is no sharing of power and rackets within an organisation, no significant violence or political connections and no interaction with the lawmakers’ (Colombié, Lalam and Schiray, 2001: 11-12).

corruption that he uses in order to become the ‘boss’.³ But the goodfella can never be totally certain of the reliability of the people close to him or his associates and the number of individuals or groups of individuals likely to follow his orders, either temporarily or permanently.

According to the interviews we carried out, the second characteristic of the underworld can be best explained with the catch-all concept of a ‘multi-skilled team’ (*équipes à tiroirs*). The special feature of this type of team is that it is quickly formed by a goodfella to carry out a ‘job’ based on the skills of the individual criminals that make up the team. The concept is commonly associated with armed robberies of a bank, art gallery or armoured vehicle. If these criminals were then to attempt to repeat the same crime over a period of several months or even years, the association would then be described using the more common term of ‘band’ or ‘gang’.

The third characteristic of the underworld is professional gangsterism. This is given by three distinguishing features: a basic form of hierarchy (in the case of robbers, this consists of a ‘brain’, some ‘specialists’ and the ‘muscle’); diversification of their illegal activities due to the leverage generated by the profits of their crimes; and transfer of dirty capital into legal sectors of the economy that require few professional qualifications (bars, restaurants, hotels, property).

After conducting many interviews with CID officers, we found that the term ‘underworld’ preceded by the name of a town does necessarily have an entrepreneurial dimension but may be well limited to a solely predatory activity (as shown in Table 1).⁴ The general understanding – if there is one – does not ignore the importance of the activities of the goodfellas, but tends to dismiss their networking and operations as ephemeral associations that are easily challenged by arguments inspired by the lust for gold and the inherent settling of accounts. And even though it is accepted that drug trafficking allows underworld members to become active internationally, many of the interviewed CID officers show little enthusiasm for the idea that the goodfellas’ group or ‘sphere of influence’ (*mouvances*) is able to manage large-scale illegal business in a given territory other than that defined by the name of the town and/or its surrounding area.⁵ Or at least they believe that it is very difficult to prove this point. Most law enforcement officers also consider

³ ‘Boss’ is the term used to refer to the leader of a criminal group, with the same hierarchical resonance as ‘godfather’ or *consigliere*.

⁴ The following remark made by a CID officer illustrates the point perfectly: ‘By underworld, we mean a person who controls and promotes criminal activity in a town or region’ (Colombié, Schiray and Lalam, 2001: 12).

⁵ The CID and examining magistrates we interviewed used the terms ‘clan’, ‘group’, ‘association’ or ‘sphere of influence’ indiscriminately. The underworld is considered a flexible aggregate of all these various descriptions (Colombié, Schiray and Lalam, 2001: 13).

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with scepticism the possibility that members of the *milieu* are able to feed their profits back into the legal economy, thus deriving not just new profits, but also the enviable conditions for limited social success. If we follow this wide-spread line of reasoning, then the only reason for making illicit profits would be to lead an anarchic and ostentatious lifestyle, living from day to day, spending for immediate consumption, womanising and debauchery.

The underworld perception dominant in law enforcement circles mirrors some of the arguments of a theory developed by François Campagnola (1996). In fact, this scholar dismisses the French criminal groups as gangs due to their 'inability to cross the critical threshold needed to take them to the organised crime stage', noting in particular that:

Compared to the situation in many rich countries with their liberal economies, the French criminal market is narrow and rather centred on itself. In terms of type, it remains at the level of professional gangsterism. [...] At the end of the day, the French underworld has never had the markets, the resources or the federative ability to raise professional gangsterism from its small-scale beginnings to the level of a true crime industry (Campagnola, 1996: 4-5).

Nevertheless, a key element of Campagnola's analysis – namely, the 'disintegration of the underworld on the eve of the 1980s' – is not shared by some specialised CID officers (above all those of *Office central de la répression du banditisme* and *Service régional de police judiciaire de Marseille*) and the examining magistrates interviewed by my colleagues and myself. Law enforcement officers quite easily zero in on the presence of both old and new gangs that are formed to quickly mobilise for a 'job' or perform specific tasks with a division of labour in a given field (theft, trafficking, receiving stolen goods, surveillance, and so on). However, contrary to Campagnola, they still commonly advocate the theory of the existence of a few criminal organisations – not only those of foreign origin, but organisations firmly based in France and run by 'godfathers' and other 'bosses' listed in the *Special Dossier on the Suppression of Organised Crime* (known as FSRB from the French *Fichier spécial de répression du banditisme*).

According to law enforcement officers, criminal entrepreneurs are supported by people 'in the same business' (who have proved their specific skills in the criminal and/or legitimate economy) and head up international businesses based on the capitalist model. They directly control groups of individuals from a military-style command post. These groups are involved in many different illegal activities and work in specific areas in France (south-eastern region, Paris and the French Caribbean islands) and abroad. They also indirectly manage many legitimate companies under figure-head directors or using various money laundering techniques. They are also in contact with a selected variety of other entrepreneurs of the criminal economy, at both national and international levels, particularly with Italian-American

organisations. They appear to make use of confidential information relating to the security of their 'business', and enjoy the protection of individuals in (highly) responsible positions in the legitimate fields of law, economics, politics, finance and secret services.

These statements highlight one of the main findings of the research project carried out by Thierry Colombié, Michel Schiray and myself, namely the perpetuation of groupings of individuals belonging to the world of *milieu* who make up the vast underworld of illicit business since the Second World War. There have been two major periods of strong growth of such groups that are composed of several families or clans. The first is the contraband period (cigarettes and alcohol) from just after the Second World War through to the times of decolonisation. The reference model for this period is still the hijacking to Corsica of the *Combinatie*, the cargo boat that carried many tons of cigarettes. The second is the 'French Connection' period in the 1960s and 1970s, which was doubtless the starting point for the industrialisation of the criminal economy via international heroin trafficking and the re-investment of its substantial profits.

By piecing together and cross-checking information from criminal investigations and the informal admissions of the accused (which are never formalised because their authors would not sign them due to fear of reprisals on their families or on themselves) some examining magistrates even mention the existence of a 'superstructure'. This superstructure allegedly culminates in a central person whose authority within the various French underworlds appears to be undisputed. Other interviewees assume that in addition to his protean activities, a goodfella is also in charge of solving 'public order problems', which presupposes a direct link between this criminal and third parties from legitimate public and private sectors. As we will see later on, this theory can be best described as the 'board of directors model'.

We should now focus on the description of criminal organisation by comparing the wealth of empirical and confidential information we accumulated. We identified four main characteristics of a 'criminal organisation' primarily involved in drug trafficking:

- Shared territory and pyramid-shaped hierarchy: once created, a team generally occupies a given geographical sector, within which it runs a range of activities. There are permanent links between these teams of criminals that are created via professional or social opportunities (business ties, informal meetings) and have a pyramid-type hierarchy, at the top of which there is a central person, commonly called a godfather. These links are also manifested by temporary associations, alliances with other groups and, above all, by the continual two-way flow of information in the pyramid, bottom-up and top-down.
- Replacement of individuals: even when key members of the drug trafficking organisation are arrested and the teams are supposedly dismantled, these

continue to be active in the region or are reformed within a few weeks or months. The imprisoned members are replaced by other individuals who have been promoted or have risen to the top to perform leadership functions. This replacement of individuals and unbounded nature of the teams is coupled with the persistence of one or more other illegal activities, particularly relating to prostitution and gaming machines. Indeed, the latter activity has two advantages. First, it always returns a profit, so it can be used to build up capital that can then be used as financial backing for other, equally lucrative segments such as drug trafficking. Secondly, the management of illegal gaming machines is viewed as a minor offence, the sentence for which does not exceed two years of imprisonment. The activity can also be used as an alibi by people charged with drugs offences or with being a member of an association of criminals.⁶

- Persistence of the networks and/or teams: in addition to the rapid replacement of individuals with specific skills and specialities, certain organisations or associations of teams have been infiltrated by criminals who belong to criminal subcultures or who show strong signs of belonging to wider circles. These are people who either spent time in the same prison or remand centre or originate from the same island (Corsica, Sardinia or the West Indies), former French colonies (*pieds noirs*, Lebanese, West and North Africans) or source countries, from which they migrated for political (such as Armenian, Greek, Israeli, Turkish migrants), economic (as in the case of eastern European and Italian migrants) or cultural reasons (the last being especially the case of religious and French-speaking migrants).
- Internationalisation of business relationships and of commodity flows: many criminal cases involving the leaders of criminal associations illustrate the triangular movements of people, goods and capital between Africa, America and Europe. For example, a single case concerning the dismantling of a cocaine network involved some 30 people of five different nationalities – almost all of those questioned were listed in the FSRB or known to Interpol for drugs offences since the 1960s and 1970s in their countries of origin.

Could this new view of the French underworld justify the conclusion that true criminal organisations and enterprises linked with organised crime are not only

⁶ There are a number of commercial companies in the legal electronic gaming machine sector that were created by an injection of cash of proven illegal origins. In one of these cases that came before the courts, some of the shareholders did not even have a bank account (data coming from interviews with judges and public prosecutors on judicial cases in progress).

active today but have been in existence for several decades? This conclusion goes well beyond the distinction that Maurice Cusson and Pierre Tremblay have attempted to draw between predatory petty crimes run by unorganised or primitively organised gangs and groups, on the one hand, and trafficking offences on the other, the dynamics of which are generated by the terms of the exchanges in relation to the dealers' profits (Cusson and Tremblay, 1996). Predatory petty crimes include attacks on the person or property, fraud, swindling and confidence tricks, while trafficking offences incorporate all illegal market activities, such as trafficking in drugs, arms and human beings, receiving stolen and smuggled goods and even trafficking in influence. Beyond these two forms of criminality, the criminal organisations described by our interviewees are clearly closer to the wider and more complex model of the economy of crime. The absolute lack of geo-strategic, economic and financial analysis of such French groups, however, prevents a definitive answer to the above-mentioned question. There is so far no scientific way to test empirically the pessimistic assessment of organised crime made by several police officers, prosecutors and judges, who work under back-breaking conditions and are inevitably impressed by organised crime's sophisticated practices.

3. The Main Sectors of Activity of the Criminal Economy

For clarity, we shall use the term 'operator' throughout this section to describe a person whose main task is to direct one or more groups of criminals in the various sectors of activity that make up the illegal economy. Before providing information on the profile of these operators who are either listed in the FSRB or were recently removed from this list (see below), it is important to note the types of activity involved. The range is very wide, and consists of three major sets (De Maillard, 2001: 49):

- Wholly illegal activities: comprising racketeering, kidnapping, drugs, procuring, trafficking in unsaleable products (such as protected species or human organs), smuggling, armed robbery, forgery and trafficking in immigrant labour;
- Illegal activities associated with legal operations: bribery in the public market, misappropriation of public resources (power or precious materials), trafficking in arms and stolen vehicles, secret funds from casinos and game circle, tax fraud, networks of forged invoices, illegal work;
- Legal activities associated with illegal operations: gaming machines and games of chance, insider dealing, commission for intermediaries on tax-deductible export contracts, agreements and abuse of dominant positions in the public market, secret backing for political parties, false accounting.

This list of activities does not simply measure the extent of the criminal economy. It also reminds us that the French operators do not appear to confine themselves to wholly illegal activities. Reading a few criminal cases highlights the involvement of several operators in the first two sets, and more rarely within all three (excluding illegal gaming machines).⁷ Although these transverse practices are extensive, we will concentrate our further analysis on drug trafficking and, more generally, on the activities of the first set, which are usually associated with and dominated by French operators. Before focusing on drug trafficking, however, in the following section we will consider the activities associated with the idea of organised crime, particularly armed robbery and procuring and managing gaming machines, which is a big business for organised crime in France.

3.1. The Continued Involvement of the Underworld Operators in Traditional Criminal Activities

The path followed by some operators, who are still active despite having played a part in the development of the French criminal economy since the Second World War, reveals three dominant areas of activity in addition to drug trafficking:

- Prostitution and the associated trafficking (such as exploitation of cheap and illegal labour);
- ‘Hold-ups’ and, secondarily, kidnapping for ransom; and, finally,
- A broader range of activities including forgery, racketeering, gaming, gaming machines and smuggling.

This study does not intend to cover all of these criminal activities in detail. We will, instead, merely touch upon the three of these activities that shape the French criminal landscape primarily to show links with drug trafficking operators. We will also return to these activities often in the more in-depth analysis of drug trafficking, which will be developed later.

⁷ By emphasising the involvement of French organisations in the traditional criminal activities, the analysis may play down their role in economic and financial crimes. In reality, this underassessment is due to the invisibility of such operations, which are masked by their highly sophisticated mechanisms. Moreover, the public response with the recent establishment of specialist financial centres (*pôles financiers*) seems not adequate in the fight against the ‘multi-faceted’ crime.

3.1.1. Prostitution

Prostitution is one of the largest markets of the criminal economy. It was significantly industrialised in the 1950s on the basis of the exploitation of women both on the French mainland and in the colonies of North Africa and South-East Asia, and subsequently extended to the countries of northern Europe (the Netherlands, Belgium, Luxembourg and West Germany). The setting up of brothels and the exploitation of prostitutes on three continents greatly contributed to the development of international networks trading in women (and later children and men) from abroad into France, and vice versa. The bordellos established in Morocco, Cambodia and Senegal and controlled by French nationals did not simply act as clearing houses for the turnover that these international networks needed. They were also used as meeting-places and centres of business – generally criminal – throughout the last half century. Thus we find that the entourages of the big procurers of the period – some of whom are still alive and still head up their networks and have the right to tax and right of veto at business meetings – contain a lot of sailors from coastal regions bordering the ocean and Mediterranean Sea, thus guaranteeing international contacts. There are also a few families of expatriates that congregate around the business circles.

These sailors and adventurers have long provided the logistics for transporting the young women, and usually also trade in connected (forged papers) and associated (forged money and opium) commodities. Some of them have accumulated enough capital to invest their benefits in gaming (card games, casinos, games of chance), particularly in West Africa and on the American continent, including the Caribbean. French brothel operators associated with legitimate businessmen (who are obviously useful for laundering the profits of such procurement) have been dispersed all across the globe since the 1950s.

This is an important element of analysis that will help us understand how new organisations are networked, in terms of both the distribution of the territory associated with the exploitation of prostitution in France – or more precisely ‘central meeting points for criminals’ as we shall show later – and its inherent struggles, and the addition of heroin trafficking intended for North America. As observed with respect to many other activities, the most important procurers in the country appear to be people listed in the FSRB. In the 1960s, Paris was the centre of gang warfare between two big families that had arrived during two different diasporas (Jews from North Africa and Corsican clans). They were fighting to control prostitution in the streets in and around the Pigalle area as well as various other types of trafficking. This was combined with a struggle to take over the bar and cabaret racket of that period. Every French city has experienced such troubles, with varying degrees of violence, over the past few decades.

Although the networks of French goodfellas did fight, albeit to a lesser extent, for control of this market in the former West Germany and Benelux countries

during the 1970s, they did not do this to claim a hypothetical monopoly in terms of supply or control of the profits. Their aim was to acquire a permanent part, however small, of this market. This is because the prostitution market seemed to be one of the biggest sources of income, at least until the expansion of the international drugs markets. In 1999, the OCRTEH (*Office central de lutte contre la traite des êtres humains*; Central Bureau for the Fight against Trafficking in Human Beings) estimated that there were around 20,000 prostitutes working in France, a third being located in and around Paris. If we assume that each of these women brings in FFR 3,000 (€ 450) a day for a whole year, then her annual turnover will exceed FFR 1 million (€ 150,000).⁸ Thus, the annual turnover associated with procurement, which does not appear to change much over time, was estimated to be around FFR 20 billion (€ 3 billion).

However, the precise figures are very uncertain because it is difficult to find out exactly how much of the turnover of a prostitute goes to the procurer. The available examples vary widely, ranging from 50 to 90 per cent. There is also a three-level hierarchy among procurers to be considered: the watchman, whose job it is to make sure that the prostitutes' activities run smoothly, the small-time procurer or pimp, who controls up to ten prostitutes, and the boss, who controls the activity of the pimps, granting them specific pitches for their prostitutes in exchange for a tax. In Marseilles, for example, the boss's tax can be as much as 50 per cent of the procurers' total earnings. There is little information on other cities. For both law enforcement officers and researchers it is very difficult to move up the hierarchy and get to know the people who are really in charge.⁹ The appearance, particularly in Paris, of itinerant networks of prostitutes from eastern Europe and Africa and transsexuals from Latin America, and the fact that some of these men and women are no longer under the 'protection' of their procurers, may have reduced the dividends shared by the pimps and underworld bosses.

Prostitution methods have occasionally diversified for longer or shorter periods, with the girls leaving the street for American and 'hostess' bars, massage parlours or finding clients through 'pink' minitel services (chat services). There are also networks of call girls exclusively intended for wealthy targets, such as Middle-Eastern sheikhs, the Russian *nouveaux riches* or a few operators in the criminal economy.

⁸ This is the average estimate given by the police, based on the assumption that each prostitute serves around ten clients per day.

⁹ Prostitution is not regarded as an offence or a crime. It is only procuring that carries a sentence of imprisonment. Since the prostitutes are not brought into custody, the police are forced to use an extensive network of informers and to set up serious undercover operations to identify the protectors.

This once again raises the central question of how prostitutes' pitches are divided up between the organisations operating in the French market. Many examining magistrates believe that the French organisations dominating the prostitution market at least up until the 1980s were in a position to exert direct control over the movements of the new itinerant networks by imposing a travel, or even an operating, tax. It is indeed unlikely that the underworlds in the major urban areas would have willingly handed over part of their substantial profits to new organisations, some of which, such as the Albanian networks, are closely linked to the various Italian mafias. If these various hypotheses are true, we need to consider the roles of transnational criminal organisations, following the example of the Russian criminal organisations or Chinese triads, within the French market. In other words, the French goodfellas might have made alliances with the new foreign organisations.

3.1.2. Armed Robbery

Armed robbery underwent significant development during the 1970s, with the emergence of two large groups of criminals who specialised in bank robbery: the Lyon Gang, which operated in the Lyon and Paris regions, and the Postiches Gang (the robbers wore masks), which moved between Paris and its suburbs and Corsica. The (partial) dismantling of these groups in the 1980s demonstrated the importance of these organisations in the field of armed robbery (not only in France, but also in Belgium and Germany). Law enforcement investigations also showed that the robbery profits were partially invested in property companies and other companies in France (including the West Indies) and Europe. The strength and intelligence that these criminals manifested required the banks to set up increasingly sophisticated security systems, the main effect of which was to encourage the robbers to diversify their methods with an increasing use of firearms, to band together for high-risk operations and, to a lesser extent, to become involved in other illegal activities.¹⁰

Since 1979, armed robberies on banks, businesses and private individuals recorded in France have shown an upward trend, with two peaks of around 9,000 cases (the first in 1985 and the second in 1992). The rise was particularly sensitive in the so-called 'high-criminality' areas, with five regional Criminal Investigation Departments (Lille, Lyon, Marseilles, Versailles and Paris) providing two thirds of the events, and with the Paris region alone providing one third. The overall losses from all the armed robberies in 1998 rose to nearly FFR 239 million (€ 36 million), with the three targets most affected being the banking, finance and credit institutions

¹⁰ In 1998, the *Office central de répression du banditisme* (OCRB, Bureau of Organised Crime Repression) recorded 6,858 events (compared to 7,207 in 1997) relating to 18 missions and among them one 'various' category (armed robbery): money movements, threats to professional people, etc.

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(FFR 54 million or € 8 million), cash transportation companies (FFR 45 million or € 7 million) and jewellery businesses (FFR 38 million or € 6 million). Although the losses from cash transportation represented only one fifth of the total losses inflicted by robbers in 1998, it is important to emphasise that the robbers caused a great deal of damage to cash transportation companies – not only by the amounts stolen, but in terms of loss of human life caused by the violent attacks carried out by highly structured teams in the 1980s and 1990s.

There are allegedly not many large groups of robbers in France. The large ones are controlled by individuals listed in the FSRB, who target security firms transporting large sums of money and other valuables, focusing either on automatic cash dispensers, security armoured vehicles or vehicle deposit centres and quickly adapting to the various decrees and changes in security arrangements. From 1983 to 1998, the total loss amounted to over FFR 1 billion (€ 150 million). Losses from automatic cash dispensers only began in 1992, with a record amount of FFR 24 million (€ 3.6 million), and reaching a cumulative total of more than FFR 80 million (€ 12 million) (1992-1998). In second place are robberies from security armoured vehicles conforming to the 1979 decree, with nearly FFR 474 million (€ 72 million) (one hold-up in 1985 netted a record of FFR 100 million or € 15 million).¹¹ Finally, safe deposit boxes account for more than half of the cumulative total in the period 1983-1998, with just over FFR 545 million (€ 83 million).

These figures require a few explanatory notes, however. The first concerns the very large variance in the annual losses. Over the 16 years covered, it has varied by a factor of nine, from FFR 24 million (€ 3.6 million) in 1990 to FFR 210 million (€ 32 million) in 1985. Secondly, even if teams are broken up, it is often difficult to trace the sometimes huge sums of stolen money. Finally, it seems that some of these profits are invested in other sectors of the criminal and legal economy, particularly drug trafficking, due to the fact that the same operators are present in these various segments. This observation, which is echoed by many CID officers, underlines a new form of criminal capitalisation derived from illegal funds.

3.1.3. The Illegal Market in Gaming Machines

The last two decades have seen significant growth in the illegal market in gaming machines. These machines are brightly coloured electronic games (such as Bingo, Poker, Flipper, etc.), that are set up in drinking outlets, particularly in bars. They offer free games or accumulated points, which the bistro owner exchanges for cash. These games were so popular with the many customers of French bars in the

¹¹ According to a decree of 13 July 1979, whenever cash involving sums greater than or equal to FFR 200,000 (approximately € 30,000) is transported on a public highway, the money must be transported in armoured vehicles.

1930s that they were banned under the Popular Front government by the decree of 31 August 1937 (Reverier, 1981). In July 1983, Gaston Defferre, the Minister of the Interior, reinforced the ban by enacting a law that prohibited gaming machines being set up in public places, including casinos. A new law (the so-called Pasqua Act, named after the French Home Office Minister at that time) was passed in May 1987, allowing gaming machines to be set up exclusively in casinos.

According to a civil servant in the Racing and Gaming Office (a general information office of the Ministry of the Interior aimed at ensuring compliance with the laws on the games of chance), at the start of the 1980s, France had at least 40,000 illegal gaming machines installed across the country, 3,000 of which were in the *département* of Bouches-du-Rhône alone (Reverier, 1981). This *département*, like the rest of the Mediterranean region, was the venue for a vicious war between the underworld gangs that included dozens of tit-for-tat strikes aimed at keeping control over territory, especially between 1996 and 1998. According to Xavier Raufer and Stéphane Quéré (1999), two researchers who carried out a study on this topic in the late 1990s, the underworld's involvement in the management of illegal gaming machines actually accelerated in the early 1980s since it was the source of considerable profits. Despite the Pasqua Act, players do not appear to have given up the illegal bar games. Indeed many police officers agree that illegal gaming machines seem to have multiplied during the 1990s, moving into previously untouched areas, such as rural areas and the suburbs of major cities.

The main reason for the perpetuation of this activity is simply that it provides a regular income, thus encouraging the illegal operation of gaming machines. According to witness statements and police documents, the profits that go to the person who 'sells' them, and indirectly to the criminal group to whom he hands over these profits, vary from 50 to 80 per cent of the money spent by customers, depending on how the earnings are allocated, particularly since some of the bars *de facto* belong to criminal gangs. If we assume that the 'salesman' receives 60 per cent on average, then an average monthly earning of FFR 40,000 (€ 6,000) would mean a revenue of FFR 24,000 (€ 3,700).¹² It is impossible to know exactly how many gaming machines are operated illegally in France, or the number and size of the groups that dominate the market, but it is possible to calculate an order of magnitude from the data revealed by criminal cases. The number of gaming

¹² The rest usually goes to the bar manager, who thus makes an undeclared profit of FFR 16,000 (€ 2,450). This additional source of earnings has become even more important recently as a result of the crisis affecting bars since the early 1980s, which lost many of their customers to fast-food outlets. Bars' turnover also seems to have been damaged by the new home-based video games. Bar managers' financial problems have been increasingly exploited by the slot machine 'salesmen' to persuade bar managers to install the machines.

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Table 2. Estimate of the turnover for the illegal operators of gaming machines

<i>Number of gaming machines</i>	10	50	100	200
Monthly turnover of a team*	FFR 0.24M € 37,000	FFR 1.2M € 183,000	FFR 2.4M € 366,000	FFR 4.8M € 732,000
Annual turnover of a team**	FFR 2.88 € 439,000	FFR 14.4 € 2,195,000	FFR 28.8M € 4,390,000	FFR 57.6M € 8,781,000

* The actual profit is estimated as 60 per cent with an average earning of FFR 40,000 (€ 6,000) provided by each gaming machine per month.

** Working on the same assumptions, and estimating that there are 10,000 gaming machines in France, the annual turnover would be of the order of FFR 2.88 billion (€ 440 million).

machines seized rarely exceeds several hundred units, most frequently they are around 50.¹³ Table 2 illustrates the potential profit for a team under four different assumptions and as a function of the number of gaming machines it owns.

These figures are important, but there are three further points that need to be made since they provide a better view of the incredible hold that the goodfellas have over this market:

- The general costs are quite low. The operators can import machines from Spain, Belgium and Italy, where the purchase price ranges from FFR 30,000 to 50,000 (€ 4,600 to € 7,600), or buy software from the United Kingdom or the United States that the salesperson simply installs directly on the legal electronic machines already in place in the bars.
- The risks are also quite low. The Act of 12 July 1983 specifies a sentence of two years in prison and a fine for the operator, and the administrative closure

¹³ To seize larger number of slot machines, more police officers need to be deployed at a given time to prevent the managers and 'salesmen' from removing the slot machines as quickly as possible. However, some machines also contain remote-controlled software that can conceal the illegal activity in just a few seconds. This is an effective obstacle to any crack-down.

of the bar (Art. 410 of the Criminal Code) for operating ‘money games’.¹⁴ Many former procurers seem to have invested heavily in this sector, using funds obtained from their primary activity. This is because the gaming machines seem to offer the best protection against the potential distrust of prostitutes and drug dealers, some are used as informers by the police.

- Finally, this illegal activity allows the operators and their associates to invest on the margins of the legitimate economy. Indeed, such criminals can often be identified, under assumed names, running limited electronic game companies or companies importing/exporting the same machines and related software and as partners in bars. For example, one goodfella in the Toulouse area, who is still active in this sector and is also known for acts of fraud, racketeering and collusion with the Marseilles underworld and is suspected of laundering money from armed robberies and various trafficking activities, was questioned after the seizure of some 30 gaming machines in 1983. He was suspected of being the real operator, but claimed simply to be one of the salesmen of legitimate electronic games, and that his employer was responsible for operating the illegal gaming machines. He could not be convicted, though the employer had always been regarded as one of his men of straw.

As much as for the exploitation of prostitution, the key question for the running of illegal gaming machines is the following: where exactly is this activity based, and how is it distributed across the entire country and in eastern Europe, Latin America and West Africa? It is also important to stress the interest that the operators of illegal gaming machines – who are usually listed in the FSRB and are also involved in armed robbery, prostitution networks and trafficking of various goods – regularly visit the bars themselves. These bars are, in fact, central meeting points for criminals to facilitate the movement of people associated with illegal trafficking in goods, capital and information. Bars ensure the confidentiality of these operations and promote the fluidity of trafficking and the networking of criminal organisations.

There is no doubt that the prohibition of gaming machines has served the interests of the French underworld in helping it to consolidate its subsidiary activities, both legal and illegal. The police and judiciary both agree: gaming machine profits are used to fund other equally lucrative criminal activities, such as drug trafficking, trafficking in stolen vehicles and cigarette smuggling, thus providing a financial

¹⁴ The risk of a penalty is de facto very low, because the operator is not often identified: the investigation is hampered by the length of the chain (salesman, chief salesman, bodyguard, lieutenant, operator) and the strict silence or *omertà* of those questioned.

knock-on effect. Another problem is how to interpret the fact that these organisations joined forces with the casinos, particularly those on the Côte d'Azur, especially during the late 1980s, when the casinos obtained the monopoly to operate the gaming machines. It might therefore be possible to draw parallels with the rapid growth of these gambling activities – one legal, the other not – if we consider that the clandestine machines were introduced again en masse into France in the late 1970s, some time after the huge profits gained from the 'French Connection' or various spectacular robberies against the French, Belgian and Swiss banking systems over the previous two decades.¹⁵

3.2. French Organised Crime Changes with the Rise of the Illegal Drugs Market

In this section, we do not intend to analyse the incontrovertible rise in the demand for illegal drugs in France or to analyse the public policies or application of the 1970 law that made drug use a crime punishable by imprisonment and compulsory treatment. This is the other face of the issue that we shall keep as our backdrop. For now, we should simply remember that this prohibitionist law was passed in a turbulent international context, when the United States was undergoing a rapid rise in the consumption of heroin, a significant component of which was produced by French chemists working in illegal laboratories set up in France or Lebanon, and exported by large networks of French operators. These circuits were known as the 'French Connection' or 'Latin Connection'.

Despite the partial dismantling of this tangled web of networks in the late 1970s and early 1980s, it is surprising to find some of the same operators, 15 to 20 years later, in control of the entire production and distribution chain of synthetic drugs, above all ecstasy or amphetamines. However, there are still many questions to be asked about the formation of a national market that is increasingly inclined towards product diversity and the development of a specific economy, broadly dominated in its large-scale distribution by the same criminal organisations that have occupied dominant positions since the 1960s. Whether the market is a monopoly, an oligopoly, or one based on plain old competition is still in doubt. This question, however, will be largely left aside in this contribution. Nor shall we focus our attention on the emergence of direct cross-border channels or on the important role played by certain ethnic and/or family networks, which are supposedly independent of the

¹⁵ According to Raufer and Quéré (1999), this trafficking 'would have been started around 1980 by the criminal clan of a Marseilles-based boss around the Etang de Berre. This business now extends across the entire Midi region, as far as Drôme and the Ardèche, and is developing along the Rhone corridor, in the Paris suburbs and in the north.'

traditional French criminal organisations, and on the multiple products available (Colombié, Lalam and Schiray, 2000).

3.2.1. The Development of a Vertical Distribution System

Before we consider some of the characteristics that will help us better understand the drugs market in France, it is interesting to note that the starting point for the industrialisation of this market was identified with the international heroin trade. In the 1980s, a French ‘godfather’ revealed during one of his rare spells in police custody that the dismantling of the ‘French Connection’ was the starting point for the rapid rise of heroin consumption in France – some commentators even use the word ‘epidemic’ along the lines of the situation in the United States. Given the problems involved with exporting the product to the American continent,¹⁶ the French operators (those who had escaped North American, Swiss or French justice) turned their attention toward the national demand.¹⁷ They no longer sold their products to a narrow and well-informed segment of the population whose usage was socially ‘controlled’ (professionals and artists), but exploited the growing demand of groups of individuals living on the margins of a society in the middle of a socio-cultural identity crisis (e.g. connected with the events of May 1968).¹⁸ Following the heroin model, use of cannabis derivatives (and, later on, cocaine) also moved out of the normal circles of habitual users and expanded into larger social strata, with increasingly eclectic consumption patterns and growing problems in financially supporting the various forms of use, particularly for heroin addiction.

Although it is difficult to accurately calculate the date at which the multiple consumption of illegal drugs started, we can easily see the initial structuring of the distribution of these products – from wholesale to retail – involving a growing number of users.¹⁹ Another important factor for our analysis is that it involves the appearance of two central players that ensure the continuity and fluidity of this illegal trade: the user-dealer, who is an essential element in the balance between supply and demand; and the wholesale trafficker operating only in France, whose

¹⁶ It should be noted that French heroin competed with other brands, such as Mexican and South-East Asian heroin; Mexican heroin, in particular, is of lower quality but is much cheaper.

¹⁷ This interpretation is often repeated by the police, but it is still the subject for debate.

¹⁸ On this point, see, in particular, the work of Tarrus and Missaoui (1998) and Coppel and Bachmann (1989).

¹⁹ We should simply remember that this multiple consumption is often combined with the use – or abuse – of tobacco, alcohol and mind-altering drugs, and that the first two products have played a large part in the industrialisation of the phenomenon of smuggling since the 1930s.

criminal career and the fact that his crimes are related solely to drug trafficking distinguish him greatly from the robbers and procurers who diversified their activities following the appearance of this new source of profit.

Since the late 1970s, a vertical distribution system built up around these two key figures and persisted throughout the following decades. This does not simply explain how it has made drugs easier to use due to the distribution effect involved in looking for potential buyers (co-option, proselytising): it is also a structural element in the industrialisation of this illegal trade in France. Indeed, and despite the establishment of public policies to back up both the suppression approach (particularly by criminalising ‘associations of criminals’) and the health message, we are currently experiencing considerable segmentation of the drugs market according to the type of product (opiates, stimulants, and so on) and the desired effects, particularly since the large-scale consumption of synthesised drugs started in the late 1980s.

At the beginning of the twenty-first century, the French market is generally characterised by a strong demand for cannabis and its derivatives, particularly among young people (for more details, see OFDT, 1999; 2002). The price per gram is now at an all-time low (around € 3.80) and the international trade in grass has diversified. There is also increasing demand for cocaine, followed by a perceptible drop in price (minimum cost of € 60). The consumption of synthesised drugs is on the increase, but the use of new products is marginal. There is also a downward trend in the number of heroin users. Finally, there has been a noticeable emergence of festive consumption of several associated products, including legal mind-altering drugs.

Without venturing to estimate the turnover of illegal drugs in France, it is easy to see that the unit of measurement will be billions of euros, as with prostitution and illegal gaming machines. The flow of profit is not exclusive to the operators listed in the FSRB; within this market, setting up a distribution system requires multiple supply networks, including the blatant shortcut for synthetic drugs and for the significant number of people who grow cannabis for their own consumption. However, the theory that these same operators can control the wholesale distribution flows of heroin and cocaine from storage and intensive racketeering centres outside France (in Spain, the Netherlands, Italy and Romania) cannot be dismissed. The facts, observations and interviews tend to confirm this analysis, although they do not provide an accurate assessment of the level of such control.

To illustrate this, let us consider the Toulouse market by way of example. This city has a large student population (over 100,000 young people) and it is a distribution centre for the south-west region. The urban area is supplied by four large groups of criminals working in various fields, who appear to cohabit with small groups of users-dealers who stock up directly in Spain. These four groups are:

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- The ‘traditional underworld’ (predominantly selling cannabis resin and cocaine), which essentially consists of robbers, procurers and gaming-machine suppliers;
- The ‘North African underworld’ (predominantly selling cannabis resin and heroin) comprising a number of large families of North African origin active in several fields (procuring, armed robbery, receiving stolen goods, gaming, various trafficking, including stolen vehicles);
- The ‘black African underworld’ (focusing on heroin), which is more involved in the street prostitution market and setting up temporary and itinerant drug sales networks;²⁰
- Finally, the ‘Gypsy underworld’ (predominantly selling cannabis resin and heroin), which is particularly used by the ‘traditional’ underworld for logistical purposes given their nomadic, cross-border lifestyle.

According to the local Criminal Investigation Department and the examining magistrates, these groups are not cut off from one another, even if each one appears to specialise in supplying one or two products. As emphasised by a CID officer in Toulouse:

within this nebula, everyone knows everyone else and meets in the same nocturnal world. The agents of suppression are few in number, and some criminals own bars and night clubs. There is a great deal of interconnection between the first three groups since their numbers are small – there are some thirty goodfellas from the traditional underworld, twenty or so among the North Africans. In contrast, it is not possible to give the same idea of numbers for the black underworld, given the fluidity and scale of these networks of itinerant criminality.²¹

Can the theory of just a hundred or so operators associated with the regular importing of drugs in significant quantities and involved in their regional and/or extra-regional distribution truly represent the dynamics of this regional market? Despite the fact that the North African underworld appears to play a very large

²⁰ The criminality of these players is highly organised, from the supply of girls and/or products in the black African countries through to the laundering and repatriation of dirty money. The important nodes in these networks appear to be cities such as Rotterdam, Brussels and Paris.

²¹ This and the following quote are drawn from unpublished interviews carried out by Colombié, Schiray and myself (2001) for the project on organised crime in France.

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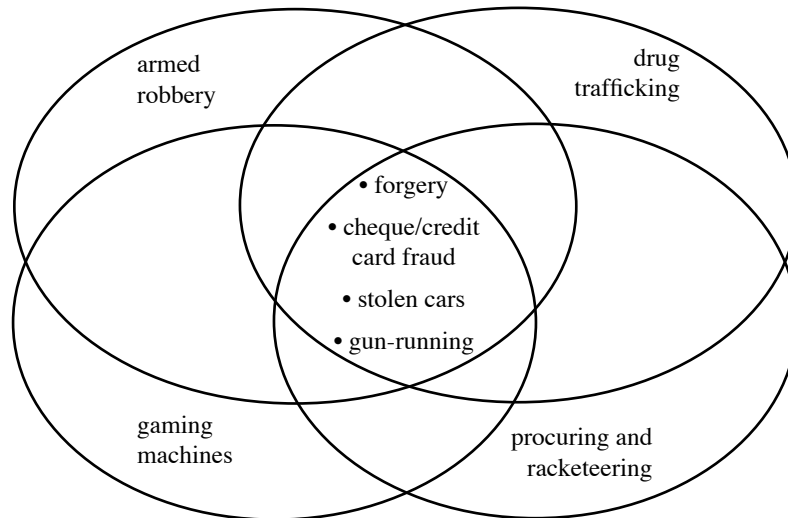
part in this trafficking, this police officer does not minimise the importance of the first group, highlighting the professionalisation of these ‘wise guys’ and the way that they have moved their operational bases on the other side of the Pyrenees or in countries of northern Europe (above all, Belgium and the Netherlands).

Question: What is a ‘*beau mec*’ [‘wise guy’]?

Answer: He’s a guy who is very difficult to catch out, who is often very organised in the way he manages his business, thus demonstrating his intelligence. He’s a guy who shifts 100 kilos of cannabis resin and five kilos of cocaine every month in the Toulouse region, who is involved in the gaming machines and the underworld, bars and discotheques. Some are like [X], around 40 years old, who is known for his involvement in drugs and gaming machines and secretly owns a number of night-clubs, although no-one knows exactly how many. Another, who came unstuck just recently, also owned a discotheque which acted as a delivery point for drugs and a mini-market for users. There is also an individual suspected of involvement in the ‘Great Plane Robbery’ on an Airbus at Perpignan airport who owned a bar. We can also see that wise guys outside the Toulouse underworld have interests in bars and night clubs, one case is that of the lieutenant to a Montpellier boss who was involved in a night-club in the Toulouse suburbs. And then there is the example of a restaurant owned by one of the foot-soldiers of a Marseilles boss, who himself had links with Toulon. Another case relates to a Marseilles-based gangster in a village near Montauban [*département* 82]: he was responsible for setting up a network of gaming machines in the Albi/Castres/Cahors area, but was turned in by the bar owners, who disagreed with this new attempt to corrupt their traditional customers. There is a connection between these two ‘underworlds’. Further proof of this is the recent questioning of a Toulouse goodfella, accompanied by another wise guy based in Lyon, but again originating from the Toulouse underworld, who supplied the towns around Lyon and Montpellier and buyers in Italy.

This statement could be applied to a number of other major urban areas of the country. It is obvious from reading a large number of court and police files that the national market does not appear to have escaped the French operators listed in the FSRB. Some are still active, having started their criminal careers trading opium between Indo-China and France. This inevitably raises the question of how this trade is structured at the global level in order to supply the national market. We are not able to precisely measure the position that the groups of French traffickers hold with respect to monopolisation, for example, but observing the development of some of these groups since the 1960s provides some possible directions for further study. It also highlights some possible theories that we shall raise later on in this paper.

Figure 2. Interpenetration of criminal activities



3.2.2. The Growing Relevance of Drug Trafficking for French Organised Crime

It is thanks to the multi-skilled nature of French organised crime that its members have been able to acquire and maintain a leading position in the drugs market without neglecting their previous specialisation and activities, such as armed robberies, procurement, illegal gaming and forgery. Since the 1960s and 1970s the multi-skilled group has been a key characteristic of French organised crime. Of course, this does not exclude the possibility of temporary specialisation. An individual who specialises in forging may find himself involved in procuring or drug trafficking. Over the following decades, the dividing lines between criminal activities became even more blurred, and we can now see that multiple skills are essential. Today, three activities are emerging, two of which appear particularly profitable. These are armed robbery, drug trafficking and procuring, although the last of these is cooling off slightly for French organisations. Figure 2 illustrates the central activities of organised crime, including also a number of other criminal activities that provide the necessary working capital for the first three.

The following constraints need to be considered when we consider how criminal entrepreneurs move from one activity to another:

- Very early on, criminals devote their energy to various activities with large potential profits;

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- As they grow older, the individuals no longer play an active role in armed robberies for objective reasons of physical weakness. Nevertheless they are still active at the level of advisor and financial backer. For these criminals, drug trafficking can effectively become a preferred activity, without abandoning other sources of profit altogether;
- Opting for drug trafficking involves higher risks: potential long imprisonment sentences need to be taken into account. The risk of being locked up for many years may persuade some criminals to move out of this field.

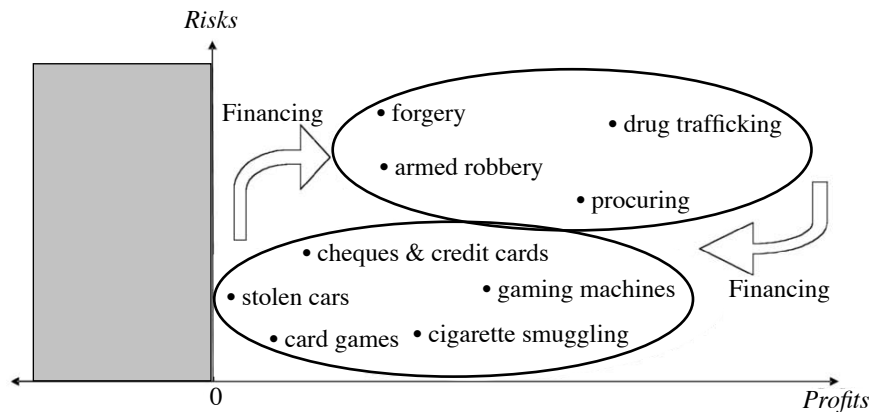
With special reference to this last constraint, however, it is important to note that in our extensive field study of French organised crime (Colombié, Lalam and Schiray 2001), my colleagues and I could not prove our initial hypothesis that criminal entrepreneurs redirect their activities taking the actual priorities and strategies of law enforcement agencies into account. The analysis of criminal cases, in particular, disproved our hypothesis: at least since the times of the ‘French Connection’, members of the French underworld were involved in a plurality of criminal activities regardless of the risks associated with them.

Certainly, highly competent teams rightly enjoy a reputation based on their effectiveness, and by effectiveness we mean the preparatory work of weighing up the costs and benefits. Drug trafficking plays a leading role in this game. Although the profits can be enormous, so can the penalties. Traffickers are also aware of the inertia and weaknesses of the justice system, however, and thus re-evaluate the theoretical costs as real costs. As a result of this re-assessment, the overall map of criminal activities has changed, and drug trafficking now offers lower risks compared to armed robbery.²² The increased security awareness of the banking system, particularly the use of electronic means of payment that require less cash in circulation, is making the armed robberies more random.

Following this reasoning, criminals have adapted to the new circumstances by robbing safe deposit boxes or by carrying out their robberies in other countries that have less experience of this type of criminality (such as Denmark and Japan). In this respect it is worth noting that the hold-up is the most audacious and dangerous activity. In the mindset of the criminals who are motivated by money, armed robbery continues to enjoy an image of excellence. The professional robber, who is

²² Even the crime of trafficking by organised crime groups is not always prosecuted given the resources that would have to be deployed and the significant additional cost for the courts, which are often understaffed and overcommitted. In fact, setting up a special court for considering charges of trafficking by organised crime groups involves high opportunity costs (i.e. the cost of bringing together the judges and clerks for several days without finding anyone to cover for their normal work).

Figure 3. Profits and risks of criminal activities



supposed to handle his gun with skill, is the incarnation of the ‘supreme’ criminal. If an experienced robber decides to get involved in drug trafficking, he is often quickly propelled to the wholesale level; several hundred kilos of hashish and several dozen kilos of cocaine. The social network that this involves (outside the French mainland) allows a high-level infrastructure to be set up. It is this pairing of robbery and drug trafficking, combined with gaming machines, that has formed the backbone of large-scale organised crime in France for at least the last ten years.

In the choice between criminal activities, the criteria that ultimately determine the choice fall between the profit and the risk involved in the enterprise or operation. It is useful to attempt to establish a few comparative elements in order to provide a general picture, as shown in Figure 3.

The profit is monetary. Such aspects as psychological satisfaction are not considered. The shaded area represents the area of negative profit, which corresponds to activities from the right-hand area that do not reach their intended conclusion, such as a cargo of cannabis thrown into the sea before the law enforcement officers arrive. The risks are the sum of those resulting from law enforcement and those due to rivalries between and within criminal groups.

Figure 3 aims to distinguish between the main criminal activities that take place in France as a function of the supposed risks and intended profits. The time-base for this activity is one year. The classification is an indication only – precise figures are not provided. The four activities further over to the right are those that generate the greatest profits. It would be useful to superimpose on this a grid showing the potential penalties, both theoretical and actual. As mentioned above,

the criminal penalties can only be a deterrent once the laws are applied effectively and without restriction in terms of location or social standing. The arrows that indicate 'financing' aim to describe how the activities are used to maintain and to increase the amount of profit.

4. What about Organised Crime's Involvement in the Legal Economy?

It is still difficult to carry out a strong analysis of the involvement of organised crime in the legal economy. Without any doubt, the fact that organised crime actors and bandits are anchored in society means to a certain extent their participation in the formal economy.

The first step of the infiltration in the economy involves the acquisition of legitimate commodities, such as land holdings, buildings and movable properties, with dirty capital. Most criminal entrepreneurs seek to be directly or indirectly owners of their housing. A small percentage of them still pursue a typical underground lifestyle that manifests itself in extravagant expenses, particularly in the leisure industry. Those underworld members thus enjoy the nightlife in the French big cities and spend time abroad.

Satisfying the basic needs of their close family is an important objective for the majority of the goodfellas – this usually means that they buy flats, cafés or shops for their close relatives and ensure high-school training to their children. It is not unusual to see the descendants of French criminals in legal sectors such as law, medicine, engineering or politics. This, of course, means that the atavism is not relevant. The interviews carried out by Colombié, Schiray and myself (2000) clearly show that the objectives of the French criminals are in conformity with those of the mainstream legitimate society: that is to say, to gain respectability.

The participants to the *milieu* define themselves as businessmen and not as criminals. The preliminary fields of investment remain the cafés, bars, restaurants and discothèques because these are high-liquidity businesses and provide goodfellas with a territorial anchorage. The cafés are also a central place of socialisation for the underground. They enable informal transactions and facilitate the construction of networks. In these cases, participating in 'realty trusts' (*société civile immobilière*) to buy bars and restaurants is an optimal way to hide the illegal origin of money.

In a much more limited number of cases, a consolidation of investments may take place, involving more capital and more labour. For instance, organised crime members may decide to acquire a participation in commercial companies to launder huge amounts of money and sometimes also hire specialists (such as lawyers, legal counsellors, notaries, insurance agents, stockbrokers, and so on) to plan their investments. Furthermore, it is judicially proved that *milieu* members have invested

money in some French casinos (such as those Nice and Menton). Indisputably, the casinos provide considerable advantages to justify a legitimate activity.

As a general rule, the strategies and methods of French criminals' investment in the legal economy are quite disparate. Whereas some invest in legitimate businesses to enhance their illegal ones, others use legal investment to put an end to their illegal activities. In reality, the landscape is even more complex. On the one hand, some owners of legal activities may resort to criminal methods to maintain their leadership – as it was the case in ambulance sector in the south-east of France²³ – on the other hand, the criminals may import their violent methods in their legal activities. These interpenetrations have been studied by Clotilde Champeyrache (2001). She analyses how some changes in the system of property rights may favour the infiltration of organised criminality into legal economic activities in the industrial, service and financial sectors. However, I share her conclusion that a systemic infiltration is possible only when a criminal organisation, such as the Italian mafia, is already present before the legislative changes take place. Such an organisation can then profit, at the time of the switch-over, from specific advantages in the access to property, such as the asymmetry of information, market-economy 'skills', participation in networks, and the willingness as well as capacity to pay. It also turns to its advantage the definition of the contents of property rights. Despite the polyhedric and multi-skilled nature of French organised crime, this seems to have happened so far only to a limited degree in France.

5. Concluding Remarks

This paper presents the results of an exploratory study that I conducted together with Thierry Colombié and Michel Schiray and tries to highlight some elements of the functioning and the role of criminal organisations in France. One step was to describe what the media and the law enforcement institutions called the 'French Connection'. It is probably incorrect to believe that it was a spontaneous generation. At that time, the criminals were already involved in many illicit trafficking. After the dismantling of some pieces of the network in the 1970s, its structure has changed in a more complex way: acting from abroad, involved in many activities either legal or illegal and circumventing the law enforcement with corruption, adoption of new techniques, and so on.

²³ This information comes from unpublished judicial files that I analysed together with Colombié and Schiray during the project on French organised crime (see Colombié, Lalam and Schiray, 2001).

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The historical scheme enables better understanding of the *modus operandi* of contemporary organisations. Even though, it is difficult to give a stable definition of the criminal organisations, the description of the illegal activities we have given is a step towards the phenomenology of organised crime. The synchronic observation touches on the importance of the local territory, as an element of the identity of a group and also as a base from which the activities are worked out. The dialectic local/global seems to take on a particular acuity in the case of France. French criminals can be distinguished by their ability to connect competences with their ‘*carnet d’adresses*’, i.e their social capital.

Henceforth, the *milieu* tends towards those productive activities where opportunities are big, risk is lower and highly complex organisations are required. These activities include: infiltration of public calls for tender, infiltration of the counterfeit industry, and fraud against the financial interests of the European Union.

Lastly, it is clear that there are connections and multiple forms of cooperation among criminal organisations. French organisations are in business with Italian mafias, Chinese triads, Russian criminal nebula and Colombian cartels. These relationships do not follow a hierarchical regulation but are based on the actual interests of each organisation. The evolution of these networks tends to soften the (artificial) boundaries between white collar crime and the traditional criminal activities.

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Spain: The Flourishing Illegal Drug Haven in Europe

Alejandra Gómez-Céspedes and Per Stangeland

1. Introduction

In his 2001 Address to the Nation, the President of Spain, José María Aznar, focused on the topic of justice and public safety. He recognised there had been an increase in the rates of crime (especially property crime) and stated that his government planned to tackle the problem by creating 20,000 police posts between 2002 and 2004. He also concentrated on immigration and crime by highlighting that any immigrant committing a crime who had an illegal immigration status would ‘reasonably be deported’.¹ Other topics included the terrorism of ETA, particular circumstances existing in the Basque country, the economy, the general strike happening across the country and the relationship with the United States. However, he did not touch on the subject of organised crime.

It was rather unexpected for anyone looking into serious and organised crime in Spain that the President of the country excluded any reference to the scale and nature of these phenomena. It became clear that the relevance of criminal networks, the role of criminal specialists and some other moneymaking criminal activities are not part of the Spanish political agenda at this point. Quite surprising if one considers the over 33 tons of cocaine and over 860 tons of hashish seized in 2001 (Ministerio del Interior, 2001); over 30 drug-related *vendette* in Madrid since 2000; the disruption of over 650 criminal networks engaged in facilitating illegal immigration into Spain between 2000 and 2001 (Ministerio del Interior, 2001); the flight of two of the main defendants in the Operation Temple maxi-trial charged over the importation – into Spain – of 11 tons of cocaine and 200 kg of heroin in 1999;² or the various serious fraud scandals that have rocked the reputation and (lack of) transparency of Spanish financial institutions in the past year.³

¹ Constituting an offence punishable by a maximum prison sentence of six years.

² Operation Temple will be discussed later in this chapter.

³ See, for example, the Parliamentary Investigation (October – November 2001) and press coverage of GESCARTERA; the summary of Baltazar Garzón’s investigation pursuing claims of money laundering and bribery against former executives of Spain’s second largest bank Banco Bilbao Vizcaya (April 2002); or the fraud involving European Community aid for flax production (the Flax Affair, see also Commission of the European Communities, 2002) – three major frauds with an approximate cost of € 430 million.

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This paper provides a first, tentative assessment of organised crime in Spain. The first section briefly reconstructs the public debate, which is quite scarce and is dominated by the Basque terrorism issue. It also reviews the (equally scarce) existing research and the accessible data. The second section sketches the emergence of the organised crime problem in Spain and the current patterns of organisation of serious crime. The third section focuses on what is undoubtedly the main organised crime activity in Spain: namely, drug trafficking. The fourth examines the available information about the other main illegal trades, ranging from the sex industry and human smuggling to organised robberies and money laundering. Some final comments with a forecast of future trends follow.

2. The Public Debate

The public debate on organised crime is very scarce, if it exists at all. One can look at the public opinion polls from the Spanish Centre for Sociological Research (CIS) enquiring about ‘the most important problems in Spain’;⁴ the top five serious problems revolve around unemployment, terrorism, drugs, immigration and public safety (although oriented to the social construction of property crime). Mapelli Caffarena, González Cano and Aguado Correa (2001) corroborated the lack of government interest in the anti-organised crime agenda in terms of the lack of human and material resources allocated to police anti-organised crime units in the country.

When one looks carefully into the development of the public debate surrounding organised crime in Spain, one must refer to the key role that investigating Judge Baltazar Garzón⁵ has played in indicting drug lords, arms traffickers, leaders and militants of the Basque separatist group ETA, business-people, Islamic extremists and leaders of former South American military juntas including former dictator Augusto Pinochet.

Although critics say that ‘Garzón stretches the limits of his authority and relishes the limelight a little too much’ it is worth noting that he has been the most prominent judge filing some of the major cases against serious and organised crime, including terrorism.⁶

⁴ CIS stands for Centro de Investigaciones Sociológicas, a state agency attached to the Office of the Presidency, vested with autonomous status in 1990. See <<http://www.cis.es>>.

⁵ Baltazar Garzón is an investigating judge (*juez de instrucción* or *juge d’instruction*) for Spain’s National Court (Audiencia Nacional). His primary function is to investigate cases by gathering evidence, framing charges and filing the case for trial.

⁶ Business Week (2002), ‘Baltazar Garzón,’ 17 June, *Business Week* <http://www.businessweek.com/print/magazine/content/02_24/b3787633.htm?bw>.

In fact, organised crime became an issue in Spain at the time Garzón investigated the so-called *Nécora* case involving the major Galician drug trafficking networks in 1990. Perhaps following the initiatives of Giovanni Falcone and Paolo Borsellino in Italy, Garzón became involved in the investigation of a large criminal network resulting in the first drug trafficking maxi-case in Spain involving 54 defendants accused of importing – from Colombia – 600 kilograms of cocaine. The case turned out to be a big fiasco basically because the legislation available at the time did not admit the evidence. Garzón based most of his investigation on tapped telephone conversations and on the statement of a *pentito*, a collaborating witness who sketched the structure and pattern of activities of the network. When the defendants were sentenced, the defence appealed to the High Court and the latter dropped Garzón's accusation based on alleged illegal criminal procedures during the investigation. Most defendants were freed and the reputation of the judge plummeted.

Some criminal procedural setbacks were alleviated with the reform of the Spanish Criminal Code in 1995 and some of the major figures of the *Nécora* case were tried and sentenced in 1999 for masterminding the same operation.⁷ Nevertheless, some serious impediments remain in terms of criminal procedure in Spain.

2.1. Terrorism Versus Organised Crime

Today, one of the major challenges for Spain is to distinguish between terrorism and serious and organised crime for profit.⁸ In Spain, the debate on organised crime has been entirely dominated by the debate on ETA and the Basque Separatist Party, BATASUNA, which has been recently banned from public participation on charges of granting political protection to ETA.⁹

In this realm, the Nathanson Centre¹⁰ has raised some concerns about the association that is usually made between transnational organised crime and terror-

⁷ Such is the case of Manuel Charlín, 66, (*a.k.a the Patriarch*) sentenced to 20 years and fined € 1.3 million.

⁸ In fact, this distinction is blurred in a very well known criminology textbook in Spain. See Garrido, Stangeland and Redondo (2001).

⁹ ETA stands for Euzkadi ta Askatasuna in Euskera, meaning 'Euzkadi and Freedom'. In English, they call themselves 'Basque Homeland and Freedom' or 'Basque Fatherland and Liberty' and, in Spanish, Organización Armada Vasca de Liberación Nacional or Organización Independentista Vasca.

¹⁰ The Nathanson Centre is a research institute that conducts empirical studies in the field of organised crime and corruption. The Centre is based at Osgoode Hall Law School at York University in Toronto, Canada.

ism.¹¹ While it is true that the links between terrorist organisations and serious and organised criminal groups have always existed, the *nature* of those links contributes to the drawing up of policies and to the policing of such activities. For example, the Council for Security Cooperation in the Asia Pacific (CSCAP) Transnational Organised Crime Working Group identified what some policy makers observe as ‘dangers’ if governments make the links too definitive. One of the main concerns was that if the links were considered to be ingrained into one absolute goal the ‘war on terrorism’ could turn into a ‘war on crime’ and anti-terrorism powers could normalise exceptional policies and procedures, which in turn could impose a threat to the principles of citizens’ rights and privacy. Another concern was that if the nature of the links was not thoroughly understood, law enforcement efforts could be wasted before really recognising who the target actually was. Or, as in the case of Spain, efforts against organised crime or against terrorism in general could be overshadowed by the fight against ETA (Observatoire Géopolitique des Drogues, 2000).

This was confirmed by the terrorist attack against a major railway station in Madrid on 11 March 2004. It killed 192 people and injured 1500 train commuters on their way to work in the early morning. The attack was carried out by a locally based group of radical Islamists inspired by Al Qaida. While public intelligence and senior police officers focused their attention on ETA, this loosely organised group acquired explosives through contacts with local criminals. They financed their activities through the sale of Moroccan hashish and probably through forged pre-paid telephone cards.

The truth is that while money is the *goal* of organised crime, money is the *tool* for terrorist organisations. Although there is some overlap in time and space between terrorism and the criminal markets this is more the result of the former’s need for temporal joint ventures for funding rather than long-term strategic alliances (*Nathanson Centre Newsletter*, 2002).

To date, there has been no proof confirming the liaisons between ETA and serious crime for profit. However, some claim there is enough circumstantial evidence to support such an accusation. For example, the last report from the Observatoire Géopolitique des Drogues (2000) underlined repeatedly that ETA is involved in drug trafficking. In addition to that, a *pentito*, a collaborating witness, attached to the camorra clan of the Genovese from Avellino declared recently before the anti-mafia prosecutor of Naples that ETA exchanged drugs (cocaine and hashish) with them for weapons and explosives.¹²

¹¹ Preparatory document for the Working Group on Transnational Crime from the Council for Security Cooperation in the Asia Pacific (CSCAP). See *Nathanson Centre Newsletter* (2002), No. 5.

¹² See <<http://www.panorama.it/italia/criminalita/articolo/ix1-A020001014338>>.

If the evidence linking ETA to the drugs trade were true one could raise questions about the government's acquiescence. Why has the government not accused ETA, rightly or wrongly, of involvement in the drugs trade? Who else, besides ETA benefits from the drugs trade? Is the drugs trade funding anti-ETA operations? Or, is the government using some sort of 'controlled delivery' operations to get to ETA members? Given the fact that there is no available information on this issue, we cannot answer these questions.

2.2. Accessible Data

The Spanish Ministry of the Interior publishes public access Annual Balance Reports since 1996. Since then, the reports have improved substantially in terms of data coverage. However, there is still a long way ahead.

The reports from 1996, 1997 and 1998 include a brief section on the fight against organised crime and another section on the fight against drug trafficking. Both sections summarise different police operations by highlighting (in most cases) the place, the people involved and the operation itself. The information belongs to operations from the two national police forces in the country: the National Police Corps (Cuerpo Nacional de Policía) and the Civil Guard (Guardia Civil). Sometimes, operations also include the participation of international law enforcement agencies (e.g. Italian police, French police or the United States' Drug Enforcement Administration, DEA) or other Spanish law enforcement bodies such as Customs and Excise (Sistema de Vigilancia Aduanera).

From 1999 onwards, the Annual Balance Reports changed their layout. Before that, much of the information contained in the report was devoted entirely to ETA and anti-ETA activities. In 1999, the report was expanded and although ETA and anti-ETA activities covered (and still do) 40 per cent of the report, other chapters included information about the performance of the National Police Corps, Civil Guard, the National Directorate of Penal Institutions, the National Plan on Drugs and the Aliens and Immigration Department. Since the performance of the National Police Corps and Civil Guard was divided into two different chapters, it overlapped¹³ and became more difficult to manage and follow.¹⁴

¹³ For example, Operation Nordic (*Operación Nórdica*) concerning the illegal exploitation of a mobile communications network was quoted in the 1998 Annual Balance Report as taking place on 14 November and in the 1999 Annual Balance Report as an operation of the Civil Guard conducted on 17 March. Similarly, Operation Marbella (*Operación Marbella*) referring to a vehicle-smuggling ring was quoted in the 1998 Annual Balance Report as 24 November and in the 1999 Annual Balance Report as 2 March.

¹⁴ Both the National Police Corps and the Civil Guard conduct operations against drug trafficking, immigration crime, prostitution, fraud, extortion, money laundering, armed

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The Annual Balance Reports do not seem to comment on Spanish law enforcement priorities for tackling serious and organised crime or on proposed changes in legislation and crime prevention. Rather, they are more a collection of annual results from different state institutions where the information is disorganised. It can only be hoped that the Annual Balance Reports have a confidential version for Spanish officials and practitioners in which in-depth assessments and trends are disclosed.

Except for terrorism, data regarding serious and organised crime are not presented thematically (e.g. the significance of criminal activities in terms of scale and impact). But even when one looks into the chapters devoted to terrorism one could very well do with an assessment of how terrorism is likely to develop in the future. In this realm, and since criminal activities are not assessed separately, one questions the relevance of other serious or organised crime activities other than terrorism. Anyone reading the annual reports could notice that essential information has been omitted. To mention just a few examples, the reports do not mention anything about the value of assets seized in anti-drug operations, the cost of 'fraud' to Spain, and the annual cost of vehicle theft and the value of insurance claims. Nor are future trends – for any type of crime – discussed.

To sum up, it seems that the Annual Balance Reports from the Ministry of the Interior are not intended to fulfil the purposes of assessment for crime prevention or reduction but rather to confirm that state institutions have conducted day-to-day activities. The reports portray a serious lack of coordinated and efficient resources, especially in the police forces.¹⁵ Finally, one wonders why the reports fail to enclose any information about the annual performance of other law enforcement agencies like the *Ertzaintza*,¹⁶ *Mossos d'Esquadra*¹⁷ or the customs police service from the Customs and Excise Department.¹⁸

Regarding crime statistics, there are no recorded figures on serious or organised crime as such. Nevertheless, figures exist on homicides, exploitation of prostitu-

robbery, etc. It is not precisely clear why operations are managed separately (e.g. different jurisdictions, different mandates).

¹⁵ Actually, this is highlighted by the work of Caffarena, Cano and Correa (2001), which indicated a serious lack of cooperation amongst national police forces (e.g. National Police vs. the Civil Guard) and amongst regional police forces (e.g. the National Police's Andalusian anti-organised crime unit vs. the *Mossos d'Esquadra*).

¹⁶ The *Ertzaintza* is the Basque police force operating in the Basque autonomous region, see <<http://www.Ertzaintza.net>>.

¹⁷ *Mossos d'Esquadra* is the Catalanian police force operating in the Catalanian autonomous region, see <<http://www.gencat.es/mossos>>.

¹⁸ Customs and Excise, see <<http://www.aeat.es>>.

tion, vehicle theft, fraud, corruption or conspiracy to corrupt, extortion, excise fraud, environmental crime, kidnapping, child pornography, human smuggling, drug trafficking, weapons trafficking, etc. However, some limitations are worth mentioning here.

First, serious crimes are not always the work of serious or organised criminals. Similarly, evidence of prior planning and organisation is not always sufficient (e.g. crimes that are committed by an organised criminal group but are not usually committed over an extended period of time or with the support of an illegal or semi-legal infrastructure). The figures do not reflect such divisions. Secondly, in the case of homicides for example, the overall total of homicides includes attempted homicides, thereby yielding a very high figure and making it very difficult to distinguish between the two. Finally, crime statistics issued by the Ministry of the Interior¹⁹ are not included in the official judicial statistics published by the National Institute of Statistics.²⁰

Alternative ways of collecting information on serious and organised crime include press clippings and investigative journalism. However, both usually follow a police or judicial investigation because it is illegal to investigate pro-actively, even for journalistic purposes.

Other ways could be developed but they very much depend on the gatekeepers. For example, interviews with drug traffickers in prison; records from the Medical Forensic Association, in particular figures on 'executions' or 'violent murders'; insurance claims from banks, industrial estates, jewellery shops and vehicle owners; surveys in the real estate sector; figures from the Treasury and the Excise Department; evaluation of sentences related to organised crime activities, or ethnographic studies at NGO's engaged in issues of illegal immigration, drug trafficking, etc.

In general terms, law enforcement institutions tend to be cooperative. For the Andalusian Institute of Criminology in Malaga, the relationship with law enforcement agencies has always been quite supportive. For example, in the course of our Falcone Project²¹ we have had the valuable participation of both national and local police forces, who in our belief achieve a lot despite numerous limitations.

¹⁹ Annual police figures are available on the Internet at <<http://www.mir.es/catalogo/catalogo1.htm#peri>>.

²⁰ See <<http://www.ine.es>>.

²¹ Falcone Project 2001/FAL/168 entitled: *Illicit Practices in the Construction Industry. Vulnerability to Organised Crime and Corrupting Agents in Urban Planning and the Building Industry*. The final report was presented to the European Union in January 2004. A Spanish language report is published as Díez Ripollés et al. (2004).

2.3. Existing Research

Applied state-sponsored research in Spain is almost non-existent. Contrary to central and northern Europe, the Spanish state has no tradition of analysing or evaluating its own activities. The preparation of a new law is carried out inside a very closed circle: a couple of civil servants, or maybe a university professor is asked to draft a new law. Neither the government nor the opposition carry out studies on how the new law should be implemented or about its cost, impact or benefit. Larrauri (2001) has analysed the creation of the new Spanish Criminal Code of 1995. The draft code was prepared without any empirical investigation. It was inspired by what appeared to be progressive and recent principles in criminal law, namely an *Alternativentwurf* from Germany dated 30 years earlier, in 1965, with ideas of rehabilitation typical of that period. The new ideas in that law – community service and weekend prison – were suggested without any previous feasibility study. Who was able to organise community service? How could existing prisons accommodate prisoners during weekends? Such details were not deliberated before that law was passed, and implementation was left to judges and prison directors. Needless to say, these new measures became a flop (not the law in itself).

However, the many disastrous and unexpected effects of criminal policy never come to light. Neither the authorities nor citizens are aware of initiatives that fail and laws that are never enforced, since there is no evaluation or follow up of activities that, in theory, should reduce crime or rehabilitate offenders. In this manner, politicians can spend the taxpayer's money in blissful ignorance of the impact of their actions.

Contrary to the British experience, where the British Home Office employs roughly 200 full-time researchers to carry out policy evaluation, planning and statistics, the applied research sponsored by the Ministry of Interior in Spain consists of two small foundations, the Instituto de Estudios de Policía and the Centro de Estudios y Perspectiva, linked to, respectively, the National Police Corps and the Civil Guard. They are actually not on the budget of the Ministry itself, and depend largely on external financing. The total number of official researchers in the field of criminology is less than ten. The autonomous region of Catalonia carries out more research than the Spanish state. Nevertheless, in spite of scarce resources, officially sponsored criminology has produced impressive results. It has, for instance, developed some of the best police statistics one can find in Europe and also prompted a series of victimisation surveys in Spain.

And what about independent university research? The truth is there are no university chairs in criminology. Spain has a Spanish Association of Criminological Research, with 80 members. But only a few of them have a permanent position at a university. Those who do are employed, basically, in Criminal Law Departments or Departments of Psychology. They are interested in criminology, but few of them can dedicate themselves to it on a full-time basis. Several scattered initiatives

in the 1970s, from psychologists, sociologists and the medical profession, gave new insights into crime problems in democratic Spain. However, these findings never were consolidated into any new criminological school. The reason was very simple: not only are there no university chairs in criminology, there are even no Departments or Schools of Criminology in the country.²² Those who aspired to a position at a university had to document their knowledge in some other discipline – behavioural psychology, criminal law, sociology, etc.

Consequently, criminology in Spain has been a history of many good beginnings and no follow up. Several scholars who wrote their PhD on a topic related to criminology can now be found as professors of some other field. The criminal lawyer, for instance, with an interest in criminology must suppress his/her passion and instead concentrate on purely dogmatic subjects: only in this way can s/he obtain a tenure and later on a full professorship in criminal law. Criminological research is, from a career point of view, a dead alley. The same happens with the psychologist, medical sociologist or economist: university chairs and research funds are found at the department one is associated with, and research in crime and delinquency therefore remains a transient interest and not a systematic line of research.

More explicitly, academic research into organised crime is virtually non-existent. The large majority of reports (largely restricted from public access) have been put forward by the police forces. The very limited academic literature on organised crime in Spain includes the works of Ferré Olivé and Anarte Borralló (1999) and Carlos Resa (1999). Unfortunately, we have found no more than two empirical studies about organised crime in Spain. The first one concerns the work by the Andalusian Institute of Criminology at Seville (Mapelli Caffarena et al., 2001) which, in 1999, conducted a research project²³ which looked into the means, instruments and strategies available to the National Police Corps in terms of anti-organised crime resources. The study carried out a total of 153 personal interviews amongst police officers working in the National Police Units against Drugs and Organised Crime (UDYCO) of Madrid and Andalusia.²⁴ The second

²² A degree in criminology was established as an official degree in July 2003, but criminology is still not recognised as an academic discipline and will, as before, be taught from the traditional university departments.

²³ Under the auspices of the Falcone Programme (now replaced by the Agis Programme) encouraged by the Directorate General of Justice and Home Affairs from the European Commission, which funded projects related to organised crime and corruption across European Union Member States.

²⁴ Although readers should be alerted to the fragmentary nature of the results which only portray the views of anti-organised crime units pertaining to the National Police Corps.

one refers to the study by the Andalusian Institute of Criminology at Malaga (2002-2003) which looked into extended corruption activities in the construction sector of the Spanish Costa del Sol and its vulnerability to penetration by criminal groups. The study also cross-compared results with similar experiences in Italy, the Netherlands and the United Kingdom.²⁵

3. The Organisation of Serious Crimes in Spain²⁶

Criminal groups with international connections began operating in Spain in the early 1980s. On one side, foreign criminals attached to the Italian Mafia and to the international arms-dealing market found refuge in a newly born democracy and operated from here. Genaro Mazzaurella, one of the heads of the Neapolitan camorra was arrested in Puerto Banus (Marbella, South of Spain) in 1998, after many years of residence there. More recently, some of the main figures of the Sicilian Cosa Nostra (e.g. Nitto Santapaola) were linked to the former mayor of Marbella, Jesus Gil y Gil, through various obscure businesses and the funding of the mayor's campaign (Roth, 2000). Other 'celebrities' living in the south of Spain (Marbella) include Monzer al Kassar who, although indicted on numerous occasions and constantly under surveillance by international law enforcement agencies, nothing has hampered his Mediterranean *joie de vivre*. On the other side, Galician smugglers (engaged basically in the smuggling of American tobacco) expanded their business when they reached agreement with Colombian drug traffickers that were trying to expand into the European market.

Today, the general picture of organised crime in Spain suggests a mixture (although not necessarily cooperative) of national and international criminal groups and networks engaged in different activities whose ultimate goal is profit.

In fact, the work by Mapelli Caffarena et al. (2001) which looked into organised crime investigations conducted by the Madrid and Andalusian UDYCOs during 1997 (458 groups) and 1998 (269 groups) indicated a growing increase in the percentage of mixed-nationality organised crime groups operating in Spain. While in 1997 mixed groups represented 61.5 per cent of the total organised crime groups under investigation, the percentage escalated to 77 per cent in 1998. Mixed groups in 1997 were composed of Spanish nationals and individuals from Italy, France,

²⁵ With regard to this project, see note 21.

²⁶ Following Levi (2002) the authors believe that the terms 'organised crime' or 'organised criminal' create confusion especially when looking at people employing the use of both legal and illegal activities under the protection or support of powerful politicians. Thereby, the 'organisation of serious crimes' seems more appropriate.

the United Kingdom, Germany, Morocco, Colombia, Peru, Yugoslavia, China and Russia. In 1998, along with the former, Spaniards sought further criminal alliances with people from the Netherlands, Portugal, Turkey, Poland, Bulgaria, Hungary, Venezuela, Chile, Senegal and Gambia. Thus, the composition of organised crime groups active in Spain is quite transnational, and thus indicates an emerging criminal market in terms of global importance.

Similarly, although the number of organised crime groups under investigation decreased almost by half between 1997 and 1998, the total number of members within a group increased – while the average number of members for each organised crime group in 1997 was roughly 16, in 1998 the average rose to 32, suggesting a more complex membership configuration. The study also shed light on the increasing participation of women active in organised crime groups which rose from 16 per cent in 1997 to 45 per cent in 1998 and, on the increasing number of groups engaged in more than one criminal activity.

4. The Illegal Drug Trade

Since the early 1980s Spain has been exposed as the main entrance point to Europe for cocaine smuggled from South America and for hashish from Morocco (United Nations Office of Drugs and Crime, 2003; United States Department of State, 2003).

In 1999, Spain broke records for drug seizures in continental Europe: one ton of heroin, 18 tons of cocaine and 431 tons of hashish. Although figures for heroin have dropped, seizures for hashish show a rising trend and, as far as cocaine seizures are concerned, 2001 broke records: 33.6 tons was seized.

Table 1. Drug seizures in 2001

	1997	1998	1999	2000	2001
Heroin (kg)	479	418	1159	485	630
Cocaine (kg)	18,418	11,687	18,110	6,165	33,680
Hashish (kg)	315,328	428,236	431,165	474,505	514,181
Ecstasy (units)	184,950	194,527	357,649	891,562	860,164
LSD (units)	25,368	9,068	3,393	7,542	25,000

Source: Spanish Ministry of the Interior, 2003.

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As Zaitch (2002: 93) points out, although some of the continuous growth in cocaine seizures can be attributed to better interception methods, the rise 'has mainly to do with increased cocaine supply into the continent.' He highlights that 'the fact that Spain seizes between one third and one half of all cocaine seized in the European Union is a serious indication of a major important role' (2002: 97) in the cartography of cocaine trafficking in Europe which, according to him, could form a cross throughout the continent. The four main points would include, in order of importance, Spain, the Netherlands, Italy and eastern Europe.

As mentioned earlier, various international criminal networks are conducting businesses in Spain. However, one must not ignore the local context that has facilitated their penetration into the country. Issues like cooperation with local criminal networks, police and political protection or the investment of illicit funds into the legitimate economy are difficult to measure accurately. Nevertheless, drawing statistics from the National Plan on Drugs (*Plan Nacional sobre Drogas*) the leading role that Spanish nationals play in drug trafficking in Spain turns out to be quite evident.

As far as illegal drug trafficking is concerned, the vast majority of those arrested or accused of this type of crime are Spanish nationals. However, the participation of foreign nationals in drug trafficking in Spain seems to be growing steadily. The percentage of foreign nationals arrested for drug trafficking in Spain has risen from 23.46 per cent in 1998 to 31.85 per cent in 2002.

Table 2. People arrested for drug trafficking offences between 1998 and 2002

	1998	1999	2000	2001	2002
Spanish nationals	10,651	10,554	12,244	12,380	11,837
Foreign nationals	3,276	2,840	4,793	4,963	5,551
Unknown	40	36	30	37	42
<i>Total</i>	<i>13,967</i>	<i>13,430</i>	<i>17,067</i>	<i>17,380</i>	<i>17,430</i>
% of foreign nationals	23.46	21.15	28.08	28.56	31.85

Source: National Plan on Drugs, 2003.

The above figures do not include violations to Act 1/1992 on Public Safety which forbids the consumption and possession (when quantities are not large enough to constitute a criminal offence) of illegal drugs in public places, including public

transport. In this case, the people reported to the police are, by far, Spanish nationals, although the percentage of foreign nationals is also on the rise.

Table 3. People reported to the police under Act 1/1992 between 1998 and 2002

	1998	1999	2000	2001	2002
Spanish nationals	64,554	73,153	77,105	104,740	111,731
Foreign nationals	3,080	3,399	4,183	7,480	10,096
Unknown	43	12	14	49	7
Total	67,677	76,564	81,302	112,269	121,834
% of foreign nationals	4.55	4.44	5.15	6.66	8.29

Source: National Plan on Drugs, 2003.

4.1. The Role of Galician Criminal Networks and the Trafficking of Cocaine

Already in the early 1980s, Galician criminal networks were active in the smuggling of goods, primarily American tobacco. Their structure consisted of hierarchical clusters built around people from the ports of Galicia (northern Spain). Contraband activities were usually disguised with front companies (Resa, 1999) and were already laundering revenues, through intermediaries, in Switzerland (Observatoire Géopolitique des Drogues, 2000). However, they went through ups and downs due to law enforcement. It was not until the late 1980s that Galician networks agreed to form joint ventures with Colombian drug traffickers and consequently started large-scale cocaine trafficking activities in Spain.

After Operation Nécora (1989), Operation Dobell (1991) introduced a new set of characters to the Spanish illegal drug trade scene. Three key players were arrested on charges of importing two tons of cocaine: the brother of the chairman of the Federation of Independent Entrepreneurs of Madrid; a lawyer and former secretary of the Chamber of Commerce of Vilagarcia de Arousa (a port town in Galicia); and a former mayor of O Grove (Pontevedra, Galicia). The lawyer was granted provisional freedom and the charges of the other two defendants were dropped. The same lawyer involved in Operation Dobell was later involved in

Operation More Wood (*Más Madera*) in 2000. This time, he was charged with the illegal importation of 1.8 tons of cocaine. Other historic Galician drug barons such as Laureano Oubiña, José Ramón Prado Bugallo (a.k.a. *Sito Miñanco*) and Manuel Charlín, have been gradually ousted from the trafficking scene. To date, they all are currently serving prison sentences.

By 2001, once Galician traditional drug trafficking networks had weakened – either by law enforcement or by competition – their Colombian counterparts changed their strategy in terms of criminal network associations and trafficking routes. While it has been stated that Colombian drug traffickers controlled, without intermediaries, 70 per cent of the cocaine smuggled into Spain during 2001 (Center for Geopolitical Drug Studies, 2001) the truth may be far more complex, as current drug trafficking networks include not only Colombians and Spaniards but also a wide array of different participants from different nationalities with different levels of decision-making powers and political protection. Regardless of the nature of the association, what seems to be the most striking trend in recent years is the strategic shift in the global cocaine trafficking business, which seems to be diverting from the already saturated and high risk North American market into the lucrative and less risky western European, namely Spanish, market. In 2001, Spain came third (after the United States and Colombia) amongst the highest ranking countries in terms of cocaine seizures in the world. This trend is also confirmed by rising levels of cocaine abuse in western Europe, particularly in Spain or shown by the yearly Global Illicit Drug Trends of the United Nations (UNDOC, 2003). The flourishing market is also characterised by a new trafficking *modus operandi*. Until recently, cocaine trafficking networks had been using large boats dedicated exclusively to transporting drugs (usually between 3 and 10 tons) across the Atlantic Ocean. Before reaching the coast, the drugs were transhipped onto smaller fishing or high-speed boats that reached the Galician coastline. Today, traffickers are also using cargo-ships (passing through the Strait of Gibraltar) bound for Mediterranean ports like Barcelona, Valencia and Malaga.

The last scandal surrounding cocaine trafficking in Spain was connected to Operation Temple. Operation Temple took place in July 1999 when the Spanish authorities seized 10.3 tons of cocaine on board the ship Tammsaare in the middle of the Atlantic. The trial for Operation Temple reached the headlines in early 2002, when one of the most notorious alleged drug traffickers disappeared after the judges from the National Court granted him provisional freedom on bail, following a report from the psychiatrist at the Valdemoro Prison (Madrid) claiming that Carlos Ruiz Santamaría (a.k.a. El Negro) was suffering from extreme depression and was likely to commit suicide. Ruiz Santamaría left the prison on 22 December 2001 and, although he was supposed to be tried on 14 January, he was never seen again after his release. The judges from the National Court trying the case were suspended by the General Council of the Judicial System but were later reinstated to the Court (although they no longer tried the case) after the Supreme

Court found no evidence of wrongdoing. Soon after the flight of Ruiz Santamaría, a second defendant, José Manuel Rodríguez Sanisidro (a.k.a. El Rubio), who had provisional freedom, also went missing. On 17 October 2002, the National Court finally sentenced the remaining 34 defendants. Ironically, the longest sentence was given to *pentito* Alfonso León, thus, raising questions about the *Realpolitik* of the protection of collaborating witnesses in Spain.²⁷

By and large, drug trafficking networks are the ones displaying the most violence not only amongst themselves but also against law enforcement agents. Recently, in August 2002, an inspector with the Homicide Squad in Madrid was killed in a shootout while trying to arrest two Colombians that had allegedly killed another South American the previous weekend (Valera and Aunión, 2002; see also, Mapelli Caffarena et al. (2001) for a similar argument along these lines).

4.2. The Hashish Drug Market

According to the latest Global Illicit Drug Trends (2003) published by the Vienna-based United Nations Office on Drugs and Crime, the bulk of hashish seizures in the world continue to take place in Spain. Cannabis resin seizures (hashish) made by the Spanish authorities in 2001 accounted for 57 per cent of world seizures and 75 per cent of seizures in Europe.

As shown earlier, the year 2001 broke records for hashish seizures: 514 tons. The western Andalusian corridor, in the south of Spain, is the major contributor to the flow of cannabis resin into and through western Europe. However, huge as these figures are, seizures constitute only the tip of the iceberg as far as the dark realm of drug trafficking is concerned. Taking the wholesale price per kilogram of cannabis resin in 2001, one could speculate that hashish trafficking networks lost over € 580 million in the seizures of 2001.²⁸ Now, if that really is the tip of the iceberg, the Spanish authorities across the country are grossly underestimating the economical and social repercussions of the illegal drug trade in Spain.

The last report of the Observatoire Géopolitique des Drogues (2000) indicated that the criminal groups that were engaged in importing hashish from Morocco into Spain were mixed groups in terms of nationality and were loosely organised as opposed to hierarchical. By contrast, drug trafficking gangs that were packing up hashish shipments in Spain were highly organised. Hierarchical or loosely organised, hashish trafficking groups have strong corruption capabilities:

²⁷ Alfonso León was sentenced to 34 years and fined € 416 million (Yoldi, 2002).

²⁸ UNODC (2003) stated that the wholesale price per kilo of cannabis resin in Spain in 2001 was USD 1,280 (€ 1,129, rates as of 30 July 2003).

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A significant number of law enforcement officers posted in small towns around the Cadiz area are systematically bribed, to the point that if these officers actually regulate the trafficking across the Strait of Gibraltar by deciding who can and cannot take part in it. In this region, the organisations involved in drug trafficking and immigrant-smuggling tend to merge, which increases their profit margins and therefore their ability to bribe officials (Observatoire Géopolitique des Drogues, 2000, 93).

Along these lines, a good example is Operation Manzanilla. Operation Manzanilla is the name given to a judicial investigation into drug trafficking activities on the Atlantic coast of the province of Cadiz (south of Spain). After two years of investigation, the head magistrate from local court no. 3 of El Puerto de Santa María (Cadiz) stated that prosecutors from the provincial court of Cadiz were hampering his investigation into a large hashish trafficking network involving, amongst others, the chief constable of San Lúcar de Barrameda (Sindicato Profesional de Policía Uniformada, 2002).

Operation Manzanilla investigates the absence of investigations undertaken by the constabulary of San Lúcar de Barrameda into drug trafficking during the last five years, despite, some say, clear indications of this activity in the area. The investigation is now open and a follow-up is recommended if one is interested in looking into alleged police corruption and/or organised crime protection.

5. Other Illicit Activities

5.1. The Sex Industry²⁹

The authors believe that in order to discuss ‘trafficking in human beings for the purpose of sexual exploitation, forced labour or slavery’ in terms of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, one should first look at the crime markets as an overall starting point.³⁰

It is true that in the eyes of the police – and the public at large – migrant women working in the sex industry are usually kidnapped, deceived and exploited. After

²⁹ The category of the ‘sex industry’ has been used since the mid 1980s in order to refer to the broad dimension around the sex market where an important economic entanglement grows parallel to the processes of globalisation (Agustin, 2002).

³⁰ Protocol Supplementing the United Nations Convention against Transnational Organised Crime, which Spain signed on 13 December 2000 and ratified on 1 March 2002.

all, this is what we learn through the media. However, the very few empirical studies undertaken in Spain show that it is very difficult to draw the line between the concept of 'trafficking' and the concept of 'migrating in order to work as a prostitute' (Alexander, 1996).

While it is true that there are situations in which groups of persons organised into international networks facilitate the transit of people from their country of origin to employ (exploit) them in the western world as prostitutes, it is also true that the real magnitude of this kind of sexual exploitation is unknown.³¹

On the other hand, there are many variants of complications when migrant sex workers access the sex industry of their own free will. These range from getting into the job already indebted and working there so as to pay off their debt, to psychological manipulation at the hands of employers and intermediaries.

According to Agustin (2002) there are no available sources to determine the extent of the problem from the 'demand' side. Although limited and fragmented, the only indicators providing some clues about the magnitude of the sex industry come from the 'offer' side.

Estimates of the extent of the offer vary considerably depending on the source and the year. For example, a few months ago, an article in the Spanish newspaper *El País* estimated that the sex industry in Spain moved around € 12 million per year but that it was impossible to say how many people were employed in the sector (Alcaide, 2002). This figure is quite low if one considers marginal sectors, such as newspaper advertisements or telephone hotlines. A study conducted by María José Barahona from the Complutense University of Madrid along with the Spanish Directorate of Women (Dirección General de la Mujer) examined 'leisure service advertisements' published by three newspapers of national coverage: *El País*, *El Mundo* and *Diario 16* in 2000. The study estimated that each newspaper was making around € 2.8 million per year (Cortes Generales, 2002b).

As far as the total offer of prostitutes is concerned, Agustin (2002) highlighted that NGO *Medicos sin Fronteras* estimated the total number of prostitutes working in Spain in 1996 as 300,000, but estimated that only 2,000 were working on the streets in 1998. In a like manner the Supreme Court estimated a total of 500,000 prostitutes working in Spain in 1970. More recently, in 2000, a report from the Civil Guard highlighted that 90 per cent of those prostitutes working in street clubs were foreigners, of which 70 per cent came from Latin America, 17 per cent from eastern Europe and 10.6 per cent from Africa.

³¹ The vast majority of studies concentrate on the immigration of people from developing countries and countries in transition into western countries. Very little is known of the phenomenon happening between developing countries and/or countries in transition or about migrations to the south.

In all, studies into the Spanish sex industry have not been contrasted or evaluated. Additionally, very little is known about clubs, massage parlours, flats, etc. in urban centres, which leads us to think that rather than a decrease in the number of prostitutes working on the street, there has been a shift of location into clubs of all kinds. It can only be hoped that future studies focus on these areas and shed light on the sex industry as a whole.

5.2. Human Smuggling

During the summer months in particular, Spain faces the arrival of thousands of illegal immigrants originating from the sub-Saharan region on the African continent. These immigrants, travelling in small, overcrowded boats (*pateras*) undertake the hazardous trip from Morocco to southern Spain using the narrow Strait of Gibraltar where only 21 km separate Europe and Africa.³²

It is difficult to tell the extent of human smuggling into Spain. Police figures are not accurate in explaining the nature of the relationship between networks engaged in document forgery, prostitution, labour crime or crimes against the rights of foreigners. Neither it is clear whether these networks overlap ventures at some point. Nevertheless, police figures indicate that a total of 651 networks engaged in some sort of immigration crime were disrupted between 2000 and 2001, and a total of 2,144 persons were arrested (Ministerio del Interior, 2001).

Although we do not know how many people are entering the country illegally, we know the number of people that are deported, obliged to return or denied entry at Spanish ports.³³ Police figures for 1999 and 2000 include detailed sections on deportation, return and denial of entry. Provisional figures for 2001 include gross figures for deportation and return.³⁴ As limited as these figures are, we will try to draw on some estimates.

First, it comes to light that only a moderate percentage of deportation suits ever materialise (18.63 per cent in 2000) due, most likely, to the shortage of economic resources. Nevertheless, it would be interesting to know what happens to all those whose deportation has been ordered but who remain in the country. Secondly, the total number of enforced returns has increased since 1999. Generally speaking, the term *enforced return* applies to the people that are caught in small boats inbound for the shores of southern Spain (usually Andalusia) and fail to show

³² Today, it is believed that rather than small fishing boats, human smuggling is taking place with powerful inflatable speedboats.

³³ Either by illegal means of transportation or through the use of forged immigration documents.

³⁴ To date, not yet published.

a legal immigration document. These people are sent straight back, unless they require medical assistance. A very high percentage of the people returned under this scheme are Moroccan nationals (97 per cent in 1999; 94 per cent in 2000; 82 per cent in 2001) who have paid for the trip back in their country. According to some rough estimates,³⁵ Moroccan smugglers made a minimum³⁶ of € 50 million between 1999 and 2001. And, last but not least, a total of 15,127 persons were denied entry (and consequently returned) at Spanish ports.

5.3. Vehicle Theft and Smuggling

Again, it is difficult to tell the extent of the problem. However, various police operations were conducted in this sector in the past year. For instance, the National Police Corps arrested four British nationals living in Benalmádena (Costa del Sol) engaged in vehicle theft and smuggling and drug trafficking. That is, operating in what Zaitch (2002) calls bi-directionality. They stole cars from the United Kingdom, forged documentation, imported them into Spain and sold them across the Costa del Sol. At the same time, they exported hashish from the Costa del Sol into the United Kingdom.

On the other hand, the Civil Guard reported that in 2001, there were 4,644 persons arrested in connection to vehicle theft and another 1,159 were arrested on document forgery charges. Amongst the most important operations are the following. First of all, Operation Romano in Madrid on 10 May 2001; 20 persons were arrested for vehicle theft and smuggling and document forgery. All arrestees were foreign nationals: 16 Bulgarian, 2 Albanian, and 2 Kosovars. Operation Tineo-Pitufu then took place in Malaga on 31 May 2001; 4 people were arrested for stealing luxury cars in Italy and selling them in Malaga after forging documentation and license plates. Finally, Operation Iceman was conducted in Valencia on 27 November 2001; four persons were arrested in connection to an international vehicle theft and smuggling ring; ten cars stolen in Spain and ready for exportation were recovered (Ministerio del Interior, 2001).

Subject to further research, the examination of police crime data on vehicle theft does not reveal an emergent criminal market. Nevertheless, while it is true that vehicle theft remains low compared to other serious and organised crime activities in the country, it would be useful to look into the value of losses affecting insurance companies and consumers and what percentage of the relatively low figures of vehicle theft in Spain could be attributed to organised criminal groups.

³⁵ According to well-informed sources the boat trip from Morocco to Spain is estimated at € 700-800.

³⁶ Considering only the total number of Moroccan nationals that have been returned between 1999 and 2001, which amounts to 61,097.

5.4. Organised Robberies

According to the police, organised criminal groups are also profiting from property crime, namely robbery, in industrial estates, jewellery shops and dwellings. Because of their *modus operandi*, those specialised in industrial estate robbery are thought to be part of former police or military forces from the Balkans. They are based in several parts of Spain but move across the country quite rapidly. Robberies usually take place at night. Perpetrators work in small groups, breaking through the roof into large warehouses to steal the safes. Or else, they break through the wall into jewellers to steal all valuables. When they abandon the crime scene they usually leave behind their tools (e.g. mallets, drills, axes, torches, etc.) and get away in hired vehicles.

The police face various challenges. First, although they have identified this activity as an 'organised crime' activity, it is difficult to convince any judge that these are not just 'burglaries.' Having said that, it is even more difficult to get judicial authorisation in order to conduct undercover operations, including following a money-trail, confiscation of property or getting hold of collaborating witnesses (*pentiti*). Most of those who are arrested are usually charged with theft and not with belonging to an organised criminal network engaged in continuous robberies. Giovanna Tagliavía López, chief executive of the Spanish Association of Jewellers, Silversmiths and Watchmakers, declared on 20 May 2002 before the Senate that robberies cost the sector € 17 million in 2000 and € 32.3 million in 2001 (Cortes Generales, 2002a).

5.5. Money Laundering

It has been described (Mapelli Caffarena et al., 2001) that money laundering in Spain derives primarily from the proceeds of drug trafficking but also from other serious frauds like forgery, fraud or vehicle smuggling. Regardless of the activity in which the illegal proceeds are obtained, most organised crime groups employ the use of legal companies to launder their proceeds. Mapelli Caffarena et al., indicated that the most common routes for laundering money included the following channels: vehicle and vessel dealing, real estate, travel agencies, the hotel industry, bureaux de change, dry cleaners, export-import and consultancy offices. More recently, it has been indicated that other methods include the use of telephone offices (*locutorios*)³⁷ and urban planning and development (Gómez-Céspedes et al., 2003; Díez Ripollés et al., 2004).

³⁷ *Locutorios* are shops equipped with enclosed phone booths where international phone calls are usually cheaper.

Back in 2000, the Observatoire Géopolitique des Drogues stated that:

Spain is the largest Colombian drug money-laundering centre in Europe. Profits made elsewhere on the continent are concentrated in Spain and massively laundered in real estate before returning to Colombia. A wide range of other laundering methods is used, from the unsophisticated purchase of winning lottery tickets to the skilful use of the financial system of Gibraltar, a British enclave (Observatoire Géopolitique des Drogues, 2000).

Very little press attention and public opinion have been paid to money laundering in Spain. So far, the fear of money laundering and fraud does not figure large on the consciousness of the public. In fact, it would be accurate to ascertain that people's perception of money laundering and fraud is that financial crime does pay. Perhaps, in that sense, judges of the National Court saw an opportunity to provoke fundamental changes in attitudes and practices amongst businesspeople and their advisers by charging with money laundering the former mayor of Estepona, Antonio Caba Tena.³⁸

Antonio Caba Tena left his position as mayor of Estepona in April 2001, soon after the National Court charged him with laundering the proceeds of drug trafficking. On 22 October 2002, Caba was sentenced to a five-year imprisonment and fined € 9 million for allegedly assisting Turks Levent Ucler and Cemil Yigitbasi with the building up of a network of front companies aimed at disguising the origin of the proceeds from the trafficking of heroin. Caba and others implicated in the case coordinated everything from Caba's private law firm, Caba and Associates. According to the sentence of the National Court, the laundering of money at the hands of Ucler and Yigitbasi would not have been possible without the support of Caba. Although not a crime *per se*, prosecutors from the National Court took into account the nature of the relationship between Caba and Ucler after the former assisted at Ucler's wedding, celebrated on the Canary Islands (Montilla, 2002). In any case the former mayor of Estepona will appeal to the Supreme Court. The mere fact that a solicitor has been investigated and charged with a criminal offence (whether or not this harsh prison sentence will be upheld by the Supreme Court) can send shock waves through the profession and result in more care and thought being devoted to the propriety of some clients' instructions.³⁹

The anti-money laundering system in Spain could broadly be separated into two different areas: prevention and enforcement. The Commission for the Preven-

³⁸ With an overall population of 37,000, Estepona is a town on the Costa del Sol located 20 minutes' drive west of Marbella.

³⁹ While mayor he also was chief solicitor of his private law firm.

tion of Money Laundering and Monetary Offences (SEPBLAC), attached to the Ministry of Economy – created in 1993 – is the ultimate body for coordinating the preventive anti-laundering activities of the various bodies bestowed with powers in the area. As far as enforcement is concerned, the reform made to the Spanish Criminal Code in 1995 shifted the definition of money laundering from ‘laundering the proceeds derived from drug trafficking’ to one which includes funds derived from all serious crimes (Financial Action Task Force, 1999). Along with the former, special investigative units have been established within the National Police Corps and the Civil Guard. Despite having a long way to go, the counter-laundering system in Spain is gradually gaining momentum. Evidence of this is the rise in the total number of transactions being reported to SEPBLAC and the escalating figures for cash seizures (a total increase of 87.61 per cent) by police forces and customs officers.

6. Final Comments and Future Trends

To date, Spain does not have an organised crime bill and, given the Spanish tradition of civil liberties within its criminal justice system, an organised crime bill is unlikely to develop, at least in the short term. In this realm, there are some arguments worth raising here. First, we believe that more than the introduction of new legal instruments *per se* (which are already there in the first place) Spain needs awareness and sensitivity on economic crime issues at large. In other words, legislation is basically sufficient, but should be enforced. However, if reforms are meant to take place, legislators could start by agreeing to reform the Spanish Criminal Prosecution Code, especially in terms of clear guidelines for evidence gathering and substantiation, genuine witness protection programmes, proactive investigations at the hands of serious and organised crime prosecutors or the police, or the inclusion of surveillance measures for corruption offences. Otherwise, any good effort in organised crime prosecution is unlikely to have any significant impact. In fact, the fresh receptiveness that Spain has to the phenomena of serious and organised crime could aid in leading the framework of policies away from the mafia rhetoric. In other words, Spain could concentrate on the prosecution of *racketeering activities* – developed in every sector that presents an opportunity to make a profit – rather than on traditional reactive policing (Beare, 2002; Geary, 2002).

In any case, there are preoccupying indicators of serious and organised crime activities in the country. By far, the most important one is the illegal drug trade, which leads to other problems such as police corruption, political protection, financing of political campaigns, money laundering, violence and the creation of economic bubbles that sooner or later burst into serious monetary recessions.

Serious drug trafficking problems are affecting Melilla, Andalusia, Valencia, Galicia and even Madrid these days. It has been said that no region is an island

and, unless important measures are taken, the problem is likely to spread to the rest of the country (Gonzalez-Ruiz, 2001).

Taking the case of Andalusia, for instance (in particular the Costa del Sol in Malaga), one wonders how a province with the highest unemployment rates, and the lowest income per capita⁴⁰ in the country, can have the highest rate of business societies per 1000 inhabitants and a growth of 1800 per cent in the construction of new private housing in the last five years?

While we do not question the seriousness of terrorism in Spain⁴¹ it is very hard to raise awareness of the importance of other serious crimes besides terrorism.⁴² This awareness could be encouraged by academics in and outside Spain. Indeed, there is a vital need for empirical research into the extent of serious and organised crime in the country, for evaluations of policy and, police and judicial performance or, for the appraisal of controls within the financial system. Otherwise, political yet unplanned measures are likely to emerge by containing – as opposed to eliminating – serious and organised crime problems in the future.

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⁴⁰ An annual income of around € 12,000.

⁴¹ Especially knowing that ETA has been responsible for the killing of 809 persons in 33 years, and after the alleged Al Qaida terrorist attacks of 11 March 2004 in Madrid (see Ministerio del Interior, 2001).

⁴² Although nowadays this is true for the world at large.

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The Nature and Representation of Organised Crime in the United Kingdom

Dick Hobbs

Now I know you've got some sort of romantic notion about crime. Yeah, you have Lenny, don't try and deny it. I bet you wish I was a bank robber, something glamorous like that. At the heavy like some sort of modern-day Robin Hood. But it wasn't like that. You see, crime, well what I did, it was just business with the gloves off. (Arnott, 1999: 311)

1. Introduction

This contribution begins with a brief consideration of the historical context of contemporary organised crime, with particular emphasis placed upon urbanism, the era immediately prior to the commencement of the Second World War, the impact of the war itself and the post-war era. I then consider the role of studies of professional crime in shaping a specifically British version of organised criminality which places an emphasis upon proletarian renditions of high value theft.

The next section concentrates upon the creation of a criminal underworld, and its subsequent demise in the light of the fragmentation of both the material and ideological principles upon which traditional criminal collaborations had been founded. This is followed by a section on the dominance of the market place in post-industrial crime, and in particular the erosion of class based assumptions regarding the identities of 'organised criminals'. Official renditions of organised crime narratives are then considered, with a particular emphasis upon the political basis of the state's recent official interest in organised crime, and the rapidly evolving character of the state's knowledge base. This is followed with a brief section on the role of violence, and then a conclusion.

I will attempt to look at what is conventionally regarded as organised crime in the United Kingdom, and in doing so will utilise sources from history, sociology, criminology, biography and the Rolls Royce end of 'True Crime' literature. In addition, law enforcement and media representations will be briefly considered, although in the case of the former, a more detailed consideration is provided in the contribution by Michael Levi in Part III. The emphasis will be upon United Kingdom sources, and divested of references from the United States, Italy, and the Netherlands in particular, the evidence base is disturbingly thin.

2. The History of the Concept of Organised Crime

For many years organised crime in Britain was a Cinderella concept within both academic and policing circles. Assisted by the fact that organised crime does not constitute a discrete offence category in its own right, scholars are therefore unable to plunder criminal statistics in order to present some of the more simplistic mathematical based assumptions that plague the study of many forms of transgressive behaviour. Historical and biographical sources focusing on the immediate post-war era established orthodoxy by emphasising a very narrow perception of organised crime, not only in terms of its core form and core activities, but also in terms of its geographical location. This orthodoxy has proved massively influential, and consequently deserves some attention within this brief review.

Until recent times it is fair to say that popular notions of British organised crime were dominated by the iconography of Hollywood gangsterism, and the brief photogenic careers of the Kray twins. However, the foundations of British organised crime are to be found within a segment of industrial Britain whose roots are deeply embedded in the urban proletariat (Samuel, 1981). Informal, heavily localised social systems enabling criminality were entrenched features of urban Britain for many years (Chesney, 1970; Emsley, 1996; Low, 1982; McMullan, 1984), situated within a context of restraint, prohibition and the licensing of pleasure and vice, many of the activities generated by these systems were based upon fulfilling the needs of the pleasure-seeking public.

Various groups of territorially based criminals had for centuries regarded the centre of London as a prize, but with the onset of the Second World War, established groups of criminals, often with reputations acquired via violent exploits as racetrack enforcers (Divall, 1929; Bean, 1981; Greeno, 1960; Samuel, 1981; Hart, 1993; Fraser, 1994), as thieves and extortionists (Hill, 1955), or even as anti-fascist activists (Janson, 1959), began to ease into the extraordinary spotlight created by wartime leisure demands. Certainly the slippery concept of 'organisation' gains some credibility when applied to the racecourse gangs who extorted the horse-race betting industry. These local coalitions of violent men were rare in their willingness to pit local reputations within a national arena, and although the ensuing violence was by contemporary standards rather tame, as manifestations of the growing potential of organised crime groups who had previously been restricted by their territorial bases, these confrontations were significant (Greene, 1943).

The Second World War created shortages in a wide range of both essential and non-essential products, from building materials to food and clothing (Thomas, 2003; Smithies, 1982), and as a consequence a thriving black market emerged that impacted upon a wide range of the citizenry (Mannheim, 1955; Fraser, 1994). Additionally, one of the impacts on the United Kingdom, and in particular on London and the south-east of the country which was playing host to a vast invasion force in the preparation for D-Day, was that thousands of young men many

miles away from home descended upon the capital in search for recreation. The alcohol licensing laws of the day created a demand for illegal drinking venues, and prostitution thrived (Watts, 1960). In addition, and standing in stark contrast to the communality and common sense of purpose that typify popular images of Britain's wartime civilian population, an estimated 20,000 deserters living outside the law, and therefore unable to gain legal access ration books and identity cards, were forced to commit crime to survive (Mannheim, 1955: 113-14).

By the beginning of the Second World War, racecourse-based extortion, illegal drinking clubs and prostitution were long established alternative institutions (Thomas, 2003). Those providers of vice who had ventured beyond working class territories into the West End of London were ideally suited to cash in on the vast demand created by the influx of allied servicemen who were attracted to Soho and its environs (Watts, 1960). Furthermore, the shortages that lasted for some commodities well into the 1950s, created a black market that touched even the most law-abiding citizen (Thomas, 2003). By the end of the war some powerful criminal collaborations had been formed that had originated in territorial imperatives, but were responsive to market demand. The influence of these groups was considerable and their broad-shouldered presence, combined with Hollywood imagery and the perception of an Americanised youth culture as a social problem (Hoggart, 1957), served to create a picture of organised criminality to which the villains, as well as the general public, enthusiastically invested their imaginations. The West End of London in particular became even more synonymous with vice, and these men of violence provided a vital coercive element with which to police the market. Converging with this vice-orientated strand of criminality were thieves who came to prominence more for their prolific wartime activities than for any inherent organisational qualities (Hill, 1955). This convergence of thieves and gangsters upon the West End of London both during and after the Second World War, if considered within the social disorganisation and violent fragmentation of global conflict, contrived to create forms of criminal collaboration that set the mould for perceptions of British organised crime that remain influential to this day.

Provincial forms of embedded criminality continued to thrive, but there is little evidence of these activities relating to a persistent organised crime fraternity (Janson, 1959; Bean, 1981). Consequently it was the Hogarthian excesses of the capital's criminals that was to become the focus for the nation's concern about organised crime, and much of this concern was couched in a concern with the Americanisation of British society in the wake of the gradual end of rationing, and, as the 1940s gave way to a 1950s, of full employment and a new era of working class prosperity (Hoggart, 1957). Indeed, an elite group of criminals who had established themselves during the Second World War remained highly influential during the 1950s and into the 1960s (Pearson, 1973: 84-99; Frazer, 1994). While non-London based organised crime remained largely invisible, the capital became the focus of a number of high profile violent disputes (Janson, 1959; Hill, 1955; Murphy, 1993:

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121-31), although firearms, given the era's proximity to global conflict and the return of servicemen to Britain, are notable for their rarity (Greenwood, 1972:71-3). Another aspect of organised criminality is the prominence of non-British criminals in the control of prostitution, a trend that can be noted to have its origins during the inter-war period (Finmore, 1951; Watts, 1960; Morton, 1993: 185-228; Sharpe, 1938; Murphy, 1993: 105-12; Cox et al., 1977: 155-7; Read and Morton, 1991: 117-29; Campbell, 1994: 177-95).

The Kray twins emerged during this post-war era, and by the 1960s had established a powerful, enduring and heavily stylised narrative that is way out of proportion to their economic power. The iconic status of the Kray twins over 30 years after their imprisonment can be gauged from the mini publishing industry that is based upon their lives, crimes and imprisonment (Pearson, 2001). Their ability to mix elements of the post-war spiv, teenage teddy boy, 1930s Hollywood gangster and ferocious unpredictable violence into a package bonded by traditional working class community and solidarity (Pearson, 1973), has created a curious legacy for two murdering twins whose 'legendary' empire failed to extend much beyond their own community (Hobbs, 1988). However, in an era that has seen British society fragment and traditional pragmatic working class communities become decimated, the indigenous, well tailored, impudently upwardly mobile white organised crime that the Kray twins represent has proved to be a nostalgic comfort blanket for the public, the media and the police. The criminal legacy of Second World War had a heavy emphasis upon gangsterism, and the Kray twins came to embody this emphasis via a peculiar, but enduring focus upon style rather than economic power. Nonetheless, the imagery of the post-war-based gangster as a predominant form of British organised crime, firmly ensconced in a defined working class neighbourhood, and extorting elements of big city vice, has been crucial.

However, with few exceptions (Hebdige, 1974), academic studies have tended to stress a rather less filmic, yet distinctively British scenario, bypassing the extortionate activities of gangsters and concentrating instead upon professional criminals (Carrabine et al., 2002). While it remains an omission on behalf of British academics who ignore the neighbourhood orientated intricacies of gangsterism – an activity that only comes to the attention of bourgeois commentators with the committal of specific acts of violence – such a stance does have advantages, the most prominent being that asinine circular debates concerning the definition of 'organised' are sidestepped, and the specifics of substantive crimes can be analysed and understood. This stance also enables scholars to confront the lack of structural, hierarchical characteristics that have featured so prominently in traditional renditions of organised crime in the United States in particular (Fijnaut, 1990).

3. Professional Crime and the Organisation of Robbery

However, the crucial aspects of the more competent British studies of organised crime, in particular interconnectivity and the interactions inherent in collaborative criminality, are not abandoned by this approach. Led by McIntosh's seminal work (1975) the post-war non-gangster focus was shrewdly centred upon changing eras of theft. Craft crime, typified by the safecracker (Hobbs, 1995), carried with it many of the characteristics of legitimate British post-war working class culture, and there was a distinct parallel between this form of criminal activity and the era's legitimate world of industrially organised employment, in particular 'craft apprentices learning at the lathe of semi-mythical masters' (Hobbs, 1995: 18), and an acknowledgement of hierarchies of competence rather than those of organisation. Conversely, craft criminals of this era have also provided powerful images of working class individuals defined by acquisitive transgression and debauched appetites, who, like the wartime and immediate post-war 'spiv', stand in stark contrast to the staunch and sturdy proletarian of a reconstructed post-war Britain relishing full employment and the fledgling welfare state. Consequently these craft-based predators, became symbols of non-compliance with the post-war new deal, while cohabiting an underworld, which remained defined as a London based phenomena without the territorial continuity so central to the identity of the gangster.

The technological innovations that ended, not craft crime *per se*, but the prominence of craft criminals and their ability to define an era, marked the emergence of team-based project crime. As craft crime gave way to project crime (Ball et al., 1978), teams of shotgun-wielding robbers supplied a focus for both the mass media and the police. Project crime was organised in that it featured planning and the designation of specialised roles to participants (McIntosh, 1975). However, the loose-knit relationships, often based upon shared territorially based experiences (Reynolds, 1996) that were a vital attribute of the armed robber's practice, were not deemed at the time as being as crucial as the common perception that precision and efficiency were the key characteristics (Mannheim, 1965: 656-9).

Violent robbery blossomed (Mannheim, 1965: 657), and while this blossoming was oddly played down by criminologists (McClintock and Gibson, 1961), what should not be forgotten is that during the 1960s Britain remained a society in the shadow of war, and military experience was a common thread that ran through post-war British masculinity.¹ The post-war period featured many conflicts of decolonisation, and the military retained a high profile in the nation's consciousness as an institution of power, expertise, competence and efficiency. In terms of

¹ For those men too young to have fought during the Second World War, National Service was introduced in 1948 for every 18 year-old male, and lasted until 1960.

interpreting criminal activity, British society did not view ex-military personnel as a latent threat born of their violent experiences (see Bourke, 1999: 345-68), rather as a potentially deviant variant of military teamwork, hierarchy and discipline. As a consequence, project crime was often described as being carried out with 'military precision' (Geraghty, 2000: 175-95; Ryall, 1996).

The use of the military metaphor is best illustrated by the reaction to the 1963 Great Train Robbery, which was a prime example of McIntosh's project crime thesis (Reynolds, 2000: 320; Read, 1979: 291-312). Coupled with a tendency to regard 'big hits' as requiring both conception and direction from a 'mind' (Fordham, 1965: 29), or 'Mr. Big' (Read, 1979: 12; Biggs, 1981: 217-23), these concepts served to mirror the organisation of policing (Stelfox, 1996) as well as shift the public gaze away from the essential ingenuity of armed robberies' proletarian practitioners. During this era the underworld functioned as an essential network of exchange, controlling and disseminating information (McIntosh, 1971; Hobbs, 1995: 19) as well as managing risk.

Despite the highly organised imagery of armed robbery, working arrangements tended to be casual, with little planning and an arrogant disregard for detail in respect to either the robbery itself (Hobbs, 1997) or in dealing with its aftermath (Knight et al., 2002). Unlike the craftsman, the self-identity of the robber was located not in skill or in the acquisition of an intricate arcane craft, but in personal, idealised masculine qualities (Hobbs, 1995: 21) featuring elements of physicality, fortitude and endurance found in industrial work. The violent potential and instrumental physicality that remains from industrial cultures is ideally suited to engagement with serious crime, and its expression lends little credence to either the military metaphor, or the 'Mr. Big' assertion. (Hobbs, 1995: 47)

As with craft criminals, improvements in security technology have taken their toll on professional armed robbers. Improvements in police tactics (Matthews, 2002) and most importantly the disintegration of the 'criminal code' via the emergence of the supergrass in the 1970s (Hobbs, 1995, 1997), have all had an impact upon this iconic criminal activities. Firearms are easier to acquire, and careless non-professionals are targeting shops, garages and off-licences for disdainful reward (Morrison and O'Donnell, 1994). This combination of factors has resulted in armed robbery as a profession deteriorating into a haphazard, essentially amateur excursion (Walsh, 1986: ch. 3; Gill, 2000), carried out with minimal planning, a low level of competence, and, most importantly, no commitment to specialised criminality (Matthews, 2002; Walsh, 1986: 57), and stands in stark contrast to the teams of robbers whose competent practice was once sufficient to establish them as key members of the criminal elite (Taylor, 1984; McVicar, 1979; Ball et al., 1978).

However, also key to understanding the decline of professional armed robbery is the fact that the rewards from entrepreneurial pursuits, and in particular drugs, were now so much greater. Criminal entrepreneurship marked the end of all but the highly symbolic debris of the 'underworld', and marked the inauguration of a

mutant variety of enterprise that is fundamentally similar to legitimate commerce. However iconic transgressions such as armed robbery have not disappeared completely, with the National Criminal Intelligence service reporting for the third consecutive year a rise in cash-in-transit robberies, although improved security measures have reduced losses, and have probably served as a deterrent to serious and organised criminals (UKTA). This contrasts with the decline of high value cash robberies of commercial premises, including banks, while robberies at convenience stores, garages, supermarkets and restaurants have increased. The latter are 'often the work of individual criminals, and where serious and organised criminals are involved they are likely to be less well-established groups' (UKTA).

4. From the Underworld to the Overworld

We can view British organised crime from a political economic perspective, and concentrate upon the substantive practice of serious acquisitive crime and the interconnectivities that both enable and sustain its procedures and pragmatics. Indeed, an analysis of professional criminality enables the unpacking of the interconnectivity of individuals engaged in full-time crime. Such an approach also enables a distinctly more complex picture to emerge than one that is locked into the static, class distinctive 'underworld' imagery that pervades so many popular and police notions of gangsterism. I shall discuss both the underworld and contemporary gangsters in the following section, but first a brief mention of two related British-based concepts that should be key in unpacking the aforementioned pragmatic interconnectivities, but have remained empirically ignored.

Mack (1964), attempted to locate the enabling culture that nurtures professional criminality, and adopted a conventional class-orientated sub-cultural stance. Mack concentrates upon the role of the traditional class base from which most 'full-time miscreants' emerge, and focuses upon the crucial role of competence in the maintenance of networks, which in turn lend structure to serious criminal activity. However, Mack's study was heavily reliant upon criminal justice documentation, and the notion of criminal competence was barely explored. Competencies established during the 1960s may or may not have some 'legs' in terms of relevance and longevity, but scholars have tended to ignore such vital concerns. Defining criminal competence within an economic rather than criminal justice or tabloid frame requires an understanding of the market place itself, and recognition of the crucial role of flexibility (Letkemann, 1973).

With complexity and flexibility of market relations established, it becomes possible to fill in some of the gaps behind the frontline criminal operators and identify who Mack and Kerner (1975) have called 'background operators', such as lawyers, accountants and members of the 'business community', who combine to create a fragmented, loose-knit and competitive network of individuals and flexible

collaborations. These legitimate operators utilise their legal and quasi-legal, as opposed to overtly criminal, status in order to create frameworks of legitimacy, upon which professional criminals can create something approaching a coherent and durable career. Mack and Kerner indicate that our comprehension of the higher levels of criminality are dominated by a mistaken focus upon 'the front line operators [...] the house breakers or the van or bank robbers, or the hijackers or fraudsters' (Mack and Kerner, 1975: 178). The importance of Mack and Kerner's thesis rests in the belief that high status of the front line operator is false, and that we should be focusing upon the organisation behind the front-liners. Here we can see pragmatic relationality emerging as the key to understanding how the term organisation may be used to some effect to describe the British scene.

Indeed, the dealer in stolen goods is pivotal to the competent and efficient functioning of any professional thief. Walsh (1977) and Maguire and Bennett (1982) place the trade in stolen goods within a milieu that is dominated by the mores of mainstream economic activity. Sutton (1998) has suggested that most stolen goods are circulated within informal neighbourhood networks, a suggestion that locates criminality firmly within specific class defined locations. Focusing upon background operators such as dealers in stolen goods serves to shift our attention from an underworld to the ambiguities of the commercial overworld (Hobbs, 1995).

5. The Traditional Underworld as a Imaginary Community

In unpacking British organised crime we are constantly faced with narratives emanating from a presumed common understanding of the existence of a criminal community residing in a universe parallel to that corralled by legitimate society. Underworld narratives often refer to a criminal subculture of shared practices and beliefs that form the basis of an easily defined criminal community. However, while a political economic focus reveals not only the clear class-based territorial origins of many professional criminals, it also encourages a logic that insists that such a sub-culture has followed the same trajectory as that of communities based upon traditional industries (Soja, 1989). The new networks support a wide range of money-making opportunities, some of which will be either partly or wholly illegal (Ruggiero and South, 1997). The contemporary serious crime environment has lost the pragmatic codes and practices that stemmed from its class and territorial origins, for the material world in which it once resided has been decimated along with the rest of industrialism, and now tends to respond to market forces that emanate from beyond the parameters of any self-contained underworld or criminal fraternity. The Dickensian camaraderie that is so apparent in the nostalgic reminiscences of elderly thieves and gangsters, cannot shroud the intricacies of contemporary criminal enterprise which are untouched by complex codes of honour (Pearson and Hobbs, 2001).

The quest for a self contained space of occupationally distinct individuals who are defined by their persistent and competent involvement in criminal activities that proffer monetary gain, or some fragment of 'the fabulous underworld of bourgeois invention' (Benney, 1936: 263) is doomed to failure by the harsh pragmatics of contemporary criminal business. While the activities of craft and project criminals, as well as the territorially based gangsters, were all locked firmly into the everyday realities of the industrial working class, their occupational status also located them amongst a very real criminal fraternity or underworld, which segregated the legal from the illegal and distinguished the committed professional criminal from the amateur. By utilising key factors of masculine industrial working class culture and refining them into a stylised set of overtly criminal strategies, the professional criminal was able to establish an exclusive milieu of specialised, explicitly deviant knowledge.

However, by the time drug markets came to dominate contemporary crime these deviant fraternities had largely disappeared. Congruence with the legal sphere is quite clear – in particular, the emergence of the market place as the primary focus of social life has made redundant any analysis of contemporary society that is restricted exclusively to the parameters of traditional cultural form. In the case of serious crime it must therefore be stressed that unlike time-honoured heavily localised criminal sub-cultures with their explicit observance to the prescribed associations of the indigenous socio-economic sphere, contemporary organised crime is the 'arch enemy of uniformity' (Bauman, 1993: 52). It is the ethic of entrepreneurship that underpins success in post-traditional marketplaces, thriving upon variety and diversification. The decline of traditional criminal crafts and trades has resulted in an emphasis upon 'new technical, social, psychological and existential skills [...] practicable only in conjunction with marketable commodities' (Bauman, 1993: 98). The product that governs contemporary organised crime is drugs, and the reliance upon entrepreneurship both in the drug trade, and in associated activities such as counterfeiting, highlights the passing of traditional skills, and an increased reliance upon market-led criteria of worth and competence.

Traditional organised crime networks were deeply entrenched in the locations, working practices, occupational cultures and very occasionally, oppositional strategies of the industrial working class, and their reflection can be located in an underworld that became valorised as a distinct cultural manifestation constituted as a material community (Samuel, 1981). Clearly this community's material base no longer exists, and as a consequence contemporary organised crime has become located within *ad hoc* trade-based loose collectivities that can splinter, dissolve, mutate, self-destruct or simply decompose. They are no longer bonded by some enigmatic freemasonry of crime, and relationships are temporary and motivated by the promise of monetary reward. What had formerly manifested as locally organised applications of extortion, and craft-based larcenies, have now mutated

into entrepreneurial activities which should be regarded as indigenous renditions of global markets.

However, the notion of an underworld as a distinct homogeneous and identifiable criminal environment empowers both contemporary professional criminals and their various audiences to insert some retrospective order into an environment that is prone to chaotic, apparently incoherent interludes (Reuter, 1984). In the United Kingdom the attraction of this sense of retrospective order has assisted enormously in the rapid expansion of a 'True Crime' market which features 1960s gangsterism more heavily than criminality from any other era. This highly lucrative underworld fantasy is constituted by the incessant recurrence of sacred myths related to traditional strategies and iconic individuals, and serves to preserve a highly significant impression of the maintenance of an expert system, and therefore lending contemporary organised crime markets a sense of 'retrospective unity' (Bauman, 1993: 138), an imaginary community that leans heavily upon an invented tradition (Anderson, 1983; Hobbs, 1995, 1997). This tradition promotes a retarded scope of activities that seldom shift beyond extortion, gaming, vice, and large-scale theft. Therefore the British underworld is presented as a 'Messianic time' (Benjamin, 1973: 265), constituting a golden age of predictability, stoicism, honour and reliability which is restricted to the West End of London during the late 1930s to early 1970s.

6. The Varieties of Contemporary Market Crime

However, beyond this villainous nirvana, with apprenticeships in criminal trades a distant memory and class and territorial allegiances fragile and fragmented, organised crime is no longer the sole prerogative of an 'underworld' (Haller, 1990: 228-9), its precepts, tenets and methodologies now can be located in an overworld to which even the most virtuous citizen has access. In particular the pragmatics and logistics, particularly of the drug trade, bring fresh significance to the works mentioned above by Mack, and Mack and Kerner. Individuals and groups from a range of class, ethnic and commercial backgrounds now cluster around irregular trading relationships.

Some of the more sophisticated scholars of contemporary criminality, Michael Levi in particular, have been able to utilise the less exclusive membership of organised crime groups to explain the extent to which organised criminal activity is now a far more extensive zone than traditional underworld narratives would suggest. By acknowledging fraud and other financial transgressions as organised crime, both the *curricula vitae* of contemporary felons and the range of ideological and material support structures for their activities are considerably expanded. Economic/enterprise/white collar criminality constitutes a considerable threat, whether or not it is associated with traditional proletarian practitioners of organised

crime (Levi, 1981), with the business community (Levi and Naylor, 2000), or with global commercial and political forces (Passas, 1996). Yet in both media and law enforcement accounts, the familiar visceral practices of gangsters and robbers are afforded precedence.

Whatever the specific activity, it is clear that the practice of organised crime should be understood as transactions between networks of what are usually small flexible firms (Dorn, Murji and South, 1992). Furthermore, as in legitimate commerce, the circuitous disposition of the power wielded by large firms confirms characteristics of flexibility, autonomy and independence amongst smaller units (Lash and Urry, 1994). This last point draws attention to the organisation of criminal labour, which instead of being a discrete and specific to the tenets of an underworld, actually mirrors trends in the organisation of legitimate labour (Ruggiero and South, 1997; Ruggiero, 1995). Particularly when the impact of economic crime is fully acknowledged, we can concede that contemporary organised crime groups reside upon a terrain that is fundamentally indistinguishable from that occupied by legitimate economic entities. As I will go on to discuss below, it is possible to comprehend British organised crime within the context of local trading networks (Dorn et al., 1992: 3-59; Piore and Sabel, 1984), although commercial viability appropriate to local precedent is retained (Hobbs, 1995: ch. 7), by continually realigning in the context of global markets. (Giddens, 1991: 21-2; Hobbs, 1995: ch. 5).

Certainly the generic adoption of entrepreneurship as both a central ideological prop and pragmatic strategy of post-industrial society has assisted in the consolidation of both legitimate and illegitimate interests around a central theme of wealth accumulation (Burrows, 1991; Heelas and Morris, 1992). Consequently the term organised crime is no longer inextricably linked to social forms that were the direct product of industrial society, and organised crimes shift towards entrepreneurial action, and should be regarded as indicative of the duplication of post-industrial interactions within the indistinct parameters of illegal markets.

However, trade within and between criminal coalitions involves the generation and nurturing of local interests (Hobbs, 1998), and one of the few primary structures upon which organised urban crime has consistently been based, remains the traditional neighbourhood family firm. As has been suggested above, de-industrialisation, and the consequent fragmentation of traditional communities (Beck, 1992; Pakulski and Waters, 1996) has removed the material underpinning upon which the neighbourhood crime 'firm' was based (Hobbs, 1995: 67; Stelfox, 1996: 18; Pearson, 1973; Murphy, 1993: 98-155). However, recent empirical work (Hobbs, 2001) suggests that the family firm has adapted to the contemporary cultural, economic and geographic terrain. Furthermore, it is suggested that the extent of the family firms' modification will vary across the United Kingdom, depending largely upon the extent to which the political economy of the local neighbourhood has been impacted upon by de-industrialisation.

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Consequently, serious crime networks, often including 'remnants' of the traditional 'firm', operate as flexible predators on constantly shifting territory, and involve not only family but also a range of associations and relationships that may be linked to kinship friendship and instrumentality (Arlacchi, 1986: 133). These loosely structured *ad hoc* collectivities should be understood as local social systems that no longer enjoy the feudal domination typified by the parochial warlords of the 1950s and 1960s.

The new organised criminal networks are able to both exploit and undercut traditional cultures (Giddens, 1991: 1). Their scope and ultimately their success depends largely upon the extent to which connectivity is established between groups and individuals (Coles, 2001) and it is this connectedness rather than either familial or corporate identity that creates the structural element that is inherent in 'organised crime', the ensuing interactions generate infinite mutations that succeed in exploiting geographic space without being restrained by territorial imperatives (Hobbs, 2001).

The pragmatics of the drug trade in particular have created disintegrated criminal firms that are typified by flexibility and unpredictability, and thrive within multi-layered opportunity networks that are constituted by both specific and multiple activity networks. This runs contrary to those academics, writers and police agencies who see fit to emphasise the existence of global crime corporations (Williams 1993a, 1993b; Williams and Savona, 1995; Sterling, 1994). However, as Robertson (1992, 1995) has indicated, globalisation has improved the feasibility of locality as an essential prop of social order (Hobbs and Dunnighan, 1999), and the local/global dialectic (Giddens, 1990: 64; Giddens, 1991: 22) indicates the existence of markets where alliances between global and local spaces are negotiated, creating locations that utilise local readings of global markets (Robins, 1991).

7. Government, Police and Organised Crime

The very existence of the Home Affairs Committee on Organised Crime (1995) indicates that by the 1990s organised crime had become a high profile policy problem that, as Gregory notes, had been asserted by politicians and police officers before any reliable data had emerged (Gregory, 2003). The ascendancy of organised crime on the United Kingdom's political agenda has been marked by scholars as being driven by concerns emanating from the European Union (Levi, 2002), and the creation in 1992 of the National Criminal Intelligence Service (NCIS) marked the British governments formal recognition of a problem that had previously been 'kept in a box' (Barnes et al., 2001). Careful reading of the minutes and evidence that preceded the Home Affairs Committee report indicates a remarkable scepticism on behalf of the politicians interrogating criminal justice sources. Indeed as Members of Parliament with constituents in mind, they appear to have been particularly keen,

not upon dismissing alien threats, but in stressing the possible inappropriateness of the NCIS definition, and in particular the tendency of law enforcement evidence to the committee to stress foreign brands of spectacular yet familiar organised crime (Home Affairs Committee, 1994).²

However, as the questioning of governmental and law enforcement sources continues, scepticism gives way to parochialism, and the discrete concerns of individual agencies. Yet even within the confines of this early, if long overdue, investigation of organised crime, some nuggets of genuine operational knowledge occasionally edge to the surface that suggest the distinctly British emphasis upon 'professional', as opposed to 'organised' criminality suggested by home-grown academics may be afforded enhanced credibility. For instance the chairman of the Association of Chief Police Officers referred to organised crime as 'serious crimes committed by career criminals who network with each other across the United Kingdom, across Europe and internationally' (Home Affairs Committee: 1994, 16-17). Whilst such a seemingly vague statement may not appear not to be especially helpful, particularly to policy makers, it is a definition of organised crime divested of connotations of organisation that sits comfortably with the work of Mack, McIntosh, Dorn and South, Hobbs, and Coles.

However, throughout the 1990s less measured statements regarding organised crime created headlines not dissimilar to those focusing upon moral panics of previous eras. The apocalyptic terminology was particularly apparent amongst the most senior police officers and politicians (Condon, 1995; Howard 1996). This mounting tension regarding the pervasive power of organised crime was matched by some highly significant newspaper articles (Bennetto, 1995: 2-3; Burrell and Levy, 1995: 14-15), which served to mutually reinforce the drive by politicians and police that 'something must be done'. Something was done in 1997 when the Police Act formalised NCIS and created its operational arm the National Crime Squad (NCS). Thus via the rhetoric of organised crime a level of police centralisation was achieved that would have been unthinkable a decade earlier (Dorn et al., 1992: 203; Von Lampe, 1995: 2).

Since the late 1990s statements from both police and politicians regarding organised crime have been more measured. The policing of organised crime in the United Kingdom is dealt with by Michael Levi in this volume, consequently my consideration of the police's presentation of organised crime will be brief, and bereft of any discussion of the complex politicisation of law enforcement's discovery and bureaucratisation of the problem (Hobbs and Dunnighan, 1999; Gregory, 2003).

² The NCIS definition of organised crime is: 'Any enterprise or group of persons engaged in continuing illegal activities which has as its primary purpose the generation of profit irrespective of national boundaries'.

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Given the task of collecting and disseminating intelligence regarding organised crime, the early outpourings from the National Criminal Intelligence Service (NCIS 1993a, 1993b) constituted crude lists of foreign crime groups, featuring a roll call of usual suspects from a global central casting office (Anderson, 1994: 302). Indeed, the one-time director general of NCIS described British organised crime as emanating from 'its bases around the world (and) tends to spread its tentacles and those tentacles reach the United Kingdom'. As Gregory (2003) notes, both NCIS and its operational arm the NCS were established prior to any plausible data-collection exercise relating to organised crime, and consequently sceptical readers may feel able to comprehend the tabloid-like quality of some of these early outpourings as typical of new agencies attempting to establish themselves (Wright, Waymont and Gregory: 1993). Indeed the hostility towards NCIS in particular in the mid-1990s was extreme (Dunnighan and Hobbs: 1996), and this writer would argue has far from subsided.

Although the NCIS continues to operate a most distinctive, and inevitably politicised notion of organised crime, with, for instance, football hooliganism somehow coming under their remit, the quality of its various outputs, notwithstanding an unfortunate tendency to adopt some of the public relations industries stylistic tools (<http://www.ncis.co.uk>), have undoubtedly improved. The public version of the most recent annual threat assessment (UKTA, 2003), featuring information gleaned from law enforcement and government agencies, while a considerably more sophisticated document than its predecessors, is clearly restricted by secretive details that it can do little more than allude to, and is of limited use to scholars. The most significant threats identified in the 2003 UKTA are: class A drugs trafficking (heroin, cocaine powder, crack cocaine and ecstasy), organised immigration crime fraud (particularly revenue fraud), money laundering, possession and use of firearms, hi-tech crime, and sex offences against children including online child abuse. The last item constitutes a re-expression of 'paedophile crime', which along with use of firearms and hi-tech crime were first recognised as distinct 'new or emerging threats requiring closer examination and evaluation' in the 2002 UKTA.

Other more traditional forms of criminality such as armed robbery, vehicle theft and counterfeiting are not ignored by the UKTA. However the list of significant and emerging threats do include forms of criminality that are of public, media and political concern regardless of their economic impact. Certainly the NCIS rubric of dealing with 'serious and organised crime' is painfully fluid, opening up this major intelligence gathering organisation to the ebb and flow of political expediency. The ever-changing nature of this threat is also enabled by NCIS's common-sense acknowledgement that 'at anything other than the lowest level, serious crimes such as drugs trafficking, the facilitation of illegal immigration and the smuggling of cigarettes are not possible without some degree of criminal collaboration and infrastructure', assuring that NCIS could never go out of business. The UKTA constitutes the British state's imagery of organised crime, and media sources in

particular plunder the annual update in order to provide contextual frameworks for crime stories. As a public document the UKTA is predictably bland, but compared to the tabloid sensibilities displayed in early NCIS outputs it is informative, while remaining suggestive via the practical reality of collaborative endeavour, of a multiplicity of transgressions constituting a common national threat. Yet there are clear signs in the language used in successive UKTAs that the notion of a criminal/business community exploiting a wide range of economic opportunities may carry some considerable operational credibility.

This tendency to generalise the nature of any threat emanating from such a wraith-like concept as organised crime, exposes the political nature of police work, and in particular the quest for funding that resides at the heart of any governmental organisation.³ However, the Organised Crime Notification Scheme (OCNS), which was first the responsibility of the NCIS and was later taken over by the Home Office, although subject to all of the defects mentioned above, does offer some scope for critical analysis.

The OCNS, based upon the classified information which informs the UKTA, has, as Gregory notes, evolved considerably since the NCIS first attempted to gather United Kingdom-wide information. Based upon questionnaire returns from a wide range of law enforcement agencies, Gregory's analysis reports that drugs and money laundering constitute between them 87 per cent of organised criminal activity, with over 60 per cent of the core members of organised crime groups being designated as 'white European'. Of the 965 crime groups identified in 1999, 85 per cent were based in the United Kingdom with 30 per cent of these based in London. In total over 75 per cent of organised crime groups were based in or near major metropolitan areas. Regarding the issue of transnationality that is criticised above, Gregory found that of those groups with known bases '14 (1.7 per cent) were based outside the United Kingdom and of these, 11 were based in a European country'. In addition, just over 40 per cent of organised crime groups were active outside the United Kingdom, and less than 8 per cent active in more than two continents. Even given Gregory's careful understanding of the statistical failings and general methodological shortcomings related to this data, the global/transnational rhetorics of many of the ex-Cold War warriors who have since turned their gaze towards organised crime are hardly sustained by these findings. Only 4 per cent of the sample displayed 'mafia-like characteristics', but over a third of the sample utilised violence 'for internal discipline'.

³ For an interesting and insightful analysis produced by a police officer, albeit featuring a traditional and restricted understanding of organised crime, see Stelfox (1996). Stelfox stresses the inappropriateness of American-orientated definitions, emphasising the existence of small, temporary alliances of white males. Stelfox identifies violence as the key problem rather than either criminal enterprise or organisation.

Although the improvement in official data on organised crime is marked, scepticism must of course rule over any data derived from law enforcement sources, particularly in relation to a concept whose definition is so contested (Levi, 1998). Yet even the most sceptical reader will be struck by the core of Gregory's findings that are clearly contrary to organised criminal stereotypes promulgated by both fictional and non-fictional wings of the media. Namely, the local orientation of United Kingdom's serious crime networks, albeit with connecting nodes in various countries, and the lack of formal traditional structures. This data is unlikely to hamper what appear to be coalitions of police and media accounts of organised crime that confuse the 'who', 'why', 'what' and 'how' (Naylor, 2003; see also Cohen, 1977), particularly if there is an opportunity to align an ethnic stereotype with a social problem (Thompson, 2003). More effective still if a powerful and recognisable 'brand' can be pinned to alleged ethnic crime. This is the process by which, as Stelfox notes, black criminals become Yardies, and Chinese criminals develop into Triads. In addition such stories are given added impetus if violence is added to the mix (Stelfox, 1996).

8. Violence and Organised Crime

However, recent empirical work into the United Kingdom's drug trade (Pearson and Hobbs, 2001) suggests that violence is relatively rare, and should be regarded as a resource to ensure contract compliance, principally as a means of ensuring that creditors do not default on debt. However, it is also acknowledged that illegal markets, as is suggested above in the brief discussion of the embeddedness of organised crime, are not purely economic systems, and that many of those featuring in middle market drug dealing networks bring with them prior reputations for violent action (Hobbs, 1995). Furthermore, these reputations are often acquired through their involvement in non-instrumental criminal arenas. Overt violence, when it does occur, was best understood by Pearson and Hobbs (2001) as the result of market dysfunction and instability occurring when competitiveness is threatened by the breaking down of established systems of trust. Little evidence was found for so-called 'turf wars'.

Kidnap and torture, which often goes unreported, was regarded as a growing tendency, and a comparatively recent innovation that complements the established use of violence and intimidation. This activity was utilised to enforce contractual arrangements and in particular the payment of debt, and as an intimidatory device to reinforce a violent reputation. It also functioned as a form of extortion to extract funds from rival dealers. This latter form should be regarded as an alternative to robbery from individuals with a surfeit of readily available cash who are unable to turn to the police for assistance.

However, there is a danger in exaggerating both rationality and instrumentality in drug markets. Such a view may inspire yet again traditional organised crime

clichés, or what the OCNS call ‘mafia-like structures’, and consequently the flexible, intricate relationships and constantly mutating nature of organised criminal networks can be ignored. When these webs of relationships are untangled, violence is often exposed as the expression of personal disputes and conflicts, as opposed to structural characteristics and aims. The articulation of macho status within many of the environments that overlap with illegal markets cannot be ignored, for organised crime is a social as well as economic system, and pervades both commercial and personal lives.

While this convolution of business and ego indicates the breakdown of trading principles rather than rational attempts at the maintenance of market order, market society has thrown up fresh opportunities, notably in the night-time economy, for violent organised crime to mutate into security provision. Indeed it would be ironical if, while the common perception of the organised criminal threat to Britain is one of alien hordes spreading their tentacles, the real threat emerges from the very specific demands for order thrown up by the leisure industry, and enabled by post-industrial systems of governance (Hobbs et al., 2003).

9. Conclusion

Within the very harsh limitations of the research available, it is suggested that organised crime in the United Kingdom should be understood in terms of interlocking networks of relationality (O’Byrne, 1997; Strathern, 1995: 179). This may manifest itself as amalgams of family, neighbourhood, region and nationality, which merge with, and are often indistinct from, purely instrumental commercial coalitions (Hobbs, 2001). Diversification in the drug market, and the exploitation of opportunities emerging from political and economic shifts, for instance in the European Union, look likely to be joined by traditional extortionate activities and even the odd spectacular heist.

Both media and police regularly express concern over aspects of criminality that have never been properly addressed by academic research, but are tagged nonetheless as organised crime (Van Duyne, 2003: 317). The list of contemporary illegal activities commonly associated with organised crime, while remaining largely unresearched, is long and professionally embarrassing, and likely to get much longer unless we can find a way to inspire interest amongst funders in the analysis of specific forms of criminal enterprise. Meanwhile permutations of established enterprises, entry level felons, legitimate businesses morphing into criminal activity, and a multitude of high-risk entrepreneurs will constitute British organised crime, and unpacking the diverse interconnecting networks of firms and individuals that lay beneath its cinematic and police inspired veneer will continue to reside beyond the gaze of the academic community.

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The Czech Republic: A Crossroads for Organised Crime

Miroslav Nožina

1. Introduction

In the last 15 years the Czech Republic has witnessed an intense intermingling of cultures and activities of crime and, specifically, of organised crime. The multiplicity of organised crime groups currently active on Czech territory have different origins and thus differing cultural backgrounds and organisational structures. Within the boundaries of the Czech Republic, the local underworld meets with criminal groupings from the former Soviet Union, the Balkans, Italy and other European countries, as well as Asia, Latin America, the Middle East and sub-Saharan Africa to create a new, highly developed crime industry. The territory of the Czech Republic has thus evolved into a veritable ‘crossroads of crime’. Though much organised crime is domestically produced, the newcomers have introduced ‘modern’ and aggressive methods of illegal work on the Czech criminal scene, dramatically changing the practices, structure and turnover of illegal markets. Today, domestic and international organised crime actors increasingly cooperate with each other, constantly looking for new sources of profit.

The following section reconstructs the emergence of the concept of organised crime as well as the public, professional and academic debate surrounding it. The existing research and accessible government data on organised crime are reviewed in the third section. The fourth and fifth sections provide a general overview of organised crime in the Czech Republic, analysing its development before and after the 1989 ‘Velvet Revolution’ and the structure and *modus operandi* of domestic and foreign organised crime groups. The sixth section focuses on illegal markets, and the seventh section is devoted to organised crime infiltration in the legitimate economy. Organised crime strategies to avoid prosecution are briefly reviewed in the eighth section. Some concluding remarks follow.

2. The Emergence of the Concept of Organised Crime and Public Debate

In the years following the ‘Velvet Revolution’, a sharp growth in criminal offences and the escalation of criminal activities broadly referred to as organised crime led to a rise in public awareness of the threat of organised crime. The media often presented

information about some of the more sensational cases, such as gunfights between rival gangs (frequently gangs coming from abroad), seizures of large amounts of smuggled drugs, and so on. The public became increasingly concerned about such events, and the fear of crime, even of organised crime, came out on top in the results of public opinion polls examining the fears of the Czech population. Crime is considered to be a very important problem by 95-99 per cent of respondents in the surveys conducted regularly since 1991 by the Czech Public Opinion Research Institute (Kury and Zapletal, 2002). Moreover, the majority of public opinion polls published in the Czech Republic in recent years list criminality and organised crime as a major security threat. According to an inquiry carried out by the Universitas Agency in 2001, on a scale of 0 to 4, with 4 representing 'the most serious problem', organised crime was rated at 3.1 and violence and aggression at 2.99 – both 'very high' (Ministry of the Interior, 2002). The wider public receives information about organised crime and its development almost exclusively from the media. Information about judicial procedures also comes mainly from the media. However, one must consider that the media concentrate on the most serious (especially violent) types of crime, crimes which occur less frequently in daily life compared to standard, run of the mill offences. Thus the media picture of organised crime and of the reaction to it is considerably distorted compared to the reality. The rise of organised crime in the Czech Republic is frequently considered to be a 'tax' on democracy.

In the public's view, the word 'mafia' has become a synonym for various organised crime groupings ranging from small gangs to highly developed criminal syndicates. For the first half of the 1990s, organised crime was also regarded as a predominantly imported phenomenon. This was primarily due to mass media reports of foreign 'mafias', such as Russian and Italian mafias, Chinese triads, and of foreigners as drug traffickers, racketeers, gunmen, and so on. This view of organised crime was predominant even in the professional milieu. Police reports describing the activities of organised crime in the Czech Republic mostly described the activities of foreign groups, while little attention was paid to the roots of organised crime of Czech origin. Arguably, it was at least partly thanks to research work that, eventually, attention began to be paid to the organised criminal activity of Czech citizens and to their role in criminal organisations.

Naturally, this picture of organised crime as an 'alien' imported phenomenon consisting of huge criminal organisations significantly influenced the debate on the development and implementation of the most appropriate control policies. In addition to the need for new provisions in penal and police legislation, much attention was initially paid to measures against the 'import' of organised criminal activities in the sense of stricter controls on people entering the Czech Republic and on their activities in the country. This 'alien conspiracy' picture of organised crime may also have been the reason why some prominent criminal cases committed mostly by Czech citizens in the early 1990s and relatively broadly publicised and

commented upon in the mass media were not presented as organised crime, although they showed a number of quite significant features of this phenomenon.

A good example is the so-called light fuel oil case. It seems to have been a typical white-collar crime of tax evasion – since 1993, a different consumer tax was put on chemically identical and visually indistinguishable products, i.e. light fuel oils (low tax) and diesel oils (high tax). The related criminal activity exploiting this tax difference was committed mostly by Czechs. However, these high-profile cases showed some characteristic features of organised crime – the existence of a group of perpetrators, organised and well-planned activity, nets of suppliers, middlemen and buyers, international connections, corrupt behaviour, competitive conflicts and their resolution through violent means. The amount of tax evasion, i.e. damage to the state, was estimated to be about CZK 3.7 billion (€ 116 million). The press also reported that 176 firms were investigated, 13 murders were committed and 17 persons were reported missing in connection with the light fuel oil case in 1993-1994. Despite all this, the case was depicted as an economic crime rather than an organised one (Baloun and Scheinost, 2002: 48-51). This is also true for a number of corruption cases investigated in relation to the privatisation process.

As these examples show, ‘domestic’ affairs had very little impact on the public debate on organised crime and its control policy, especially in the first half of the 1990s. Nevertheless, the pressure of public opinion on law-making as well as on government and police authorities was unambiguous. The fear of organised crime resulted in repeated requests for more severe penal and immigration policies and, on a broader scale, strengthened the punitive attitude of the public.

Only in 1994 did a serious professional debate on the dangers of organised crime and on the possibilities of combating it begin. On the one hand, this debate took place among law enforcement officials, especially policemen, who pushed for more effective tools of investigation; on the other hand, it also involved legislators and legal scholars, who tended to draw attention to the limits of penal and police law and to insist on the necessity to safeguard civic rights and liberties (Cejp et al., 2003). In the mid-1990s academic and professional research also began to develop, much of it starting from scratch.

3. Existing Research and Accessible Data

In the former Czechoslovakia, ‘modern’ forms of organised criminal activities were highly suppressed and the organised crime phenomenon was considered to be a low intensity threat.¹ Therefore there was neither the urgency nor the political will to develop any kind of research into this type of crime. However this situation

¹ See section 4.1 *infra*.

changed drastically in 1989 due to the profound structural transformation of the political and economic system. Not only did the Czech Republic suddenly become attractive for penetration of cross-border crime and foreign organised groups, but the transformation process also produced favourable conditions for a potential rise in domestic forms of organised crime backlit by the increasing overall crime rate (Scheinost, 2001: 36). Yet, even though an objective purpose to conduct research into organised crime clearly existed, and despite the fact that the political barriers had now fallen, the magnitude of this problem was slow to be realised, as was the development of the academic capacity necessary to launch the research.

In 1992, a state college, the Police Academy of the Czech Republic (PACR), was established in Prague.² The main aim of the PACR is to prepare specialists for university level degrees in certain police and other security activities, as well as to prepare them for leading positions in the police service. It organises workshops and conferences at national and international levels, and conducts criminological research projects concerning organised crime. Two essential monographs by Miroslav Němec, a lecturer at the PACR, describing the phenomenon of organised crime in general were published on the basis of the projects (Němec, 1995, 2003).

In 1992, the Institute of International Relations (IIR), a Prague independent research centre connected to the Ministry of Foreign Affairs, started research into international organised crime (the so-called Internationalisation of Crime Research Programme) in the framework of international security studies.³ Its projects examine the geographical expansion, structure and impact of international organised crime activities in the Czech Republic. The activities of groups involved in international organised crime from the former Soviet Union, the Balkans, Italy, Asia, Latin America, the Middle East and sub-Saharan Africa are analysed in spheres of various criminal operations – drug trafficking, illegal immigration, trafficking in human beings, commodity smuggling, fraud, money laundering, and so on. The projects define the role of the Czech Republic in international criminal networks, estimate future trends in the development of the Czech criminal underworld and the impact of these international criminal activities on the Czech economy and society. Finally, they deal with the problem of national and international security cooperation and strategies of the Czech state – analysing opportunities, obstacles and perspectives for coordinated security activities. The institute regularly invites police and security experts to take part in its research programmes. An essential volume comprising articles by Czech professionals (mostly policemen) on the manifestation of organised crime in the Czech Republic (Nožina, 1997) and a special monograph by the author on the topic of international organised crime transiting the Czech Republic (Nožina, 2003) were published in the course of the IIR projects. The interviews carried out

² See <<http://www.mvcr.cz/akademie/english/index.html>>.

³ See <<http://www.iir.cz/>>.

with officials of the Czech police and security forces, and the data collected within the framework of the IIR research project International Organised Crime in the Czech Republic (1999-2003) provide the empirical basis for this article.

In 1993, the Prague Institute for Criminology and Social Prevention (hereinafter 'ICSP') of the Ministry of Justice also initiated systematic research on organised crime and organised crime policies.⁴ Together with theoretical studies and analyses of specific kinds of criminal offence and legislation, the institute researches the organised crime activities of Czech citizens. Among other initiatives, it surveys law enforcement and judicial authorities and some specialists on the current situation, the trends and the characteristics of organised crime.

The ICSP research on organised crime and organised crime policies can be divided into three periods. The initial period lasted from 1993 to 1997 and began with an introductory theoretical study on the likely models of organised crime (Scheinost et al., 1994). Following this, empirical research was launched, supported in this period (from 1994 to 1996) by the Grant Agency of the Czech Republic. The aim of this research phase was to produce a basic description of the organised crime phenomenon, to summarise available data concerning characteristic features and structure of organised crime in the Czech Republic, to analyse its state, trends and selected forms and to compare Czech legislation with the respective legislation of other European countries. On the basis of this information, the researchers were expected to formulate recommendations for legislation and for police and prison service work.

The research was carried out via several partial studies by the ICSP in collaboration with the PACR and the headquarters of the Prison Service. As well as an introductory study, the researchers involved conducted partial studies focusing on drugs, racketeering, theft and trafficking in stolen artworks, prostitution, economic crime, illegal migration, violent crimes and the ethnic factor in organised crime. Two volumes were published on the penal legislation and police work related to organised crime, and a broad study on the offenders of crimes committed in organised groups was carried out in the Czech prisons. A synthesis of the results of this first research programme was published in 1997 (Scheinost et al., 1997).

Following the end of the first period of research in 1997, a second period continued until 1999, which was also supported by the Grant Agency of the Czech Republic. Through examination of the trends of criminal activity and the structure of organised groups, this research effort sought to confirm the preliminary concept of organised crime. This aside, the researchers' field of interest was extended to include the social conditions and consequences of organised crime, the involvement of Czech citizens in organised crime activities and the effectiveness of legal measures (Scheinost, 2000).

⁴ See <<http://www.ok.cz/iksp>>.

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In 2000 the third research period began, scheduled to end in 2003. This phase of research continued to study the trends in the development of organised crime in general and of selected organised crime activities in particular, with special attention being paid to the nexus between organised and economic crime and the development of appropriate legal measures (Scheinost et al., 2003).

Speaking of research methods, it is necessary to concede that organised crime research has predominantly relied on secondary sources and indirect research methods. It is the character of the phenomenon in question that makes direct methods inapplicable. Moreover, it was long impossible to analyse a broad sample of closed criminal cases involving offences committed by criminal organisations, as a sufficiently large number of such cases simply did not exist in the 1990s. Even the use of statistics has been limited, as Czech police statistics do not include the category 'organised crime offences'. Whilst 'offences committed by an organised group' is included as a category, this does not of course have the same meaning as 'organised crime' (at least in the majority of registered cases). With regard to the judicial statistics, the provision on the so-called 'criminal conspiracy' (in other words 'criminal organisation') was introduced in the Czech Criminal Code in 1995 but it was not until the end of the 1990s that cases really began being prosecuted as criminal conspiracy (the first was in 1998). These discrepancies in definition relegated statistics to a secondary role, limiting their function to that of indirect sources of information.

It was therefore necessary to analyse data gathered from different sources. Case analysis consisted of the detailed analysis of a limited number of cases that were selected in collaboration with policemen and prosecutors. These concrete cases constituted the most important source of empirical information. Besides experts' reports written by specialists on specific topics, experts – mostly specialised policemen and prosecutors, but also, less frequently, judges – were interviewed regularly and thoroughly. A variety of public and confidential government documents (e.g. personal files of prisoners, regular governmental reports on the security situation in the Czech Republic, and reports by law enforcement authorities) were also analysed. Furthermore, researchers made use of all the available statistics, duly considered all previous publications and sources on the topic, compared the organised crime legislation of other countries, analysed the daily press and occasionally also resorted to psychological methods to study the prisoners.

It is difficult to speak of 'hard data' with regard to organised crime. Recently, some cases have been prosecuted and sentenced as 'criminal conspiracy' but these cases do not represent the occurrence of organised crime activities as a whole. It seems that the majority of organised crime offences have been prosecuted as committed by organised groups because it is often very complicated for law enforcement authorities to prove the existence of a criminal conspiracy. The basic empirical material for research is police and court files, except of course for 'ongoing' cases that are still under investigation. It is also possible to make use of Prison Service

materials but the interviewing of imprisoned members of criminal organisations in order to obtain direct information has as yet, never been authorised. Therefore, expert reports and expert inquiries still remain important sources of information, which, of course, must be evaluated very carefully and critically.

Besides organised crime research, other studies (mostly on the drug problem) have been carried out by various subjects from an array of perspectives. Educational and medical institutions were particularly active in this field. However, rather than focusing on illegal drug markets and the wholesale trafficking in drugs, these research projects were more interested in the spread of drugs among youngsters, drug addicts' problems, drug legislation, and so on. A special comprehensive monograph on the drug problem in the Czech Republic was published in 1997 (Nožina, 1997).

Public opinion regarding crime and the fear of crime including the fear of organised crime have been regularly surveyed as part of opinion polls undertaken by specialised private agencies (Cejp et al., 2003). The Czech law enforcement authorities collaborate with researchers quite willingly and put information at their disposal. According to evaluations by the ICSP, PACR and IIR, based on the author's personal interviews, cooperation with law enforcement institutions is good, though 'not without obstacles'.

4. The Evolution of Organised Crime before and after 1989

4.1 'Communist Style' Organised Crime

To understand the contemporary situation, we have to analyse the earlier development of the Czech criminal scene. Criminal groups successfully developed their specific activities in the Czech Republic before the democratic changes of 1989. 'Communist style' organised crime has always existed – however, it had a different face. The situation in the totalitarian police state behind the Iron Curtain led to a criminal underworld, in many ways different to the criminal underworlds in Western countries.

The communist economic and political model and the relative isolation from the free world did not allow the development of the 'classic' forms of organised crime activities on a large scale. Criminal behaviour was closely monitored and suppressed by the communist state. As a result, some criminal activities were highly restricted, whilst others were much more developed than in the West. Usual organised crime activities (such as racketeering, drug trafficking, trafficking in human beings and arms, thefts of expensive cars and pornography) were too risky due to the totalitarian police regime, and not very profitable because of a very limited market for illegal goods and services. Crimes such as bombing, kidnapping,

hostage-taking and contract-killing were almost totally unknown in the Czech Republic before 1989.

Imports of foreign drugs were very limited. Imported drugs began to appear on the Czechoslovak territory only sporadically in the late 1980s. Addiction to classical drugs such as heroin or cocaine was virtually unknown. Foreigners arrested for drug offences were in most cases couriers in transit to the West or, much more rarely, criminal entrepreneurs testing the potential interest in addictive substances of Czech drug consumers. Nevertheless, dangerous 'hard' drugs were present in Czechoslovakia – they were produced from various medicines and their effects were commensurate with heroin or cocaine. These were mainly forms of so-called pervitin, a powerful stimulant consisting of a metamphetamine solution, and codeine, an opium derivative, colloquially known as *braun*. Pervitin was produced from ephedrine, which had been stolen from pharmacological factories, and medicines such as Solutan, which were distributed free of charge in the framework of the communist health-care system. The main way of obtaining *braun* in the 1980s was from the readily available medicine Alnagon, mostly in fluid form. Other medicines were also widely abused.

Thanks to 'domestic' manufacturing of this sort, no black market in drugs existed in Czechoslovakia in the classic sense. The illicit manufacture, export and distribution of narcotic drugs was not highly organised. The availability of drugs was limited, as they were mainly peddled and used in the closed circles which produced the drugs in the first place (Nožina, 1997: 326).

In contrast to the situation in Western countries, drugs never became the vehicle of 'communist' organised crime. Its main domain lay in illegal economic activities. The long-term crisis of the socialist economic system created a situation in which a chronic lack of certain goods and services was catered for by semi-legal and illegal sources. Criminal networks at various levels of organisation with some features of organised crime were engaged in a wide spectrum of illegal economic activities, including the import and distribution of consumer goods, illegal money exchange and the illegal export of artworks. These networks lasted for years, although in most cases they were not strongly hierarchical and their members were only tied together on the basis of mutually advantageous conditions.

This type of crime could not be successfully performed without contacts, as well as the support of police and other government officials. Strong corruption networks, willing to work for anyone with a sufficient amount of money, were established long before the 'Velvet Revolution'. A new group of 'socialist rich' – 'grey' businessmen and persons benefiting from their administrative positions in the state apparatus – appeared in the communist Czechoslovak society. It is significant that many of these people continued to cooperate behind the legal lines until the present day.

4.2. Democracy Brings Change

Along with democratic freedoms, the immense changes after 1989 brought highly undesirable side-effects to the Czech Republic, including a rapid rise in crime. Liberalisation was – in some cases – not so much an expression of intended efforts as a severe weakening of state power. In the first half of the 1990s, in particular, the Czech Republic represented an attractive territory for transnational organised crime for several reasons:

- by opening up its state borders and its economy, the Czech Republic became a part of global processes: transport of goods and people through the Czech Republic accelerated, strong migration waves were seen, and Prague became a European metropolis;
- vast economic transformation accompanied huge movement of property and capital, and the sudden creation of a free market presented many opportunities to criminal ‘businesses’;
- ‘classical’ criminal activities such as robbery, violent crime, illegal gambling and prostitution were never highly organised in socialist Czechoslovakia – the local underworld represented little competition to the ravenous, highly professional groups from abroad, and there was virtually no competition among criminal groups;
- the Czech legal system was only gradually and with great difficulty amended and adapted to democratic standards and the necessities of a market economy; the justice and police apparatus was fundamentally reconstructed; initially the police were inexperienced in the investigation of organised crime;
- social consciousness built upon communist ideology was destroyed and old norms of social behaviour were devastated at the same time as social regulation and control were weakened;
- new values, patterns and criteria of social success were created: material gain, often without regard to source, became the main goal of many activities – as a result, it was easy for organised crime to find a sufficient number of people eager to make ‘easy’ money.

As a result of all these changes, the creation of transnational criminal organisations in the Czech territory was quick and efficient. Practically all the main transnational criminal groupings established themselves in the Czech Republic within two years of the democratic change. In contrast to the situation in the former Soviet Union or the Balkans, the main motor of organised crime activities at the beginning of the 1990s was not the domestic underworld, but criminal organisations coming in from abroad.

4.3. The Penetration of European and Post-Soviet Organised Crime ...

Post-Soviet organised crime appeared in the Czech Republic at the beginning of the 1990s. Organised crime from the former Soviet Union invaded Czech territory, starting gang wars with competing organisations for zones of influence, and building up the *kryshas* – argot for the ‘roofs’ – of the racketeering networks. When the dead bodies of famous Russian hat-sellers trading in old Soviet Army uniforms across eastern Europe were found in the tourist area near the Charles Bridge in Prague, the Czech police announced that the assassinations were the result of personal quarrels among the hat-sellers. Nobody thought that the incoming post-Soviet mafia would liquidate independent competitors. Shortly afterwards, small, more-or-less independent organised crime groups, as well as envoys of strong post-Soviet criminal syndicates, equipped with unlimited financial resources and excellent professional knowledge, appeared in the Czech Republic, interested in the Czech economy and privatisation process (Nožina, 2002: 69-70).

Criminal entrepreneurs from other European countries – and from the other four continents – also showed up in the Czech Republic. Criminal delinquents from the former Yugoslavia probably operated in Czech territory before 1989 thanks to the good connections between the two countries. They exploited their knowledge of the terrain and their long-term contacts with the Czech criminal underworld and corrupt administration structures from the communist era. On the surface, they succeeded in enlarging their networks, especially in the sphere of drug trafficking. Pre-eminent among them became Albanians from Kosovo who efficiently penetrated local drug distribution networks. Big traders on the so-called ‘Balkan Route’, Turks were not very interested in the Czech drug market, although they frequently used Czech territory for drug transits to the West and as a reloading place.

Former Yugoslavians also became widely engaged in violent crime, extortion, organised prostitution, car theft, and so on. In the initial phase after 1990, Yugoslavians also dominated the sphere of paid ‘protection’ of newly opened bars and night clubs. However in a relative short time, they were pushed out by ‘harder’ groups arriving from Russia, Ukraine, the Caucasus and Bulgaria (Nožina, 2002: 118-22).

Bulgarians, notorious for their violent practices in the prostitution business, also started to join the Macedonians, Serbs and Croats in the smuggling of people through the Czech Republic. The Czech towns of Rumburk, Děčín, Varnsdorf and Pilzen started to serve as waiting places for immigrants and places of contact for Balkanians with local smugglers across the Czech-German border (Nožina, 1999: 232).

In the course of 1990, the Czech police registered an influx of Italian traders in (usually fake brands of) imitation leather, precious metals, and so on. The goods were imported from manufacturers in Italy and neighbouring countries. The traders were almost exclusively of Neapolitan origin, and changed every six to ten months.

Business was organised by some branches of the Italian camorra from Naples, mainly from bases in Germany and Austria.

In the second wave, together with shadow business activities, the Italian groups started becoming involved in the stolen car trade and in delivering heroin, cocaine and hashish to rock clubs in Prague and Brno – all in cooperation with former Czechoslovak citizens, who were now citizens of Switzerland and Austria, and with members of the Prague and north Bohemian Gypsy underground (Macháček and Ruml, 1997: 58-9).

4.4. ... and of Criminal Entrepreneurs from the Other Four Continents

With the exception of a few members of the diplomatic corps and several dozen emigrants, there were no Chinese citizens in Czechoslovakia before 1989 due to cool political relations. However this was no obstacle for Chinese organised crime trying to penetrate Czech boundaries. The strong Vietnamese community became its main hub.

The situation of the Vietnamese in the former Czechoslovak Socialist Republic (CSSR) differed significantly from that of the Chinese. The emigration of Vietnamese to Czechoslovakia began in 1975 after the end of the wars in Indochina and was organised by both the communist Vietnamese and Czechoslovak governments. Thousands of young people were 'exported' to Czechoslovakia in the framework of the so-called 'assistance programme to suffering Vietnam'. The reason was simple: Vietnam had to pay its war debt to the CSSR (one of the important suppliers of arms to the north Vietnamese army). Although official figures on the numbers of Vietnamese workers were never published, it is estimated that between 70,000 and 120,000 young Vietnamese passed through the system of 'voluntary labour' in the CSSR in the course of the 1980s (Nožina, 2000/2001: 17-18).

After 1989, many of the Vietnamese workers and students decided to stay in the Czech Republic or to emigrate to the West. They created the base for a new wave of immigration from Vietnam and China, and for Asian organised crime groups. Chinese immigrants – and Chinese organised crime – started to employ Vietnamese at the beginning of the 1990s as interpreters, as middlemen and 'specialists' on the Czech Republic, as dealers of goods, and as 'dirty work' servicemen.

The youngest Asian organised crime grouping in the Czech Republic is the Japanese Yakuza, first registered in 1997. Japanese organised crime to the Czech Republic is expected to expand in connection with foreign investment (Nožina, 2002: 187).

Many emigrants from the Middle East also permanently lived in the former Czechoslovakia before 1989 because of the good relations of the former communist regime with the Arab countries. Some of these emigrants holding Czech citizenship created cells of 'Arab' organised crime groups which penetrated the Czech Republic as well.

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Traffickers in drugs from sub-Saharan Africa appeared on eastern European routes early. In 1990, the Czech Republic became a transit territory mainly for reloading 'Nigerian drugs' destined for western Europe and the United States. The Lagos–Sofia–Prague air connection grew in importance at that time. The most active drug couriers were of Nigerian nationality – or Nigerian passport holders. Other nationalities involved were Ghanians, Gambians, Zairians, Sudanese and Tanzanians. Drug couriers of the first wave had little experience of eastern Europe and were only rudimentarily educated in their 'smuggler's job', hoping to avoid the attention of customs officers in the 'eastern European disorder' – and were therefore very visible. Yet their employers were members of highly organised western African gangs. Czech customs started to routinely uncover western African couriers and their influx stopped.

From 1994, African traffickers started their comeback to the Czech Republic with a more sophisticated strategy, namely with assistance of 'Czech specialists' – former students of Czech schools. Paradoxically, the former communist regime created their biggest source of such 'specialists' in the framework of international development assistance programmes. The programmes awarded many of the present criminal delinquents scholarships at Czech universities. Many traffickers in drugs are former students of chemistry, and curiously also of the Police School, as the Czech Republic was a study centre for future policemen in many African countries. Their police education is now being used against the law (Nožina, 2000: 29-31).

In 1993, the German police seized more than 1 ton of cocaine delivered by the Colombian Cali cartel. Large amounts of cocaine discovered in transport containers were smuggled through naval ports in Bremen, Hamburg and Rostock to reloading centres in the Netherlands, Poland and the Czech Republic. After distribution into smaller packages in these three countries, the deliveries were smuggled back to Germany and the other western European countries into the hands of local drug dealers. This explains why amounts of cocaine imports seized in Germany ranged between 5 and a maximum of 20 kg. In the middle of 1990s, a strong wave of Latin American drug couriers ('mules') arrived at Prague's Ruzyně airport. This signified that the Czech Republic had become one of the key points in cocaine smuggling and that the cocaine route from Latin America through the Czech Republic was growing in importance (Nožina, 1997: 188).

4.5. The Reaction of the Czech Underworld

Battles for territory and spheres of influence between foreign organised crime groups and the local underworld, and between foreign organised crime groups themselves, were particularly intense in the years 1991-1995, and continued being so until 1997 when the situation became quieter and the composition of criminal organisations stabilised (Ministry of the Interior, 2001a). At the beginning of the 1990s in particular, the 'classic' domestic underworld was highly suppressed by

the transnational phenomenon. It is hard to estimate how deep this suppression went. From 1993, the quota of foreigners punished for criminal offences in the Czech Republic has remained at around 6 per cent (Ministry of the Interior, 2002). However these statistics do not and cannot sufficiently describe the role of the organised crime phenomenon. The Prague Institute for Criminology and Social Prevention publishes regular surveys of the organised crime phenomenon based on the opinions of experienced criminal justice authorities and some other specialists on the current situation. The results can be compared year to year, mainly for the period 1993 to 2001, and since 1998 they can also be compared with similar surveys carried out by the Council of Europe.

On the basis of these surveys we can deduce that, between 1990 and 1992, foreign organised crime groups almost exclusively dominated Czech territory. Domestic organised crime represented no more than 20 per cent of the total organised crime activities in the country. Czech citizens started to cooperate with these groups early on, working as servicemen, drivers, goods keepers, local advisers, and so on, gradually improving their position. By 1993, the Czechs represented nearly half of all organised crime group members – in most cases still occupying the lower organisational levels. In the following three years, Czech presence in the organised crime underworld slowly gained in importance, only to be suppressed again for a short time by foreign elements in 1997-1998. Currently, there are approximately 75-100 organised criminal groups operating in the Czech Republic with 2,000-2,500 members, and a similar number of 'external assistants'. More than a third of the organisations are highly developed. Half of the groups have mixed Czech-foreign composition, slightly more than one quarter are composed exclusively of foreigners. The largest foreign organised crime element consists of delinquents from Ukraine and Russia, followed by the former Yugoslavia's citizens, Bulgarians, Albanians, Vietnamese and Chinese (Cejp, 2001; Scheinost, 1999).

5. The Structure, *Modus Operandi* and Activities of Organised Crime Groups in the Czech Republic

Organised crime groups in the Czech Republic often employ business-like principles in their operations based on conscious calculations of risk and opportunity. Specialists are frequently hired for specific tasks and groups use sophisticated technological means for their work, *inter alia* for safer communication. Although these organisations are generally not engaged exclusively in one type of criminal activity, a tendency towards specialisation does exist.

The crime groups active in the Czech Republic differ in their organisational structures depending on their cultural and social backgrounds. Most of them have a stable division of tasks, and, with a few exceptions, a stable composition, particularly concerning core members. They have also usually been in operation for

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several years. Most groups are hierarchical and use some form of internal discipline to ensure group cohesion.

Foreign criminal groups do not, on the whole, confine their operations to national borders. Quite frequently, members of the criminal groups are themselves likely to be of different nationalities. Indeed, heterogeneous groups consisting of members from different countries have become the rule rather than the exception in recent years. There is a high degree of international cooperation between the groups active in the Czech Republic, even between foreign organised crime groups earlier considered insular and self-sufficient (for instance Chinese, Vietnamese and Albanian groups).

Organised crime groups active in the Czech Republic increasingly tend to be involved in the same criminal activities that are also favoured by the organised crime groups active in 'older' European Union countries. During the 1990s, the smuggling and sale of illicit drugs have become the most common and profitable activities of organised crime groups in the Czech Republic too – as they were in western European countries during the 1970s and 1980s. Also, 'Czech' crime groups increasingly tend to be organised and run their illegal businesses in the same way as western European criminal groups.

5.1. Czech Organised Crime

Although Czech citizens mainly provide services to foreign groups (Ministry of the Interior, 2001a), the number of organised crime groups with Czech leadership is gradually growing. Two characteristics of these 'new' Czech groups are the relatively low average age of the members (usually in their late twenties and thirties) and a higher flexibility than the traditional Czech underworld (Cejp, 2001; Scheinost, 1999). According to Czech experts, the most serious type of offence committed by Czech organised crime groups is economic and financial crime, including 'white-collar crime'. They are also widely engaged in drug offences, car theft and smuggling, organised prostitution, pornography and trade in women. They have a tendency to specialise in one or two kinds of criminal offences (Scheinost, 2000) – often acting as specialised 'firms' on the basis of 'business contracts' with international criminal networks (for example as smugglers of illegal migrants across the Czech-Slovak and Czech-German borders). The strongest contingents of Czech delinquents engaged abroad in organised crime operations have been registered in France, Italy, Bulgaria, Croatia and Romania (Cejp, 2000).

5.2. Organised Crime from the Commonwealth of Independent States

Criminal organisations coming from the Commonwealth of Independent States (CIS) rank among the most active in the Czech Republic. In the last five years

the crimes committed by them have markedly increased. Post-Soviet criminal organisations – usually, though imprecisely, referred to as ‘Russian’ organised crime – are mainly organised into cells. Called ‘brigades’, these are based upon the leadership principle whereby they are headed by a *papka* (i.e. ‘father’), who directly supervises the *starchina* (i.e. ‘senior officer’).

Due to their permanent infiltration into the state structures of the CIS, their influence and power is widening. These groups have large amounts of money at their disposal that are often re-invested in shady ‘business operations’ or to improve the groups’ organisational infrastructures. They are heavily engaged in violent crimes that involve brutality, torture and disfiguration of victims and the use of firearms (Ministry of the Interior, 2001a).

Since 1997, financial crime has dominated the sphere of post-Soviet organised crime in the Czech Republic. Highly sophisticated methods of financial fraud and penetration of business and complex financial and administrative structures are used. Post-Soviet organised crime members are not exclusively citizens of the CIS. Many of them are Soviet emigrants of the 1970s, and Israeli citizenship is extremely common among them. They also use fake documents, in particular diplomatic passports (from Panama, Belize, Paraguay, and so on) or passports from Israel. The cooperation of Czech-Russian organised crime groups with partner groups in the CIS, most of Europe and the United States is common (Ministry of the Interior, 2001a).

The Russian Solntzevo brigade – partly suppressed in May 1995, when the Czech Police raided a meeting of Russian mafia bosses in the restaurant ‘U Holubů’ in Prague – operates mainly in western Bohemia. Its members present themselves as serious businessmen, creating contacts with the Czech economic and political elite, and being interested in buying real estate and building up operational bases in the Czech Republic (Ministry of the Interior, 2002).

Ukrainian criminal organisations are usually more aggressive, and are frequently involved in bank robberies and the illegal employment and racketeering of Ukrainian workers. Currently, they are engaging in serial robberies conducted mainly in Prague. The most famous among them are the Lvovskaia brigade (active across all the Czech Republic territory), the Luhanskaia brigade (based in Brno, also active in Slovakia, Hungary, Spain and Germany), the Kyivskaia brigade (eastern Bohemia, central Bohemia in the area of town Beroun), the Mukachevskaja brigade (northern and western Bohemia – engaged in car theft, racketeering, night club business), Uzhorodskaja (Prague, northern and western Bohemia), the Irshavskaja brigade (central and northern Bohemia) and the Krivirovskaja brigade (Prague, specialising in racketeering and robberies of businessmen and workers from Ukraine).

Worthy of mention from other CIS countries is the Moldovskaia brigade. The group originates ‘somewhere in Moldova’, according to the Czech police sources, operates in the Moravian region and in Prague and is involved in racketeering, fraud

and in the management of night clubs. Caucasus organised crime is represented by the Armenian brigade (active in Prague and specialising in the falsification of documents and banknotes, frauds and car thefts), by Dagestan and Chechen gangs (usually engaged in lower-level criminal activities, such as violent robberies, racketeering, drug trade, organised prostitution and contract killing). Typically, Caucasian gangs act with extreme brutality.

In 2001, the police registered the growing activity of a new organised crime wave from the CIS – the St. Peterburgskaia, Khabarovskaia, Krymskaia, Tiachevkaia and Jekaterinburgskaia brigades (Ministry of the Interior, 2002). The majority of the CIS groupings in the Czech Republic also have contacts abroad.

5.3. South European Organised Crime

Former Yugoslavian, Bulgarian, and Albanian organised crime groups have changed the focus of their activities, division of influence and *modi operandi*. Bulgarian criminal organisations, which previously concentrated on sex clubs, now focus on car thefts and supplying Bulgarian prostitutes to brothels. Criminal organisations from the former Yugoslavia have now taken over the running of sex clubs and also focus on drug trafficking, conveyance and crimes of violence.

With respect to Kosovo-Albanian criminal groups, the Czech Intelligence Service states that they are particularly engaged in the drug trade, illegal conveyance, debt collection, prostitution, car theft, and the weapons trade in the Czech Republic. Additionally, Albanians are dominant in trading in gold and leather products. They are organised into clans – *fares* – frequently composed of relatives and countrymen. At the same time as the sophistication and size of many Albanian gangs are increasing, so too is the brutality of offenders. The same applies to the groups recruited from Macedonian Albanians (Ministry of the Interior, 2001a).

The activity of Italian organised crime is covert. Some groups of the Neapolitan camorra have become the most influential criminal organisations of Italian origin in the Czech Republic. Their members belong to or keep frequent contact with camorra groups abroad – in Italy or other western European countries. Low-level activity connected with Sicilian mafia groups and the American Cosa Nostra in Miami have also been denounced by the Czech security forces (Macháček and Ruml, 1997: 59-61). The presence of Italian groups in the Czech Republic could turn out to be more significant in future owing to their active penetration. Italian crime groups are mainly interested in buying real estate in the Czech Republic, though they do not entirely disdain criminal enterprises, such as money laundering, illegal trade in artworks and the drugs trade (Macháček and Ruml, 1997: 59-61). Proof of drug-taking activity is disclosed by the police operation Iridium (1999-2000), which was carried out by the Czech police in cooperation with the Italian authorities. During this action more than 50 offenders working for a joint Italian-Kosovo Albanian smugglers' network were convicted, including the two

Italian camorra bosses Antonio Melandrino and Senatore Vincenzo as well as the top Kosovo Albanian trafficker, Prince Dobrosi (Ministry of Interior 2001b; Nožina, 2003: 171-3).

5.4. South-East Asian Organised Crime

Chinese and Vietnamese groups are the most active of the criminal organisations from Asia. Chinese criminal structures have a strong ethnic coherence and are organised in small groups. They differ in their place of origin in China and in the type of crime they are involved in. Several groups from Beijing, Shanghai, Wenzhou, Quitiang and Fujian operate in the Czech Republic (Macháček and Ruml, 1997: 66-7).

Many Chinese groups specialise in running illegal migration, casinos and illegal brothels. Chinese criminals are additionally suspected of money laundering, organising illegal bets and dealing in drugs. The trade in fake 'trademark' goods is another common activity. Chinese people-smuggling groups not only arrange illegal border crossings, but also the kidnapping of illegal migrants for the purpose of blackmailing their relatives. The famous Dover tragedy of June 2000, in which custom officers found the dead bodies of 58 suffocated Chinese illegal migrants in a truck going to Great Britain, was connected with the 'eastern branch' – the Fujian 'Snakeheads' smuggling network operating across Russia, the Czech Republic, Germany and France (Nožina, 2003: 210-12).

Vietnamese criminal organisations have been particularly involved in the organisation of illegal migration and the smuggling of goods, including illegal drugs. Apparently the establishment of a network of Vietnamese drug dealers was initially prompted by the higher drug (heroin, marijuana, pervitin) consumption rates in the Vietnamese community. There are also around a dozen violent Vietnamese gangs operating on Czech Republic territory, which specialise in murder, blackmail and extortion. These gangs often operate under the influence of the Vietnamese coming from Germany. In many cases, international and/or national warrants of arrest are issued against these 'criminal immigrants' whose experiences are mainly used in debt collection, racketeering of marketplaces and threats towards competitors.

An apparent shift from street gangs to the establishment of more structured organisations is underway in the Vietnamese underworld. As violent crimes remain a 'specialty' of Vietnamese gangs, they have long been supposed to be merely able to perform 'dirty work' for Chinese organised crime. However, this is only partly true. Gradually, Vietnamese delinquents have become involved in big business, and although the structure of their groups is not as hierarchical or as strong as the Chinese triads, more and more Vietnamese criminal bosses and groups have begun to operate independently and to organise their own vast criminal networks. Many aspects of their operation are being copied from the successful Chinese tong

model (Nožina, 2000/2001: 28).¹ A further proof of the growing emancipation of Vietnamese criminal groups from their Chinese counterparts is given by the fact that closer cooperation between Vietnamese delinquents and criminal groups from the former Soviet Union and other countries has recently been detected.

5.5. Other Organised Crime Groups

A plurality of other foreign crime groups and delinquents are also active in the Czech Republic. Criminal organisations from the Middle East and south-western Asia are mainly involved in drug smuggling, arms dealing and financial fraud. Such activities are undertaken through a network of travel and car-rental agencies and garages. Fake companies are also frequently resorted to for the perpetration of criminal activities. Middle-Eastern and south-western Asian criminals have recently started to cooperate with Vietnamese criminals in organising illegal migration (mostly from Sri Lanka, Pakistan and Afghanistan). The growing relevance of these groups is shown by the high number of Pakistani citizens that have been recently arrested in the Czech Republic.

North Africans are usually specialised in drug smuggling and dealing in drugs, notably hashish and heroin. Though they are usually termed Arabs, many of the drug dealers coming from Tunisia, Algeria, Morocco, Western Sahara and Mauritania are in fact ethnic Berbers. They do not collaborate with Arab people and keep their distance from them, and even in the Czech Republic an open hatred exists between Berbers and Arabs, a hate which has its roots in events in northern and north-western Africa (Nožina, 2002: 233). Increased activity among 'Arab' criminal organisations is expected with regard to the illegal trade in weapons (Ministry of the Interior, 2001a).

Sub-Saharan gangs are composed mostly of ethnic Yorubas and Ibos, two of the largest Nigerian ethnic groups. They usually consist of between 5 and 10 members, often bound through tribal and family ties. Cooperation based on western African nationality is also common. Sub-Saharan gangs operate in connection with the Czech underworld in the recruitment of drug couriers of Czech nationality whose passports do not attract as much attention at customs as those of Africans. Most of them are young people contacted at discos, in children's asylums and in the criminal underworld. Businessmen with financial problems are also common

¹ Tongs are benevolent protective associations of Chinese merchants, craftsmen and tradesmen. During the Chinese gang wars in American cities (1850s – 1920s), the term tong – meaning a hall or meeting place – came to be used by the white population to refer to the Chinese secret societies or fraternal organisations that were involved in illegal activities, such as opium trading or gambling (*New Encyclopedia Britannica*, 1992: 840).

recruits. The couriers are paid € 2,000-5,000 for one trip, depending on the amount of drugs smuggled across customs points, and are thus very cheap in comparison to Western couriers. Czech drug couriers in Nigerian service have been apprehended in Thailand, India, Brazil, Uruguay and Holland. They are suspected of being responsible for the introduction of 'white powder' (heroin number 4 from south-eastern Asia) on the Czech drug market. The Czech Republic is also used as a transit territory for big consignments of drugs (marijuana and hashish) organised by the Nigerian networks (Nožina, 1999: 239-40).

The sub-Saharan groups are not restricted to trafficking in drugs only. They are active in the smuggling of people, counterfeiting of passports, 'invitation letter' operations (recently mailed through the internet, in which Czech businessmen are invited to African countries on the pretence of high profits and then robbed), financial frauds, and so on (Nožina, 1999: 241). Since 2001, their activities in the Czech Republic have once again been on the increase.

Several seizures of cocaine consignments from Latin America confirm that the Czech Republic is used by Latin American organised crime groups as an active reloading centre for drugs in transit to Western countries. Since 2000, the price of cocaine distributed on the streets of Czech towns has fallen dramatically, signalling that a growing amount of the drug is being distributed locally. A crack cocaine explosion is expected in relation to this development.

On the whole, the type, relative weight and organisation of the organised crime activities carried out in the Czech Republic are becoming increasingly similar to those of the criminal activities crime conducted in 'older' European Union countries. The relation between democratic systems of government and modern forms of organised crime has turned out to be more profound than expected.

6. Organised Crime and Illegal Markets

The Czech Republic experienced a dramatic increase in crime at the beginning of the 1990s, though only by 'local standards'. This is because crime rates were very low before the fall of the communist regime, far below the levels of crime in Western countries. According to criminal statistics, the total number of criminal offences in the Czech Republic is now not dramatically higher than in many western European countries. The volume of crime per 1000 inhabitants is 3.63 in the Czech Republic, according to 2002 Interpol statistics. For comparison, Sweden reports a figure of 7.89 (2002); England and Wales, 9.93 (2001); Northern Ireland, 2.38 (2001); Scotland, 8.22 (2001); France, 6.93 (2002); Spain, 2.36 (2001); Austria, 7.27 (2002); the Netherlands, 7.81 (1998); Switzerland, 4.78 (2002); Italy, 3.75 (2001) (Interpol International Crime Statistics). These data have only orientation value owing to the various systems of statistical analysis, definitions of criminal

offence and legislation, traditions of confidence in the police, and so on, in the various countries.

Since the detected number of criminal offences peaked in 1999, the Czech Republic has been seeing a gradual decline in total criminal offences – 8 per cent per year on average in the last few years (Ministry of the Interior, 2002). The main problem is not the ‘quantity’ of criminal offences, but its rising ‘quality’ connected to the activities of organised crime, especially of international and foreign organised crime. Due to this phenomenon, many criminal offences considered to be petty crimes during the communist regime, such as illegal trade in drugs, people, weapons, cars, crimes of violence, and so forth, have become not only much more common but also highly professionalised. The social and economic losses due to criminal offences are higher than ever before.

6.1. Illegal Trade in Drugs

Drugs is one sphere in which illegal production and trafficking has dramatically escalated. Drug dealing has become highly sophisticated and organised, in many ways similar to the drug dealing in western Europe and the United States. About 80 per cent of the drug trade in the Czech Republic is controlled by foreigners.

The price of heroin (CZK 1,000, or € 32 per gram) is three or four times lower in Prague than in Berlin or Zurich, and there is a ‘considerable surplus’ of drugs according to the chief of the Czech Police anti-drug squad, Jiri Komorous (Nožina, 2002: 299-300; Nožina, 2003: 342).

The Czech Republic has become an important ‘hub’ for the international trade in heroin and cannabis products in particular. The organisers of this trade are not directly associated with any one consignment; they hire couriers or companies in the Czech Republic to facilitate the transport of the consignments. In addition to heroin and cannabis, all other illegal narcotic and psychotropic substances have become available – i.e. are being imported or produced – in the Czech Republic, with the exception of crack cocaine. A number of Czech and foreign gangs are involved in the production and transport of illegal drugs and precursors and in laundering the proceeds from the illegal drug trade. The Czech Republic in particular has frequently been selected by Kosovo Albanians and Nigerians to stockpile large amounts of drugs and arrange their smuggling in western European countries. Besides Albanians and Nigerians, who still have a monopolistic control of white heroin, many other ethnic gangs are engaged in the wholesale distribution of the most common illegal drugs. The first group of Vietnamese drug distributors, for example, was detected in 1999. Russian-speaking organised crime groups also seem to be involved in the heroin trade. The involvement of Czech citizens in the drug business is increasing (Ministry of the Interior, 2001a).

6.2. Illegal Trade in People

Since the peak year of 1998, when 44,672 undocumented migrants were arrested on the Czech borders (42,957 were foreigners, mainly from the Balkans, China and Afghanistan), the number of arrested immigrants have been gradually declining. In 2001, the Czech police registered 23,834 persons (21,090 foreigners, mainly from Romania and India) who illegally crossed the Czech national borders (Ministry of the Interior, 2002).

The Czech Republic remains predominantly a transit country for undocumented migrants. Illegal conveyance is nowadays a highly organised activity – one part of a group ensures recruitment of prospective migrants in their country of origin while the other part facilitates their transport from the country of origin to the target country. In cases of further transfer to Western countries in particular, where immigration laws are stricter and more systematically enforced, transfers from the Czech Republic are usually accomplished by using counterfeit documents, either counterfeit visas or passports which have been stolen, bought and adapted accordingly from Western countries (frequently Belgium), Latin American republics (e.g. Peru) and so on. Another method is smuggling across the ‘green line’ (illegal crossing of borders) with the assistance of ‘guides’. There are several of these illegal ‘entry points’ along the Czech-German border.

Though not as frequently as in the early 1990s, the Czech Republic is still a source country for trafficking in people. Czech girls and women are occasionally lured to foreign countries with the promise of an attractive and well-paid job and then forced to become prostitutes. Although this problem has been declining in the Czech Republic in comparison to other eastern European countries such as the Ukraine, Moldova or Romania, it still persists. The Czech Republic is also a source country for young men who leave to work abroad in the sex business and then become victims of the people trading and other violent or moral crimes. Increasingly women from the Ukraine, Thailand, South Africa and Mongolia are smuggled to the Czech Republic and then sexually and economically exploited. Child pornography, distributed mainly via the internet, is also a persistent problem.

6.3. Illegal Trade in Weapons, Explosives and Nuclear Material

The illegal trade in weapons and explosives is mainly fed by the surplus of weapons and explosives produced by Czechoslovak factories and used by the army and police in communist times which have not yet been intercepted by police forces. In this market, the most profitable is undoubtedly the plastic explosive Semtex (which was produced in the former Czechoslovakia and legally exported from 1964 to 1989) (Čech, 1997: 97). Industrial production of the explosive was stopped soon after the ‘Velvet Revolution’ but illegal stocks still exist. Explosives are also often stolen from the sites where they are used for industrial purposes.

Those involved in the illegal trade in arms and explosives are either professionally involved in legitimate arms trade, have or had access to Czech army weapons, or collect historical weapons. Serious offences in connection with the stealing of weapon parts from the famous Czech Zbrojovka Uhersky Brod weapons factory and their illegal assembling in home workshops were detected. Firearms without identification marks and with the possibility of adapting silencers were offered on the Prague illegal market for CZK 20,000-25,000 (€ 625-780) and in Germany for DEM 1,500 (€ 770) in 2002 (Nožina, 2003: 347).

Weapons from the Czech Republic are exported through illegal networks to many countries of the world. Attempts to sell army material to regions where embargoes have been imposed, or to sell larger amounts than are authorised under licensed permit remains a problem. Important cases were registered in connection with North Korea, Iran and Germany. In 1997, for example, 3,500 weapons of the Czech provenance were seized in Germany according to the German police sources. In five years during the 1990s, the Czech security forces discovered attempts to export 5,700 SA-61 (Scorpion) sub-machine guns to the Dominican Republic and 8,200 guns to Sudan, with the help of fake end-user certificates. The transactions were organised by an international group of traffickers in weapons (Čech, 1997: 96).

According to police and security forces, the Czech Republic has also become a transit country for radioactive materials, mainly smuggled from countries of the former Soviet Union. Several occasionally sensational seizures prove this assessment. Most notably, in December 1994, a record 2,722 kg of highly enriched uranium U-235 of Kazakhstani provenance was seized in Prague. The smugglers, who were of CIS and Czech origin, planned to sell the material through a German distribution centre for CZK 68 million (€ 2.125 million). According to the Czech police experts, the final buyer was probably 'somebody from the Middle East' (Nožina, 2003: 89-90). In addition to classic radioactive materials, ionising radiation sources are also offered on the illegal market.

In most cases of illegal trade in radioactive materials, the majority of traffickers come from the former Soviet Union. There is a range of connections between citizens of the former Soviet Union and Czech citizens involved in these illegal transactions. Networks of fake companies are used for this purpose. Obviously, this trade creates a direct risk of radioactive contamination to people and the environment.

6.4. Forgery

From the beginning of the 1990s, and peaking towards the end of the decade, fluctuations of counterfeit foreign and Czech banknotes have been recorded in the Czech Republic. The Czech police detected several organised crime groups involved in counterfeiting activities in the 1990s and 2000s (Ministry of the Interior, 2001a, 2001b, 2002). Counterfeit CZK 5,000 (€ 160) banknotes still remain the biggest

problem. The situation of other forged payment documents (such as cheques, notes and credit cards) also shows a rising tendency.

On another note, the Czech Republic is becoming a centre for producing forged documents which leads, amongst other things, to covert economic crime. Interest in counterfeit Czech banknotes amongst illegal distributors is expected to rise in the future, as are the quality and the spread of forged goods in general.

6.5. Financial Crime and Money Laundering

Money laundering has become widespread in the Czech Republic since the opening of its borders to the Western world. The Czech economy has since become part of international money laundering networks. The laundering of dirty money in connection with the stock exchange, or attempts to mix 'dirty' funds with legally earned money (sales, revenues, and so on), ranks among the most frequently used forms of 'money laundering'. As there is no central information system, proving the origin of laundered money can be problematic. Moreover, the 'proceeds' are transferred abroad, out of the reach of the Czech police. According to police sources, CZK 428 billion (€ 13.4 billion) came from illegal business transactions and criminal activities in the Czech Republic in 2001. The Czech Ministry of Finance has been registering around 2,000 suspicious transactions per year, frequently connected to organised crime activities (Nožina, 2003: 350).

6.7. Illegal Trade in Artworks

Every year, approximately 20,000 works of art are stolen in the Czech Republic (Zahálka, 1997: 157). Religious objects are frequently targeted because of their cultural and financial value. Also, a high number of thefts in cemeteries has been recorded. A substantial number of stolen items are illegally exported abroad through international traffickers' networks.

The targeted selection of stolen goods is shown by the rapid growth of damage claims. Immeasurable damage has been caused by the illegal export of archive documents and rare prints. Further information on plundered archaeological sites is currently being collected by police.

6.8. Motor Vehicle Thefts and Smuggling

Some 80 cars are stolen in the Czech Republic every day. The thefts are professionally organised and the police are only successful at finding the cars and the offenders in 15 per cent of cases. The Czech Republic has also become a base for smuggling stolen cars to other eastern European countries. The offenders are both Czech citizens and foreigners, organised in criminal networks. Analyses of police

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data show that the makes of cars most commonly stolen for legalisation through identification number changes are Škoda, Chrysler and Jeep followed by Peugeot, BMW, Citroen, and Mercedes.

Stolen cars are transported abroad or, after gathering all required documents (including the foreign vehicle registration document, purchase agreement and customs declaration), are registered in the Czech Republic. Offenders go after cars with original keys and genuine documentation. In spite of the fact that the number of stolen cars has decreased in recent years, damage claims have increased, as has the number of insurance frauds (Nožina, 2003: 351-2).

6.9. Crimes against the Environment

The Czech Republic has an international reputation as a transit country with a large number of infringements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) agreement on protecting endangered species of plants and animals (Ministry of the Interior, 2001a).

7. Organised Crime Penetration of the Legitimate Economy

It is difficult to estimate how deeply organised crime has penetrated the legitimate Czech economy. The grey and black economies create approximately 15 per cent of Czech GDP (a figure comparable with many Western countries). Estimates for the future suggest this figure will rise to about 17-25 per cent of the GDP in the coming years (CPA, 1995). As a whole, criminal groups have very considerable funds available, which are mainly invested in real estate in the Czech Republic.

In the course of privatisation, considered to be the 'theft of the country' by some politicians and economic experts, billions of Czech crowns were 'tunneled' from privatisation funds and companies into private hands. Gaps in the legal system and the unofficial government policy of turning a blind eye to the sources of money used in the course of privatisation allowed many shady businessmen, corrupt communist officials, smugglers or black-market currency dealers to legalise their money and thereby enter the legal sphere.

In the course of the 1990s, a new stratum of 'dirty businessmen' interested in maximising profits without regard to their legality emerged. These people dextrously exploit legal loopholes and, when necessary, cross legal lines. As a result, the demarcation line between legal and illegal spheres is frequently blurred in the Czech Republic. Some of the 'dirty businessmen' are connected to organised crime networks and therefore create 'bridges' between the legal and illegal sphere.

Together with the Czech dirty business phenomenon, the Czech Republic was chosen by some groups of international organised crime as a 'safe country', particularly because of:

- liberal conditions for legal residence in the country (before new immigration laws came into force in 2000);
- the simplicity with which a front company can be established in a cost-effective way and used for money laundering;
- the low penalties for certain offences (such as drug dealing and trafficking in migrants); and
- the high probability of being able to protect assets acquired from criminal deals without the threat of their forfeiture.

Since 1989 these organisations have been trying to extend their influence by establishing corporations with foreign participation (Ministry of the Interior, 2001a). In view of the accession of the Czech Republic to the European Union, the interest of criminal organisations in penetrating western Europe via the Czech Republic was evident.

In particular, the Czech Republic faces an influx of ‘legal’ organised crime migration, organised by professional groups on the basis of gaps in immigration laws. These penetrate the Czech Republic with the help of various ‘front’ companies. Frequently, they use the following pattern to establish themselves in the Czech Republic. A Czech citizen or foreigner living permanently in the country establishes a business company and registers other persons as partners in the business register. The ‘partners’ arrive in the Czech Republic on the basis of an official invitation of the company and receive a permanent residence permit. The ‘partners’ then establish new companies and invite other ‘business partners’. Often, the companies do not develop any activity but rather work as a cover for criminal activities. A small suburban house with three rooms in Prague was discovered in 1997 as serving as the permanent address of 60 Asian ‘companies’ (Nožina, 2000/2001: 19). These activities were partly restricted thanks to the reform of the immigration law in 2000 and the asylum law in 2002 (Nožina, 2003: 373-4).

Another way to obtain permanent residence permits is by marrying local women, often prostitutes, sometimes regardless of the fact that the immigrants are already married at home. The cost of a fake marriage in the Czech Republic lies currently between CZK 30,000 and 150,000 (€ 940-4,700) (Nožina, 2000/2001: 19).

Typical features of Russian-speaking organised crime groups are the efforts to penetrate the legitimate economic sphere with the consequence of possible destabilisation and attempts to achieve a significant influence in strategic economic industries (for example, the petrochemical industry). According to Czech Intelligence Service findings, the gradual transfer of CIS organised crime from apparent criminal operations, which marked their early activity, to legal business operations is typical (Ministry of the Interior, 2001a). In the last few years, a ‘new criminal elite’ emerged in the sphere of CIS crime. This new generation of harsh criminal delinquents, called (mainly in the Ukraine) *komsomolcy* (i.e. former Communist

Youth Organisation Members), does not recognise the authority of old criminal bosses and behaves in a very brutal manner. While officially engaged in legal business, they keep up active contacts with the criminal underworld. Due to their ability to penetrate legal business through this official engagement, *komsomolcy* are considered especially dangerous (Ministry of the Interior, 2002).

Post-Soviet criminal bosses usually act as serious businessmen and frequently develop contacts with the Czech elite. Arriving in the Czech Republic with previously gained capital generated by crimes committed outside the Czech Republic, they further utilise such capital to establish legal trade companies. The number of casinos, restaurants and business companies owned by post-Soviets or with post-Soviet financial participation is steadily growing in the Czech Republic. There are approximately 200 Czech-Russian joint ventures in Prague, a considerable number of them acting as a respectable front for criminal activities. Post-Soviets invest in hotels, pensions, casinos, restaurants and other real estate properties in Prague, as well as in the well-known spa towns of Karlovy Vary and Mariánské Lázně.

The 2000 annual report of the Czech Ministry of the Interior (2001b) states that the goal of CIS organised crime is to gain control of the trade in strategic raw materials and banking, and through the mediation of investment companies, funds and contacts with the governmental sphere, to gain real power in the Czech Republic.

In addition to post-Soviet organised crime's infiltration attempts in the legitimate economy, there are several Italian 'business' companies suspected of acting as a cover for organised crime. For example the camorra has created a network of hotels, warehouses and restaurants in Prague, Brno, Olomouc and many smaller Czech cities.

Balkan criminals have also penetrated the Czech economy. These are often 'first-wave' drug traders who, after collecting sufficient amounts of money, have ceased their activities in the drug trade and are now more or less developing legal business activities. However, despite turning their attention to legal activities, their removal from the drug underworld is usually not absolute. Many goldsmiths' shops, pizzerias and boutiques in the centre of Prague are actually owned by Albanians suspected of drug dealing.

Chinese-Vietnamese organised crime groups have also been discovered in several areas of the Czech economy. The groups engage in the street trade in textiles, electronics, cigarettes and foods, and are gradually making their way from illegally trading on the streets to legally trading in supermarkets. Trade in fake 'trademark' goods is also common. Moreover, Chinese-Vietnamese organised crime groups also concentrate on running casinos and have built many restaurants across the Czech Republic, which in many cases are used for money laundering. Chinese-Vietnamese bosses use the cover of businessmen and plan to gain control over Asian traders and businessmen in the Czech Republic. In 1995, members of the Beijing group of 'Snakeheads' physically attacked the chairman and a member of the executive

committee of the Central Coalition of Chinese Businessmen and Traders Working in the Czech Republic, who were then replaced with the Snakeheads' own people (Macháček and Ruml, 1997: 67).

8. Organised Crime Strategies to Avoid Prosecution and Influence Government Decision Making

In the last few years, the Czech police have been registering organised criminal attempts at penetrating government control structures. Usually these attempts consist of placing, or attempting to place organised crime members or their cohorts in governmental bodies and political parties, in a bid to corrupt the state administration and thereby affect its decision-making. Various forms of corruption conducted by organised criminal groups have emerged in political, social and economic areas. Corruption is becoming more intense, especially regarding crimes committed by public officials. Not only in the Czech Republic are such forms of crime difficult to prove by using police techniques, and the results of the government's 'Clean Hands' anti-corruption initiative have been far from satisfactory.

In addition to corruption efforts, a growing number of police and justice officials have been threatened in an endeavour to influence the investigation and judgment of criminal offences by intimidation. An attempt by a CIS organised crime group to destabilise the special organised crime police squad is under investigation.

Organised crime groups also hire lawyers and other specialists to safeguard their operations. The number of new 'business companies' has begun increasing substantially since private Czech lawyers have started engaging in lucrative work for criminal entrepreneurs and groups from abroad. Such specialised lawyers secure impunity from organised crime investigation and prosecution.

Thanks to good connections with the Czech underworld and the corrupt circles of the state administrative apparatus, for example, Kosovo Albanians feel relatively safe in the country. It is symptomatic that all Kosovo businessmen in the Czech Republic have weapons licences despite the official licence tests being among the most severe in Europe and requiring considerable ability in the Czech language. In this respect, it is evident that it is relatively unproblematic for Kosovo migrants to obtain the official documents necessary for the development of their 'business'.

Some of the foreign organised crime groups active in the Czech territory also have links with terrorist and extremist groupings, thus further threatening the security and stability of the state. Three examples from different parts of the world prove this point. First, a cell of the terrorist Japanese Red Army transferred to the Czech Republic in 1997. In an effort to collect money, the group started to perform 'dirty work' for Chinese criminals. The Japanese 'Red Army' cell was connected with several killings in the town of Most. Secondly, when a group of Kosovo Liberation Army emissaries appeared in Prague to collect money for financing an

insurgency in Kosovo, the Kosovar criminal bosses were among the most generous contributors. Thirdly, the Czech Arab underworld keeps long-term contacts with several fundamentalist terrorist organisations, such as the Algerian Islamic Salvation Front (FIS) and Armed Islamic Group (GIA), the Palestinian Liberation Front, Hezbollah and Al Fatah. While some of these movements have been around for a significant time in the Czech Republic, a latent risk of terrorist activities by a section of the Middle-Eastern community cannot be cancelled out. Moreover, the suspicion exists that members of radical Muslim organisations transit through Czech territory. Their reaction to Radio Free Europe's broadcasts to Iran and Iraq remains a risk factor (Nožina, 2003: 205, 291-5).

9. Conclusions

The Czech Republic has become a crossroads of international organised crime in Europe. Criminal organisations monitored by police and security forces have direct links to foreign countries, and their activities in the Czech territory follow the trends of international organised crime. Organised crime groups active in the Czech Republic increasingly tend to be involved in the same criminal activities that are also favoured by the organised crime groups active in 'older' European Union countries. During the 1990s, the smuggling and sale of illicit drugs also became – as in western European countries during the 1970s and 1980s – the most common and profitable activities of organised crime groups in the Czech Republic. Czech crime groups are increasingly organised and run their illegal businesses in the same way as western European criminal groups.

Possibly to a higher degree than in western European countries, criminal organisations in the Czech Republic struggle to maximise their legal activities, mainly by purchasing as much real estate and land as possible. Criminal organisations have also strong desires to strengthen and expand their power base. The leaders of criminal structures endeavour to infiltrate government structures with the objective of legalising their activities and profits. This is realised through attempting to influence or place their people directly in governmental institutions. Various means are used to achieve this goal, including corruption in all its forms, extortion, blackmail and subsidising interest groups and influential individuals.

In future, the illegal trade in drugs is expected to further expand. The smuggling of undocumented migrants will become, if possible, even more profitable. Organised crime activities will apparently be carried out as a complex form of crime perpetration, particularly in connection with corruption, drugs, violent crime, financial crime, organised prostitution and trafficking in people. The potential links of organised crime to international terrorism represent an underlying risk. The illegal sale and purchase of explosives, weapons and ammunition will remain of permanent interest to organised crime members. The interest of distributors in

Czech counterfeit currency is anticipated. A higher quality of counterfeits and an increase in forged 'trademark' goods are expected.

It is correct to assume organised crime structures are partially extricating themselves from their criminal environment and becoming well-established in legal business operations. However, there are only limited indications of this trend available, such as links to legal commercial structures, international cooperation and the employment of special (financial) advisors.

Far from remaining a local issue, organised crime represents a direct threat to the security and stability of the Czech Republic and, in its broader dimension, to Europe as a whole.

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Organised Crime in Poland: Its Development from ‘Real Socialism’ to Present Times

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1. Introduction

At the beginning of the 1990s, two types of organised crime – sometimes also improperly called the ‘Polish Mafia’ – emerged in Poland. First, top-down organised crime was created by increasingly corrupt public officials and politicians who acquired control of strategic sectors of the national economy by exploiting their positions and connections. Secondly, bottom-up organised crime was created as the traditional criminal ‘underworld’ became progressively better organised. It is ironic in the sense that we could say that dishonest politicians became more ‘criminalised’ at the same time as the criminal entrepreneurs became more ‘civilised’. In light of this, the two groups have often met halfway. On the one hand, politicians occasionally select a wealthy member of the underworld as a business partner to take over a lucrative enterprise or gain control of an economic sector. On the other hand, criminal entrepreneurs need protection and contacts with politicians and government officials to legalise the proceeds of their crimes. According to some sources, people connected with state security services (e.g. former officers) frequently act as middlemen between the two, as they have good contacts in both groups (Foks, 2002: 9-10; Jurczenko and Kilijanek, 2001).

This article focuses on two issues: the emergence of organised crime in socialist Poland, and its contemporary patterns and trends. The second section of the article reconstructs the public, academic and professional debate both before and after 1989, additionally describing the changes in the wider socio-political context. The third section reviews the problems in defining the issue and provides a general overview of organised crime today, specifically focusing on Russian-speaking organised crime. The fourth section assesses the involvement of organised crime in the main illegal markets; the fifth section analyses its infiltration in the legitimate economy and its capability of corrupting government structures. Some concluding remarks with a forecast of future trends follow.

2. The Public, Academic and Professional Debate

2.1. Organised Crime Relevance and Patterns before 1989

During the time of the socialist regime, the issue of professional and organised crime was not publicly debated in Poland, mainly for political reasons. As we will see later on, the absence of a public debate should not lead to the conclusion that professional and organised crime were first created by the transformation that began in 1989: with the collapse of the socialist dictatorship and the introduction of democracy and the market economy. After the Second World War, Polish lawmakers and representatives of the socialist ideology considered professional criminality a problem that was inherited from the past. In the new socialist system this kind of criminality was expected to disappear, since the new conditions providing legal jobs for all members of society would eradicate the causes of such criminality (Świda, 1977: 28-9). This assumption turned out to be quite idealistic. As a matter of fact neither criminality as a whole, nor professional criminality ceased (for instance see Bożyczko, 1962). In socialist Poland, as in most other places, the prospect of making fast money through criminal activities attracted those individuals who were not well-integrated into society, particularly those with criminal records or who had been raised in a criminal subculture.

Socialist countries were also confronted with the problem of organised crime. This was, above all, organised criminality in a broader sense with criminal offences being committed by various organised crime groups. Although these groups were unable to dominate any specific segment of the economy, they did cause harmful consequences to society. As far as common offences were concerned, Polish organised crime groups mainly engaged in burglaries, robberies and car thefts. The scope of these crimes was narrow if compared with the present extent of organised crime, although the groups occasionally created social unrest and were deliberately exposed for political reasons.

It is unclear to what extent organised crime groups were involved in drug production and trade and how these activities functioned at all in socialist times, as the number of undetected offences in this field was very high (Redo, 1979: 102 f; Krajewski, 2001: 392 f; Filar, 1997: 317 f). The real extent of the drug abuse and trafficking problem was virtually unknown up to the late 1980s. Manufacturers and sellers of prohibited drugs operated in great secrecy, sometimes forming small clandestine groups that were only rarely discovered (Gaberle and Ostrowska, 1985). There were no signs that organised criminality thrived in such classic areas as prostitution, distribution of pornographic materials, gambling and loan-sharking (Marek and Pływaczewski, 1988a: 4). Prostitution was not punishable in socialist Poland (nor is it today) and as a result prostitutes operated quite freely, usually in clubs, hotels and restaurants. Prostitutes had to fear only sanitary conditions and

the controls on foreign currency movements made by the socialist authorities, as they had contacts mostly with foreign clients and were paid in foreign currencies (Antoniszyn and Marek, 1985). All in all, it seems that the extent of pornography, gambling and loan-sharking was rather limited up to the late 1980s.

The real businesses of pre-1989 organised crime were the misappropriation of state property, speculation in scarce or rationed goods and illegal trade in Western currencies, as some criminal investigations show. The speculation in scarce or rationed goods mainly resulted from attempts to break the state monopoly on running economic activities and providing all legitimate commodities (Górniok, 1986; Grabarczyk, 2002: 92 f).

The origins of contemporary organised crime in Poland go back to the mid-1970s. The economic boom of that decade, the simplification of the rigid rules governing the relationship between the state and its citizens, as well as the increased possibility of travelling to the West created, among other things, an opportunity to become wealthy by trading in Western currencies. The possession of these currencies was illegal but also very common at the time. Western tourists also contributed to the development of the new illegal trade. Initially, Polish criminal entrepreneurs conducted their business mainly on a local basis, earning one-tenth of every illegally traded dollar. By the end of the 1970s, middlemen's commission soared to between three and four times the initial percentage. Many bosses of the contemporary Polish underworld made their first fortunes in this business. Due to membership in the Warsaw Pact and the very limited freedom of movement granted by the socialist regimes, Polish crime bosses did not fear Western competition. Despite the rapidly rising fortunes of illegal currency traders, most lawmakers and scholars kept ignoring the problem of professional and organised crime. The last dissertation on the topic was published in the 1960s (Solarz, 1967). It was more than two decades later – in the late 1980s – that Andrew Marek and Emil Pływaczewski (1988b) called for a systematic study of the problem and proposed to include a general regulation on professional crime in the pending reforms of the Polish legislation.

2.2. Organised Crime Relevance and Research after 1989

Since the collapse of the socialist regime, there has been great media and political interest in the topic of organised crime in Poland. This has been fostered by the rapid and sharp increase of all forms of crime and by a deteriorating feeling of personal security. In Poland, as virtually everywhere else in the former Warsaw Pact countries, these changes were accompanied and fostered by the social, economic and political transformation process set in motion with the fall of the Berlin Wall in 1989.

The increase in serious crime has been particularly significant: 547,580 serious offences were recorded in 1989; 883,346 in 1990 (a 61 per cent increase in just one year) and 1,404,229 in 2002 (up 156 per cent in comparison with 1989). During

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the same time span, some negative trends have also affected the overall structure of crime:

- The probability of being a victim of violent crime has increased; the same applies to offences against property where aggression, violence, and brutality are used against victims. For example, in 1988, 530 murders were reported. By 1995 this figure had jumped to 1,134, to reach the highest point in 2001, when 1,325 murders were committed. It then stabilised at the very high level of 1,188 reported murders in 2002.
- The use of firearms by offenders against victims and police officers assisting victims of crime is on the rise. Since the establishment of the new Polish police in 1990, 91 police officers have been killed while on duty. During a recent attempt to apprehend two very dangerous suspects (a Polish and a Belarussian citizen, who was a former KGB soldier) in Magdalenka near Warsaw in 2003, two members of a special anti-terrorist police squad were killed and 17 others were injured (one of them died a few days afterwards). The two offenders, both of whom were killed during the operation, used methods typical of military special forces and ‘guerrillas’, such as homemade bomb-traps, grenades and remote controlled explosives. They had mined the whole building in which they hid (Maciejczak, 2003: 1, 4-5).
- Fights within or between criminal groups are increasing. These include such acts as murders, robberies, assaults, as well as criminal terrorism (Kulicki, Pływaczewski and Zajder, 2000). For the first time in the mid-1990s contract murders, i.e. murders committed by professional hitmen, were also carried out in Poland. On 25 June 1998 for example, general Marek Papała, the former chief of the State Police, was shot dead by an unknown hitman. This difficult and very complicated case has not been solved yet. Barely a year later, on 31 March 1999, five men were shot dead in a café in the centre of Warsaw by hitmen using machine guns.
- The process of moral corruption of juveniles has been continuing at a disturbing rate. A direct symptom of that process can be found in the high number of illegal acts committed by juveniles (Błachut, Gaberle and Krajewski, 1999: 317 f; Hołyst 1999: 444 f).
- Poland has become fully integrated in the international drug trade. A serious rise in illegal drug consumption and related HIV-infection has been recorded (Filar, 1997: 320; see *infra* for more information on this point).

Not only have the perpetrators themselves undergone significant transformations, but next to traditional underworld offenders a new category of criminals has also emerged. They generally hold a high position in the social and political hierarchy and consider economic activity that is conducted by dishonest means as normal

business practice. Furthermore, these white-collar criminals often involve high-profile members of society in their illegal activities, including legitimate business employees, high-ranking state officials, parliamentarians and celebrities, by offering them profitable posts in business or by sponsoring political parties. Since the early 1990s a series of economic scandals have been disclosed by the mass media and have shocked the public by revealing the involvement of high-ranking government officers in illegitimate businesses (Hołyst, 1996: 201-2; Zakrzewski and Jasiński, 1993).

In general, the number of criminal groups and their level of professionalism have increased. A growing number of crimes, both ordinary and economic, are premeditated and committed by organised groups. At the same time a process of internationalisation has been taking place and the participation of foreign nationals in criminal acts has been on the rise. This applies in particular to the citizens of the Commonwealth of Independent States (CIS), who, as members of criminal groups, are active in Poland.

Since the early 1990s, the fear of crime has increased enormously and in vivid disproportion to the actual crime rate (Jasiński, 1995; Krajewski, 1996; Hołyst, 2000). According to a national poll conducted in 2002 with a representative sample of 1,017 respondents and interviewees aged 15 and over, 46 per cent of the respondents considered the threat of crime 'very serious'; 43 per cent considered it 'fairly serious' and only 10 per cent assessed it as 'average' (10 per cent) or had no opinion on the subject (1 per cent) (TNS OBOP, 2002: 1 f). As far as the issue of organised crime is concerned the results are however quite different. In another public poll, only 11 per cent of 1,064 respondents were afraid of organised crime if they had to assess this kind of criminality on the basis of their own experience or the information received by family members and acquaintances (Rau, 2002: 310 f).

Though only a minority of ordinary people feel personally threatened by organised crime, the topic has received much attention by the media and political institutions. The public debate, however, has not been very professional or substantive. On the one hand, many journalists tend to exaggerate the true extent of organised crime in Poland. They usually put small criminal bands, common criminality, and economic crimes into one category and then label it as 'Polish Mafia'. They do so for the sake of creating sensation and selling their papers. On the other hand, numerous politicians and law enforcement officers invest much time and energy in denying the existence of the 'Polish Mafia'. They have been trying to convince society that Poland has usually poorly, but occasionally well-organised criminals, not, however, mafia-type organised crime. Luckily since the mid-1990s a few investigative journalists have occupied the middle position, devoting their time to track all sort of serious crimes – i.e. especially economic and organised crime – and the connections between the upperworld and underworld.

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The need for serious, empirical information on organised crime has been only partially satisfied by Polish social and legal scientists. As a matter of fact, not many empirical studies have yet been conducted by academics on organised crime. There are several reasons for this, including the lack of financial resources and the limited access to official data or analyses conducted by government bodies. These bodies, in fact, are not yet used to sharing data with independent academic researchers and often justify their non-cooperation by the fact that their files contain data protected by the Personal Data Protection Act of 1997 and the Secret Information Protection Act of 1999. However, this interpretation is very controversial (Hofmański and Pływaczewski, 2001: 682).

As far as legal research on organised crime control issues is concerned, the Faculty of Law at the University in Białystok is one of the leading academic centres in Poland. Many doctoral dissertations and research projects of the Department of Criminology and Organised Crime Issues (renamed Department of Penal Law and Criminology in 2002) have been devoted to predominantly legal (but occasionally also criminological) issues related to organised crime. The doctoral dissertation, prepared by Z. Rau (2002) under the present author's supervision, for example, examined the functioning of organised criminal groups on the basis of expert interviews with police officers, public prosecutors and judges dealing with organised crime cases as well as immunity witnesses (i.e. former organised crime members now cooperating with the authorities) and juvenile delinquents.

Some research on the phenomenon of organised crime in Poland has been conducted by the Higher Police Training School in Szczytno and the Institute of Justice in Warsaw (Lelental, 1996: 71 f; Kulicki, Pływaczewski and Zajder, 2000). These two institutes have also substantially contributed to the professional and political debate on organised crime. As early as 1991, the Higher Police Training School of Szczytno organised the first international conference in central and eastern Europe on the criminological and legal aspects of organised crime. Among its participants were numerous leading social and legal scholars and many high-level practitioners. All the conference participants agreed that thorough research was needed to prevent the escalation of crime and particularly organised crime in Poland.

Reflecting the conference focus on prevention, a Foundation for the Prevention of Organised Crime was registered in Warsaw on 5 March 1992. This initiative was greatly appreciated by the Office of the President of the Republic of Poland and the Office of the Council of Ministers. The main aims of the Foundation were to support law enforcement agencies in their organised crime prevention and control efforts; to promote research on organised crime; to foster cooperation with other Polish and foreign research institutes and experts as well as with churches, religions and mass-media; to inspire and support legislative initiatives directed at preventing organised crime; and, finally, to disseminate information on the threats posed by organised crime (Pływaczewski, 1994: 2-4).

During the five years of its functioning, the Foundation for the Prevention of Organised Crime made an important contribution in preparing new pieces of legislation that facilitate the prosecution of the most dangerous criminals and make law enforcement more effective (for more information on this issue see the article by Emil Pływaczewski and Wojciech Filipowski on organised crime policies in Poland in Part III). Some of the proposals and projects launched during the conferences and meetings organised by the Foundation were introduced into the Polish legal system, e.g. the introduction of witness immunity and the strategy to counteract money laundering. Among the participants of the Foundation meetings were representatives of the Office of the President of the Polish Republic, the Ministry of the Interior, the Police Headquarters, the Board of Customs, the State Security Bureau, the Business Centre Club, as well as public prosecutors and journalists (Socha, 2003).

Several criminal lawyers and criminologists were also highly interested in the work of the Foundation and took active part in many conferences. Several books were published, based on the papers presented at the conferences (Pływaczewski, W., 1993; Pływaczewski, E., 1993; Adamski, 1994). The Foundation meetings were also an inspiration for new research projects on organised crime issues, which were sometimes carried out together by members of the Foundation, scientists from other academic centres and the Higher Police Training School in Szczytno (Lelental, 1996; 71 f). In 1997, however, the board of the Foundation decided to end its activities due to the lack of regular financial support from the government and difficulties in acquiring funds from other sources.

3. Definitional Problems and General Patterns of Organised Crime

3.1. Looking for a Definition of Organised Crime

Describing and assessing the phenomenon of organised crime primarily depends on how the phenomenon itself is defined. In Poland the selection of an official definition of organised crime became particularly urgent with the establishment of a Bureau for Fighting Organised Crime at the Police Headquarters, which became operational on 1 January 1994.

It was ultimately unofficially decided by the police that 'organised crime' should mean activities of criminal groups that have been set up for making money with crime (no matter whether it relates to violent or economic offences), use violence, blackmail and corruption, and aim at introducing illegal revenues into the legitimate economy. At the same time, the following eleven characteristics of organised crime were identified:

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- profit or power as main aims of the activity;
- long-term or unlimited time-frame of the activity;
- division of tasks and powers among the members of the criminal group;
- a special hierarchy;
- resort to different criminal methods to make money;
- isolation from the outside world, internal discipline, and internal control of the members of the criminal group;
- perpetration of serious crimes;
- use of violence or other means of intimidation;
- capability of operating internationally;
- money laundering; and
- ability to influence the realms of politics, state administration, and law enforcement.

For the activities of a group to be defined as ‘organised crime’, at least five of the above-mentioned criteria must be met. If this is the case, the investigations concerning the organised crime group are taken over by a police unit specialising in organised crime control (Pływaczewski, 2000a: 99).

3.2. An Overview of the Organised Crime Problem in Poland

In Poland, as everywhere else, statistics give only an approximate and partial view of organised crime. Statistics, in fact, show what law enforcement bodies know about organised crime, illuminating just one fragment of the real organised crime activities (Pływaczewski, 1994: 79 f). According to the data of the Polish Central Investigative Bureau (CIB), in 1998 the police units specialised in fighting organised crime investigated 935 cases, uncovering 644 organised criminal groups, including 121 groups with an international composition, 8 groups consisting of ethnic minorities living in Poland and 17 Russian-speaking groups. The investigations involved foreign nationals from over 30 countries, including Russia, Germany, the Ukraine, Belarus, Lithuania, Vietnam, Turkey, and Italy. The police estimate that the groups targeted by the investigations were composed of at least 5,500 members, including 634 foreign nationals.

According to official statistics, members of organised criminal groups committed about 4,200 crimes, which constitute 0.7 per cent of the 1,073,042 crimes reported in 1998. Most likely this figure is just the ‘tip of the iceberg’ because the real danger coming from organised crime is not determined so much by the number

of crimes reported to the police as by their nature and gravity and the losses of the State Treasury. On this last point, it is worth mentioning that in 1998 the financial loss caused by reported organised crime was estimated at about PLN 255 million (around € 57.4 million).¹ During the criminal investigations carried out in the same year, property worth over PLN 21 million (around € 4.7 million) was recovered and property worth over PLN 25 million (around € 5.7 million) was seized from 174 suspects belonging to organised crime groups.

In 2002, the Bureau for Fighting Organised Crime conducted investigations into 522 organised criminal groups (in 2001 there were 485 investigations) with 6,134 suspected members (5,281 in 2001). Out of these groups, 417 groups were Polish, 86 groups were internationally heterogeneous, 10 groups were ethnic, and 9 groups were exclusively composed of Russian, Belarussian, and Ukrainian nationals. All in all, in 2002, 381 foreign nationals (367 in 2001) were involved in organised crime investigations in Poland.

As a result of criminal investigations conducted in 2002, as many as 4,115 persons (up from 3,218 in 2001) were charged with a total of 10,571 offences (up from 7,439 in 2001), including 1,142 persons (968 in 2001) charged with participation in an organised criminal group (Art. 258 of the Polish Criminal Code). The number of suspects with regard to whom courts applied pre-trial detention based on the collected evidence, was 1,811 (up from 1,621 in 2001). In 787 cases (up from 566 in 2001) public prosecutors used police surveillance, and in 346 cases (up from 248 in 2001) bail was granted (Komenda Główna Policji, 2003: 8; Pływaczewski, 2000c).

Police data show a clear interdependence between economic crimes and ordinary crimes. The latter type of crime usually supports economic crimes as the means of making profits, neutralising people who constitute a threat to the existence and functioning of the group, disciplining group members and solving conflicts with other groups. An ordinary crime may *prima facie* appear a separate crime (e.g. cargo vehicle robbery), but is often part of a complex entrepreneurial activity of an organised criminal group. Well-established crime groups are, in fact, criminal 'enterprises', i.e. run a variety of illegal and legal economic activities (Górniok, 1994: 109 f). New, less established groups may, instead, have to resort to ordinary crimes, such as robberies and the like, to collect the resources they then invest in legal and illegal economic businesses.

Some crime groups merely operate in local, limited areas, for example organising prostitution rings, controlling 'call-girl' agencies or extorting money from other local legitimate and illegitimate businesses. These groups are usually composed

¹ The conversion rate adopted is € 1 = 4.44 Polish new złoty (PLN), the official exchange rate of the National Bank of Poland on 2 June 2003.

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exclusively of Polish people. In addition to these, there are other groups that have a mixed composition and a larger scope of activities. In these groups Polish citizens operate together with foreigners, mostly nationals from former Warsaw Pact countries. Crime groups with an international membership are more likely to be involved in transnational activities, such as illegal drug production and trafficking, car theft and smuggling as well as smuggling of people and consumer goods (Wilk, 1999: 82 f). Many groups involved in cross-border crime do not show a cohesive structure. In some of them there are subgroups and teams of people specialised in particular activities, e.g. car thieves, document forgers, couriers or receivers of stolen property. In many cases, however, these are not independent groups but elements of more complex illegal economic enterprises conducting different criminal activities.

Police investigations allow us to distinguish the following typical features of the more sophisticated organised criminal groups:

- clear leadership (consisting of one or several persons);
- multi-level organisational structure;
- hermetic nature of the group;
- strong and lasting personal ties between members;
- specialisation in particular crimes;
- ability of quick adaptation to external conditions (both to demands of the market and to threats);
- great mobility of members and quick action in case of emergency;
- flexibility and great susceptibility to reorganisation; and
- organisational efficiency and professionalism (Pływaczewski, 1999: 59).

The group of Marek K. (alias Little Eye) is an example of a highly organised criminal group. Disbanded in 1998 in a nationwide police operation involving 500 police officers, Little Eye's group was the biggest and the strongest criminal group in Szczecin and the whole area of western Pomerania. Little Eye, the founder and undisputed leader of the group, decided its business and power strategies, distributed the profits, settled disputes and maintained contacts with other criminal groups (e.g. from Colombia, the United States of America, Russia and Italy). He also punished traitors and those who had disobeyed his orders at the same time as his group supported the members serving time in prison. Little Eye's group was involved in drug trafficking, robberies, kidnapping for ransom, extortions (for example, from smugglers, prostitutes, owners of massage salons and restaurants) and illegal trade in alcoholic beverages. The group also tried to control a specific territory, defending it against other criminal groups using explosives and guns.

Little Eye had around 50 'soldiers' under his command. Some 600 people were directly or indirectly involved in his group's illegal activities.

3.3. The Problem of Russian-Speaking Organised Crime

In Poland as much as in other countries of central and eastern Europe, since the early 1990s a process of internationalisation of organised crime has been going on. Several factors have fostered this process. The two most important ones are the newly gained freedom of movement of people, goods and capital and the weakness and inefficiency of the law enforcement system.

In Poland, the internationalisation of organised crime has primarily manifested itself in the growing presence and activities of Russian-speaking organised crime groups and offenders coming from former Soviet countries. This trend is also shown by statistical data, which indicate a systematic growth in the number of citizens of the former USSR in the total number of organised crime suspects. Among the foreign nationals targeted in 2002 by the Central Investigative Bureau, Ukrainian and Belarussian are the largest groups (representing 26 per cent and 25 per cent of the total, respectively). Other foreign nationals are Germans (18 per cent), Turks (11 per cent), Russians (8 per cent), and Lithuanians (8 per cent) (Komenda Główna Policji, 2003: 4).

The Polish and Eurasian criminal underworlds have merged to a high degree. This 'fusion' creates a natural base for those arriving across Poland's eastern border. The good relations between Russian-speaking criminals and their Polish counterparts have allowed them to get information, establish contacts, receive assistance (even legal assistance), safely resell stolen merchandise and if necessary, leave Poland undetected. The case of an organised criminal group from the so-called 'Treble City' (composed of the three neighbouring cities of Gdańsk, Sopot and Gdynia) can serve as an example. It is composed of citizens of Belarus and Russia and is headed by one Belarussian. The group members have contacts with Polish, Swedish and German citizens and use these contacts for purchasing amphetamine, cocaine and weapons. They smuggle drugs and firearms both into former Soviet republics and western European countries. Currently only a branch of this group has been neutralised.

Russian-speaking criminal groups increasingly commit crimes against the state and social institutions by forging documents and even staging armed attacks on police officers. However, robberies are their most typical activity. For instance, between 1992 and 1996 there were 2,675 highway robberies committed in Poland, 1,883 of which were committed by Russian-speaking perpetrators (Pływaczewski, 1997: 120-1). Apart from robberies, Russian-speaking criminal groups are very active in fields such as kidnapping for ransom and economic crimes. For example, in the late 1990s a group consisting predominantly of Armenian citizens but that also had Russian, Ukrainian and Polish members, committed several armed robberies,

extortion, kidnapping for ransom, credit card fraud and was also heavily involved in drug trafficking. The group also kept close connections with other criminal groups from the former Yugoslavia, the Czech Republic, Poland, Germany and Switzerland.

Given the ongoing expansion of criminal groups originating from former Soviet Republics and their increasing involvement in illegal activities in Poland, there is concern that these groups might soon be able to infiltrate the legitimate economy as well.

4. Illegal Markets

4.1. Drug-Related Crime

The political transformations that began in 1989 and, in particular, the opening of borders have produced drastic changes in the Polish illegal drug market. Poland is no longer an isolated domestic market but has become fully integrated into the international drug trade and, like other eastern European countries, is now supplied with semi-synthetic and synthetic drugs that were previously unavailable. These 'new' drugs, ranging from heroin to cocaine, from ecstasy to LSD, have largely displaced the production of what was once the typical Polish drug: the so-called Polish *compote* (which is also known as 'Gdańsk heroin' as it is similar to heroin, though it was mainly produced domestically from local poppy plants generally by the addicts themselves).

Poland's integration into the international drug trade has also fostered the consolidation of roles typical of fully developed drug markets: the producer/smuggler (who is not an addict), the dealer and the customer (drug addict). The improved effectiveness of the market and the increasing availability of a larger variety of drugs have also stimulated a veritable boom in drug consumption and addiction. According to the Polish Health Ministry there are 30,000 to 40,000 drug addicts in Poland and this number appears to be increasing (Hołyst, 1999: 565). According to other unofficial sources there are as many as 500,000 to 600,000 people who may use drugs and are thus susceptible to addiction. However, these estimates are considered to be too high (Filar, 1997: 321).

Given the expected profits involved, it should not be surprising that the new roles of producers/smugglers and dealers are increasingly run by members of organised criminal groups. Drug trafficking is, in fact, the most profitable organised criminal activity and international criminal groups seek both new markets and safe smuggling and transit routes for drugs, as indicated by operational intelligence activities and information collected during criminal proceedings. Besides the increasing involvement of Russian-speaking criminal groups in the Polish drug markets, there are indications that (especially in Warsaw) members of the Italian

'Ndrangheta and Cosa Nostra, some of whom are fugitives, as well as residents of Turkish origin (especially in Łódź) are using legitimate economic activities to organise the transit through Poland of large heroin lots. These groups either operate in Poland independently or cooperate with Polish criminal groups (Komenda Główna Policji, 2003: 14-15).

Whether carried out by foreigner or Polish entrepreneurs, drug smuggling across Polish borders has been growing rapidly since 1989. In 1990, just one case of smuggling drugs was reported but the figures for the following years increased: 6 cases were reported in 1991, 23 in 1992, 69 in 1995 and 97 in 1996. It is estimated that the real figures are at least a few times higher. It should not be forgotten that customs officials are technically capable of inspecting only about 20 to 30 per cent of goods going through the country's borders.

Heroin, for example, is transported by land from Afghanistan via Iran, Turkey, Bulgaria, Romania, Hungary, the Slovak Republic, the Czech Republic (or alternatively, the Ukraine), and Poland to Germany and the Netherlands or to Scandinavian countries. Another route by which heroin finds its way into Poland is from the so-called 'Golden Crescent' (Afghanistan, Pakistan, Iran) through the countries of the CIS along the so-called 'Silk Route' and from the 'Golden Triangle' (Myanmar, Laos, Thailand) through India, the CIS and African countries.

Hashish and marijuana are smuggled into Poland from the 'Golden Crescent' countries by air or land, as well as from the Middle East and northern Africa (Morocco). High-class hashish ('black Afghan' and 'marokka') is especially valued.

Cocaine is mainly produced in Latin American countries and is transported into Poland mostly by sea and into the harbours of the Baltic Sea, particularly Gdynia, which has superior container equipment facilities. The smuggling routes run through Poland into Germany, the Czech Republic, and Austria, as well as to other countries of western Europe. Many cocaine smuggling cases are also reported at Warsaw international airport. Two methods of smuggling by air were uncovered;

- the use of drug couriers (who swallow the drugs); and
- hiding the drugs inside luggage sent as air freight (equipped with double walls, hiding places inside objects, or using liquid solutions of cocaine).

Along with the growing demand for cocaine at the beginning of the twenty-first century, the Polish police note that Polish criminal groups are establishing connections with cocaine producers in South America, with the aim of organising the smuggling of drugs to Poland and western Europe. The cocaine is usually transported together with goods that are typically imported from that part of the world, e.g. bananas and flowers. In order to deceive law enforcement agencies and customs officials, the goods are also transported to Poland via other European countries, where they acquire false documents indicating they come from countries other than South America (e.g. flowers come by air through the Netherlands where

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new letters of conveyance are given that indicate the Netherlands is the true origin of the consignment). Another method of smuggling is to hire Polish citizens – especially from cities or villages with high unemployment rates – as couriers or ‘body-carriers’ (they swallow the drugs and then cross the borders). In 2002, about 600 Polish citizens suspected of smuggling cocaine were apprehended in France, the Netherlands and Germany (Komenda Główna Policji, 2003: 26).

In 2002, about 900 kg of drugs was seized in cases related to drugs trafficking. Its street market value was estimated at PLN 101,114,000 (about € 22.7 million). In, particular, the police seized:

- 72 kg of amphetamines (down from 195 kg in 2001);
- 4.8 kg of heroin (down from 208 kg in 2001);
- 331 kg of marijuana (up from 75 kg in 2001);
- 397 kg of cocaine (down from 45 kg in 2001); and
- 100 kg of hashish (up from 9 kg in 2001) (Komenda Główna Policji, 2003: 6).

The structure of drug smuggling organisations is usually built around people who are in Poland either permanently or temporarily and have associations with traditional drug-producing countries. These individuals include foreign students, business people, residents with green cards and permanent residence status, and spouses of foreigners. The organisations may also include Polish nationals who travel to drug-producing countries for various reasons (studies, business, tourism or medical treatment). Companies with Polish and foreign capital that deal in shipping or international trade also facilitate drug trade (and are, indeed, often established for illegal purposes). The business is arranged so that these contacts with specific countries and regions of the world seem credible (Serdakowski, 1996: 195 f).

Poland has become fully integrated in the international drug trade not only as a consumer and transit country, but also increasingly as a producer of illegal drugs (Komenda Główna Policji, 2000: 9). Since the early 1990s the domestic cultivation of cannabis has been increasing. Cannabis plantations are usually hidden in plastic covered greenhouses that are also used for growing vegetables. Marijuana is quickly becoming the drug of choice among university and high school students. Above all, the manufacturing of synthetic drugs, mainly amphetamines, has become the new ‘Polish specialty’. Generally wealthy criminals finance the laboratories and, once they have received the final product, they organise the smuggling and distribution of the pills and tablets. Poland’s amphetamine industry today constitutes the most sophisticated indigenous drug enterprise. Judging from the extremely high purity of the final product, criminal groups apparently use first-class laboratory equipment and highly qualified chemists. In 2002, 15 laboratories producing synthetic drugs (mainly amphetamines) were shut down by law enforcement officials, in 2001 12

laboratories were eliminated and in 2000 this number was 14 (Komenda Główna Policji, 2003: 22).

Data provided by law enforcement agencies specialising in drug cases indicate that the level of professionalism and the activity of manufacturers of amphetamines have been increasing. The criminal groups are no longer satisfied with creating just one laboratory; they insist on creating a whole network of illegal laboratories. These operate on a round-the-clock basis, since there is demand for the product and a reliable network of distributors.

The criminal cases also indicate that amphetamine producers, who can be described as criminal entrepreneurs, manage their own distribution networks consisting of several couriers selling the drugs in Poland and smuggling them abroad (especially to Sweden, Germany and Great Britain). It seems that they manage the production of drugs in a very professional way and treat it just as any other form of economic activity. In one of the cases, an entrepreneur who organised the production of amphetamine was using professional help and equipment and even researched literature on this topic. In another case, in September 2002, police raided an illegal laboratory while the producers were in the process of producing amphetamine sulphate. In this case five individuals were apprehended. One of them was the owner of a large building company specialised in building freeways and shopping malls and, along with the other arrestees, was a respectable businessman in his community. He also was the organiser of the whole illegal drug trafficking scheme, running a large network of domestic and foreign distributors (Komenda Główna Policji, 2003: 22).

Outside Poland, and especially in Germany and in the Scandinavian countries, amphetamine producers operate through a network of Polish citizens who serve as critical links in the wholesale trade. This network can move any type of drug into western markets: central Asian hashish, Afghan heroin, and even Colombian cocaine (Pływaczewski, 2001: 209-10; Laskowska, 1998).

4.2. Trafficking and Exploitation of Human Beings

In Poland and other countries in the region, the phenomenon of trafficking in human beings and smuggling of migrants is a novelty that only appeared after the regime change in 1989 (Sklepkowski, 1996). Both activities are by now criminal offences under Polish law that are of particular interest to organised crime groups, who can exploit their international connections in committing them.

Due to its geographical location between Germany to the west and Russia, Lithuania, Belarus and Ukraine to the east, Poland is at the same time a destination and a transit country for thousands of undocumented migrants and victims of human trafficking from the former Soviet Union and from Asian and African countries. From the two last-mentioned regions migrants (and many refugees as well) usually enter Russia or Ukraine legally and then the illegal part of their journey begins,

to Germany in most cases. In the early 1990s Poland also used to be a source of both undocumented migrants and victims of trafficking, who wanted to enter western Europe at all costs. Whereas the outflow of the second group has reduced consistently since the late 1990s, the flow of undocumented migrants continues, though on a more limited scale.

The end of the 1990s also recorded a distinct reduction in the smuggling of foreign migrants across Polish frontiers. The trafficking of women for the purpose of prostitution has also become less visible, although it is difficult to estimate the 'dark number' that may be very high. Victims of trafficking may be foreign women who become prostitutes in Poland, and Polish women taken abroad for the same purpose (Rzeplińska, 2002: 396).

Women who are trafficked, both Polish nationals and foreigners usually from the former Soviet Union and Bulgaria, are recruited through newspaper advertisements offering jobs abroad for waitresses or au pairs, as well offers of marriage. After answering the advert, the women are taken abroad and sold to nightclubs and brothels in western Europe. Since the mid-1990s Polish police have observed the transportation of foreign women from Romania, Bulgaria and former Soviet Union into Poland. The women are forced to work for so-called 'escort agencies' and offer their services as prostitutes on roads, highways, and transit roads, especially in areas close to the borders (Rzeplińska, 2002: 398; Sztulkowska, 1996: 210 f).

In 2000, the first criminal proceedings were brought against persons accused of illegally organising other persons' crossing of frontiers of the Republic of Poland. Both Polish and foreign national members of criminal groups were convicted for organising the smuggling of migrants. In south-eastern Poland in October 2000, a district court convicted eight men (seven Polish nationals and one Iraqi) accused of smuggling migrants across the Ukrainian-Polish frontier in the Bieszczady mountains. The police and border guards estimate that that gang had smuggled at least 200 migrants, mainly from Sri Lanka, Afghanistan, Pakistan and Iraq, across the border (Rzeplińska, 2002: 397-8).

The method of recruiting victims or contacting clients depends on several factors, such as the profile of the perpetrator and the level of 'organisation' on the one hand, and the profile of the victim on the other. Large-scale international networks use several different recruitment methods, which often seem legal at first, such as entertainment, housekeeping, arranged marriage and travel agencies (Siron and Van Baeveghem, 1999: 35 f).

4.3. Trafficking in Stolen Cars

Before the borders of Poland were opened to the world the only opportunity for car thieves was to work at the domestic level. During this period, the proportion of car thefts in the overall number of offences against property was insignificant. The situation changed radically after 1989 when the borders opened as a result of the

political and economic transformation. These changes enabled private individuals and entrepreneurs to import western-made vehicles into Poland. An increasing demand for attractive western-made cars encouraged criminal groups to change their orientation and start dealing in the car business. In 1988 the number of stolen cars was reported at 4,173 but by 1991 9,356 stolen cars were registered. In the following years this number grew exponentially: from 15,308 in 1992, to 42,021 in 1994, 50,684 in 1995, 53,319 in 1997 and 71,543 in 1999. Only since 2000 a small decrease in the number of these offences can be observed: in 2000, in fact, 68,062 car thefts were reported, and in 2002, 53,673.

The problem of car theft has been identified in 60 per cent of Polish cities including Warsaw, Katowice, Gdańsk, Gdynia, Sopot, Łódź, Wrocław, Kraków, Szczecin, and Poznań. Many of the completed criminal proceedings indicate that gangs of car thieves are among the most organised and efficient criminal groups with a wide transnational network. The very activity of car theft and smuggling calls for comprehensive specialisation, sophisticated techniques, planning and division of labour among many participants, and usually involves the importation of vehicles from other countries. The time factor is dominant in the operations of these criminal organisations; the time between the theft and the smuggling of the stolen car to another country must be reduced to a minimum. Unfortunately, the efficiency of car theft rings is quite high and often the car is already in another country before its owner discovers the theft.

In Poland, police investigations show that, besides Polish nationals, citizens of Belarus, Ukraine, Latvia, Russia, Germany, Lithuania, Estonia, Armenia, Kazakhstan, Bulgaria, Belgium, the Netherlands, the Czech Republic, Italy and the countries of the former Yugoslavia are involved in car theft and smuggling. The routes of smuggling groups usually run along the main Polish highway, from the western border with Germany and the southern border with the Czech Republic, to the eastern border with Lithuania, Belarus, and Ukraine.

Thefts are usually committed by criminal groups led by someone who is well informed of the rules governing imports and trade in cars in a given country, including the requirements concerning legal documentation for imports. Other members of such groups include the thieves, the transporters, those dealing with fencing and document forgers who arrange for vehicle documentation. There has been a consistent increase in the level of professionalism of this kind of car theft and of the level of criminal specialisation of the perpetrators. Violence is increasingly used to gain criminal control of vehicles. Cases of thefts made for a payment (potential owners paying for someone to commit a theft) are also increasing. Apart from theft and smuggling of cars, criminals have also been involved in insurance fraud, forgeries, robberies and extortion. Data provided by Poland's Central Customs Office suggest that recently more stolen vehicles have been smuggled into Poland by taking advantage of loopholes in legal procedures created for the purpose of importing property from abroad.

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Perpetrators of car thefts have worked out many methods for transporting cars across borders while maintaining some appearances of legality. These include the following scenarios:

- a person who crosses a border by car uses a forged registration document, which is usually issued in Germany, Belgium, the United States or Canada;
- a fictitious contract for the sale of a car is manufactured; documents certifying such a 'transaction' enable the perpetrator to go through customs procedures and to register the vehicle with the proper officials – this in turn enables him/her to sell the car to another person acting in good faith;
- before forging documentation perpetrators change the vehicle identification numbers; if the police stop the car they will have to conduct a costly and time-consuming examination of the vehicle.

Among the techniques of theft that have so far been uncovered, the following are the most common:

- appropriation of a vehicle rented from a rental agency by a person using forged identification or theft of vehicle that was rented legally but then sold and declared stolen;
- breaking into a car using master car keys;
- breaking into a car by pushing in a window and disconnecting the car alarm system.

The results of police work, preparatory police proceedings and the exchange of information with European police forces, point to an increase in the phenomenon of insurance fraud. For example, a western European citizen reports to authorities that his/her car has been stolen, but in fact he has sold it to foreign (usually eastern European and CIS) nationals and the car has already reached its point of destination. The 'old' car owner then collects compensation from the insurance company. This kind of operation is encouraged by the low prices of the stolen vehicles, the naiveté of the purchasers, and their ignorance of how proper documents should look. The cost of such fraudulent transactions is borne by police forces of several countries that are forced to conduct labour-intensive investigations, and also by insurance companies.

5. Organised Crime and the Legitimate Economy

The general consensus is that the first priority of crime control policies in Poland should be to curb ordinary criminal activity that causes suffering and a sense of

threat in the society. Its effects are directly seen and felt by citizens, and hence it causes abhorrence and fear. Especially if violent and repeated, ordinary crime fosters a general sense of insecurity, because its effects are frequently very painful to individuals and evident to the society as a whole.

If it is to some degree organised, ordinary criminal activity does not unsettle the country's economic system. What damages the state and may lead to a destabilisation of the economic and political system is highly organised criminal activity, especially when it aims at the infiltration and corruption of legal companies and governmental structures. Its victims are anonymous and collective. It is every citizen who through taxes and a decrease in real income is burdened with the losses that result from organised crime. Though it negatively affects the standard of living of almost every member of the society, such criminal activity is better 'tolerated' by the society because its effects are not directly visible. The scale of losses caused by organised economic crimes, although occasionally terrifying, is not commonly known.

5.1. The Results of an *Ad Hoc* Study

In assessing the real impact of most dangerous and sophisticated portion of organised crime, the key question we need to ask concerns the ability of the Polish governmental structures to prevent and combat this destructive criminal activity. To answer this question properly, we need to assess the susceptibility of the state to this type of criminal activity on the one hand, and the potential of aggressiveness and effectiveness of the most sophisticated organised criminals in infiltrating the state and the legal economy on the other hand.

An interesting effort to answer this question is a study conducted in 2000 and 2001 among police officers of the Central Investigative Bureau, prosecutors of organised crime departments, judges who work on serious criminal cases, and immunity witnesses (i.e. organised crime defectors).² The study was conducted as a part of a doctoral thesis prepared under the supervision of the author, which was defended in 2001, and then published (Rau, 2002).

Answers to a questionnaire were obtained from 195 police officers (corresponding to 22 per cent of the police officers working in specialised units), 153

² An individual receiving immunity within the meaning of the Immunity Witnesses Act 1997 is a person who, while being suspected of having committed a crime, consents to collaboration with the prosecution including providing comprehensive testimony incriminating some other defendants. In return the prosecution guarantees this person significant concessions which could be as exceptional as discontinuing the criminal proceedings against the person, this means avoiding criminal liability altogether (Waltoś, 2002: 389 f; for more on this see Pływaczewski and Filipkowski's contribution in Part III).

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prosecutors and 382 judges (57 and 38 per cent, respectively of the prosecutors and judges working on organised crime cases). Though the actual number of immunity witnesses is classified, 61 per cent of those who had direct experience of organised crime were questioned.

Some of the results of the study are rather alarming. On a five-point scale rating how immune the Polish state is to organised crime, only 11 per cent of police officers and 8 per cent of prosecutors indicated that immunity was 'very high' and 'high', 54 per cent of police officers and 51 per cent of prosecutors indicated it to be 'average', and 35 per cent of police officers and 39 per cent of prosecutors rated it as 'low' and 'very low'.

The participants were asked to correlate the potential of organised crime – understood as its influence on structures, politics and economy of the state – with the potential of immunity of the state and its bodies. Only 4 per cent of police officers and 1 per cent of prosecutors identified the potential of organised crime to be 'very high', 35 per cent of police officers and 18 per cent of prosecutors indicated that the potential is 'high', 48 per cent of police officers and 46 per cent of prosecutors determined the potential to be 'average', and 12 per cent of police officers and 22 per cent of prosecutors described it as 'low'. Only 1 per cent of police officers and 7 per cent of prosecutors indicated the potential to be 'very low'.

In order to make a more precise determination of the type of threat, and hence to elaborate the possibilities of countering it, the respondents were asked another question: 'What is the greatest threat to Poland coming from organised crime?' In the prosecutors group, the greatest threat was found to be the intimidation of society (62 per cent of respondents); in second place was the infiltration of organised crime into state structures (49 per cent). The next issues that were indicated by this group of respondents were the threat of the influence of crime on economic structures (38 per cent), and gaining profits and investing them in the critical components of state functions (33 per cent). Police officers indicated the greatest danger to be influence on economic structures (57 per cent), infiltration into state structures (49 per cent), and only in third place was the intimidation of society (44 per cent).

In order to find out more about the orientation of activities of organised criminal groups, immunity witnesses were asked the following question: 'Which state organs were in the area of interest of your group, with the purpose of influencing them?' As many as 90 per cent of these witnesses who were questioned stated that their group was trying to influence the police, 38 per cent indicated prosecutor's offices as targets of their corrupting actions, and 33 per cent courts of justice and members of Parliament. Another 33 per cent admitted to have corrupted (or tried to corrupt) local government bodies, and 24 per cent financial control institutions.

In order to determine the dangers more clearly, another question was asked: whether in Poland organised crime in the broadest sense of the word influenced politics and functioning of enumerated groups of state and local government bodies. In their answers, respondents highlighted the greatest influence of organised crime

on local politics (76 per cent of police officers, 59 per cent of prosecutors, and 34 per cent of judges). Parties and political groups were ranked second (45 per cent of police officers, 47 per cent of prosecutors, and 42 per cent of judges). The next group most susceptible to the influence of organised crime was state officials, including senior officers (36 per cent of police officers, 30 per cent of prosecutors and 38 per cent of judges).

There was a high discrepancy in the answers related to the influence of organised criminal groups on national policy. A positive response was given by 26 per cent of police officers, 8 per cent of prosecutors and 10 per cent of judges.

Organised crime influence on local politics was confirmed by the immunity witnesses participating in the study. According to 39 per cent of them, the influence of bosses of organised criminal groups on the local government (self-government, municipal level), and in particular on mayors and rural municipal chief administrators is 'high'. 28 per cent of them said this influence was 'very high', 32 per cent described it as 'average', and only 2 per cent as 'low'. None of the respondents selected the answers 'No influence' and 'I do not know'.

The respondents were also asked whether they thought that leaders of large criminal groups had influence over the actions of high-level administrative and political authorities (deputies, senators, ministers and chief regional administration officials), and if so, what influence they played. Some 30 per cent of police officers and 32 per cent of prosecutors gave a positive answer to this question. The influence of leaders of large criminal groups on high-level state authorities was indicated as 'very high' by 1 per cent of police officers and 1 per cent of prosecutors, as 'high' by 20 per cent of police officers and 21 per cent of prosecutors, and as 'average' by 31 per cent of police officers and 16 per cent of prosecutors. Based on their own experiences from cases they had worked on, 15 per cent of police officers and 18 per cent of prosecutors determined this influence to be 'low', and the phrase 'no influence' was deemed to be appropriate by 2 per cent of police officers and 9 per cent of prosecutors.

In their comments, respondents also differentiated between direct and indirect influence, indicating that direct influence is lower than indirect influence, which may be characterised by a whole range of covert pressures and financial or economic dependence, as well as social acquaintances. Hence, the so-called hard corruption was separated from soft corruption, which is characterised by indirect influence. In this respect, the network of so-called arrangements and links is the most difficult to identify and to combat. The responses of immunity witnesses indicate that, in the opinion of 14 per cent of respondents, the influence of organised crime on the activities and decisions of high-level state authorities is 'very high', 27 per cent indicated that it is 'high', and another 27 per cent that it is 'average'. No respondent chose the answer that indicated no such influence. However, 23 per cent of the participating immunity witnesses were not able to respond to such a question.

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A key question of the study was ‘What influence do large criminal groups have on organs of law enforcement and administration of justice (understood as courts of justice, prosecutor’s offices and the police)?’ The influence was described as ‘very high’ by 7 per cent of police officers, while none of the prosecutors and judges thought this was true. 31 per cent of police officers, 11 per cent of prosecutors, and 3 per cent of judges described the influence as ‘high’, 39 per cent of police officers, 31 per cent of prosecutors and 14 per cent of judges as ‘average’. On the other hand, 13 per cent of police officers, 18 per cent of prosecutors, and 20 per cent of judges described organised crime influence on police and the criminal justice system as ‘low’, 2 per cent of police officers, 25 per cent of prosecutors, and 18 per cent of judges as ‘minimal’. Finally, 7 per cent of police officers, 9 per cent of prosecutors and 37 per cent of judges were not able to answer this question.

The answers presented above indicate a discrepancy in opinions. Prosecutors, unlike police officers, describe bodies of law enforcement and administration of justice as relatively immune to the influence of organised crime. From answers given by judges, one can deduce their high opinion of the immunity of state bodies to the destructive activities of organised crime. In evaluating these answers one must consider the fact that they reflect the private opinions of the respondents, even though the respondents are experts in combating organised crime.

5.2. The Corrupting Influence of Organised Crime

The fact that organised criminal groups are trying to influence organs of law enforcement and administration of justice in various ways is beyond question. The schemes used by members of crime groups to state officials are frequently characterised by a high degree of planning. Among the methods indicated by police officers who work in the area of combating corruption are:

- gaining influence by accessing retired prosecutors, police officers or judges, and, with their help, contacting the acting professionals and gaining influence among them;
- skilful, gradual corruption by lending small amounts of money, covering gaming debts or making various favours; sometimes the prosecutor, police officer or judge does not know that the person that he has befriended has links with organised crime;
- using influence through the use of discrediting materials, such as photographs taken in brothels, or parties where alcohol was abused;
- collecting financial documents indicating dishonesty of a police officer, prosecutor or judge;

- influencing the family by making deals with members of the family without the knowledge of the prosecutor, police officer or judge in the initial phase;
- signing contracts, through various funds, with selected persons for the performance of a task with a very high remuneration; those are the first steps to gradual recruitment.

There was a very disturbing case of a judge from Toruń (a city north-west of Warsaw), who as well as a few other public prosecutors, was a regular guest of a club-house administrated and visited by criminals. The judge would often impose vindictive damages in favour of that club-house. In 2002, in Opole, criminal proceedings were started against a public prosecutor, a judge and a barrister who had helped to 'arrange' advantageous decisions of the Appellate Court for criminals in exchange for a fee. Yet another example comes from Lublin where there is an investigation going on with respect to a public prosecutor who had stolen copies of files from another prosecutor. The Internal Affairs Department of the police, however, indicates that most of the corruption cases are among police officers. In 2001, there were 800 investigations of police officers, 114 of them concerned corruption cases, 26 investigations were terminated and 15 officers were sentenced to prison (Sitek, 2002: 1).

A serious problem frequently indicated by judges and prosecutors is the lack of mechanisms for self-policing in the structures of the public prosecution service, the court system, and particularly law firms. One necessary step is to increase the number of disciplinary bodies, to speed up disciplinary proceedings and to assure obligatory free access to the rulings issued in such cases. Besides this, it is necessary to shorten the time necessary to lift the immunity of officials and to introduce obligatory suspension from official duties until the disciplinary court pronounces a judgment. An important problem is the practical impossibility of using intensive investigative techniques in dealing with prosecutors, judges or attorneys.

According to the Central Investigative Bureau, among recent dangers related to corruption the following are the most eminent:

- a speculative trade in real estate with the participation of local government and other organs;
- beguilement of loans for fictitious investments, done with the participation of bank managers;
- activities to the disadvantage of entrusted public institutions; and
- links between senior officials and organised criminals.

Moreover, it has been determined that the areas of national and local administration that are the most susceptible to corruption are related to issuing various documents

and certificates, public tenders and concessions, public procurements and dishonest evaluation or privatisation of property belonging to the National Treasury. In particular, the Central Investigative Bureau foresees a growing threat of corruption of national and local government officials in relation to Poland's recent entry into the European Union and its participation in the structural funds.

An example of cases that gained public attention and outrage are cases in which the Central Investigative Bureau uncovered irregularities and corrupt links (including international ones) in local government bodies in connection with foreign and domestic capital. They indicated that individuals and legal entities that purchased land had a prior knowledge of development plans of towns or that they had corrupted officials with the purpose of changing the status of the land they had purchased. For example, foreign-owned petrol stations and supermarkets are built on land that previously was planned for housing.

Police intelligence indicates that many forms of seemingly 'small' corruption have become common in the functioning of various institutions and public services: from 'buying' driving license tests to obtaining false sick-leave certificates, falsified results of professional examination (for example medical checks), 'arranged' public tenders for investments and public services (repairs, removal of litter, lawn maintenance, renting of premises) and others.

5.3. Money Laundering

Much as other types of criminal activities, money laundering was virtually an unknown phenomenon in Poland at the beginning of the 1990s. The reason is that under the socialist economic system, individuals had practically no opportunity to undertake this kind of action. The state monopoly in the banking system and economic market as well as the very high effectiveness of the tax and treasury apparatus led to the almost paradoxical situation that in the socialist regime the state was the only actor capable of laundering 'dirty money'. In the extremely rare instances where a citizen committed such an act, he or she was apprehended and quickly brought to justice.

A completely new situation developed at the end of the 1980s, which turned out to be very advantageous for both Polish nationals and foreigners having 'dirty money'. At that time the liberalisation of foreign currency laws led to the establishment of foreign currency exchange units in 1989. Since then, it has been possible to channel income derived from illegal sources through the exchange units, followed by depositing the money in foreign currency bank accounts, from which it can be transferred abroad without any problem, or used for any legal domestic activity. Additionally, a restructuring of political and economic agencies began, which was coupled with the process of privatisation. Money laundering thus became the pathological by-product of the process (Pływaczewski, 1993: 29 f). Lastly, the financial sector has been growing and the number of services rendered

has been increasing, which makes it difficult for less experienced members of the law enforcement agencies and for bank officials themselves, to individually identify and detect unusual or suspicious transactions. Banks and other financial institutions may therefore be (also unknowingly) abused for the purpose of transferring or depositing money derived from criminal activity (Pływaczewski, 1996: 113; Wójcik, 2001).

It is very difficult to say at what scale money laundering takes place in Poland. Describing the magnitude of the phenomenon is especially difficult; in this regard one can only rely on estimated data. For instance, according to the Financial Action Task Force on Money Laundering (FATF) as much as USD 3 billion may be laundered in Poland annually, and according to Transparency International between USD 2.5 and 3 billion annually (Ministerstwo Finansów, 2003: 3).

Police data indicate that dirty money is laundered in Polish banks, foreign currency exchange units, restaurants and privately owned commercial companies. In almost every city one can find restaurants and cafes that, despite small numbers of customers, report disproportionately high revenues to the tax office. The kind of money most often laundered is derived from drug trafficking and drug dealing. It is not possible to give estimates about the amount of various types of criminal activity in Poland, organised or not, that generate the need to launder money.

According to the predictions contained in a police report on the current state and future situation of crime in Poland, organised criminal groups will invest their financial means in legal ventures and by doing that, they will gradually come to dominate (as they have in Western countries) parts of the entertainment industry, the real estate business, the construction industry, the stock markets, insurance companies and the banking sector. The most significant dangers are associated with the uncontrolled opening of the Polish financial market, and with associations between the underground economy and the world of business and politics. Also the insurance industry is an excellent way to launder money for organised criminal groups, as well as being a very good place for quickly multiplying their laundered profits, which came originally from illegal sources (Pływaczewski, 2000b: 71).

6. Conclusions and Future Trends

Currently, given the research and information we have about organised crime one can determine that organised crime groups mainly engage in the following activities:

- establishing close ties with the most powerful criminal groups in the world, especially in the areas of the production, smuggling and sale of drugs, as well as large-scale smuggling of weapons, explosives, cars and other commodities;

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- laundering dirty money, eventually through the establishment of bogus companies, investing illegally derived profit in legal business, like currency-exchange units, pawn shops, escort services, construction companies, real estate, securities markets, and depositing financial means in banks and insurance companies;
- controlling some areas of the economy and sections of the entertainment industry using all manner of intimidatory techniques, and so forcing individuals to implement the goals and strategies defined by criminal groups;
- establishing special groups protecting the interests of criminal organisations, with the goal of minimising the criminal responsibility of their members through informal financial assistance and hiring (permanently or temporarily) of attorneys, physicians, or state officials, who – by consulting services or direct participation – provide legal protection to the criminal group as a whole, or its leaders;
- using explosives for shows of force and intimidation, for creating fear and pressuring members of specific professional groups e.g. customs officials, police officers, judges, public prosecutors, and physical elimination of people who are detrimental to the interests of criminal groups, and for elimination of ‘troublesome’ witnesses;
- having ties with representatives of the world of politics and state administration; leaders of criminal groups, especially those active in the legitimate economy, are successful in reaching senior officials and politicians with the goal of obtaining favourable decisions in return for rewards of all kinds: money, participation in profit, etc. (see Pływaczewski and Waltoś, 1998: 155-8).

An assessment of the threat coming from organised crime in Poland over the next years is obviously linked with the general direction, the scope and the pace of social and economic transformations in the country. Further development of crime is expected to correspond with trends taking place in countries with established democratic systems. It is also predicted that changes in the trends and characteristic traits of crime will not be drastic, which hopefully means that they will probably not be extremely dangerous.

Unfortunately, we cannot be optimistic in regard to forecasting the future development of organised crime in Poland. New negative phenomena in this area are to be expected. The number of usual violent crimes will gradually decline, but really serious acts resulting from aggressive and cruel behaviour by perpetrators will increase. The division of crime into violent crime and property crime will increasingly lose importance in the area of organised crime as a result of the interaction between the two types of crime as well as of the increasing diversification

of criminal methods. Having said this, it is important to remember that economic crime, money laundering, tax offences, and crimes in relation to laws governing the banking system and the securities industry will continue to be a serious threat to the legal order in the country.

It is especially troublesome to realise that the process of infiltration of various walks of economic life by organised criminal groups will continue. This is a result of, among other things, the fact that the legal infrastructure is not catching up with the process of economic change. The desire of the criminal world to take charge of some areas of the economy will be stronger, as well as the desire to invest illegal profit in the economy. Predictions regarding drug-related crime are also negative because this type of crime and the drug consumption and addiction that goes with it will continue to rise as well. Domestically produced drugs, especially synthetic ones, will become even more relevant. Poland's integration in the international economic markets and the increased freedom of movement resulting from Poland's membership in the European Union will also foster the rise of transnational crime (Hołyst, 1999: 349 f).

With Poland's admission to the European Union in May 2004, its eastern borders have become the border of the Union and this fact will undoubtedly foster cross-border crime in the region neighbouring the former USSR countries. Such crimes will be committed by highly organised smuggling groups operating on the eastern border. Having connections with a plurality of other crime actors on both sides of the border and disposing of enormous funds, these groups make use of perfectly forged documents or transit visas gained under false pretences from consular offices of the former Soviet countries, to organise, for instance, the smuggling of individuals and groups in the European Union.

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Illegal Markets and Organised Crime in Switzerland: A Critical Assessment

Claudio Besozzi

1. Introduction

This paper provides a critical assessment of organised crime in Switzerland. The first section reconstructs the emergence of the concept in the Swiss public discourse, critically summarises the public and academic debate on organised crime and assesses the existing research and the accessible government data. In the second section a general overview of organised crime patterns in Switzerland is provided. The third section focuses on illegal markets, whereas the fourth section analyses the infiltration of organised crime in the legitimate economy. Some concluding remarks follow.

2. Organised Crime: Relevance and Research

2.1. The Emergence and Political Significance of the Concept

Twenty years ago, Marshall Clinard described Switzerland as a country ‘with little crime’ (Clinard, 1978). Although the American criminologist may have underestimated the global amount of criminal offences, as suggested by Fleming Balwig,¹ this does not mean that he had missed the point. There are as a matter of fact, few serious crimes in Switzerland and in everyday life the fear of crime does not exert a noticeable influence on the routines and behaviour of law-abiding citizens. Although some representatives of the government, as well as some criminologists,² try to dramatise feelings of insecurity in order to legitimise claims for a tough criminal policy.

¹ Looking for the hidden reality of crime in Switzerland, Fleming Balwig (1988) suggested the Swiss criminal statistics underestimate the level of criminality in order to preserve the image of a place where people can make a living without being victimised.

² See Ziegler (1990, 1998).

Insecurity arises not so much from the subjective perception of rising criminality rates, as from the social changes of post-modern society destabilising – in Switzerland as in other countries – routines of everyday life and a taken-for-granted reality. Globalisation, migration, the reshaping of labour markets as a consequence of both technological innovations and the implementation of neo-liberal ‘laissez-faire’ policies set other priorities and emphasise other risks. The threat of being victim of a serious crime is superseded by the fear of losing employment. In spite of such a shift in the perception of sources of risk, criminality continues to play a role in the cognitive management of feelings of insecurity, and as a screen for projecting diffuse fears and uncertainties about the future. This happens for example when migrants from foreign cultures seeking a decent living in Switzerland or shelter from political persecution are held responsible for all sorts of offences.

The association of ‘alien’ with ‘criminal’ helps us also to understand the circumstances under which organised crime became an issue in Switzerland. As disclosed by the analysis of myths rooted in the history of western Europe, the conspiratorial connotation of concepts like ‘organised crime’ or ‘mafia’ points to the responsibility of players acting from the outside (Kuschej and Pilgram 1998; Pilgram, 2001; Busch, 2001; Cesoni, 2001). It is also hardly surprising when, since the issue emerged, public debate referred to criminal organisations in foreign countries. Stereotypical images of the Sicilian mafia and, to a lesser extent, of the Italian-American mobs were the blueprints shaping both risk scenarios and actions to be taken against the worldwide threat of the ‘Octopus’ (Besozzi, 2002a). From this point every crime with payoffs – from drug trafficking to alien smuggling, from the illegal arms trade to the counterfeiting of credit cards – was seen as empirical proof of an overwhelming epidemic spreading quickly across Europe and threatening the immaculate purity of the Swiss way of life.

From this vantage point, the construction of organised crime as a political topic appears to bear only a tiny relationship to the Swiss reality. In the political and public discourse, organised crime is mostly a rhetorical glaze aiming to attribute a shared meaning to a whole range of events and occurrences threatening to defile a given cultural pattern (Douglas, 1966). As a discursive rite of purification, the issue of organised crime contributes also paradoxically to maintaining a complacent self-image of the Swiss society. If mafia-like organisations come to Switzerland for money laundering, they do so because of the excellence of the financial services the country has to offer.

Organised crime is without doubt an issue in Switzerland, but this does not mean that it is set at the top of the political agenda or bears paramount importance in public opinion and the media. Among the matters addressed by the Swiss Parliament, organised crime is a scarcely debated topic. Personal intervention by members of Parliament relate to specific criminal offences (money laundering, violent crimes) or particular illegal markets (drug trafficking, child pornography), never, or only seldom, to the all-encompassing issue of organised crime. The federal police also

seem to pay little attention to the topic. In the security reports published annually the coverage of organised crime is very narrow, and generally not more than a few pages.³ Newspapers, broadcasting and TV stations allot only a limited space to crime in general (Balvig, 1988) and to organised crime in particular. An analysis of the news reported in the *Neue Zürcher Zeitung*, the leading Swiss newspaper, revealed that most reports referred to measures implemented by the federal government in order to take action against the threat of organised crime, or about the ratification of bilateral agreements and international treaties. This leads us to think that in Switzerland the issue of organised crime is nurtured and maintained in the public awareness not so much through the activities of criminal organisations, as through the relentless action taken by the authorities in charge of penal law and prosecution.

2.2. The Public, Academic and Professional Debate

It is important here to understand that a thorough, genuine debate about organised crime and its whereabouts has not taken place in Switzerland. In the political arena, the ivory tower of academia, as well as in public opinion, there is an ongoing consensus about the nature of organised crime and the need to fight against this modern plague. From the right to the left of the political spectrum, people share the belief that organised crime is a global threat to social and economic order: an extraordinary risk demanding extraordinary measures. This was a topic allowing both left-wing and right-wing representatives to legitimise their own ideologies, world views and political strategies. The emergence of organised crime as a public issue offered an opportunity to the political left to blame someone for the entanglement of the political and economic powers in shady businesses (Ziegler, 1990, 1993, 1998; Auchlin and Garbely, 1990, Leuthardt, 1994). On the other side of the political spectrum, conservatives took the chance of justifying law-and-order policies and claims for tougher regulations against the flow of migrants and refugees (Graf, 1993). Such a consensus left only a tiny gap for alternative interpretations and also for a debate on this issue. Only few voices (Arzt, 1993, 1998, 2002; Vest, 1994) dared to give a critical assessment of the real threat generated by organised crime and of the very nature of mafia-like criminal organisations. Not much notice was taken of criminological research findings from abroad (Reuter, 1986, 1996; Ruggiero, 1996; Hess, 1986; Naylor, 1996; Gambetta, 1993) nor of the results of the National Research Programme on 'Violence and Organised Crime', results that, as we will see later in this contribution, challenge many ideas related to organised crime that have been taken for granted.⁴

³ This is also true for reports released before 11 September 2001.

⁴ See 'Gewalt: Jagt die Justiz ein Phantom?' (*Neue Zürcher Zeitung*, 27 October 2002).

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The concept of 'organised crime' has appeared in political discourse since 1974, when the Swiss government ratified an agreement with the United States for mutual legal assistance in the prosecution of crimes related to criminal organisations. But it became an issue with political relevance at the beginning of the 1980s when the Swiss citizens involved in the 'Pizza Connection' were brought to trial. The prosecution of the owner of a financial firm in Lugano, for money laundering and participation in drug trafficking revealed another image of Switzerland: 'The storybook land of cuckoo clocks, snow-capped peaks, and chocolate was a nexus of the mafia's money-drug network' (Blumenthal, 1988: 118).⁵ A few years later another affair shook public opinion and substantiated the suspicion of major involvement of the Swiss financial sector in money-laundering. The police found out that the husband of the former head of the Justice Department, Elisabeth Kopp, had a share in the financial company Shakarchi Trading AG, which was headed by a Turkish banker with connections to drug trafficking organisations (Trepp, 1996). The report published by the federal commission investigating the Kopp affair appears as the turning point in Swiss security politics. Organised crime eventually took the place of the extremist left-wing movements and their supporters as 'public enemy number one' (Busch, 2001).

These events contributed to making organised crime an issue in Swiss policy, but also shaping once and for all both the (mis)conceptions about the nature of organised crime and the (mis)perception of the threats generated by criminal organisations. Since then, the Swiss authorities have fostered a scenario casting organised crime as a danger coming from outside and not yet contaminating the immaculateness of Swiss society. Nevertheless, they concede⁶ the Swiss banking system may be vulnerable for being misused by mafia-like organisations as a tool for money laundering. In a draft for the revision of the Swiss Penal Code introducing money laundering as an offence, the threat is described as follows:

Money laundering is a phenomenon highly intertwined with organised crime. Criminal organisations around the world use the financial services of offshore havens to re-invest their profits quickly and quietly, concealing their illegal provenance. The Swiss financial sector must be aware of the risk of being misused by transnational criminal organisations looking for

⁵ See Trepp (1996) for an account of the 'Pizza Connection' from a Swiss vantage point.

⁶ Cf. the security reports issued annually by the Federal Office of Justice and by the Federal Office of Police. See also Pieth and Freiburghaus (1993), Müller (1993) and Krauskopf (1991).

countries with a free capital market, a high efficiency and political as well as economic stability.⁷

Such a situation is threatening insofar as, in the opinion of the authorities ‘cases of money laundering are able to cause a long lasting damage to the positive image of Switzerland and of its financial sector’ (ibid.: 7). The threat generated by letting dirty money infiltrate the main stream economy goes a step further, as outlined in the draft for the ratification of Convention No. 141 on money laundering.⁸ Investments of illegal profits through the Swiss banking system threatens not only the image of our country, but also the very foundation of a democratic society:

During the last years organised crime has risen qualitatively and quantitatively. The cash flow of criminal organisations involved in drug trafficking amounts to several hundred billion Swiss francs every year. We have to be aware that under such circumstances the consequences of the activities of criminal organisations go far beyond the direct damages caused by the crimes committed. The huge amounts of dirty money entering the legal economy may create the conditions fostering the development of an underground economy and also threatening the power of democratic political systems (ibid.: 3).

Although no one knew exactly the nature and whereabouts of this supposed overwhelming danger, political action was needed: to polish the dirt from the image and – last but not least – to satisfy the rising pressure exerted on the Swiss government by the international community. Legal measures were taken aiming to control the financial sector more efficiently; penalising the membership and support of a criminal organisation; increased funding and better trained staff were allocated to the federal prosecutor and to the federal police; operative strategies were implemented (Busch, 2001; Roulet, 1997). The Swiss ‘war on organised crime’ was lacking a well-defined target from the beginning. It is hardly surprising that the measures taken against a shadowy enemy located nowhere and everywhere appear now as a ‘shot in the dark’, eventually misused to pursue ‘normal’ street criminality (Busch, 2001; Cesoni, 2001; Estermann, 2002).⁹

⁷ Botschaft über die Aenderung des Schweizerischen Strafgesetzbuches und des Militärstrafgesetzes (Revision des Einziehungsrechts, Strafbarkeit der kriminellen Organisation, Melderecht des Financiers) of 30 June 1993.

⁸ Botschaft über die Ratifikation des Übereinkommens Nr. 141 des Europarates über Geldwäscherei of 19 August 1992.

⁹ A former head of the German Federal Police (Bundeskriminalamt) said: ‘Visible organised crime is not organised crime’.

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This may be related to the fact that the issue of organised crime, as stated above, did not arise in Switzerland from endogenous factors i.e. from the awareness of criminal organisations acting inside the country. As representatives of the Federal police pointed out (Sobotkiewicz and Klopstein, 2003), the topic came onto the political agenda under international pressure, exerted particularly by the United States government. The fall of the Berlin wall and the breakdown of the communist empire may also have played a major role in focusing the attention of the political authorities on a new enemy. Lastly, the globalisation of the world economy and the expropriation of the nation-state (Bauman, 1998), seem to have contributed to the spread of globalising representations of organised criminality, overlooking the fact that organised crime is primarily a local phenomenon (Becchi and Rey, 1994).

Organised crime as defined in the Swiss Penal Code may be seen as a generalisation of local models, such as the Sicilian mafia and Italian-American families emerging from the Prohibition. Emphasising criteria such as the '*omertà*', the competence to adapt to changing situations, the hierarchical structure, the transnational network, the rationality and so on, Swiss penal law took over uncritically an image of organised crime made popular by Cressey's *Theft of the Nation* and by the Kefauver Committee. As Maria Luisa Cesoni (2001) suggests, Article 260ter of the Swiss Penal Code links together two different views of organised crime: the conspiracy theory (the Sicilian model) and the theory of organised crime as a firm (the American model), applying the first to criminal organisations from abroad and the second to indigenous forms of market-oriented criminality (*Basis-Kriminalität*). It is also worth mentioning that the newly released official reports disclose an evident shift from the former to the latter model. The concept of organised crime is becoming more and more synonymous with illegal entrepreneurship or more generally with the organisation of market-oriented criminality.

2.3. Existing Research

Empirical research on organised crime as well as criminological analysis of the structure, importance and networking of criminal organisations operational in Switzerland did not occur until 1993, when the Swiss National Research Foundation began a National Research Programme on 'Violence and Organised Crime' (NFP 40). Although some research was carried out before 1993 through interviews with police representatives, analyses of newspaper articles and the small amount of available statistical data (Pieth and Freiburghaus, 1993) the information that was available was not substantial enough to give more than a sketchy and incomplete description of the situation. Also there was some research on forms of criminality (i.e. drug trafficking, violence) related to the activities of criminal organisations, but overall a thorough systematic analysis of the manifold aspects of organised crime in Switzerland is sufficiently lacking.

Empirical research on local drug markets was carried out by Norman Braun and Andreas Diekmann (1994) and also by Manuel Eisner (1994). Both studies focus more on the situation of drug consumers and on drug dealing needed to finance drug consumption than on the structure of the supply or the presence of criminal organisations. There is also little concern with organised crime in two studies on trafficking in human beings edited by Caritas Switzerland (Caritas Schweiz, 1992; Caroni, 1996), which present some statistical data and an analysis of some legal issues related to the status of illegal migrants. Many scientific contributions in the field focus on penal law responses to money laundering as a main issue dealing with illegal profits laundered through Swiss banking institutions. On the basis of case studies (Bernasconi, 1988) or of penal files (Ackermann, 1992; Pieth, 1992) different strategies aimed at legalising criminal assets are described and containment and control measures proposed. There are also a few attempts to grasp the behaviour of the staff of financial institutions when confronted with dubious transactions on the capital market (Müller, 1992). A book by Gian Trepp (1996) offers a thoroughly accurate description of some cases of money laundering with the active participation of some Swiss banks and political representatives.

A commission set up by the Federal Department of Justice and Police issued a report in 1996 on corruption in Switzerland providing further evidence of the lack of useful data on this topic. Also worth mentioning is a report on trafficking in human beings released by the same department (2001), as well as a few surveys on racketeering in the restaurant business (Achermann, 1999), on money laundering (Pieth and Estermann, 2000), on the sexual exploitation of children (Studer and Peter, 1999), on prostitution (Bianchi, 2000) and on illegal domestic workers (Bartal and Hafner, 2000).

Eisner (1993a, 1993c, 1994) carried out some research on violence, particularly on the role of violent behaviour related to local drug markets. Eisner's work also focused on the relationship between prohibition policies and drug-related violence. There are no attempts in these studies to describe the structure of local drug markets or to answer questions about the links between rising violence rates and the presence of criminal organisations. The issue of organised crime is also not raised in a further study by Eisner dealing with the consequences of modernisation and urban crisis on violent criminality (Eisner, 1997).

The research projects completed within the framework of the National Research Programme 'Violence and Organised Crime' (Pieth et al., 2002) were not able to fill the gap completely. They succeeded in challenging ongoing beliefs about and definitions of organised crime, as well as taken-for-granted ideas about criminal organisations threatening society and the mainstream economy. But questions of paramount importance such as the phenomenology of criminal organisations or the structure of supply of illegal goods and services remain unanswered. The results of this research will be summarised in the following sections of this article.

2.4. Accessible Data

The Federal Office for Statistics releases statistical data about convictions registered in Swiss Criminal Records, including convictions for belonging to a criminal organisation and sustaining their activities (Art. 260ter Swiss Penal Code) and money laundering. Because convictions on the basis of Article 260ter are a rare occurrence, the limits of a statistical analysis are extremely narrow. It is also not possible to link the convictions to the activities of a particular organised crime group or to establish the amount and structure of networking between the groups. No further insight is gained into organised crime with data from the drug statistics, released by the Federal Office of Police, summarising the number of offenders charged with consumption, trafficking or smuggling of illegal drugs and the amount of drugs seized by the police. There are no indications allowing us to tie the drug offences documented in the statistics with charges against Article 260ter. Equally limiting are the police statistics released by the Federal Office of Police. The data provide an overview of all the penal law offences recorded by the police, but the data structure is not differentiated enough to allow a thorough statistical analysis of criminal organisations and their fields of activity (Estermann, 2002: 18). Some data that are more useful are the police statistics published by the Canton Zurich (KRISTA). They present not only information about the offences recorded by the police, but also about suspected links to criminal organisations. Although the data gathered by the Zurich City Police refer only to the offences committed in their own jurisdiction, the figures may be held as representative of the situation in Switzerland, as 50 per cent of the offences registered in the whole country are perpetrated in the Canton of Zurich.

Some qualitative information on organised crime can also be gathered from the reports released periodically by the Federal Office of Police. These reports aim to give an overview of the illegal businesses connected to organised crime in Switzerland. For research purposes such overviews are of some relevance as they provide insight into the representations of organised crime shaping the police response to the underground economy.

The Annual Report¹⁰ of the Money Laundering Reporting Office Switzerland (MROS)¹¹ includes detailed statistical figures on offences under Article 305bis or

¹⁰ Available in English.

¹¹ MROS, which is part of the Federal Office for Police Matters, is vested with the function of a relay and a filter between the financial intermediary and the prosecuting authorities. During examination of the reports it receives, MROS is to separate those cases in which no conclusion can be drawn as to the criminal origin of the assets, an offence under Articles 305bis or 305ter of the Penal Code (money laundering offences), or a connection of the monetary assets to organised crime. If the suspicion is substantiated, the cases are

305^{ter} of the Swiss Penal Code (money-laundering offences) reported and also on offences related to suspicion of money laundering and supposed links to criminal organisations. The case descriptions included in the Annual Report provide helpful information for a qualitative assessment of the nature of money laundering in Switzerland.

Reliable nationwide data on trafficking in human beings and illegal migration are not available, but there is some relevant information about the victims of human trafficking in data released by the Federal Office of Statistics, the *Opferhilfe-Statistik (Statistics on Support for Victims of Crime)*.¹² Relevant data are also issued by the Swiss Federal Alien Office on the number of ‘dancer’s visas’ being granted annually. But unfortunately neither source offers a link to offences perpetrated by criminal organisations. The same can be said about the statistics on illegal migrants released annually by the Swiss Border Guard (Grenzwachtkorps, GWK). A working group set up by the Swiss Government issued a report giving an overview of trafficking and smuggling of human beings and on the legal aspects of the phenomenon (Bundesamt für Justiz, 2001).

This overview of the sources available for the analysis of organised crime and related phenomena shows that the empirical basis for criminological analysis is very narrow in Switzerland. Scholars aiming to go beyond the little available data have to gather further information on their own by going through penal and police files or relevant newspaper articles. There are several databases implemented by the federal police and prosecution authorities, but these are not set up for statistical purposes. Issues of confidentiality may also considerably limit access to information gathered by intelligence units. Although the law enforcement institutions are in general cooperative, negotiations for accessing further information may be very time consuming. Despite ongoing endeavours to centralise the fight against organised crime at the federal level, coordination between the central government and the cantonal agencies, and also the transmission of relevant information, is not without problems. Sometimes material access to the gathered information or to official files can be quite difficult as it is not computerised (Zanolini, 2002).

forwarded to the cantonal authorities for prosecution. As a specialised office, MROS will be capable of distinguishing cases of suspicion of money laundering from those which are lacking in substance, thus conducting an efficient preliminary examination for the prosecuting authorities. As a centralised special authority, it will also be possible for it to establish connections among the various reports. Finally, it should also be in a position to acquire a general view of the methods and the evolution in the field of money laundering, to analyse situations of risk, and to furnish reliable information to financial intermediaries, supervisory bodies and prosecuting authorities.

¹² The statistics on support for victims of crime since 2000 are available on the web site of the Federal Office of Statistics <<http://www.statistik.admin.ch>>.

3. Organised Crime in Switzerland: An Overview

In Switzerland the concept of ‘organised crime’ points to an impending risk situation, not to an actual problem.

The assessment of the situation has scarcely changed over time. As with the organised crime report by Mark Pieth and Dieter Freiburghaus (1993), the security report recently issued by the Federal Office of Police acknowledges that there is no evidence of criminal organisations actually permeating society and the mainstream economy as a whole. Organised crime is seen as a risk only insofar as criminal groups from abroad could take advantage of Swiss financial institutions for laundering illegal profits and thus harm their image (Bundesamt für Polizei, 2001: 52). Besides considerations aiming to take the drama out of the threat, there are also assessments presenting organised crime as having already stretched its tentacles into the core of the Swiss society, insofar as criminal groups from abroad (ethnic groups from the former Yugoslavia, the Russian mafia) supposedly play a major role in several illegal markets.

The results of the National Research Programme NFP 40 both substantiate and challenge this view of the situation.¹³ The analysis of some illegal markets and of behaviour patterns traditionally tied to criminal organisations (drug trafficking, trafficking in human beings, corruption, violence, racketeering) did not disclose further evidence for criminal groups or mafia-like organisations acting in Switzerland. The research also could not detect any proof sustaining the hypothesis that criminal groups from abroad dominate the illegal markets on a national scale. The data gathered emphasises in particular that Article 260ter – a legal measure set up to improve efficiency in the fight against organised crime – is barely applied. Since coming into force, only very few charges have been brought under this article of the Swiss Penal Code and, as Josef Estermann (2002) suggests, there is some evidence for the courts having misused it.¹⁴ This is not to say that the lack of practical relevance mentioned above is enough to discard the concern with organised crime. But it corroborates the opinion that the law is based on misconceptions of the very nature of organised crime (Besozzi, 2002).

The research findings also question the belief that Swiss financial institutions are being seriously threatened by money laundering. It is true that an unknown amount of dirty money is attracted by the secrecy of the Swiss banking system. But is dirty money seeking legalisation necessarily linked with the illegal profits of criminal organisations? The data released by the MROS casts serious doubt on

¹³ See Pieth et al. (2002) for a thorough presentation of the results.

¹⁴ Between 1944 and 2002, only 21 persons were convicted under Article 260ter of the Swiss Penal Code.

Table 1. Convictions under Article 260ter Swiss Penal Code

	1995	1996	1997	1998	1999	2000	Total
Sentenced persons (BFS)	1	1	5	0	5	0	12
Sentenced persons (BAP)	0	0	4	0	3	1	8
Convictions (BAP)	0	0	3	0	1	1	5
Pending cases	0	0	0	0	1	1	2

Sources: Federal Office of Statistics (BFS) and Federal Office of Police (BAP)

this widespread opinion. The money laundering offences reported to the MROS refer mainly to offences such as fraud, embezzlement or (since 11 September 2001) terrorism. In only 2 per cent of the cases does money laundering appear to be related to organised crime business. It is possible, as advanced by Wolfgang Hafner and Gian Trepp (1999), that the measures taken by the Swiss government in order to control shady financial transactions are too ‘cash-oriented’ and not aware of up-to-date laundering strategies such as the trade in derivatives. Without denying that this hypothesis may truly explain the low proportion of money laundering reports related to organised crime, alternative explanations have to be taken into account, i.e. that the amount of illegal profits entering the mainstream economy and the rationality of illegal entrepreneurs may be systematically overstated (Besozzi, 1999, 2001a, 2001b).

The lack of empirical evidence for the presence of criminal organisations of any importance in Switzerland will not bother those political representatives considering the low visibility of organised crime as ultimate proof of its existence and of the threat it represents. Heiner Busch (2001) emphasises that organised crime is a social construction based primarily on the ambiguity of its definition. Such a construction points to a dark area of criminal behaviour that cannot be properly grasped, opening the door to ideologically flawed speculation and myth (Busch, 2001: 3). This seems not to be the right path for a better understanding of the phenomena linked to organised crime. In our approach, we will track the visible consequences of these phenomena before asking for the hidden part of the iceberg. The reality concealed by the concept of ‘organised crime’ may be dusky and nebulous, but illegal markets are a matter of fact. In Switzerland, as elsewhere,

there is a supply and also a demand for illegal goods and services, a phenomenon with roots reaching far back into the history of the country as a transit point in the trade from north to south Europe.¹⁵

4. Illegal Markets

4.1. Drug Markets: Size and Structure

Estermann (1997) estimates the annual turnover for drug trafficking in Switzerland at up to CHF 2.3 billion (€ 1.3 billion), including one billion for the trade in heroin. The global estimates released by the Federal Office of Police are slightly higher (CHF 3 billion, € 2 billion) because they consider not only heroin, cocaine and cannabis (as Estermann did) but also the trade in synthetic drugs. The estimated worth of the trade amounts to CHF 1 billion (€ 670 million) for heroin and cocaine, one billion for cannabis and one billion for synthetic drugs. These figures may possibly over-estimate the amount of the turnover, for accurate and well-documented assessments, as carried out by Braun et al. (2001) for the heroin market, yield results at a clearly lower level. Based on a consumer-centred approach, the study conducted by Braun et al. estimates the annual turnover of the heroin trade, at between CHF 0.4 and 0.6 billion (€ 267 and 400 million).¹⁶

Estimates are available on the demand for illicit narcotic drugs. The results of the health survey conducted by the Federal Office of Statistics in 1997 suggest that about 30,000 people occasionally or regularly use heroin, 100,000 people are addicted to or abuse cocaine, whereas cannabis products are used by 700,000 people. We know next to nothing about the number of drug suppliers at wholesale or retail level. A rough approximation may be provided by the figures of the drug statistics, and particularly by the number of people charged with drug trafficking and/or drug smuggling. The data for 2000 show 3021 people being charged with trafficking and 215 with smuggling. In the same year 2310 persons were convicted of drug trafficking and 435 of drug smuggling (Estermann 2001).

¹⁵ See Mandelli and Zoia (1998) and Polli (1989) on the history of smuggling between Switzerland and Italy; Arnold (1994) on child trafficking in the nineteenth century and Thomas (1997) on the participation of Switzerland in the transatlantic slave trade.

¹⁶ The estimate is based on an annual consumption of 4-6 tons and an average price of CHF 100 (€ 67) per gram.

Table 2. Convictions on drug trafficking and smuggling

	1995	1996	1997	1998	1999	2000	2001	2002
Drug consumption only	2741	3035	3057	3194	2868	3241	2935	3360
Trafficking only	1746	1793	2006	2353	2396	2551	2494	2607
Miscellaneous	3286	3147	3338	2568	2302	2990	2625	2376

Source: Federal Office of Statistics

Braun et al. (2001) carried out empirical research on some drug markets, especially in Basle, Zurich and Bern. Of concern were mainly questions about the networking of demand and supply, the relationship between demand and drug price, price elasticity, the socio-economic determinants of consumer behaviour and the consequences of tougher law enforcement policies on the market behaviour of consumers.

The findings suggest that cooperation between suppliers and consumers take place on the basis of enduring business relationships and mutual trust. To minimise the risks of ‘rip off’, fraud or arrest, people buy drugs from dealers they are acquainted with and provide drugs to consumers they know. Avoiding risks means disposing of social capital. But there is not complete networking on the drug market: sometimes drug deals take place anonymously between buyers and sellers that are not acquainted. Transactions on a cash basis are the rule, deals on commission occur only when consumer-dealers enjoy the trust of a given supplier.

The research conducted by Braun et al. provides substantial results on the price elasticity of the demand for illicit drugs, i.e. on the relationship between the price level and the amount of consumed or purchased drugs. Price elasticity measures the response of the demand to a change in price. Braun et al. found that the price of cocaine exerts a significant influence upon demand, also upon consumption and purchase.¹⁴ They also observed that the demand for heroin is elastic for the amount of purchases, but inelastic for the amount of consumption. A fall in the price of heroin will also produce a significant rise in the purchased amount without influencing

¹⁷ The observed elasticity of -1.62 means that a price reduction of one per cent causes a 1.62 per cent rise in the amount purchased.

the consumption. When the socio-economic factors shaping the demand are taken into account, the influence of the price decreases, but the trends and differences in the price elasticity of the demand for heroin and cocaine do not vanish.

Also worth mentioning are the findings about the relationship between the consumption of illegal drugs and the strength of the social response. Whilst there is no significant correlation between the amount of heroin or cocaine purchased and the frequency of indictments brought by the police, it seems that a tougher intervention by law enforcement agencies prompts a slight rise in consumption. This result is corroborated by a second survey also conducted by Braun et al. on the same issue, a quasi-experimental design carried out on the occasion of the 'Action Citro'. As the Bern Police took action against the drug dealers, the researchers found out that the strengthening of police control did not have any influence on the purchase price for the street dealers, on the retail price or on the quality of the traded substances, the amount of purchases, the consumption, the market transparency and the number of dealers. The 'Action Citro' missed the target (a rise in prices and reduction in consumption) completely, because the players in the drug market were able to adapt to the new situation. It succeeded only in significantly reducing the amount of violence related to this specific market.

The research of Jochen Nett (2000) on the local drug markets in Zurich, Basle and Bern encompassed a standardised survey conducted among the participants of the 'open drug scene', the analysis of statistical data and of police and court files, open interviews with experts and with some drug dealers. The analysis was aimed at a better understanding of the interactions between drug policy and the adaptation strategies displayed by the players in the drug market. Of particular interest were the conditions allowing the market participants to develop cooperative relationships despite the twofold risk of being arrested and of being 'ripped off'.

There are significant differences in the prices on the drug markets observed by Nett. The differences are quite important for the purchase of small amounts, negligible for large quantities. For example, the average price for 0.2 grams heroin is CHF 100 (€ 67) higher in Basle than on the drug market in Zurich. The price differences are even larger for cocaine. While the purchase of 0.2 grams cocaine costs in Zurich on average CHF 225 (€ 150), the consumer in Basle has to pay CHF 380 (€ 253) for the same amount. Such a price difference does not seem to increase 'drug tourism' from local markets with lower retail prices to those with higher prices. It seems that the local drug markets are not in competition. There are only a few consumers travelling abroad for the sake of lower drug prices, since enduring relationships with the local suppliers are of paramount importance to them. The 'sluggishness' of the demand also explains the observed differences in the profit margins between and within the local drug markets. The variance of the profits earned at retail level on the heroin market are very striking. Depending on the size of the deal, the profits may vary from zero to 300 per cent in Bern, from zero to 200 per cent in Zurich and from zero to 100 per cent in Basle. The competi-

tion within the local drug markets seems to be very strong, for the consumer has the choice of a relatively large number of suppliers: from 3 to 7 by those who are merely users, and from 4 to 10 by user-dealers. But the widespread networking of the market participants sets some limits on competition and also on the consequences of competition on prices and profit levels.

Considering the problems of carrying out economic transactions in a situation of illegality, i.e. of business being carried out without the opportunity of recourse to courts for the settlement of disputes, the drug market seems to offer a relatively high level of mutual trust. Only 10 per cent of the market participants interviewed by Nett had been victimised by theft or robbery once or more in the twelve months preceding the survey. Drug suppliers and consumers are able to build up trusting business relationships in order to make transactions safe. Although threats or violence may occasionally be helpful to enforce agreements, they do not play a major role on the Swiss drug market. 75 per cent of the interviewed people denied having been the target of threats or violent behaviour. Nett did not find any evidence of protection services carried out by mafia-like organisations.

4.2. Drug Markets and Organised Crime

The research carried out by of Braun et al. and by Nett was not designed to track criminal organisations doing business on the Swiss drug market. Both describe and analyse mainly the retail trade and give no direct access to the structure of the trade on the middle level or of the wholesale trade. The results allow neither an assessment of the degree of horizontal and vertical integration of the drug market nor an appraisal of the supposed involvement of criminal organisations in the drug trade. Nevertheless, the results bear some relevance for a preliminary exploration of some structural features of the drug market in Switzerland.

Braun et al. suppose that the inelastic demand for heroin and the barely elastic demand for cocaine create opportunities for monopolistic practices, but the data gathered do not support such a hypothesis. Nett asserts also that the drug market may bear the conditions for a monopolistic organisation of the supply, inasmuch as there is no competition between local markets and the retail prices for medium quantities of heroin are approximately the same throughout the whole country. There could be a network of suppliers able to impose drug prices nationwide. The arguments are not very convincing, for both the lack of competition between local markets and uniform drug prices may be interpreted alternatively as evidence for a free market. As we have seen above, the lack of competition between local markets is related to the need for safe transactions and does not impede competition within the markets. The relative uniformity of drug prices may be the outcome of a free market as well as the result of a monopolistic or oligopolistic supply.

As a matter of fact, dealers from the former Yugoslavia seem to play a major role in the supply of drugs to the Swiss market since the 1990s. Does this mean

that Balkan organised crime, as assumed by the Federal Police,¹⁸ rules the drug trade? Nett argues that this is not the case, for a shared ethnic origin does not necessarily mean membership of an ethnic organisation. For example, the dealers from Kosovo see themselves as part of an ethnic community, but they do their business as autonomous entities. Of interest are Nett's further comments on the succession of ethnic groups as main suppliers of the Swiss drug market. He suggests that the members of an ethnic community succeed in maintaining a predominant position on the market as long as they do not make use of the drugs they deal with. As soon as they indulge in taking drugs, they lose the ethnic-based social capital and are out of business. Migrants from Kosovo were supposedly able to enter the Swiss drug market only after the Turkish dealers, until then known as major players on the market, started to use drugs and eventually became addicts.

There is also further evidence supporting the hypothesis that the drug market may not be the turf of mafia-like criminal organisations. The low level of drug related violence, the lack of a private protection business as well as falling drug prices supposes that the Swiss drug market is a relatively open-market and that organised crime is far from being in command of the drug trade. The research conducted by Estermann on the convictions under Article 260*ter* of the Swiss Penal Code corroborate this statement. If between 2000 and 3000 people are convicted for smuggling and trafficking drugs, only very few among them are also prosecuted for being part of a criminal organisation. The statistical data released by the Zurich Police states that only one per cent of the people charged with smuggling and/or trafficking are supposedly doing business for a criminal organisation. A detailed analysis of the charges and convictions under Article 260*ter* reveals business structures that barely fit the model of classic criminal organisations. The qualitative analysis of penal files carried out by Nett upholds similar findings. He suggests that Article 19/2/b of the Drug Act and Article 260*ter* of the Swiss Penal Code, penalising respectively the offences perpetrated by gang members and the membership or support of transnational criminal organisations, failed to hit the intended target. Both measures, Nett argues, are based on conceptions of the patterns of criminal cooperation bearing no ties with the reality of illegal business structures. It follows that under such circumstances the penal measures mentioned above are not applied or misused in the courts.

The research findings reviewed above do not fit at all with the statement released by the law enforcement agencies. The security report and also other documents issued by the Swiss Federal Police emphasise the paramount role played by drug

¹⁸ For a very different view of the situation, see the report issued by the Federal Office of Police on organised crime in the Balkans (Bundesamt für Polizei, 2001).

traffickers coming from abroad: ‘Gangs of alien criminals pull the strings of the trade with heroin and cocaine. In particular, illegal migrants and asylum-seeking persons from the Balkan regions (Albania, Kosovo, Macedonia) have largely taken control of the heroin trade’ (Bundesamt für Polizei, 2002: 59). But the chart displayed in the same report showing the proportion of people charged for drug trafficking by nationality tell us unexpectedly that the highest relative frequencies relate to Swiss nationals. The charges against dealers from the Balkan region represent only 25 per cent of all charges laid by the police. The description of the drug dealers from the Balkan regions as a ‘well-structured, flexible, nationwide organisation’ emanate more from stereotyped images of organised crime than from a thorough analysis of the available information.

4.3. Trafficking in Human Beings and the Sex Industry

Trafficking in human beings is defined from the vantage point of the Swiss penal law as mainly, trafficking in women. Article 195 of the Swiss Penal Code penalises the encouragement of prostitution and protects people, especially women, from being induced to prostitute themselves against their will. Article 196 penalises explicitly the trafficking of human beings, i.e. supplying human beings to a third party for prostitution, with or without the consent of the victim. Other forms of trafficking such as the illegal supply of domestic workers,¹⁹ the recruitment of women for mock marriages or hiring people for work in sweat shops are actually not covered by the penal law. The following considerations refer mainly to the trafficking and smuggling of human beings for sexual exploitation.

In Switzerland as elsewhere the market for sexual services is a prospering industry. The estimated annual turnover amounts to CHF 4 billion (€ 2.6 billion), including CHF 3 billion (€ 2 billion) for the legal and illegal prostitution market.²⁰ According to a survey carried out by the Federal Office of Police there are approximately 14,000 prostitutes working legally or illegally in Switzerland, satisfying the sexual needs of 340,000 customers. Of relevance for the appraisal of the size of the sex market are also the 1,800 women receiving a dancer’s visa. The visa allows the recipient to work in bars and cabarets for up to three months and ‘has become a primary instrument used by traffickers to move women into the country legally’ (Caldwell et al., 1999).

¹⁹ Torres (1996) suggests that some representatives of foreign embassies in Switzerland hire men and women as domestic servants and exploit them as though they were slaves. See also on this topic Bartal und Hafner, 2000.

²⁰ This estimate, provided by Friedrich G. Schneider (see CASH, 13 October 1995), is at best rather unscientific guesswork.

Organised Crime in Europe

Table 3. Illegal migrants caught by the Swiss customs

	1997	1998	1999	2000	2001	2002	2003
Not allowed to enter	102,409	102,196	108,247	109,518	105,734	110,127	101,190
Referred to the police	23,148	29,641	30,970	26,456	26,732	32,290	34,063
Illegal migrants	5,005	12,714	10,489	5,668	4,967	7,405	8,181
False documents	1,322	1,486	1,762	1,684	1,864	1,986	1,934

Source: Swiss Customs Office

It is not possible to say what proportion of migrant women are victims of traffickers and what proportion come to Switzerland on their own to engage in prostitution. The estimates of the number of women being trafficked annually range from 2,200 up to 9,200.²¹ These relatively large numbers are blatantly inconsistent with the figures of the official statistics. During 1997 only 20 people were charged for the trafficking of human beings. Between 1992 and 2002 the statistics recorded a total of only 24 convictions under Article 196 of the Swiss Penal Code. The recently issued statistics on the help for victims of crime mentions just 40 people (out of 14,700 registered victims) being referred to counselling agencies for having been trafficked. The gap between the estimates mentioned above and the statistical data may be due to some extent to the illegal status of the victims and/or to the fear of reprisals. But, as a matter of fact, there are no reliable sources of information allowing us to seriously assess the number of women trafficked to Switzerland. This is also true for the smuggling of aliens into this country. The data released by the Swiss customs authorities may be interpreted as an indicator of the strength of the law enforcement agencies, not of the extent of illegal immigration.

Research on the market for sexual services has been carried out by Rahel Zschokke Longridge (2001), Massimo Sardi and Didier Froidevaux (2001) and by Maritza Le Breton and Ursula Fiechter (2001). The results suggest that the supply of sexual services takes place on an open market. A steady stream of migrants

²¹ This estimate is an extrapolation computed on the basis of the data released by the Commission of the European Communities and by the International Office of Migration.

– especially from eastern Europe – and a rising demand generate competition and falling prices. The analysis of the sex market points also to a rising decentralisation, and diversification of the supply for sexual services offered to the customers in many places and in many forms. Prostitutes sell their bodies not only on the street but also in hotels, bars, night clubs, escort bureaus, massage parlours, saunas or in private tenements. For example, the 1,000 prostitutes working in the Italian-speaking Canton of Ticino offer their services in 37 night clubs, 44 hotel bars, 220 apartments and 5 massage parlours (Zschokke Longridge, 2001).

In spite of rising competition, the sex business has succeeded in maintaining high profit rates. Prostitution seems to be profitable not only to the pimps or the owners of bars and sauna-clubs, but also for people renting apartments and real estate agencies. The economic crisis shaking the hotel business in some parts of Switzerland is eventually cushioned by renting vacant hotel rooms to legal or illegal sex workers. Zschokke Longridge (2001) emphasises that although the women working as prostitutes are undoubtedly financially exploited, the supply of sexual services in Switzerland is in general lucrative for them too, given the high income level in this country. Last but not least, as suggested by Le Breton and Fiechter, the government takes a share of the profits generated by the sex market since the legal working prostitutes pay income taxes and social security. For example, the women receiving a dancer's visa and eventually engaging in prostitution pay about CHF 25 million (€ 16.6 million) annually in income taxes and social security allowances.

The living and working conditions of the migrant sex workers, Le Breton and Fiechter argue, are characterised by a loss of autonomy and a high degree of enforced mobility and adaptation. They make a living in conditions of extreme insecurity, fearing also deportation to their home countries. Mainly women entering and staying illegally in Switzerland are exploited. Debt bondage and fraud make those migrants susceptible to being blackmailed and exploited both financially and sexually. Although the loss of autonomy may potentially increase the risk of them being victims of violence, it seems that the use or the threat of violence does not play a major role in the Swiss sex market, except for episodes of violence exerted by customers. Sardi and Froidevaux also maintain that the illegal prostitutes working in Geneva are able to do their business without coercion or systematic control. But we have to take into account that the situation of illegality and social exclusion make women hesitant to report abuse to the authorities and to seek help.

The research projects carried out within the framework of National Research Programme 40 let the question of autonomy of the decision to migrate and/or to engage in prostitution in the host country, and also of the real incidence of trafficking, go without a clear-cut answer. There is some evidence that women migrate without coercion, though their decision may eventually be facilitated by false promises of a job, rewards and working conditions in general. We do not know whether the migrant women willing to earn a living selling sexual services abroad

were prostitutes in their own country or were enticed by the expected opportunity of high earnings. Estermann (2002) argues that the huge amount of people from eastern Europe waiting for migration opportunities in the West seems to support the thesis of autonomous decisions. All the women interviewed by Zschokke Longridge (2001) knew they would work as prostitutes. The swindle relates to the money, not to the job. Le Breton and Fiechter (2001) also assert the relevance of both autonomous decisions and false expectations. Coercion is not necessary for the women were willing to leave their home country in the hope of better pay, better working conditions, job training opportunities and a decent living. The debts contracted to escape the precariousness of everyday life at home seem to them a bearable risk. But their expectations are deceived, the arrival in the host country brings the women back to reality. Hired as dancers, domestic servants or brides (Föllmi, 1997), some women have no other choice but to engage in prostitution.

The recruitment and the trafficking of migrants into Switzerland follows very different patterns. The research findings indicate that sex workers are recruited by fellow citizens in their home country, brought into the host country and handed over to the employers. The employers are in general Swiss nationals married to former sex migrants. Through their wives' connections they are also able to recruit women for the Swiss sex market on their own. Migrants with a dancer's visa are hired mostly through Swiss agencies, but also through acquaintances, friends or relatives (Zschokke Longridge, 2001). The diversity of the recruitment patterns and trafficking structures are also emphasised by Le Breton and Fiechter (2001). There are very different forms of business relationships involved in the trade of human beings. Besides legal employment agencies and loosely organised professionals, the analysis by Le Breton and Fiechter points to the importance of informal relationships for the recruitment of sex workers. Tourists and businessmen travelling in third world countries may occasionally hire women and convince them to work on the Swiss sex market.

4.4. Trafficking in Human Beings and Organised Crime

The significance of criminal organisations from eastern Europe in smuggling and trafficking human beings or taking command of the market for sexual services in Switzerland is of major concern to the research conducted by Sardi and Froidevaux in Geneva. The findings suggest that there is no empirical evidence supporting the thesis of the sex market being controlled by pimps from Russia or from other eastern countries. Migrants from the former communist countries working in Geneva's 'red light districts' are not as numerous as alleged, and their importance in the sex business not very significant. Among the owners or the staff of places supplying sexual services there are only a few people corresponding to this profile. Evidence is also lacking for Russian criminal organisations trying to take over the sex market or doing business through the exploitation of prostitution in Geneva.

Although there are many women from eastern Europe working as dancers (and allegedly as prostitutes) in the cabarets of Geneva, Sardi and Froidevaux could not find evidence of racketeering practices or other criminal patterns of exploitation or control. There is also no noticeable indication of criminal organisations trafficking or smuggling migrant women and coercing them into prostitution.

If it seems that organised crime is not very prevalent on the Swiss sex market, Sardi and Froidevaux point to the observed changes in the structure of prostitution – especially to the shift from legal street prostitution to illegal private-room prostitution – as a factor of risk. This could facilitate the infiltration of criminal organisations into the market for sexual services. Some more or less organised networks are already smuggling sexual workers on to the Geneva sex market and the agencies of law enforcement seem to tolerate this trade. Sardi and Froidevaux mention as further risk factors the low probability of smugglers and traffickers being arrested and convicted, as well as sex tourism, which still thrives.

Estermann's (2002) analysis of police and court files on the exploitation of prostitution and trafficking of human beings leads to similar conclusions and to a critical assessment of the role played by organised crime or mafia-like groups. The statistics of the Zurich Police mention 26 per cent of the charges on the exploitation of prostitution and 36 per cent of those on trafficking are allegedly related to organised crime. Estermann argues that the files point to loose networks and business structures supported mainly by ethnic and patriarchal or matriarchal relationships. There is no evidence for these structures being embedded in far-reaching criminal organisations. As emphasised by Le Breton and Fiechter (2001) the women migrate into Switzerland mainly with the help of acquaintances, friends, relatives and also of legal placement agencies. The alleged role played by organised crime contributes to concealing how trafficking of women is embedded in the worldwide labour market blurring the distinction between legal and illegal, and also supporting, systematising and enforcing a gendered division of labour.

The experts interviewed by Zschokke Longridge (2001) disclaim the view that criminal organisations rule the trafficking of human beings into Switzerland. Asked to assess the relationships between the sex market and organised crime, the experts admitted to having no knowledge of criminal organisations acting in the country as traffickers or smugglers. Possibly there are such organisations in the home countries of the sex migrants. But it seems that in the Canton of Ticino indigenous networks of political and economical interests are far more important than criminal organisations from abroad. Although some loosely organised ethnic groups from Brazil, Colombia and Lithuania may supply the sex market with women from their home country, the threat of organised crime may be largely overstated (Bianchi, 2000).

This view is not shared by the Federal Office of Police. The security report states that 'the transnational criminal organisations acting in Europe have taken control of the trafficking of human beings, ousting local entrepreneurs from the market.

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This also true for the smuggling of aliens into Switzerland' (Bundesamt für Polizei, 2002: 64). Organised crime is supposed not only to take advantage of an existing demand for smuggling services, but also to be a direct cause of illegal migration. There is therefore a symbiotic relationship between illegal migration, trafficking in human beings and organised crime and also an overlap between the supply of sex workers and other illegal trades of drug trafficking and money laundering. The Federal Office of Police argues that the rising number of migrants coming into Switzerland with fake or counterfeit papers is evidence of the paramount importance of groups of traffickers and smugglers bearing all the distinctive features of a criminal organisation. Of course, small ethnic groups are also in the business. Sometimes the owners of establishments offering sexual services in Switzerland recruit women on their own. But they do not seem to represent a major challenge for the control exerted by criminal organisations on the sex market.

The Federal Office of Police explains the small number of arrested and/or convicted traffickers bearing connections to organised crime as follows:

To charge under Article 260ter in cases of trafficking or smuggling of human beings is not very easy, for the prosecution authorities generally fail to gather enough evidence for laying charges under Article 260ter. A laborious international cooperation and the lack of resources are also to be considered. Furthermore, Article 260ter targets the heads of large criminal organisations acting on a transnational level and consequently misses smaller groups of traffickers (Bundesamt für Polizei, 2002: 68-9).

4.5. Other Illegal Markets

There are very few sources of information available on other illegal markets representing potential sources of profit for criminal organisations. No data is available on the illegal arms trade in Switzerland and it is not an issue in the security report released by the Federal Office of Police. Although the 1999 Security Report mentions there were 86 charges of offences under the War Material Act (*Kriegsmaterialgesetz*) and 37 cases prosecuted, no further details are provided.

According to police statistics, 65,000 vehicles were stolen during the year 2002. This figure also includes vehicles having been stolen for joy-riding (*Entwendung zum Gebrauch*). But there are no data about the illegal trade of stolen cars available (Bundesamt für Polizei, 2003b).

Some information on tobacco smuggling can be found in the 2001 security report released by the Federal Office of Police, but there is no indication of the size of this trade. The security report does suggest that the smuggling of cigarettes through Switzerland may be controlled by criminal organisations.

The draft regarding the law on the transfer of cultural objects states that Switzerland, one of the main markets for art products in the world, has been criticised

for having served as the centre for illegal trafficking in cultural objects. Reliable data on the size of this trade are not available. Nevertheless, criminal organisations are supposed to be behind the illegal trade in cultural objects, as the profits seem to be very rewarding.²²

5. Organised Crime and the Legitimate Economy

The manifold relationships between the underground economy and the mainstream economy have not yet been the object of empirical research in Switzerland as elsewhere, for the boundaries delimiting the two sectors are largely blurred (Besozzi, 2001). Although the transfer of illegal assets in the legal economy are the main concern, other structural ties connecting ‘bad business’ and ‘good business’ may be emphasised. It is worth mentioning, for example, the contribution of the informal economy to the gross domestic product, the profits of legitimate sectors of the economy selling raw material needed for the production of illegal goods and illegal earnings expended for the consumption of legal goods and services. The interactions between the legal and illegal sectors of the economy are also evident from an historical vantage point, for the growth of the European national economies was eventually fostered by investments from illegal trades.

In light of the deficiency of empirical data on these aspects of the relationships between the legal and illegal economy, we will focus the following considerations on two phenomena – corruption and money laundering, which bear some relevance to the Swiss political debate.

5.1. Corruption

The concept of corruption covers a wide range of meanings. The behaviour patterns associated with corruption range from the offering of gifts or gracious services intended to facilitate business relationships to substantial amounts of cash being laid out for exerting influence on the decisions of political or economic agencies. Besides the differences in definition, the core of corruption processes occurs in a transaction between two parties, to the disadvantage of a third party (Queloz et al., 2000). Generally speaking, corruption refers to private firms giving bribes to public servants in order to gain some advantage by the allocation of contracts for public work or to minimise the risks of arrest and prosecution. Besides bribery, other patterns of corruption are situated in the grey zone between legally allowed

²² Botschaft über die UNESCO-Konvention 1970 und das Bundesgesetz über den internationalen Kulturgütertransfer of 21 November 2001.

and morally reprehensible business practices. Within these grey zones, corruption is related not only to organised crime and illicit trade, but also to business transactions conducted by legal entrepreneurs.

On the basis of the statistical data available (Queloz et al., 2000), it seems that corruption plays a minor role in Swiss society. Statistics show that between 1987 and 1997 only 133 people were convicted under Articles 281, 288, 315 and 316 of the Swiss Penal Code, an average of 12 convictions per year. The number of convictions increases to nearly 500 under a broader definition of corruption considering offences under Articles 312, 313, 314, 317, 319 and 320 of the Swiss Penal Code. The amount of the bribes in the cases under prosecution is not very substantial: it ranges between CHF 500 and 87,000 (€ 300 and € 58,000). Schneider (1998) evaluates the annual amount of bribes given by illegal entrepreneurs at up to CHF 370 million (€ 247 million), i.e. 5 per cent of their annual turn-over (see Schneider, 1998).

The results of empirical research on corruption carried out by Nicolas Queloz et al. (2000), Daniel Bircher and Stefan Scherler (2001) and by Nicolas Giannacopoulos (2001) suggest that corruption takes place in Switzerland, but not systematically. This is also true for economic and social sectors being considered as particularly vulnerable to corruptive practices. Bircher and Scherler in their research point out that there are very few cases of bribery for the allocation of contracts for public work. More frequently there is the misuse of illegal or half-legal business practices as collusive agreements between firms in order to bypass the market competition; informal agreements between firms and public servants to the advantage of particular suppliers; abusive practices by charging for supplied goods or services. There seem to be considerably more misuses at local and cantonal level than at the federal level. The research conducted by Queloz et al. presents similar results. According to a survey carried out in the cantons of Ticino, Valais and Geneva, the bribery of public agencies for obtaining contracts for public work is a rare event. Of some relevance seems to be a grey area of shadowy but not illegal practices, especially collusive networks involving businessmen and political representatives.

Corruption practices also play a minor role in other sensitive sectors such as the allocation of residential and work permits, the monitoring of illegal workers, the funding of political parties and the administration of justice (Queloz et al., 2000). Although a survey conducted in Geneva did not show any evidence for bribes being given in order to obtain a work or residence permit, there may be misuses of some importance in the monitoring of firms suspected of hiring illegal workers. Queloz et al. advance that the sampling of firms being controlled could be influenced by pressures exerted both by unions and political parties. It is also possible that the informal face-to-face relationships between the public servants in charge of the monitoring and the entrepreneurs being controlled may foster corruption and bribery. In their analysis of the informal networks involving political and economic representatives in the Italian-speaking Canton of Ticino, Queloz et

al. found no evidence for the systematic use of corruptive practices. But there is a quite significant correlation between the decisions of public agencies and private persons funding the political party in charge. This points to the significance of informal networks, patronage, trading of influence and 'old boys' networking in some parts of Swiss society.

Queloz et al. suggest that the low level of corruption in Switzerland may be related to the competence, the efficiency and the loyalty of Swiss public servants. Corruptive processes may also be thwarted by a political system based on direct democracy, by informal social control as well as by Switzerland being a small country. They emphasise also some risk factors inherent to some aspects of Swiss society, such as the networking of politics and economy and the extensive decisional power attributed to some public agencies.

There is no reason to suppose that corruptive practices relate to the illicit businesses carried out by indigenous criminal groups. The risk of public agencies and public administration being bribed systematically by criminal organisations from abroad seems also quite low, as Swiss society, as seen above, does not possess the means to foster corruption. Of course, the bribes paid by criminal organisations to political representatives or public servants of nearby countries may eventually be deposited in Swiss bank accounts.

The analysis of penal files carried out by Estermann did not find cases of corruption related to organised crime. He states: 'There is no conviction for bribery related to offences under Article 260^{ter} of the Swiss Penal Code'. The research of Giannacopoulos and Auchlin (2001) on criminal networks suggests that corruption may be the path by which criminal organisations from abroad infiltrate the country. The case studies conducted by Giannacopoulos display some evidence for Swiss nationals being networked with criminal groups and sustaining their illegal activities.

5.2. Money Laundering

In the political discourse there is no clear-cut distinction between organised crime and money laundering, for they are the expression of a self-fulfilling prophecy: money laundering is proof of the existence of mafia-like criminal organisations, and organised crime explains the significance of money laundering. In the social construction of the threats they represent for society and/or for the economy, they constitute a whole that cannot be taken apart. It is not the dirty money as such that is perceived as a threat to the Swiss financial system, but the illegal profits of criminal organisations aiming to subvert the social and/or economic order.

In accordance with the Swiss Penal Code, money laundering is defined as 'the action of concealing the origin of criminal assets and of thwarting their detection and seizure' (Art. 305^{bis} Swiss Penal Code). This definition bears some problems generated by a misunderstanding of the phenomena, by the opaqueness and – last

but not least – by the assumption of a clear-cut boundary between ‘clean’ and ‘dirty’ money. As a matter of fact, such a boundary cannot be drawn, if we take into account the historical and structural relationships tying together the legal and illegal sectors of the economy (Besozzi, 2001). The boundaries are also blurred in an ongoing globalised world, for the differently regulated markets offer the opportunity of making legal what is illegal by simply doing business elsewhere.

Hafner and Trepp (1999) make us aware of a contradiction underlying the modern economy. On the one side, globalisation has fostered the rise and flexibility of the informal economy, on the other side, the nation states trying to control illegal trades through the law are losing power. Taking advantage of this gap, money laundering may create functional links between the mainstream and the informal economy, stabilising both of them and offering opportunities for the repatriation of illegal profits, the concealment of illegal and semi-legal businesses, tax evasion, capital flight and other shady transactions. It follows that the consequences of such linkage in the economic order depend largely on the aims underlying the legalisation of ‘dirty money’ and also on the global amount of the money being laundered.

There are no reliable data available on the proportion of illegal assets deposited in Swiss bank accounts, going through the Swiss banking system or invested in the Swiss economy.

According to the annual report of the Money Laundering Reporting Service (MROS), 863 suspect transactions have been recorded throughout the reporting period (2003) amounting up to CHF 616 million (€ 411 million).²³ Of all suspicious transactions reported, 76 per cent were forwarded to the competent prosecuting authorities. Of main concern were cases related to fraud. Very few suspicious transactions were connected to drug trafficking, to other illicit trades or to organised crime. A survey conducted in 1997 by Pieth and Estermann (2000) of the prosecution authorities found that there were 155 charges on money laundering being prosecuted annually, involving a global amount of CHF 267 million (€ 178 million).

Only a small proportion of the offences prosecuted end in a conviction under Article 305*bis* (money laundering) of the Swiss Penal Code. But the figures released by the Federal Statistical Office shows a trend toward an increasing number of convictions. Whilst only 45 people were convicted on money laundering charges during the year 1994, the number rose to 98 during the course of 1998.

The empirical research conducted by Hafner and Trepp (1999) and Estermann (2001) do not support the thesis that the Swiss financial system is threatened by mafia-like criminal organisations laundering money in Switzerland. There is no evidence for a straightforward relationship between money laundering and organised

²³ The corresponding figures for the years 1998, 1999 and 2000 are respectively 160 reported cases (CHF 334 million), 370 reported cases (CHF 1.5 billion) and 311 cases (CHF 655 million).

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Table 4. Money laundering cases reported to the MROC and nature of the offence, 1999-2003

<i>Nature of offence</i>	<i>1999</i>		<i>2000</i>		<i>2003</i>	
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>
Terrorism	0	0.0	95	22.8	5	0.6
Fraud	112	36.0	74	17.7	127	14.7
Corruption	14	4.5	42	10.1	43	5.0
Embezzlement	18	5.8	34	8.2	37	4.3
Money laundering	43	13.8	26	6.2	32	3.7
Other offences against assets	19	6.1	25	6.0	7	0.8
Drugs	13	4.2	19	4.6	24	2.8
Organised crime	3	1.0	11	2.6	18	2.1
Other offences	18	5.8	8	1.9	5	0.6
Arms trade	6	2.0	6	1.4	9	1.1
No suspicion	42	13.5	5	1.2	35	4.1
Unfaithful management	1	0.3	4	1.0	14	1.6
Theft	1	0.3	4	1.0	17	2.0
Forgery of documents	4	1.3	3	0.7	24	2.8
Robbery	2	0.6	2	0.5	2	0.2
Sexual integrity	5	1.6	1	0.2	2	0.2
Extortion	0	0.0	1	0.2	2	0.2
Violent crime	3	1.0	2	0.5	2	0.2
Counterfeit money	0	0.0	1	0.2	3	0.2
Not classifiable	7	2.3	36	8.6	455	52.7
Total	311	100	399	100	863	100

crime. As a matter of fact, there are some headlines reporting cases of money being allegedly laundered by acolytes of the (Italian or Russian) mafia. But the bulk of the money laundering charges handled by the courts, far from supports the view of Switzerland as the financial turning point of the worldwide mafia business. According to Estermann (2001), there are mainly petty cases without any noticeable relationship to criminal organisations. This finding is supported by the case studies presented in the MROC Reports. The cases of money laundering reported to the MROC refer mostly to very simple, unsophisticated methods of transferring and legalising illegal profits. The repatriation of earnings from drug trafficking, for example, follows traditional, well-beaten paths, i.e. over the border with cash stashed in the car – far from the professional money-laundering strategies allegedly employed by criminal organisations.

Some researchers suppose that the cases known to the control authorities may represent the so-called ‘tip of the iceberg’ and not the hidden reality of money laundering in Switzerland. Hafner and Trepp (1999) share this view and argue that the observed prevalence of insignificant money laundering cases with a low level of complexity results from the penal law demanding a definition of money laundering as clear-cut as possible. It follows that the courts handle only cases allowing a straightforward application of the law, i.e. only petty cases. Hafner and Trepp argue further, that the amount and forms of money laundering being prosecuted have to be seen as a negative selection. The cases brought to the court are in no way representative of the money laundering business as a whole. They are no more than accidents at the edge of successful and hidden illegal transactions. Discernible from outside the network of money launderers and their customers are only unsuccessful strategies. According to Hafner and Trepp, the data available are no proof of the insignificance of money laundering and also of the lack of connections to organised crime. They may be better understood as evidence for the failure of governmental control agencies in monitoring and controlling illegal transactions on the global financial market. The policies implemented by the law enforcement agencies aiming at more efficient control of the banking system – in Switzerland as elsewhere – did not recognise money laundering as more than just a transfer of cash. Since the beginning of the 1990s, money launderers have switched to sophisticated methods, involving non-monetary techniques, such as the derivative trade, as evidenced by the case of the Bank of Commerce and Credit International (Hafner, 2002; Hafner and Trepp, 1999).

6. Conclusions

If the concept of ‘organised crime’ points to market-oriented criminality, there is organised crime in Switzerland: drug trafficking, trafficking in human beings and other illicit trades do not stop at the Swiss border. It is also beyond doubt that

proceeds from illegal sources (tax evasion, capital flight, fraud, dirty businesses) flow through the Swiss banking system. If 'organised crime' means mafia-like organisations or 'mobs', the question of the role played by organised crime in Switzerland must remain without a clear-cut answer. The empirical research conducted within the framework of National Research Programme 40 can only give a glimpse of the structure of the supply and the level of organisation displayed by the purveyors of illegal goods and services. Further research is needed in order to improve our knowledge of the structure of illegal markets, the behaviour of illegal entrepreneurs and also the manifold links between the mainstream and the hidden economy. It seems to me that such an inquiry also needs to challenge the conceptual and theoretical framework shaping the current research on this topic, for if the concept of 'organised crime' may be of some use for the law enforcement agencies, its mythical connotations conceal some crucial features of the phenomena under investigation.

Hidden realities reach far back in the history of human society. This is also true for the conspiracy theories trying to make such phenomena accountable and culturally meaningful. The witchcraft of the Middle Ages, the plague in western Europe of the seventeenth century, global warming, organised crime and terrorism: they all call for a public discourse that exorcises the evil attributing the blame to outsiders (Jews, Muslim fundamentalists, deviants) and nourishing myths. At stake, as Mary Douglas suggested 40 years ago, were and still is the preservation of cultural purity from pollution and defilement (Ruggiero, 1999).

This is not to say that such phenomena and their social construction lack any relationship with everyday reality, for the consequences are very real and visible: there are illegal markets, there are bad businesses, there are forms of organisations sustaining illicit trades, there is overlapping between the underworld and the upper-world. The point is that discourses trying to re-establish cultural purity are necessarily entangled in a paradox, for 'the search for purity [...] is an attempt to force experience into logical categories of non-contradiction. But experience is not amenable and those who make the attempt find themselves led into contradiction' (Douglas, 1966: 163).

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Organised Crime in Albania: The Ugly Side of Capitalism and Democracy

Vasilika Hysi

1. Introduction

The sudden rise and phenomenal spread of organised crime in Albania is the topic of this article. The following section briefly sketches Albania's difficult transition to a market-based economy, highlighting the factors that have favoured the rise of organised crime. The development of a public, political and scientific debate about organised crime and the search for a definition are then described. The fourth section discusses the number, size and internal organisation of Albanian criminal groups. The most typical illegal entrepreneurial activities of organised crime are then reviewed. Section six investigates organised crime's infiltration into the legitimate economy; section seven its capability to corrupt politicians and government officials. Some final remarks follow.

2. Albania and its Difficult Transition Path

Albania is a small European country. Up until 1991 it was governed by a most rigid communist government and isolated from the rest of the world. For many foreigners it was a mysterious entity and very little was known about its state organisation and functioning, or its economic and social development. One of the few available means of information for foreigners was the news provided by Albanian state radio in its programme for foreigners. Being at that time a party-state regime, however, information was censored and everything was presented in a positive and optimistic way.

Albanians themselves had little information about the world around them and the way it functioned. They could only dream of a better life than their own – of owning their own homes, having a car or a piece of land, watching or listening to a foreign programme without the fear of being imprisoned or interned. For the majority of Albanians, the world beyond their borders consisted exclusively of beautiful things. As soon as they could get out of Albania, they thought, they would find wealth, happiness and freedom. They did not realise that Western societies had such problems as unemployment and crime. For most Albanians, life beyond their country borders merely meant prosperity and freedom.

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Some of these dreams began to become a reality during the 1990s. The year 1990, in particular, marked the beginning of a new era for Albania and huge political, economic and social transformations were set in motion. After the collapse of the totalitarian regime and the command economy, Albania was supposed to become a market-based democracy within a few years. Most Albanians felt overwhelmed by these radical and sudden changes, unable to foresee the consequences these developments would have on their everyday life. They could suddenly satisfy their desire for freedom of expression, communication and movement but they did not really know how to manage this sudden freedom under the new circumstances.

Albania's transitional process was accompanied by both positive and negative developments. On the one hand, the isolation of over 50 years was finally overcome and new relations with several countries were established. Albanians took advantage of their newly obtained freedom of movement and many of them emigrated to Italy and Greece, hoping to secure a rewarding job and good living conditions. Migrants also became a relevant source of income for many Albanian households, alleviating the difficulties of the transition. The majority of families that had members abroad received regular remittances and thus began to enjoy capitalist commodities without realising the work involved in being able to afford them.

On the other hand, the Albanian economy went through an extreme crisis during the early stages of the transition. As a result of the massive shutdown of inefficient state-owned companies and the collapse of agricultural production, a drastic fall in production was recorded. This can be clearly seen in the decline of GDP up to 1993 and in the high levels of inflation. The implementation of an ambitious reform programme coupled with the liberalisation of prices and markets, privatisation, the establishment of a commercial banking system and the drafting of new legislation then produced rapid growth in the private sector, which led to a substantial rise in GDP and was viewed quite positively by international organisations (HDPC, 2002: 21).

As in most other eastern European states, however, there was not a clear plan to foster, guide and control the development of a market economy. Private enterprises were set up according to models experimented with in other countries, without taking due account of the complete prohibition of private property under the communist regime and the resulting market inexperience of most Albanians (Hysi, 2001b: 5). State property was distributed to poor farmers and former owners and was sold cheaply to those who previously worked in related businesses (such as the employees of former state shops and enterprises), to the victims of political prosecution under the communist dictatorship and, above all, to the militants of the political party controlling the government after the regime change. As a result, while few Albanians accumulated land and property, the privatisation process fostered the rapid growth of unemployment and drastically worsened the economic conditions of most Albanians, who for the first time experienced genuine poverty. According to the latest estimates of the United Nations Development Programme (UNDP),

almost 30 per cent of Albanians (or 920,000 inhabitants) are still today considered to be poor (income poverty under USD 2 per day), whereas 500,000 individuals live in extreme poverty (income poverty under USD 1 per day). Poverty is concentrated in rural areas, where four out of five people are classified as poor, a much higher incidence than in urban areas. The spread of poverty has been accompanied by a rapid rise in income inequality, which – with Gini coefficient of 0.43 – is today one of the highest of all the countries in the region (UNDP, 2001: 23).

Alongside massive external emigration, internal migration – i.e. migration from villages and peripheral districts to big cities and in particular to Tirana – also rapidly assumed massive proportions. This led to a unique and uncontrollable increase in the population of some cities, at a time when the existing infrastructure could not deal with this flow of human beings (Hysi, 2001a: 5). Within a short period of time, the ‘new rich’ families, who had accumulated wealth by fair or unfair business practices, came to live side-by-side with the poor, who had miscalculated living costs in big cities under construction.

The burst of a pyramid-scheme bubble in late 1996, which ended up in deadly rioting and widespread chaos (UNDP, 1998: 11-38), clearly showed that stabilising reforms and a satisfactory macro-economic situation were not enough to guarantee the success of the transition to a market-based democracy and the institutionalisation of the rule of law. As the Human Development Promotion Centre (HDPC) *Human Development Report Albania 2002* notes:

the climate of political conflict, institutional weakness, the lack of willingness of little interest in respecting the law, the idea that you can make money without working, corruption, etc, were some of the major factors which were not taken into consideration sufficiently in the early stages of transition (HDPC, 2002: 21).

One of the consequences of the 1997 crisis was a dramatic fall in overall economic activity. The GDP slumped to the level of 1992, inflation to the level of 1993 and direct foreign investment halved. On top of everything, the confidence of Albanians in their political system was seriously shaken. The murder of the opposition party leader Azem Hajdari in September 1998 provided more proof that the rule of law was not yet institutionalised and that much time and effort were still needed in order to consolidate both democracy and the rule of law. Only at the end of the decade did Albania begin to recover from the 1997 crisis: GDP growth stabilised at 6-8 per cent and inflation dropped to 2-4 per cent. At the same time, political and administrative reforms were undertaken to reinforce the state and its institutions.

Regional events – especially the war and humanitarian crisis in 1999 in Kosovo and later on the insurgency in Macedonia – also had considerable influence on Albania’s development. Albanians took care of an enormous influx of refugees. According to the UNDP’s *Human Development in Albania 2000*, from the beginning

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of the air strikes against the Milosević regime on 24 March 1999 until the end of the NATO campaign on 9 June 1999, the number of refugees reached almost 500,000 people. Over 300,000 of them took shelter in the houses of Albanian families, 75,000 in the emergency camps and 85,000 in public buildings turned into large-scale collective shelters (UNDP, 2000: 63). Under these circumstances, Albanians were put under a lot of stress.

After this emergency situation, insecurity and crime rapidly became the most discussed topics both privately and publicly (Hysi, 2001a: 6). The growing feeling of insecurity was matched by a sharp rise in common crime. An unanticipated side-effect of the transition was also the development of more sophisticated crime than had existed before. New types of crime became common, such as organised crime, economic crime, trafficking in drugs and weapons, and prostitution. The police, prosecutors' offices and courts were long unable to successfully repress or even control these new phenomena. On the contrary, state organs were often exploited by politicians to pursue their own personal goals. There was a general lack of professionalism and law enforcement officers often favoured a political party or accepted bribes from criminals and common citizens to secure their positions or to make extra money.

In the early 1990s, a sharp increase in violent crime and crimes against property was registered. Typical manifestations of organised crime, such as dealing in stolen cars and the exploitation of prostitution and the illegal drugs trade, also become more common. The drugs trade, in particular, was an entirely new phenomenon for Albanians. Before 1990 they had only heard about drugs and their consequences. None of them would have ever dreamt that within a decade drugs would be nationally available and would be both cultivated and sold in Albania.

A sharp acceleration of these trends was recorded in 1996-1997. Yielding an estimated USD 13 million in illegal proceeds, the pyramid schemes were not only Albania's biggest fraud case but can also be considered a manifestation of organised crime. After their collapse, Albanian criminal groups became intensively involved in illegal activities and organised crime, trying to recover their lost money. The looting of military storehouses by the rioting population also led to a sharp increase in the number of intentional and non-intentional crimes against persons. Suffice it to say that in 1997 over 1,500 murders were recorded, corresponding to a staggering rate of 41.9 per 100,000 inhabitants. As a result of both the turmoil and the following deep economic crisis, the number of victims of ordinary crimes as well as the number of people being trafficked for prostitution purposes rapidly grew. At the same time, the weakness of the state and its inefficiency in crime control became apparent. These factors fostered the blooming of all sorts of illegal activities, ranging from organised crime to economic crime and tax evasion.

It was indeed the rapid surge of organised crime that fully demonstrated the need to introduce legal and structural changes and to establish specialised organs to fight organised and economic-financial crime. As shown in the article on Albanian

organised crime policies in Part III, the Albanian Criminal Code was amended in those years. In addition, to better prevent and repress cross-border illegal trades and international economic crime, Albania signed a number of international conventions and multi- and bilateral agreements. By then, however, organised crime had already gained a stronghold and constituted a real threat for Albania.

As normal people experienced a staggering increase of all sorts of crime and at the same time watched successful criminals driving luxurious cars, entering expensive restaurants and then, a few months afterwards, being killed by their rivals, fear of crime soared. Normal people also felt that they were not properly protected by the police and the justice system and did not place much trust in these organs. The International Crime Victim Surveys carried out in 1996 in former communist countries in transition by the United Nations Inter-regional Crime and Justice Research Institute (UNICRI) showed that public trust in the police was extremely low in Albania: police performance was assessed as being 'poor', and Albanians admitted rarely reporting crimes as they thought it was largely pointless (Zvekic, 1998: 67, 78; Hysi, 1998a: 27). In a follow-up survey carried out in 2000, public trust in the police had slightly increased, but it was still below reassuring levels (Hysi, 2001a: 35-6).

3. The Emergence of the Problem and the Search for a Definition

For a long time the expression 'organised crime' was not part of the Albanian vocabulary. Before the 1990s, criminal offences committed jointly by several individuals, especially thefts of state property, were recorded in the official statistics, but the existence of organised crime was not acknowledged.

Soon after the collapse of the communist regime, Albania began to experience new forms of crime – such as smuggling of all sorts of commodities, ranging from fuel to cigarettes, and trafficking in human beings – but these episodes were long not considered an expression of organised crime. In the meantime, a considerable number of Albanians migrated illegally to other countries, but little was known in Albania about their integration into the host countries. The public was ill-informed about the 'new' crimes committed by Albanians at home and abroad and their high cost to Albanian society. Both state bodies and the public were unprepared to face these new forms of crime. In most cases, entrepreneurial illicit activities were not even identified as offences and in the rare cases in which an investigation was started, they were hardly ever classified as 'organised crime'.

In the first years of transition, the population as well as the mass media and the political system were above all concerned with the state-building and democratisation process. As a result, scant attention was paid to the new forms of criminality that flourished in Albanian society and to the development of appropriate means of crime control. Criminal law was absolutely outdated and unable to respond to

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the new crime tendencies and structures. At the same time, the reform of the public administration and the judicial system led to the substitution of the old staff for new and unqualified employees. Appointments were often made on the basis of political and not of professional criteria. Many of the new police officers, prosecutors and judges simply did not have enough juridical education and professional expertise to understand and combat serious crime, let alone organised crime. Their lack of professionalism also contributed to the delay in acknowledging the threat posed by organised crime and in developing more effective control strategies.

In the early 1990s, politicians and state representatives did not officially acknowledge the existence of organised crime and its ongoing expansion. They merely talked of sporadic manifestations of such crime, usually attributing them to political opponents. Only in 1993 did practitioners and legal scholars first begin to discuss the problem. In his lectures at the Faculty of Law of the University of Tirana, Ismet Elezi (1994:72-3), for example, presented organised crime as a phenomenon widespread in many different countries, pointing out that it was also spreading in Albania. At the same time, the first articles about organised crime were published in newspapers and magazines, and via electronic media. The public concern rapidly increased when many Albanians themselves became victims of organised crime. In 1997 hundreds of thousands of people lost their savings in the pyramid schemes, at the same time as many Albanian women and children became victims of trafficking in human beings.

Following the 1997 riots and state collapse, state officials, politicians and even representatives of the political parties in power finally acknowledged that organised crime existed and that it had become a serious threat to state development. Albanians became fully aware of its existence and power. During 1997 and 1998 the Albanian underworld was rocked by a series of shocking murders resulting in the decline of some criminal groups. Other gangs also began to be targeted by the first effective law enforcement investigations. At the same time, however, other criminal groups expanded and flourished.

In 1998, the Albanian government requested the World Bank to conduct research on corruption in Albania (Council of Ministers, 1998: 3-10). On the basis of this report, which showed that corruption was a major problem for the country, a seminar 'Government and Corruption in Albania' was organised on 30 June 1998 and a strategy for combating corruption was developed (Council of Ministers, 1998: 11-38). Though the official strategy did not produce the expected results, corruption began to be considered a very serious problem as it facilitated infiltration by criminal groups in the Albanian economy and the perpetration of organised crime activities.

Since 1998 there has been much talk about organised crime in the media and great political and administrative discourse. The political debate often becomes very harsh and partisan, especially during election campaigns, as politicians accuse

each other of being involved in organised crime, being corrupt and having relations with mafia groups.

The public and political interest also promoted academic research. The first pioneering efforts at definition were carried out by Elezi in the first half of the 1990s. In his university lectures (1994: 72), he presented organised crime as the most organised form of professional crime: in his opinion, the term implied the existence of different organised groups and gangs that collaborate systematically in committing criminal offences. It was, however, in the second half of the 1990s that practitioners and legal scholars began to write papers and reports on organised crime and the related preventive and repressive policies. In 1997, for example, Edison Heba conducted a study on the most widespread forms of economic organised crime and the role of the public prosecutor in controlling organised crime. In that same year, Shefki Bejko concluded his PhD thesis *Aspects of Economic Organised Crime*. This dissertation, as yet unpublished, provides a juridical and criminological analysis of economic and financial crimes, which are considered a form of organised crime. It includes a series of recommendations to improve Albanian criminal legislation.

In 1998, Zamir Poda published the book *Organised Crime*, which is mostly based on discussions with and the investigations of the Italian judge Giovanni Falcone. The book also describes *ad hoc* techniques for investigating organised crime. In the volume, Poda identifies organised crime with criminal organisations structured like the Italian mafia. On the other hand, the present author (Hysi, 1998, 2000: 52-3) accepts the less restrictive definitions singled out by the European Union and the Council of Europe in their official documents: namely, the Joint Action of the Council of the European Union on making it a criminal offence to participate in a criminal organisation (Council of the European Union, 1998) and the Recommendation of the Committee of Ministers of the Council of Europe (2000) concerning guiding principles on the fight against organised crime.

One of the main obstacles to research has been the lack of both qualitative and quantitative information. Statistical data, in particular, are poor and fragmentary, due to the lack of an official definition of organised crime, the difficulty in ascertaining whether a crime is organised or not and the low level of crime reporting. Moreover, police data and analyses on organised crime were long inaccessible to the public, media and researchers. Therefore, scientific investigations have primarily had a descriptive character and have largely been based on media accounts, as the media could often gain access to 'classified' information on organised crime.

From 1999, however, information on crime, and specifically on organised crime, has been made available to the public.¹ From time to time, law enforcement bodies

¹ Today, anyone can get information on crime via the web site of the Ministry of Public Order, <<http://www.mpo.gov.al>>.

publish data on crime and offenders. They even compile reports and periodical analyses on organised crime. State bodies, such as the General Prosecutor's Office, and non-governmental organisations (NGOs) have organised seminars and round-table discussions to talk about organised crime patterns in Albania and the fight against it. International and foreign organisations as well as NGOs have also published reports regarding specific aspects of the struggle against organised crime in Albania and the role of different players for prevention of trafficking (UNDP, 1998, 2001, 2003; UNICEF, 1998; Heba, 1999; Renton, 2001; IOM and ICMC, 2002).

One of the most interesting documents to understand organised crime policies is the *National Strategy to Combat Trafficking in Human Beings* that was prepared by the inter-ministerial group set up by the Prime Minister in 2001. The first part of this strategy report provides a description of the problem itself, whereas the second part contains recommendations to curb trafficking in human beings. As an appendix to the report are some tables presenting data on trafficking and their victims during the period 1998-2001. The annual reports of the Ministry of Public Order (MPO) are also worth mentioning. These reports contain data on offences and offenders as well as on legislative measures and institutional reforms adopted in combating organised crime. In addition, these reports provide information on the cooperation between Albanian police and foreign law enforcement agencies.

The journals of the police and of the Police Academy also occasionally contain articles on organised crime written by academics, law enforcement officers and practitioners. As of today, however, there is no study systematically analysing the specific manifestations of organised crime and offering concrete programmes for preventing and repressing it (Hysi, 2000a: 417-8).

Despite the spread of organised crime in Albania and the growing public and political concern, there was for a long time no official definition of organised crime. Albanian legislation does not provide one, and the Code of Criminal Procedure of 1995 (Art. 28) merely specifies the offences of criminal organisation and armed gang. With the ratification of the UN Convention against Transnational Organised Crime in July 2002, however, the official definition of 'organised criminal group' provided by Article 2 of this international treaty has been fully incorporated in Albanian legislation, thus finally ending the definitional debate.

4. On the Number, Structure and *Modus Operandi* of Albanian Criminal Groups

There is no doubt that organised crime activities have boomed since the collapse of the communist regime in 1990. The main reasons why this tremendous expansion has taken place have been explained above. There is much less certainty, however,

on the number, size, structure and *modus operandi* of the Albanian criminal groups active in Albania and abroad.

It is very difficult to estimate the total number of Albanian criminal groups and their members. Not all criminal groups are known. Even when members are arrested, police investigations often are unable to reconstruct the group composition and find proof of its criminal activities. Moreover, existing police information is often not thoroughly detailed, and the data gathered by intelligence services are usually not made available to the police and researchers. As shown by the reports of the MPO, the number of the criminal groups operating in Albania is not insignificant. In 2002, for example, 44 illegal drug trafficking groups and four economic criminal groups were broken up (MPO, 2002: 5-12). In 2003, the Albanian police targeted 28 criminal groups involved in people trafficking and 49 criminal groups involved in the drugs trade (MPO, 2003).

There is no consensus either on the size and structure of the criminal groups. According to prosecutors specialising in organised crime investigations and academic scholars (Poda, 1998: 21, 1999: 93), the structure and *modus operandi* of Albanian criminal groups is very much influenced by the Italian mafia. Here is meant, however, not so much the hierarchical and complex structure of the Sicilian Cosa Nostra but the more flexible and loose organisation of the Apulian mafia and pseudo-mafia criminal groups, such as the Sacra Corona Unita and gangs of the Lecce provinces (see the contribution by Paoli in this volume). In fact, Apulian criminal groups have been closely cooperating with Albanian criminals since the early 1990s, smuggling drugs, migrants and arms into Italy. Apulian beaches are the closest landing point for motorboats coming from the other side of the Adriatic Sea – at the narrowest point, only 41 nautical miles separate Otranto from Albania. To run their businesses more successfully or avoid Italian prosecution, several Apulian gangsters have also sojourned in Albania and the neighbouring region of Montenegro.

Whatever the Apulian influence, we cannot give precise data on the structure of the Albanian criminal groups. But if we take into consideration the groups broken up by the police, we can say that most of these consist of an extended family or a clique of friends sharing a similar background or working position, or originating from the same village or city. In the early stages, criminal groups tend to operate in their own geographical areas but later on, if successful, spread their activities elsewhere in Albania and abroad.

Most groups are exclusively composed of Albanians. Only groups smuggling drugs or human beings sometimes have a mixed composition. A series of criminal cases have demonstrated that Albanian criminals have close connections with Italian, Greek and Bulgarian illegal entrepreneurs to smuggle drugs in and out of Albania. Several investigations by Italian law enforcement agencies have also proved the close cooperation by Italian and Albanian offenders in the trade of various illegal commodities. In general, however, Albanian groups prefer to act on

their own, merely selling and buying illegal 'commodities' from foreign offenders. Investigations dealing with the trafficking of women coming from Moldova, Romania and other eastern European countries, for example, have shown that Albanians 'bought' these young women from Serbian and Montenegrin criminal groups, who had arranged their trip in the Balkan regions.

Research studies carried out in Albania and other countries, mainly in Italy, have come to the conclusion that Albanian criminal groups are particularly cruel and violent (Bregu, 1999: 37-40; Hysi, 1999:70; Renton, 2001:10; UNICEF, 1998: 85). Violence is exercised both against victims and underworld rivals. In the past years as well as in 2003 in Albania there were often public shoot-outs between rival groups on the streets as well as the murders of several businessmen and other persons known for their involvement in illegal activities. In a long article published on 18 October 2003, the Albanian newspaper *Koha Jonë* provided a detailed overview of these murders (Prifti and Kovaci, 2003). These started with the homicide of Gazmend Muça and others members of his groups in the late 1990s. On 29 March 2003 the businessman Fatmir Rama was killed in his restaurant. On 9 April 2003, the businessman Florian Vila was executed near to his residence. And on 20 August 2003, another businessman, Arben Fodulli (Pojani), was killed in the city centre.

The frequent use of violence is also confirmed by the victims of trafficking in human beings. Some of the women liberated in Albania were, for example, interviewed within the Inter-Agency Referral System (IARS) run by the International Organisation for Migration (IOM) and the International Catholic Migration Commission (ICMC) (IOM and ICMC, 2002: 5). Accordingly, almost all of the victims had experienced some form of abuse during their transit through or stay in Albania – 32 per cent of them had been raped and 30 per cent had been beaten.

5. Patterns of Organised Crime in Albania

Organised crime in Albania manifests itself in the form of various activities. Smuggling of illegal migrants, trafficking of women and children for the purposes of exploitation, trafficking of stolen cars, drug trafficking and economic crime are the main components of organised crime in Albania.

5.1. Smuggling of Human Beings: A 'Good' Business for Albanian Criminal Groups

Since 1990, illegal immigration has been very problematic in Albania. The country has experienced a massive exodus of its population: over the first ten years of the transition, about 25 per cent of the population emigrated from Albania. About 91 per cent of those interviewed in a sample of Albanian migrants in Greece and Italy said that economic and living conditions were the prime reasons for their emigration

(HDPC, 2002: 24). Looking for a better life, most of the migrants were obliged to travel illegally to Italy, Greece and other countries, because it was impossible for them to obtain a visa.

Due to its favourable geographic location, Albania became not only a source but also a major transit point during the 1990s for undocumented migrants willing to enter the European Union. Foreign nationals (above all, Kurds and Turks) are usually brought to Albania through two routes: the first one goes through Turkey, Greece or Macedonia to Albania; the second one reaches Albania through Bulgaria, Romania, Serbia and Montenegro.

Given the huge demand, the smuggling business soon fell prey to criminal entrepreneurs, who have made huge profits out of this activity. Albanian criminal entrepreneurs have specialised in bringing Albanians and other nationals to the Italian coasts by speedboats and dinghies. Between 1993 and 1998, hundreds of these vessels could be found along the Vlora coast, the Vjosa and Shkumbin estuaries and were routinely used for smuggling people and illegal commodities in Italy (Council of Ministers, 2001: 10). Since then, due to the more effective controls of the Albanian authorities and the improved cooperation with foreign police forces, the business does not operate as smoothly and as openly as before. Nonetheless, according to the data provided by the Italian police, which set up an Interforce Police Mission (IPM) in Albania providing extensive assistance and training to the country's police forces, over 90,000 illegal migrants were stopped on their way from Albania to Italy in the period between 1998 and 2002. Of these, 22,516 were Albanian (IPM, 2003).

To better organise their activities, Albanian smugglers soon began to cooperate with foreign, especially Apulian, criminal groups who were in charge of the migrants as soon as they landed in Italy. Apulian smugglers, especially those belonging to the Sacra Corona Unita and other southern Apulian criminal networks, usually provided migrants with land transportation in and out of Italy and helped them get a visa or forged passport (Heba, 1997: 31-2; Poda, 1999: 93).

Though Albanian and Italian smugglers provided a service much longed for by migrants, they are far from being benefactors. On more than one occasion they did not think twice about throwing their 'customers' into the sea to avoid being caught by the Italian border police. Hundreds of innocent people have thus disappeared into the Adriatic Sea due to clashes between the Italian police and the traffickers on boats (UNDP, 2000:40). It will suffice to mention the most serious event, which took place in the Otranto channel on 27 March 1997, when 102 Albanian citizens, most of them children and women, were thrown overboard and died. The disaster was caused by an Italian military ship deliberately hitting an Albanian vessel full of undocumented Albanian emigrants (UNDP, 2000:38). Similar disasters are indirectly favoured by the climate of intolerance and racism that has become widespread in Italy and Greece, and frequently targets Albanians. It is no coincidence that the Otranto disaster took place just a day after an Italian

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politician had said that everything should be done to prevent clandestine Albanians from coming to Italy, even if it means throwing them into the sea (UNDP, 2000: 40). The family of the victims initiated criminal proceedings against the Italian military staff involved in the incident and eventually, in 2003, the court recognised their right to compensation. Another serious incident occurred on 30 December 1999, when 37 people, intending to reach relatives and friends in Italy to celebrate New Year's Eve together were drowned (UNDP, 2001: 37). As a result of these repeated incidents, the Otranto channel has become known to many people as 'the channel of tears'.

In order to carry out their smuggling business, criminal groups have frequently involved family members, relatives and acquaintances living in coastal areas, who do not have other means of living and are keen to make some extra money. These facilitators are usually in charge of guiding and providing shelter to migrants waiting to embark and provide manpower for the smuggling trips. According to Ndre Legisi (1997), Under-Secretary at the MPO in 1997, in the mid-1990s the smuggling business and the cultivation of cannabis were the main sources of income for over 7,000 families living in coastal areas. The income drawn from the smuggling of human beings exceeded USD 300,000. Estimates by the UNDP are considerably higher: the UNDP estimates, in fact, that smuggling and related services produced USD 250-350 million a year in the city of Vlora alone in the late 1990s (UNDP, 2001: 41).

A particularly troublesome aspect of the smuggling business has been the involvement of young people (usually 15 to 25 years old) in the transportation of migrants across the sea. The organisers of the traffic do not run risk themselves, though they pocket most of the profits. A speedboat owner, interviewed by Daniel Renton in Vlora (Renton, 2001: 20) admitted earning USD 10,000 for every night he sent his boats to Apulia. According to Heba (1999: 33), the yearly profits for each smuggling team are around ITL 6 billion (about € 45 million).

Smuggling of migrants as well as trafficking of people could not be carried out without the support – or at the very least the benign neglect – of police officers and other state representatives and politicians. The media often accuse politicians of involvement in these illegal activities. So far however, no formal charges have ever been raised against politicians for facilitating the business of smuggling migrants. Some criminal cases have, however, concerned police officers who had protected smugglers.

After enjoying great success throughout the 1990s, the business of smuggling migrants entered into a period of serious crisis in the early twenty-first century. There is still an abundance of potential 'customers', but the more frequent and effective controls of the Albanian and foreign police and customs have created new hurdles for smugglers of human beings. In 2000-2001, for example, 662 rubber dinghies and motorboats, carrying in total over 18,000 illegal immigrants, were sent back from Italy to Albania (Council of Ministers, 2001:49). As a result of the increased

police pressure, in 2002 there was a sharp decrease in both the number of trips and smuggled persons. In the second half of 2002, according to the IPM report for 2002 (IPM, 2002), smuggling of migrants has been almost completely eradicated.

Forced to reduce the business of smuggling migrants, Albanian criminal groups have increasingly focused on drug trafficking. It is too early to say if the current standstill really implies the definitive retreat of Albanian criminal entrepreneurs from this activity or, more probably, a mere pause to adjust to the new 'business conditions' and develop more covert smuggling techniques.

5.2. Trafficking of Women and Children for the Purpose of Sexual Exploitation

As with the smuggling of migrants and other illegal commodities, the trafficking of women and children for the purposes of exploitation started in the early 1990s, boomed in 1996-1998 and showed a considerable decrease afterwards. Throughout this time, Albania has primarily been a source and transit country and only seldom a country of destination for the victims of this horrible trade.

Up to very recently, Albanian state officials were not able to provide accurate data on trafficked women and children. Failure to gather such information has for a long time led to contradictory data, often based on sensational estimates made by the foreign press. According to the Italian press, for example, there are almost 15,000 Albanian prostitutes in Italy, and another 6,000 in Greece (Renton, 2001: 10). Daniel Renton (2001: 9) and Majlinda Bregu (1999: 37) estimate that all in all 30,000 Albanian women work as prostitutes abroad. These figures have never been confirmed or denied officially by the Albanian government. In a recent report, however, the Albanian Council of Ministers set the figure of the actual victims of trafficking, i.e. the Albanian women forced to prostitute abroad, at 8,000 (Council of Ministers, 2001: 13). There are no official data on the number of women who engage in prostitution of their own free will.

Even fewer are the data on the exploiters. In 1997, for example, 580 reports of trafficking in human beings were filed by the Italian police and 200 persons were arrested (Bregu, 1999: 38). The Albanian government reports that in 2001, 85 persons belonging to 14 different criminal groups were prosecuted for trafficking in human beings. In that same year, 41 females were rescued, 19 of whom were foreigners.

The incentives for the victims of this trade are numerous: some have been singled out by an analysis of criminal cases and police data conducted by Xhavit Shala and Engjell Hysi (2000: 8-11) in the late 1990s and are now listed in an explanatory report accompanying the *National Strategy to Combat Trafficking in Human Beings* (Council of Ministers, 2001: 13) and the first annual report *On the Convention for the Elimination of all Forms of Discrimination against Women* prepared by the Albanian Committee for Equal Opportunity (2002: 35). Among

the most important incentives, we can mention the poverty of the victims' families as well as their current unemployment, lack of information and education, but also changes in Albanian families caused by the difficulties of the transition that are reflected in an increase of divorces and of child neglect and abandonment.

It must also be considered that the police long focused its attention and energy on the repression of more visible crimes and neglected individual offenders and criminal groups running human trafficking schemes. A lack of police units specialising in the prevention of trafficking also allowed this shameful business to develop and prosper.

Empirical investigations show that criminal groups resort to various methods for recruiting their victims. The victims are usually promised marriage or a profitable job in a foreign country, although they are sometimes kidnapped or forced by violence and intimidation to leave their place of residence. Other people are then in charge of effectively trafficking victims using legal or illegal means of transportation: regular aeroplanes and ferries but also motorboats are the means most frequently used. If necessary, the corrupt cooperation of Albanian or foreign law enforcement officers is also secured. Others facilitate their trafficking by providing fake or regular visas and passports or selecting complacent brothels or night-clubs where the victims are then forced to work as prostitutes. Interviews were carried out with 437 women out of the 870 victims of trafficking returned to Albania during the period 1998-2001 in a study the findings of which are attached to the *National Strategy to Combat Trafficking of Human Beings*. Only 10 per cent of them admitted to engaging in prostitution of their own will. More than half of them stated that they were forced into prostitution with violence (Council of Ministers, 2001: 14).

Throughout their stay abroad, victims of trafficking are usually left prey to 'pimps', who strictly control and manage both their 'professional' activities and private life. Those who do not comply are raped, beaten or threatened by their oppressors. The Italian Ministry of the Interior reports that 168 foreign prostitutes were killed in 2000, and that most of them were Albanian or Nigerian women murdered by their pimps (IOM and ICMC, 2002: 10).

In the late 1990s, due to its favourable geographic location, Albania has increasingly become a transit country for foreign victims of trafficking. Albanian criminals also prefer to deal with foreign women coming from poorer eastern European countries, such as Moldova, Romania, Bulgaria and the Ukraine. Albanian traffickers thus avoid being threatened by the relatives of Albanian victims. From 1999 onwards, 126 foreign victims of trafficking were detained in Albania and returned to their home countries. Ninety-seven of them were from Moldova, 19 from Romania, five from Bulgaria, four from Russia and one from the Ukraine.

Eastern European women enter into Albania from transit countries, such as Macedonia, Serbia, Kosovo and, most frequently, Montenegro. Very occasionally they are transported through Greece. Of the 125 victims of trafficking interviewed within the framework of the above-mentioned IARS project, 93 per cent were

smuggled into Albania – namely, the northern town of Shkodra – via Montenegro. Victims are then trafficked into Italy, France, Belgium, the Netherlands and England. The majority of these women involved in trafficking are forced into prostitution during their journey to the destination country. Within Albania, these victims may be traded two or three times before being smuggled abroad (Renton, 2001: 4).

5.3. Trafficking of Children for Other Purposes

Many of the victims of trafficking for the purposes of sexual exploitation are minors. The data, though very partial, are staggering. Out of 41 former prostitutes formally returned to Albania in 2001, 11 were minors (Council of Ministers, 2001: appendix). According to Renton (2001: 23), of the 2,000 cases of trafficking originating from the poor Berat and Kuçova regions and examined in his report, 75 per cent involved minors. Likewise 70 per cent of the 219 Albanian prostitutes interviewed by the Vlora NGO Women's Hearth were 14 to 17 years old (Renton, 2001: 24).

Children are trafficked and exploited in Albania not only for the purposes of sexual exploitation but also for other heinous reasons. As the Italian and Greek press regularly report, and studies of local NGOs prove, many Albanian children are daily constrained to beg on the street or exploited in other ways in foreign countries and in Albania itself. Children are obliged to beg mostly by criminal groups of Gypsy or Roma origin. According to unproven press reports, some of these young victims are even forced to steal or to get involved in more serious crimes. Many of them are orphans or abandoned children, though parents and tutors sometimes sell or are forced to sell their own children to exploiters. Two major scandals focused public opinion on this phenomenon: the first one broke in 1996 and involved the charity organisation Shpresa, which ran illegal adoptions of Albanian children. The second one is known as the 'hospital scandal' and broke in March 1998, when six coffins of 12 supposedly dead orphans, including some new-born babies, were found to be empty (Bregu, 1999: 39).

Starting in 1998, the police have begun to gather data on children trafficking and exploitation but official figures still represent only a minimal portion of the reality. According to these data (Council of Ministers, 2001: 4), there are about 4,000 Albanian minors who are living abroad unaccompanied. It is particularly difficult to collect reliable data, when parents themselves allow their children to be sold or exploited. The data gathered by social services administrations show that within the past eight years over 1,000 Albanian children have disappeared from the coastal region and it is estimated that 3,000 Albanian minors are being exploited in different parts of Greece. According to the report written on the topic by Daniel Renton (2001: 10) for the NGO Save the Children, around 1,000 Gypsy children from Albania are exploited in Thessalonica, Greece's second largest city, alone.

5.4. Trade in Stolen Cars

In the transition years, Albanians have been frequent victims of car theft but at the same time they have consistently bought stolen cars. For a relatively long time, the Albanian state has been unable to prevent this type of illegal business. The import and distribution of stolen cars in Albania flourished largely undisturbed up to 1997. Up to then, many Albanians bought expensive, newly produced foreign cars, which they certainly could not have afforded had the cars not been stolen. The stolen cars were brought into Albania by criminal groups operating abroad, made up of Albanians or having a mixed composition. Out of 4,400 cars produced between 1999 and 2002 and recently checked by the Albanian police in collaboration with Interpol, at least 350 turned out to be stolen, primarily from Italy (MPO, 2002:7).

Up to a few years ago, most cars to be imported into Albania were stolen using traditional methods using violence, arms and false or skeleton keys (Qystri, 1999: 24). Nowadays, however, more peaceful methods have also become common, which rely on the cooperation of the legitimate car owner. When a car theft is simulated, in fact, both the future and past owners benefit. The former gets the car cheaply, whereas the second obtains a reimbursement from the insurance companies in addition to the discounted car price. At the end of their stay or mission in Albania, some foreigners have sold their cars in such a way: they offer their customers a good price, but do not provide the new owners with the official documents so that they can claim the car theft.

Stolen cars can be easily registered in Albania, because services are available to change the registration numbers of the vehicle. Corruption among Albanian customs and police has also facilitated the process of legalising stolen cars by violating the laws. In most cases, cars go through customs and are registered in Albania on the basis of counterfeit documents and without checks on the car chassis number and the original papers or confirmation that the car is no longer registered in another country.

Since 1997, Albanians have themselves become frequent victims of car theft. Criminal groups often steal vehicles and then offer their owners the possibility to get them back in exchange for a fee rewarding the group's 'honesty'. Stolen cars are also frequently exported abroad – mainly to Montenegro, more rarely to Macedonia and Kosovo – and are then sold there as a whole or as spare parts (Hysi, 2000c: 12).

Official statistics registered a steep rise in car theft in the late 1990s. In 1998 and 1999, 464 and 467 car thefts were registered respectively. One in six people interviewed for the International Crime (Victim) Survey of 2000 admitted to having been victim of at least one car theft during the previous five years (Hysi, 2001:16). The increase in car theft in Albania is not recorded by court statistics. According to the 2002 report of the Ministry of Justice (2003: 22), no person has been convicted of motor vehicle trafficking in Albania. As we will see in the chapter

devoted to organised crime control policy in Part III, the lack of prosecution and sentencing largely depends on the definition of the above-mentioned offence. The offence of motor vehicle trafficking has been largely envisaged for organised crime groups and is thus hard to prove. Most car thefts, even if they are organised by professional criminals, are reported and prosecuted by law enforcement agencies as simple thefts.

5.5. Drug Trafficking

The cultivation and trafficking of illegal drugs have become relevant phenomena in Albania since the early 1990s. Once again due to its geographical position, Albania has become one of the key transit countries for drugs on their way from Asian production countries to European consumers. Since the mid-1990s the cultivation of cannabis sativa, once limited to the south of Albania, has also become widespread throughout the country. By producing marijuana and hashish, Albanian farmers help satisfy the growing demand of the illegal drug market in Albania itself as well as in Greece and Italy.

Since the late 1990s, the trade in locally produced cannabis products and in foreign drugs, such as heroin, amphetamines, cocaine and Asian hashish has become a major business for organised crime players and groups. Most drugs – most notably heroin and hashish – are imported from Turkey, Bulgaria and Macedonia by land and sea. Some are sold locally to satisfy the growing domestic demand. The largest part, however, is exported into western Europe, above all to and through Italy (UNDP, 2001: 37).

Albanian drug trafficking groups have become skilled in developing business relationships. On 13 March 2001, the police arrested two leaders of the so-called ‘cocaine group’, Sokol Kociu and Mentor Gjonaj, accusing them of being part of an international drug trafficking network.

The profits from drugs are immeasurable. Investigations of a series of cases have shown that persons suspected of drugs and other forms of trafficking have invested their profits in activities such as the construction industry and other sectors.

As for other illegal activities, economic factors need to be taken into account to explain the sudden spread of drug cultivation and trafficking in Albania. Farmers, in particular, have found cannabis a profitable crop, which helps them improve their poor living conditions. In addition to economic factors, the weakness of the post-socialist state has also played a significant role. Law enforcement agencies have, in particular, for a long time not been equipped with the appropriate technical and scientific equipment, ranging from speedboats to sniffer dogs, to prevent both the import and export of illegal drugs. Antiquated laws and offences have hindered the prosecution of drug traffickers. Widespread corruption within the public administration, the ineffective coordination of the police, customs and prosecutor’s offices as

well as the lack of cooperation between Albanian law enforcement agencies and their foreign counterparts have also not helped.

Despite these hindrances, major steps forward have been made in the last few years. In particular, the systematic seizure of dinghies and speedboats carrying drugs onto Italian shores has prompted a change of drug trafficking routes. The beginning of the twenty-first century also recorded a rapid increase of charges against criminal groups trading in heroin and other illegal drugs in Italy. According to the latest annual report of the MPO (2002: 6-7), in 2002 alone 239 drug trafficking cases were reported, 44 criminal groups were disbanded and 71.1 kg of heroin, 13,717 kg of marijuana and 155,678 cannabis plants were seized. The value of the heroin seized amounted to USD 5.5 million; the value of the seized marijuana exceeded USD 2 million.

Cooperation with foreign law enforcement agencies has also substantially improved, bearing significant fruits. In 13 joint operations, 36 members of international drug trafficking groups were arrested in 2002 in Albania; among the arrestees were also some Albanian police officers (MPO, 2002: 8). In the first five months of 2003, 20 additional drug trafficking networks and groups were disbanded by the local police (MPO, 2003: 3).

Despite these successes, drug trafficking goes on. Almost every week, Italian media and police authorities report the seizure of drugs coming from Albania and the arrest of Albanian drug traffickers. As a result of the effective repression of the smuggling and trafficking in human beings, the illegal drugs trade has become the major source of profits for Albanian organised crime players.

5.6. Arms Trafficking

Arms trafficking has long been a favourite activity of Albanian criminal groups. In the early 1990s, criminal groups smuggled weapons for their own use from Montenegro and Greece, as proved by several criminal cases (Heba, 1997: 51). The widespread public unrest following the collapse of the pyramid investment schemes in late 1996 made weapons and ammunitions available for all. During the riots of March 1997, in fact, the population looted over 1,300 army stores. Specifically, over 550,000 small arms and light weapons and close to 900 million rounds of ammunition were taken, which were used in the 1,500 murders in 1997 mentioned above. During the Kosovo crisis, all sorts of weapons and ammunitions were looted from Yugoslavian storehouses in Kosovo and then smuggled into Albania. Again, these were sold not only to members of criminal groups but also to 'normal' citizens who wanted to protect their families and property in case of civil riots. Many of the looted weapons were subsequently smuggled out of Albania by criminal groups. Since 1999 several criminal groups involved in arms trafficking were brought to justice in several Albanian cities, such as Shkodër, Durrës, Dibër and Korçë.

As early as April 1997, in an effort to create stability and to achieve eventual integration with Europe, the government of Albania promoted the voluntary surrender of weapons and ammunition. In August 1998 a new bill was passed regulating the possession of weapons and providing for an amnesty period for the voluntary surrender of weapons without penalty until August 2000. This law foresaw the legal possession of weapons by some businessmen and people in border areas. Subsequently this law was extended until 4 August 2002, with the provision for voluntary surrender without penalty until that date.

The National Weapons Collection Commission was established as the main body overseeing the recovery of the looted weapons and ammunition. The police were put in charge of the collection of weapons and the army was to pick them up from the police and placed them in army depots or arrange for their destruction. In their efforts to recover the looted weapons, the Albanian government agencies were assisted by the UNDP, which launched the 'Weapons in Exchange for Development' programme. This assistance evolved from a pilot project in 1998 in the district of Gramsh, which was implemented from December 1998 to January 2000. During its two-year life span, this project resulted in the collection of some 5,000 weapons. In the following years, the UNDP activities were extended to the districts of Elbasan and Diber. During this second project's two-year period, close to 6,000 weapons were collected (UNDP, 2003).

Despite these efforts, a large variety of weapons have remained available to criminal groups that keep on using and smuggling them abroad, as numerous investigations in Albania and Italy prove (Council of Ministers, 2001; Poda, 1999: 93). Unlike other crimes, prosecution and sentencing have been quite effective in the case of weapons illegal possession and trafficking of weapons. In 2002, for example, 271 criminal cases were opened for the trafficking of weapons and ammunition and 295 persons were sentenced (Ministry of Justice, 2003: 27).

However, arms trafficking is no longer the favourite activity of the criminal groups in Albania. Drug trafficking and infiltration into the legitimate economy have replaced this illegal trade in the priority list of criminal entrepreneurs.

6. Organised Crime's Infiltration into the Legitimate Economy

Throughout the 1990s and early twenty-first century, organised crime in Albania has become more skilled and less visible. Responding to the growing law enforcement pressure and to the changing economic and political conditions in Albania, it has changed its tactics and areas of activity. Criminal groups resort to open violence less and less – murders were down to 208 in 2001 from the peak of 1,500 in 1997 (UNDP, 2003) – and commit predatory offences to infiltrate the legitimate economy. Unfortunately, this new trend is hardly revealed by official data nor is sufficiently discussed, even in academic publications. These, as much as the attention of law

enforcement agencies and the media, are still largely focused on the trafficking in drugs and human beings. In comparison, financial and economic crime and the informal economy have been largely neglected by law enforcement agencies and researchers, despite the fact that politicians often accuse each other of exercising undue influence on economic decisions and establishing more or less hidden monopolies in different sectors of the economy.

Is economic crime a concern for Albania? Clearly it is. The brief history of democratic Albania has already experienced financial scandals that have seriously threatened the political and economic stability of the country. As early as 1991 and 1992, the Albanian-Swiss company, Sejdia, collected considerable amounts of American dollars from credulous Albanians promising the payment of high-interest returns, and then disappeared with the whole sum. This scandal was followed by another one called 'Arsidi': four Albanian bank employees and a French citizen misappropriated USD 1.6 million during the negotiations on the Albanian public debt with foreign banks. During 1995-1996, the pyramid fraud schemes assumed massive proportions, defrauding many Albanians of most of their savings (Heba, 1997: 42).

The collapse of the pyramid schemes and the subsequent reforms undertaken to strengthen the state and the market regulatory framework compelled Albanian and foreign criminal entrepreneurs to focus on other, more traditional forms of economic crime, such as counterfeiting official stamps, documents, labels and trademarked goods and the smuggling of highly taxed goods. The relevance of these offences is shown by the annual reports of the MPO. In 2002, 641 economic crimes were reported. These cases corresponded to 15 per cent of the total offences reported for this year (MPO, 2002: 9). Counterfeiting official documents and trademarked goods, forging money and smuggling highly taxed commodities, such as cigarettes and fuels, are today the most widespread forms of economic crime. To quote just one example drawn from the press, a group of forgers was targeted by the Albanian police in September 2003. The leader was the owner of a popular disco in Tirana, who was found in possession of the official stamps of virtually all Albanian government agencies and a considerable number of faked passports.

The Albanian legal economy is also suffering considerable damage from other trade and financial frauds: trademarked goods, food and industrial product labels are still frequently counterfeited. Counterfeited products are also imported from abroad, mainly from Italy and Greece. In this case, documents and trademarked goods are forged in the source country before they enter Albania, and sold at a higher price than they are really worth. As a result, Albanians have no certainty about the quality of the goods they buy, even when they have to pay more for them than western European consumers. This type of fraud is particularly widespread in cases of beverages for which the consumption tax is very high, and other consumable goods.

Criminal groups involved in economic crime operate mainly in large coastal cities and in the majority of cases officials and customs employees are also involved. In 2002, four big criminal groups specialising in counterfeiting official documents were broken up and prosecuted (MPO, 2002: 10).

Besides fraud and counterfeiting operations, Albanian criminal groups routinely invest the money resulting from illegal trades in the legitimate economy in their own country and abroad. Money laundering is greatly eased by the widespread practice of tax evasion, a major problem with incalculable consequences for the Albanian economy. Albanian and foreign private companies sometimes work with two balance sheets, one for their internal use and one to present as an official document to tax authorities. Though the magnitude of these practices may have declined since the early stages of the transition, tax evasion is still widespread due to the corruption of the public officials, who pursue their narrow economic interest instead of the general ones.

Money laundering was most probably committed by some of the 'charitable' foundations which ran the infamous pyramid schemes, collecting money from credulous Albanians in exchange for fabulous interest rates and in the end not returning the money at all. During an international conference in 1998, officials of the General Prosecutor's Office stated that there was evidence that some of these foundations were engaged in money laundering and other illegal activities, but the owners of these foundations have not been prosecuted for money laundering. Legal experts and especially the Albanian judge Zamir Poda also believe that dirty money was laundered by the pyramid schemes operators (Poda: 1999: 93)

Since then, money laundering has only occasionally been charged by Albanian prosecutors. In one operation in 2001, for example, the police disbanded an Albanian criminal group that organised drug trafficking and counterfeiting from Switzerland, subsequently laundering dirty money in Albania. In another case, a person suspected of participating in a drug trafficking organisation was arrested after the police seized CHF 4 million (€ 2.6 million) in his library. These first money laundering cases are still pending before the court (MPO, 2001). Since 2001, only six new criminal cases were opened for the offence of money laundering.

Police operations and data reveal, however, only the tip of the iceberg. In Albania there is currently an investment boom in the construction industry – apartment blocks, hotels and restaurants are being built everywhere – and in the organisation of lotteries and games of chance. It is assumed that a considerable part of the money invested in such projects has been earned illegally. So far, however, the owners and investors of these initiatives are not obliged to declare the origin of their money.

Again, the weakness of the state is the main reason why it has so far been impossible to stop dirty money flowing into the legitimate economy. Laws, even when they exist, are applied only superficially. Since the enactment of a money laundering law in July 2000, public officials are obliged to declare their income and properties. According to their declarations, they have an income comparable

to that of other middle-class Albanians. In reality, however, the living standards of most of them are much higher. As already mentioned, not even businessmen are required to prove the legal origin of the money they invest. They carry out most transactions in cash without resorting to banks or financial institutions. Practitioners and scholars are currently debating proposals to amend the money laundering act and oblige businessmen and private companies as well to declare their properties and prove their legal origin.

In comparison to money laundering, extortion and intimidation of private businesses do not seem to be as widespread. Some 72 per cent of the businessmen interviewed in the latest International Crime Business Survey carried out in Albania claimed that extortion and intimidation are not common. Only 9 per cent of them described them as frequent phenomena (Hysi, 2001b: 30). However, the Albanian media reports on threats and clashes between criminal groups to win public construction contracts as well as 'classical' racketeering activities against large companies. Occasionally, to enforce their threats, criminal groups have gone so far as to kidnap the children of the company owner. In 1999, for example, the daughter of an Albanian businessman and the son of a Greek businessman were kidnapped. In 2002, the son of a wealthy person in Vlora was kidnapped and subsequently released by the police (MPO, 2003: 5). Criminal groups sometimes organise such actions on their own, sometimes, however, they act on commission for business rivals of the victims.

7. Corruption and Organised Crime

Although it is well known that organised crime and corruption are closely inter-related, for a long time this relation was not considered by the Albanian authorities. Up to 1997, combating corruption was not a priority for the Albanian state, despite of the fact that during the first seven years of the transition most state enterprises were privatised. It was only after the 1997 crisis that the Albanian government asked the World Bank to make a study of corruption in Albania.

The survey showed that corruption was a very serious problem and the Albanian government, which had commissioned the study, was forced to acknowledge it (Council of Ministers, 1998:1). Almost half of Albanian citizens admitted to paying bribes, while two-thirds of public officials admitted that bribery was a common phenomenon in the country. Customs, taxation, telecommunications, the justice system, police forces and prosecutor's offices, and health care agencies turned out to be the most affected services. As the World Bank report shows, civil servants did not merely accept bribes but also provided a pay-off themselves to secure a post as customs inspector, tax inspector, judge, national resource administrator, prosecutor or local government official. Although the official wages of public officials are very low, the bureaucrats are willing to purchase government positions on the basis of

expected illicit gains. On the basis of these findings, the World Bank ranked Albania as one of the most corrupt states in Europe.

Later studies and the regular monitoring reports of local and international agencies have further proved that corruption is eating into the Albanian economy and severely weakening the effectiveness of its organised crime control efforts. Two out of five businessmen interviewed in the framework of the 2000 International Crime Business Survey stated that the paying of bribes was commonplace. According to this survey, foreign companies also routinely pay bribes, especially to politicians and senior officers. Corruption is such a common practice that standard fees have crystallised and private enterprises know in advance how much they should pay for a specific favour (Hysi, 2001b: 24). The above-mentioned business survey, which was coordinated by UNICRI, again demonstrated that corruption is most common among customs (55 per cent) and police officers (48 per cent). Similar results also emerge from the latest *Global Corruption Report* of Transparency International (TI). According to this, customs officers (90 per cent), tax officials (80 per cent), government ministers (77 per cent) and judges (75 per cent) are perceived to be most corrupt (TI, 2003: 287). Passing a border control and obtaining a construction permit – two crucial activities for organised crime players – proved to be the most likely to require bribing of a competent official (Hysi, 2001b: 28).

As a result of these findings and of growing pressure of lending agencies and donor countries, the Albanian government has launched several initiatives to curb corruption. A concrete example is the establishment of a controlling department in each ministry. In 2001, 140 employees of the MPO were fired on corruption charges. Two were the heads of the customs offices in two border districts, Korca and Gjirokastra, which are located in southern and eastern parts of Albania respectively. From 1997 to 2001, the General Prosecutor's Office discharged 12 district prosecutors, five of whom were taken to court for 'abuse of duty, accepting bribes and violation of investigation procedures'. In 2002, 1,250 disciplinary and penal measures were opened against police officers; 868 of them were administrative measures against abuses of duty and 157 were penal proceedings, most of which are still pending (MPO, 2002: 3-4).

Unfortunately, official data do not say how many of these corruption cases are related to organised crime. There is no doubt, however, that many of them are. To quote just one example drawn from recent court rulings, an Albanian police officer was sentenced for his involvement in an international drug trafficking scheme (the above-mentioned 'cocaine group').

8. Final Remarks

Organised crime has turned out to be an omnipresent phenomenon accompanying Albanian society in its laborious transition to a market-based democracy. Despite

increasing law enforcement efforts, it has become a major threat for Albanians and their economic and political system.

As Albanian criminal groups have strengthened their positions in the country and abroad and have established a powerful network of communication and cooperation with other criminal groups, there is no doubt that organised crime will proliferate. Trade in prohibited commodities as well as the infiltration in the legitimate economy will continue.

The extensive informal economy and widespread corruption are not only manifestations of organised crime but also its most important 'culture medium', which enables it to develop and flourish. As long as organised criminals remain able to corrupt state officials and infiltrate public authorities, it will be difficult to fight organised crime effectively.

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Contemporary Russian Organised Crime: Embedded in Russian Society

Louise Shelley

1. Introduction

The Russian mafia has gained enormous currency as a post-Cold War security threat. Western Europe sees the growth of the drug trade, human smuggling and trafficking and money laundering from Russia as a major security challenge. Russian organised crime is therefore not only a domestic problem for the Russian state but also an international one. The predominance of organised crime in both political and economic life will be a major determinant of Russia's future development and its ability to maintain its standing in the international community.

The concept of the Russian mafia is a misnomer. There is no unified Russian mafia, but only Russian-speaking organised crime that has emerged from the former USSR. Russia's organised crime is unlike the Sicilian mafia – it is not a strict hierarchical organisation based on family, permanent membership and induction rituals. Rather Russian organised crime involves a wide range of actors who are not connected by familial ties and operate with flexible network structures. They are not the 'standard' underworld criminals, as in most parts of western Europe, but also overworld figures who are successful entrepreneurs or high-ranking officials.

The rapid rise of the 'Russian mafia' has alarmed Russian citizens and foreign governments. However, it has not been as central a concern to the Russian state. Russian organised crime proliferated in the last decade because it exploited the post-Soviet transition. It grew unimpeded because there was no political will to stem its growth or punish its leaders.

Within Russia, numerous surveys have identified the mafia as a major force ruling the state. The mafia is seen not only as a major economic force but also as a major political force. Many within and outside of Russia see it as a national security issue for the Russian state (Nomokonov, 1999: 7-12; Webster, 2000). The amorphous concept of the 'Russian mafia' transcends the loose conglomeration of crime groups and has become a major explanatory force of Russian state and economic development.

The present paper is organised as follows – the following two sections reconstruct the emergence of organised crime as a concept in the Russian-speaking public debate and the emergence of organised crime-related research. The fourth section

singles out the specific character of Russian organised crime. The fifth and sixth analyse its involvement in both the illicit and legitimate economy. The seventh section reviews Russian organised crime's strategies to limit investigations and prosecutions. Some conclusive remarks with an analysis of future trends follow.

2. The Emergence of the Concept

Organised crime during most of the Soviet era was, because of state ideology, an impermissible term, except in reference to foreign countries. Under communism, crime would wither away and the concept of more permanent crime groups such as exist in organised crime was therefore even more unacceptable. Especially severe punishments were meted out to those who committed any crimes in groups (Solomon, 1996: 443-4). Soviet criminological literature, therefore, analysed only organised crime in the United States (Nikiforov, 1972: 105-62; Nikiforov, 1991), with minimal reference being made to the Italian mafia.

The reality diverged significantly from the ideology. The well-formed organised crime groups that existed through the late 1920s (Kuznetsova, 1971) were incarcerated under Stalin. Organised crime did not disappear but was merely suppressed and reemerged once the totalitarian controls were lifted. Emerging from the labour camps in the 1950s, it took several decades for these groups to regain their potency but they developed in the 1960s and 1970s cultivating ties with high levels of the Russian regional and even national leadership. In some ways the post-war development of Russian organised crime followed a similar trajectory to Italy (Varese, 1994). Suppressed under Mussolini, the mafia reemerged after the overthrow of the fascist government and grew along with the state in the succeeding decades, cultivating high-placed links with government officials.

Unacknowledged by the Soviet state, organised crime grew significantly during the lengthy Brezhnev era. Closely associated with the ruling elite of the Communist Party, crime groups profited from the inadequacies of the Soviet system. Unlike crime groups in many societies that exploit the demand for illegitimate goods and services, Soviet crime groups mushroomed exploiting the demand for consumer goods and the unmet demands of the legitimate economy.

Organised crime in many societies tries to create monopolies to raise profits and to choke off competition. In the former Soviet Union, where the state enjoyed the monopoly of production, there was no need for crime groups to create monopolies. Instead, they exploited existing monopolies. Organised crime in the final decades of the Soviet period consisted of large scale embezzlement from the state, diversion of goods from trade organisations to organised crime groups and the establishment of underground production using state materials (Shchekochikhin and Gurov, 1988). The Uzbek leadership provided the most notorious example of exploitation of any state monopoly. By boosting reports of cotton production through deliberately false

book-keeping, Party leaders accumulated vast fortunes while leaving the cotton workers in the fields at bare survival levels. The term mafia was introduced to the Soviet public in the context of the investigation of the 'Uzbek mafia.'

Following Brezhnev's death, the new Party Secretary Yuri Andropov launched an investigation into the Uzbek mafia. At the core of the Uzbek mafia was Sharaf Rashidov, Party Secretary of Uzbekistan and a candidate member of the Politburo. He and his Uzbek Party associates amassed a fortune by falsifying accounts of cotton production in their republic (Coulloudon, 1990: 96-116). Enjoying enormous political protection and paying off the Deputy Minister of Interior, they were able to avoid prosecution even after Brezhnev's death (Vaksberg, 1991: 104-36).

After years of investigation, the Uzbek mafia was finally put on trial in a sensational legal proceeding which lasted nine months. The joint trial of Yuri Churbanov, Brezhnev's son-in-law and former Deputy Minister of Interior, and several leading Uzbek officials was widely reported in the media throughout 1988. Detailing the machinations of the Uzbek mafia and its close links to the central government, the citizenry watched every detail of this trial. The concept of the 'mafia' and its central role within the Soviet economy and the Party leadership became very clear to the mass of the Soviet citizenry (Gevorkyan, 1988; Likhanov, 1989).

The revelations of a mafia were not confined to Uzbekistan. By the end of the 1980s, the widespread presence of organised crime was all too evident to Soviet citizens. The anti-alcohol campaign that was launched the month Gorbachev assumed office gave organised crime a further boost. From the mid-1980s, its leaders became more professional and had more access to capital as the 10 per cent of state revenues that were collected by the Soviet government on the sale of alcohol were transferred instead to the hands of organised criminals and their associates, corrupt government officials. Together these groups now had the resources to exploit the new economic opportunities offered by the nascent market economy of the *perestroika* era. By the end of the 1980s, Soviet citizens were blaming organised crime for many highly visible ills of society including increased shortages of food and consumer goods, and visible and growing income differentials.

At the end of the Soviet period, militia investigators estimated that every fifth criminal group had penetrated the state apparatus and about one-half of the crime groups had attempted to corrupt government officials. The links between corruption and organised crime were all too apparent. Observers became cognisant that they were not dealing with a problem of a society in flux but a problem that was deeply rooted in the structure of the state. As one Soviet journalist explained, organised crime was 'rooted in the bureaucratisation of society, in the administrative-command system, whose methods breed an alternative economy' (Khohkryakov, 1988).

Organised crime grew rapidly in the 1980s as a result of prohibition, privatisation and the emergent cooperative movement. The growth of private entrepreneurship provided ample opportunities to launder the ill-gotten gains of the shadow and the

illicit economy. Citizens equated 'the mafia' with private enterprise. The new rich became rich by seemingly 'invisible means' (Humphrey, 2002: 62) fostering this enormous resentment of the new elite.

The state law enforcement system proved incapable of protecting the new capitalist activity (Shelley, 1996; Varese, 2001: 55-72). The militia had served the state and was not dedicated to protecting the personal property of citizens. Furthermore, the close connections between the Party apparatus, justice and law enforcement officials and members of organised criminal groups undermined the state's capacity to serve as protectors of private property and private businesses. Citizens sought '*kryshas*', covers that included payment to top government officials for protection (Varese, 2001: 59). In addition, a whole industry of private protection emerged to safeguard the business sector. Some of these private protection businesses were actually private entrepreneurs but many firms were blatantly criminal. These firms engaged in illegal debt collection through violent means, were covers for criminal rackets and were themselves entrepreneurs of extortion (Los and Zybertowicz, 2000: 159-64; Volkov, 2002: 3-6).

In many countries, there is a greater distinction between organised crime groups and the state. Criminals are clearly identified as underworld figures. In Russia, however, government officials provide a *krysha* for crime groups and license the private protection firms staffed by criminals which 'protect' citizens from organised crime. Some police officials are even leading members of crime groups. With this criminal-political nexus, organised crime groups are powerful enough to compete with the state (Rawlinson, 1997: 47; Shelley, 1999: 102-3). Consequently, the term 'mafia' emerged in Russia not to refer to a specific form of organised crime but a powerful force that would determine the political and economic future of the state (Handelman, 1995: 10). It is not a uniform or a single, homogenous entity.

3. The Emergence of Organised Crime Research

The first demand for understanding organised crime came from the mass media in the Soviet Union. The *glasnost* era press of the Gorbachev period revealed the deep-seated problems of Soviet society that no other sectors had been able to touch. Once the newspapers and television did such far-reaching exposés of the problems of organised crime in society, their topics became permissible for academic research.

Researchers affiliated with law enforcement research institutions were the first to rise to the challenge. Academics from the Ministry of Internal Affairs and the Procuracy conducted some of the first research. A significant round-table discussion was organised by the Russian Criminological Society, based in the research institute of the Russian procuracy, that published the first widely disseminated volume entitled *Organizovannaiia Prestupnost (Organised Crime)* (1989). The first

of three subsequent volumes, these collections aired the views and research from scholars in a variety of Russian institutions (Dolgova and D'iakov, 1993, 1996; Dolgova, 1998).

Sociologists and public opinion researchers also began to produce research on organised crime. Initially, there was little interchange between the sociologists and the legal and law enforcement researchers studying the same phenomena. The Institute of Sociology in St. Petersburg under Yakov Gilinskiy, whose contribution is in Part I of this volume, began to investigate the relationship between the underground economy and organised crime (Gilinskiy, 2003). Public opinion surveys, conducted by leading sociologists, examined attitudes towards organised crime and the diverse forms of illicit conduct that provided important revenue for organised criminals. Included in this was research on public attitudes towards prostitution and the surprising results that this was a highly sought form of employment for young Russian girls (Sanjian, 1991).

Without much access to Western literature on organised crime, Russian research initially relied heavily on reports and legal recommendations from the United Nations. While the United Nations conferences and materials remain an important point of reference for Russian legal scholars, the development of indigenous research capacity and the wider access to a range of Western sources has reduced this dependence.

Initial discussions on organised crime analysed the phenomenon in the context of the transition. The precipitous decline in living standards, the social support system and the socialist way of life were seen as major explanatory factors in the growth of organised crime. Discussions focused not only on the rise of banditry and of violence within Russian society but on the links between organised criminals and corrupt government officials. Many identified crime groups contained law enforcement personnel and government officials. The corruption of the new legislative process was a topic of concern (Dolgova and D'iakov, 1993: 43).

The composition of the organised crime groups was an important point of contention. The nationalistic Russian Criminological Society frequently depicted Russian organised crime as a phenomenon dominated by diverse ethnic groups. Whereas researchers who emphasised the corruption component of organised crime were forced to acknowledge that there were significant numbers of Slavs engaged in and collaborating with organised crime. All realised that the phenomenon consisted of a diverse group of actors who collaborated for financial gain.

The emergence of post-Soviet organised crime that operates within the borders of the entire territory of the former Soviet Union was a topic of great concern. In the aftermath of the collapse of the Soviet Union, border controls and relations among the newly independent states were weak. Criminologists noted that the organised criminals exploited the lack of controls to move precious metals from central Russia to western Europe, to obtain arms for regional conflicts from Afghanistan to

Tajikistan (Dolgova and D'iakov, 1993: 53) and to move stolen cars across weakly guarded frontiers with corruptible law enforcement personnel.

Criminologists explored the relationship between the state and organised crime as well as the future evolution in this relationship. Observing the proliferation of regional conflicts in the initial post-Soviet period, criminologists were concerned that organised crime would be linked with terrorism. While the drug trade was not a significant element of Russian organised crime in the early 1990s, Russian criminologists identified narco-terrorism as a possible future threat.

Soviet criminologists correctly warned the Kremlin leadership in the mid-1980s that the introduction of prohibition would lead to a rise in organised crime as had occurred in the United States in the 1920s. In their initial analyses of organised crime in the new Russian state, specialists acknowledged that Russia was no longer isolated but increasingly subject to global trends and influences (Ovchinsky et al., 1996: 27-39).

Until the adoption of a new Criminal Code just before Yeltsin's re-election as President, much discussion within the criminological community focused on the need for this legislation, the form it would take and problems of implementation of such legislation. As researchers were governed by studying only legally defined phenomena, the absence of criminal legislation defining organised crime limited their ability to study many aspects of the problem.

Despite the absence of a precise legal definition of organised crime for much of the 1990s, criminologists and some sociologists produced a significant body of research on organised crime. Enjoying access to official crime data, criminal cases and even inmates of penal institutions, researchers were able to use a wide variety of methodologies to study the phenomenon. Criminological research developed rapidly from broad generalisations on organised crime to much more highly focused studies on specific topics of concern such as money laundering, corruption and organised crime and the links between organised crime and terrorism. The research evolved from that focused uniquely on Russian and post-Soviet territory to a broader analysis that examined the place of Russian organised crime within transnational organised crime (Nomokonov, 2001; Repetskaya, 2001).

Among the most widely recognised works on organised crime are the four volumes produced on the topic by the Russian Criminological Association. Each of these compilations presents the views of numerous criminologists and draws on the national membership of the association. The research centres, supported by the Transnational Crime and Corruption Centre (TraCCC) at the American University in Washington, located in Moscow, St. Petersburg, Irkutsk, Saratov and Vladivostok produced a significant and widely cited body of research used by scholars and law school students throughout Russia. Through grants for research and publications, they have produced many influential studies on human trafficking, regional variations in organised crime and the role of Russian organised crime in international organised crime. With active websites, their research is consulted by numerous

scholars and practitioners in the Russian-speaking world. The most known of the TraCCC centres, in Vladivostok, has over 3000 visitors monthly to its website.¹

Official crime data in Russia is very unreliable. Because the militia has traditionally been evaluated by their ability to clear up crimes, there has been a very strong incentive to under-report crimes. According to overall estimates of crime under-reporting, less than a quarter of reported crimes are actually recorded by the police and in some categories the figure is even lower (Kudriavtsev, 1999).² There is almost total impunity for corruption crimes and in the area of organised crime only the very smallest fish ever face prosecution because of the close links between the crime bosses and the law enforcement apparatus.

In the 1990s, Russian law enforcement declared that there was a rapidly escalating number of organised crime groups. Between 1990 and 1996, they claimed that the number of crime groups rose from 785 to over 8,000 whose membership was estimated to range widely between over 100,000 individuals to some estimates as high as 3,000,000 (Dunn, 1997: 63). These identified crime groups were mostly small amorphous organisations without permanence that committed acts of extortion, drug dealing, bank fraud, arms trafficking and armed banditry (Voronin, 1997: 53). This figure does not capture the underworld figures engaged in high level crime and money laundering. One Western analyst concluded in the late 1990s that 110 Russian crime groups operated in 44 countries and only 30 of these groups were truly large multinational organisations committing a wide range of criminal activities (Dunn, 1997: 63-87). Since these estimates, there has been some of the predicted consolidation of crime groups. But they have also expanded internationally in Latin America, Asia and Africa as well as many small countries in the Caribbean used for money laundering.

Official crime statistics presented only a very partial view of the crime picture. Therefore, researchers on organised crime needed to use a wide variety of techniques to examine the organised crime problem without relying on official statistics. Interviews and surveys were conducted with crime group members (Paoli, 2001; Volkov, 2002), with trafficking victims (Erokhina, 2002) and with law enforcement and government officials. These shed light on the role of law enforcement personnel in the criminal organisations (Repetskaya and Shelley, 1999). The close ties of many researchers to the investigative bodies sometimes impede research. But in many other cases, researchers examine cases under investigation that are never prosecuted because of political pressure (Nomokonov, 1999). Research in

¹ The links to all these websites can be obtained by going to <http://www.american.edu/tracc> and then going to the links to the respective Russian centres.

² Kudriavtsev suggests that one in three homicides, one in seven rapes, and one out of every 78 larcenies are registered.

a special labour camp for incarcerated law enforcement and government officials was possible because of the links between the law school faculty and labour camp administrators (Repetskaya and Shelley, 1999).

4. The Character of Organised Crime

With the vastness of Russian territory, there are enormous variations in organised crime. While all regions of Russia suffer from the common problems of the Soviet legacy and the post-socialist transition, the crime problem in Moscow is very different from that in the Urals, the Russian Far East and the South of Russia. The countries that border on Russia shape its crime problems. Russian crime is affected by contact with crime groups from the Caucasus in the South of Russia, with Asian groups in the Far East and with eastern and western European crime groups in the more western parts of Russia. Moreover, the demand for different goods and services shapes the form of illicit conduct. The Japanese demand for fish and crabs and timber that cannot be legitimately met has resulted in an illicit trade in these commodities in the Far East. The proximity of southern Russia to the numerous regional conflicts in the Caucasus has fuelled an illegal trade in weapons. Russia has become an important trans-shipment country for drugs because of Russia's proximity to Tajikistan.

Post-Soviet organised crime is a far from homogeneous phenomenon in Russia. The first decade of the Russian state has resulted in enormous variation and diversification in organised crime that results from contacts with a range of foreign trade partners, the dominance of organised crime groups in regional governments and proximity to ports and international trade routes. Organised crime is not a single entity, but a diverse phenomenon that draws from many sectors of society.

Unlike in many societies, the impetus for Russian organised crime did not come from the demand for illegal goods and services. Rather, the rise of organised crime was tied to the transition from a socialist to a capitalist economy, the privatisation of state property and the opening of borders. The collapse of border and customs controls allowed the movement of large amounts of licit commodities in illicit ways. The drug trade has contributed to the growth of many international crime groups but in Russia the drug trade expanded after many organised crime groups had already developed.

In the United States, Japan and in many parts of western Europe, ethnic minorities are significant participants in organised crime. Unable to obtain social and economic mobility through established channels, they seek economic and political power through organised criminal activity. In the Soviet era, there was a significant criminal underworld. The elite of this underworld were the thieves-in-law or *vory v zakone*. The number of individuals who bore this title may have reached a maximum of 800, rising significantly in the 1990s with the economic possibilities of the transi-

tion (Varese, 2001: 167; Razinkin, 1995). A significant number of these elite of the criminal world were members of Soviet ethnic minorities. Members of different Caucasian groups assumed a disproportionate role. The groups cooperated together across ethnic lines but the pre-eminence of a disproportionate number of minorities suggests that crime was used by non-Slavs to advance their political and economic interests in the absence of legitimate opportunities that were concentrated among Slavs in the Soviet period. In the Chechen case, organised crime activity helped overcome the repression and loss which had been suffered by the deportations of the Stalinist era.

Some Russian officials in the Yeltsin era went as far as to assert that there 'is no Russian mafia'. At a time when much attention was paid to the problem of Russian organised crime, this seemed like a blatant denial of a pervasive reality. Examining these statements more closely, it was an attempt to blame organised crime on non-Russians operating within Russia. This nationalist stance denied the reality of the very wide range of actors participating in Russian organised crime.

In the first post-Soviet decade, organised crime consisted of much more than the traditional figures of the criminal underworld. It was an amalgam of former Communist Party and Komsomol officials, active and demobilised military personnel, members of the law enforcement and security system, participants in the Soviet second economy and the criminal underworld. Although ethnic crime groups such as Chechens were highly visible because of active presence in automobile, drugs and arms smuggling rings, most organised crime consisted of a broad sector of actors who worked together to promote their financial interests by using violence or threats of force.

Certain criminal organisations have obtained particular notoriety. These include such groups as *Solntsevo* in Moscow and *Tambov* in St. Petersburg (Varese, 2001: 170-6) and *Uralmash* in Ekaterinburg (Handelman, 1995). These multi-faceted criminal organisations have survived throughout the 1990s and have warded off competition. The famed thief-in-law, Viacheslav Ivankov, alias Yaponchik, incarcerated in New York is part of the *Solntsevo* group (Shelley, 2002: 60; Friedman, 2000). Notorious crime groups also are based in Chechnya, St. Petersburg, Kazan and the Russian Far East. They have diversified their hold over both the legitimate and illegitimate economies. By infiltrating the political process at a very high level, they have been able to influence policy formulation and to halt the prosecution of their crimes. These organisations are rarely identified by their leaders in the way that Toto Riina was identified with the Corleone mafia or John Gotti with the Cosa Nostra in New York.

Many crime bosses were killed in the 1990s in Moscow, St. Petersburg, the Urals and the Far East as well as other regions. But others survived, particularly because they were operating internationally. These include such figures as Semyon Mogilevich, the Cherny Brothers and Anatoly Bykov. The tracking of Mogilevich's assets by the British government led to the disclosure of the Bank of New York

case. International law enforcement authorities associate him with a broad range of international criminal activity including drugs and arms trafficking, trafficking in women, money laundering and stock manipulation. The Cherny brothers and Anatoly Bykov violently acquired large shares of the Russian aluminium industry (Stepashin, 2000; Webster, 2000: 12; Repetskaya, 2002), and subsequently laundered their proceeds internationally.

Russian organised crime groups involve the widest range of participants of almost any criminal group discussed in this multi-nation study. They also have the most diverse forms of criminal activity. Crime groups acquired control over many sectors of the economy since the late 1980s but this dominance accelerated with the advent of a free market economy and the break up of the Soviet Union in 1991. Not one type of organised crime, identified internationally, is unrepresented in at least one part of Russia. Moreover, there are certain types of organised crime that are particularly associated with Russia. These are related to Russia's role as a former military superpower. The spontaneous privatisation of parts of Russia's conventional military arsenal to managers high level military officers has made them important actors in Russian organised crime. Therefore, Russian organised crime traded in nuclear materials, large military equipment and classified military technology (Ovchinsky et al., 1996: 44-5).

The hi-tech capacity of Russian organised crime has given it a competitive advantage. A Russian criminal broke into the computer system of a major Western bank, and according to the analyses of the White Collar Crime Centre in the United States, Russian organised criminals are major perpetrators of international frauds on the Internet.

The links between Russian organised crime and terrorism have been studied since the mid-1990s (Ovchinsky et al., 1996: 24-7). While initially, this was studied in relationship to other countries, Russians acknowledged the centrality of these links before 11 September when this topic began to receive more attention (Luneev, 2002a). A driving force for this analysis was the conflict in Chechnya but the writings on this topic by Russian criminologists are not tied exclusively to this internal conflict. The overall 300 per cent rise in terrorist acts recorded in Russia between 1997 and 2001 commanded attention and the United Nations mandate to study the financing of terrorism gave an added impetus to this criminological problem (Dolgova, 2002: 17-18).

Apart from the international security crimes of Russian organised crime, there are a full range of other crimes of both the licit and illicit economy. These include drug trafficking, trafficking and smuggling of human beings, automobile theft, gambling and casinos, banditry, extortion and rackets, kidnapping, murder for hire, large scale environmental crime and trafficking in endangered species, and large scale and often violent corruption (Ovchinsky et al., 1996; Dubovik, 2002). Although certain low-level groups specialise in acts of banditry or extortion, most significant groups engage in multiple crimes simultaneously such as arms, drugs

and human trafficking. This was seen in the investigations of Semyon Mogilevitch that led to the *Bank of New York* case (Gordon, 1999).

Money laundering is associated with every one of these illicit sectors as well as large-scale abuses linked to the legitimate economy. The most significant of these are the criminalisation of the privatisation process, the banking and the real estate sectors, commodity and stock markets. Also highly significant are export-import firms that can be readily used to launder money. Organised crime also exploits its control of ports, shipping and transport to facilitate smuggling and promote sales of stolen commodities. The control of food markets, sports teams and training facilities, the natural resource sector including precious metals and gems, timber, fishing industry, nightclubs, restaurants and hotels and travel agencies and infiltration into the lucrative shuttle trade with China, Turkey and Italy (importation of consumer goods) also contribute to the coffers of organised crime.

Money laundering is central to Russian organised crime activities. In many countries, money laundering is a central element of organised crime because it permits money from illegitimate means to be moved into the legitimate economy. Because so much of Russian organised crime is already involved in the legitimate economy, money laundering is less necessary within Russia. Instead, Russian money launderers provide their services for crime groups from other parts of the Soviet Union, eastern Europe and many other international crime groups. This is done through the banking sector, casinos and even direct investment in restaurants and bars within Russia. Moreover, Russian criminals have been prosecuted abroad for helping Colombians launder their money on a fee for services basis.

Russian organised criminals exploit the lack of regulation of the banking sector to move billions of United States dollars in assets abroad. Only recently removed from the Financial Action Task Force list for being in non-compliance with anti-money laundering measures, the Russian banking sector facilitated massive transfers of illicit assets. The *Bank of New York* case involved seven billion dollars of which only a fraction involved money laundering. The use of offshore havens to hide funds, including even the assets of the national treasury as in the *FIMACO* case, drained Russia of the capital it needed to pay citizens their salaries, pensions and to provide capital for investment (Bohlen, 1999; Webster, 2000: 14).

Russian organised crime group's infiltration into the legitimate economy has few parallels outside of Japan where organised crime groups are deeply implicated in the banking sector, commercial real estate and ports. The contemporary economic crisis in Japan is strongly linked to the failure of banks and commercial real estate investors to recover bad debts from organised crime groups. The crises of the Russian banking sector and stock markets are explained not only by the absence of transparency but also the domination of these sectors by organised crime groups. Evidence of this is the numerous contract killings in Russia associated with

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personnel employed in these areas of the economy that continue to the present time (Webster, 2000: 60-70).

Violence is a very important element of Russian organised crime. Organised criminals in both the legitimate and illegitimate economy rely on violence. This was particularly pronounced in the first half of the 1990s during the initial division of state property. At that time hundreds of deaths annually resulted from contract killings and the internecine conflicts of criminal groups. In major cities such as Moscow, St. Petersburg and Ekaterinburg, there were very visible shootouts that were not confined to organised crime dominated properties. In Ekaterinburg, a whole portion of the cemetery is dedicated to gangsters killed in shootouts and bombings.

Violence is used to eliminate rivals, but it has also been used extensively to eliminate financial obligations (Dolgova, 1998: 105). The perpetrators of these crimes enjoy almost total impunity thereby making them a very effective form of settling economic conflicts (Dolgova, 1998: 110; Nomokonov and Shulga, 1998). Whereas many anticipated that the level of violence would decline once the initial division of property was over, the continued killings of organised crime groups suggest that violence assumes a much more deeply rooted role in Russian organised crime activity. Contract killings are the most extreme form of violence. The rise and endurance of private protection companies, many of them staffed by organised criminals or closely linked to them, ensures that the threat of violence remains an important enforcement technique within Russia (Varese, 2001; Volkov, 2002). The privatisation of state social control to organised crime leaves little possibility for state control of the violence.

Russian organised crime groups have been among the major beneficiaries of globalisation (Luneev, 1997). The opening of frontiers of the largest country in the world that borders on both Asia and Europe has provided enormous opportunities for crime. Russia's leadership role in military and technology issues has given Russian organised crime a technological edge in a global world dominated by hi-tech. Moreover, the collapse of the state control apparatus have provided large scale criminals the impunity to operate both at home and internationally.

5. Russian Organised Crime Involvement in the Illicit Economy

Russian organised crime's involvement in the illicit economy has been a transnational phenomenon since the break-up of the Soviet Union at the end of 1991. Some of this illicit activity is most closely linked with other newly independent states (the other countries to emerge from the former Soviet Union) and with eastern Europe. But as the past decade progressed, illicit criminal activity involved an ever larger and broader range of countries. For example, Russian-trafficked women are now found in Southeast Asia, the Middle East, western Europe and as far away as

Latin America. The drug trade, although linked to central Asia, has become more global in scope (De Kochko and Datskevitch, 1994; Romanova, 2002).

Russian organised criminals work closely with Colombians, as recent arrests near the Pacific Coast of the United States indicate. The disclosure in Colombia of a submarine under construction with the assistance of Russian engineers confirmed the diversity of the ties. Synthetic drugs produced in Russia are marketed in western Europe and close ties have developed with Chinese and Japanese groups involved in the drug trade. Russia is now not only a trans-shipment country but an important participant in the international drug trade. Drugs now assume a more central role in Russian organised crime than at the beginning of the 1990s (Paoli, 2001; Romanova, 1998, 2002).

The Russian illegal arms trade is a worldwide phenomenon. Arms from the Russian military have been confiscated in Mexico, have been used in regional conflicts in Africa and in the Balkans. Foreign crime groups, especially from Asia, see Russia as a new source of supply for their weapons (Repetskaya, 2001: 73). Colombians sought to acquire large-scale Russian military equipment through a Russian émigré organised criminal (Friedman, 2000). Senior members of Russian organised crime, according to Interpol, are travelling to regions of conflict in Africa where they sell Russian arms in exchange for 'blood diamonds'.

A significant trade in stolen cars exists between western Europe and the European parts of Russia. In Russia, from Irkutsk west to the Vladivostok, the cars on the road are predominantly Japanese. Most of these cars are second-hand Japanese cars traded in after a few year's use. They are moved to Russia, with the help of the *boryodukan* (Japanese organised crime) who control Japanese ports and sell the cars to Russian organised crime, colluding to avoid Russian customs duties. Some of the Japanese vehicles are stolen from their owners but the extent of this phenomenon has not been ascertained.

Tens of thousands of women have been trafficked abroad, the women often sold to foreign crime groups who traffic the women to more distant locales. Women are trafficked from all regions of Russia by small-scale criminal businesses and much larger entrepreneurs. An elaborate system of recruitment, transport facilitators and protectors of these trafficking networks exist. Despite significant prevention campaigns, trafficking remains a significant revenue source of Russian organised crime (Tiuriukanova and Erokhina, 2002).

Apart from the trafficking of domestic women, there is significant illicit movement of smuggled individuals from Asia who traverse Russia. For some, their end destination is Siberia and the Russian Far East whereas others seek to move to Europe. Asian smugglers work in cooperation with corrupt law enforcement officials and domestic crime groups to facilitate the smuggling. Less is known about the dynamics of this phenomenon than trafficking. But the presence of tens of thousands of illegal residents from China and the Indian sub-continent in Moscow alone is evidence of the size of the phenomenon (Shelley, 2003).

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The vast natural resources of Russia are much exploited by crime groups. Many of these commodities are not part of the trade of the legitimate economy because they are endangered species, timber that is not authorised to be harvested or radioactive materials that are subject to international regulation. The trade in these commodities is facilitated by corrupt law enforcement, particularly by corrupt customs and border officials, and often local crime bosses. The largest consumer of the illegal exported timber is China and there are more than ten uncontrolled transfer points along the Russian and Chinese border. Other purchasers of illegally cut timber in the Far East include Japan and Korea. Whereas in the north-west of the country, illegally harvested timber heads to Finland, Austria, the United States and Germany (Dubovik, 2002: 166-8; Romanova, 2002). Russian organised crime overseas is also significantly involved in illegal trade in CFCs but this is primarily connected with United States markets.

The routes for these illicit commodities follow similar paths. Geographical location is a prime determinant of the distributors and the distribution of the illicit commodity. From the Urals east, products are sent on to western European markets and on as far as the United States and Latin America. From Siberia and the Far East, much illicit trade heads to Asia, although there are some notable exceptions, for example in the *Golden Ada* case in which diamonds valued at several hundred million dollars, unauthorised for international sale, were sent to San Francisco. The diamonds came from Siberia and the Far East (Kaplan, 1998). This different route existed because only the American market could absorb such a large quantity of diamonds.

The drug trade follows a different trajectory. Goods are transported to Russia from Afghanistan through the countries of Central Asia. The trade route within Russia adheres to the route of the trans-Siberian railroad not only because of the transport links but because the wealthiest markets exist along this route. The termini of the railroad in Moscow and Vladivostok are important trade points as are the intermediary cities of Ekaterinburg and Irkutsk. St. Petersburg with its excellent railroad transport and its ports linked to western Europe is another focal point of the Russian drug trade. In these major cities with higher income levels, purity and prices for drugs are higher than in tertiary communities where there is less disposable income. Ethnic minority communities from the Caucasus and central Asia in cities like Irkutsk help facilitate the drug trade (Repetskaya, 1997: 68-9). Russian military in Tajikistan help move the Afghan drugs from there to points throughout Russia.

The domestic market for drugs and prostitutes has grown significantly within Russia in the last decade. Exact data on the number of drug users is not available but the enormous growth in the number of AIDS cases, 80 per cent of which are attributed to the sharing of tainted drug paraphernalia, is a consequence of the rise in illicit drug use (United States Department of State, 2001). Many women have been trafficked abroad for the foreign sex industry but there has also been a tremendous

rise in the number of domestic brothels as evidenced by research in the Far East among local law enforcement agencies (Erokhina, 2002: 35-58).

In early 2003, the Ministry of the Interior announced that the illicit economy now represents half the revenues in Russia. The methodology used to derive this figure was not provided and seems exaggerated considering the substantial revenues in Russia from the sale of oil, gas and other natural commodities as well as the rise in domestic food and consumer production. Russia has a large shadow economy that does not deal in illicit commodities but provides ample opportunities for the investment in illicit funds. Russia's enormous shadow economy and the growing trade in drugs and human beings complicates determination of the percentage of the Russian economy consisting of 'dirty money', tax evasion and the shadow economy.

6. The Involvement in the Legitimate Economy

Russian organised crime established its enormous stake in the national economy with the reintroduction of a market economy in the late 1980s. Whereas Volkov's *Violent Entrepreneurs* suggests that Russian organised crime did not initially benefit from the privatisations, his conclusions are based on a small sample of organised crime in St. Petersburg (Volkov, 2002). In other parts of the country with very visible crime groups, there is much evidence that groups such as Uralmash in the Ekaterinburg area and groups in the Far East were active participants in privatisation. During the privatisation process, by using force, crime groups squeezed out potential purchasers, becoming the dominant shareholders in many factories, banks and acquiring valuable commercial and residential real estate (Shelley, 1995: 250-2).

Once in the legitimate sector, they continued to operate with illegitimate tactics. For example, organised criminals have intimidated minority shareholders of companies where they own large blocks of shares, used 'enforcers' to recover debts and laundered money from their illicit businesses through their legitimate ones.

The presence of Russian organised crime groups is most pronounced in the following legitimate sectors – banks and financial institutions, export or precious metals (Luneev, 2002b) real estate, transport, hotels and restaurants, casinos and nightclubs, and such heavy industry as the aluminium sector (Repetskaya, 2002). Unlike in Italy and the United States, they are not involved in the waste sector that is controlled by the state. Neither are they major actors in the movie industry, as is the case in India.

Russia's high level of technical specialists also means that there is a high level of cyber-crime (Sergeyev, 1998). These crimes include financial fraud against banks and credit cards, fraud committed internationally through the internet and the use of encryption to hide communications.

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The strong involvement of Russian organised crime groups in the financial and real estate sectors of the legitimate economy bears strong resemblance to the patterns of Japanese organised crime involvement with their legitimate economy. It less resembles the European experience, including that of Italy because the Italian economy is based more on small businesses than the Russian or Japanese.

Since its formation, the banking sector has been heavily influenced, if not controlled by organised crime. With low capital requirements for the establishment of a bank, until 1994 it was easier to establish a bank than buy an expensive car. Former Party officials and security police established many of the new banks through the privatisation of Communist Party money (Handelman, 1995: 100). Without large-scale private capital, much of the banking sector in the 1990s depended on its corrupt links with the government to secure control of state budgetary resources (Glinkina, 2002: 52). Moreover, the Central Bank, throughout the 1990s, was not a source of integrity or stability for Russian financial institutions. According to the FBI, 550 banks – or nearly half of Russia's credit and financial organisations – were controlled by organised crime groups, while the Russian Ministry of Internal Affairs gave the figure of 85 per cent for the banking sphere (Webster, 2000: 37).

With infiltration of Russian organised crime into the banking sphere, there was no control over who served as the officers of banks or how they disposed of their funds. Banks all too often were merely conduits to move money to offshore locales rather than sources of capital which could provide loans for investment (Lopashenko, 2002). Banks provided loans to organised crime groups which they knew had no chance of being collected. The financial collapse of the Russian banking sector and the accompanying rouble devaluation in August 1998 were, in part, a consequence of the massive movement of capital offshore by the criminalised banking sector.

Russian money laundering moved billions – estimates range as high as in excess of USD 200 billion – to offshore locations around the world. Within Europe, Cyprus and Switzerland figured prominently but many offshore locales in the Caribbean as well as Nauru in the Pacific were used. The largest money laundering investigation launched in the United States was the Bank of New York that involved both Russian capital flight and money laundering by major crime figures.

The preponderance of Russia's money is laundered abroad. Yet Russia provides money laundering services through its financial institutions, casinos and restaurants, hotels and bars for organised criminals from other states of the former Soviet Union and crime groups from Italy and Colombia.

7. Limiting Investigations and Prosecutions

Russian crime groups have been extremely successful in avoiding prosecution through their buying, coercing and intimidating of muck-raking journalists, and their bribing of law enforcement and other government officials, thereby infiltrating the

political system. Russia offers very far-reaching immunity for those who serve in national and regional Parliaments as well as a wide range of governmental positions. This immunity is much more far-reaching than that known by parliamentarians in other countries (Boylan and Newcomb, 1997).

Most serious offenders enjoy immunity from prosecution. Some enjoy this through their election to national and regional Parliaments. For others, their immunity stems more from their manipulation of the criminal justice system rather than the institutionalised protections granted to wealthy politicians. Criminals with significant assets or allied with affluent crime groups can bribe themselves out of criminal investigations.

As a result, the post-Soviet criminal justice system has prosecuted few offenders from the top of the criminal or the political elite. Instead, most prosecuted individuals came from the lowest socio-economic level of society, few are members of significant criminal organisations. Lawyers also help find technicalities leading to the release of suspected offenders.

Court and prison data reveal that the criminal courts and labour camps are reserved for the lowest strata of Russian society. Of the 1.7 million offenders charged with crimes in 1999, 55.6 per cent were persons with no steady income, 26.7 per cent committed a crime while under the influence of alcohol, narcotics or other substances. Women committed 15.2 per cent of crimes and minors committed 10.7 per cent. Those convicted are the most defenceless and poorest members of society. The highly significant detention rate of women is further evidence of the impact of the impoverishment of women in the transitional period (Luneev, 2000).

8. Future Trends and Conclusions

Organised crime groups and corruption have deeply penetrated state structures and economic life. The lack of political will to address these problems at the national and regional level will undermine Russia's economic development and reduce its economic competitiveness.

Despite the negative prognosis, Russia's future is better than that of many other Soviet successor states. In many of these countries, organised crime has penetrated the highest levels of political power and severe economic decline is resulting from the combined impact of post-Soviet transition with organised crime dominance. In contrast, Russia with economic growth and greater political stability, has more capacity to withstand the corrosive impact of organised crime.

In the future, Russia will face high demographic, health and ecological costs resulting from the activities of crime groups. The trafficking of women will have serious demographic consequences because Russia's birthrate is already below the replacement level. The increasing spread of narcotics without effective drug prevention or treatment programmes will exacerbate the spread of AIDS. The

difficult ecological situation in Russia will worsen as Russian organised crime groups sell more of its natural resources.

Certain more specific trends can be anticipated. First, there will be a significant growth in the drug trade. One of the major consequences of the war in Afghanistan has been the massive movement of drugs from northern Afghanistan into Tajikistan. Russian and Tajik military, along with the usual drug trafficking organisations, are moving large quantities of drugs into Russia. Secondly, the increasing regional diversification of Russian organised crime groups will continue as their trading partners shape local crime groups. Thirdly, the presence of many highly qualified technical specialists will give Russian organised crime groups a strategic advantage and skills to market to foreign crime groups. Fourthly, the existing links between transnational crime and terrorism will expand. The absence of effective border controls, the proximity of Russia to many central Asian states and the hostility among many Muslim sympathisers towards Russia because of the continuing and devastating war in Chechnya provide the basis for more terrorism. Lastly, Russian organised crime groups will maintain and expand their links with foreign crime groups.

Russian organised crime groups have the high-level specialists, flexible structure and vast geographical reach that will permit its personnel to maintain their importance on the international crime scene in the coming decades. The Russian state has failed to devise or implement an effective strategy to combat the problem. The failure to combat the internationalisation of Russian organised crime, through effective international cooperation, will have deleterious consequences at home and internationally.

Organised crime groups' penetration into the privatisation process will have long term consequences for the social and economic structure of Russian society. Organised crime's power in the transitional period prevented citizens from acquiring a financial stake in the society. With the vast majority of the citizenry lacking property, there is little pressure on the state to provide legal guarantees to protect property rights and the rule of law. Russia's future society may more closely resemble that of Latin America than the socialist society it left behind. A small elite, including the upper levels of the criminal world, will control most of the country's assets. The majority of the citizenry will live at a subsistence level. Such unequal division of income and property will have far-reaching consequences for Russia's educational levels, mortality rates and its competitiveness in the globalised economy. Without a significant middle class, its transition to a stable democracy will be compromised. Russian organised crime is more than a peripheral problem. It is a defining problem of state development with many long-term and serious consequences.

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The Turkish Mafia and the State

Frank Bovenkerk and Yücel Yeşilgöz

1. The Susurluk Incident

It happened on the evening of Sunday, 3 November 1996. Late-night television viewers in Turkey saw their programme interrupted by a line of text appearing under the picture. It was shocking news. Three people were killed in a traffic accident near the town of Susurluk in western Turkey and a fourth injured. Ever since the advent of commercial television, people in Turkey had grown accustomed to this kind of *shock news*. Every night there were sensational interruptions especially inserted to boost viewing ratings. In retrospect most of them were pretty insignificant. The people who died in this particular accident were police chief Huseyin Kocadag, a man by the name of Mehmet Ozbay and Ms Yonca Yucel. The injured man was Sedat Bucak, a member of Parliament from the province of Urfa in the southeast of the country and known as the commander of an army of village guards set up to protect that region from the PKK, the violent separatist movement of Kurds. A couple of pistols, machine guns and a set of silencers were found in the wreckage of the car. Half an hour later a new line of information appeared on the screen: the deceased 'Mehmet Ozbay' was really Abdullah Catli. His name will not mean much to Turks under the age of 30, but the older generation certainly knows him. In the 1970s, Catli was the vice-chairman of the national organisation of *ulkucu* (literally idealists) better known abroad as the Grey Wolves. He has been wanted by the Turkish authorities since 1978 as the suspect in a number of murders, one of them involving seven students. He was also wanted by Interpol, because he had been arrested by the French and Swiss police as a heroin dealer, but escaped from a Swiss prison in 1990. The woman who died in the crash was his girlfriend.

There was soon more information about the other people in the car. Police chief Kocadag was one of the most important founders of the special units at the police force and was now the director of the Police Academy in Istanbul. These special units were set up in 1985 under the command of the General Board of Directors of the Police. Alongside the army and the militia of village guards, they combated the PKK. It was generally assumed that their members were recruited from MHP circles, the ultra-right-wing political party that protected the *ulkucu*, or Grey Wolves. These units were expanded in 1993 and came to resemble what they were under Tansu Çiller, who was Prime Minister. It was an odd combination of people, the four passengers in this car.

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Everyone in Turkey was shocked. On 5 November, the headline in *Hurriyet*, the country's largest daily paper, read, 'The state is aware of corrupt relations'. According to the paper, Catli had played a key role as a Grey Wolf and *agent provocateur* in the coup of 12 September 1980; he had organised the escape of Agca, the man suspected of the murder of the editor-in-chief of a major daily paper and a later assault on the Pope. Ever since the incident in Susurluk, references were made on television and in the newspapers to the recently published report of the Turkish Secret Service, which had not always been taken that seriously until then, but whose contents now rang true. According to the weekly *Aydinlik* of 22 September 1996, the report stated:

A criminal organisation has been set up within the police force in such a way as to give the impression that the people involved are combating the PKK and Dev-Sol [an ultra-Marxist movement]. The group largely consists of former *ulkucu* and concentrates on crimes such as intimidation, robbery, extortion, smuggling drugs and homicide. The group is under the direct command of the General Chief of Police Mehmet Agar. The members of this group have been provided with 'police' identity papers and 'green [i.e. diplomatic] passports'. The members of the group give the impression of being active in combating terrorists, but in reality they are active in smuggling drugs to Germany, the Netherlands, Belgium, Hungary and Azerbaijan.

The press and politicians kept pressing for more information. Newspaper columnists in particular lived up to their typically Turkish reputation of always wanting to know more. Mahir Kaynak, a former secret service staff member often consulted by the media on events of this kind, stated 'This chance occurrence proves the claims I have been making for years.¹ There are two wings in the state. One of them is visible; this group is of the opinion that the Kurdish problem cannot be solved via the model of the constitutional state. This is why we have set up this second and illegal organisation' (*Milliyet*, 7 November 1996). The political opposition wanted to pose questions in Parliament but the cabinet would not comment. Agar, still general chief of police at the time of the events described in the Secret Service report and Minister of the Interior in 1996, was discredited the most but continued to act as if the whole matter was insignificant (*Milliyet*, 6 November 1996). To this day the most important agency of the Turkish state, the National Security Council (known

¹ Mahir Kaynak was an MIT agent, and at the same time a lecturer at the University of Ankara. He was well informed on what was going on in left-wing circles in the 1970s and involved in preparing a left-wing coup. After the army ultimatum, these groups were brought to justice and at the courtroom session of one group, the Madanoglu trial, Kaynak had to *come clean*. He was later appointed professor at Gazi University in Ankara.

as the MGK from the Turkish acronym), which includes the chiefs of staff of all the army units, the President, the Prime Minister and several ministers, studied all the important state issues, has never had the Susurluk issue on its agenda. Agar had no intention of drawing any political consequences since ‘we never did anything that made us lose face’ (*Milliyet*, 8 November 1996).

However, since there was no end to the troublesome questions, something had to be done. Prime Minister Çiller had no choice but to take concrete steps, and to her great regret she made a sacrifice and asked Mehmet Agar to step down. He was nonetheless cordially thanked for his efforts by his own party chairman. On 22 December 1996, all the leaders of the political parties represented in Parliament were invited by President Süleyman Demirel to a meeting to discuss the Susurluk accident. They met for five and a half hours, and a 73-page report was drawn up. Necmettin Erbakan, the new Prime Minister, set the tone by noting:

The situation is more serious than we think and the public knows. There are military men, police officers, politicians and mafia people involved. Events have taken place that are not known to the public. We now know the names of 58 people involved in these shady matters, and have been able to locate 47 of them. Ten of these 47 people have been murdered or are at any rate no longer alive. Some of the more important of these 58 names are: Mehmet Agar, Sedat Bucak, Korkut Eken, Huseyin Baybaşin, Ali Yasak, Abdullah Catli (deceased), Haluk Kirci, Tarik Umit (disappeared), O. Lutfu Topal (murdered). [*Milliyet*, 24 December 1996]

At the same meeting Mrs Çiller, the Vice-Premier, responded to an earlier statement by her political opponent Ecevit, who had declared, ‘I first discovered this illegal organisation in 1974 when I was Prime Minister. During my second term as Prime Minister I asked the military Chief of Staff to terminate this organisation. But it did not come to an end. Later Çiller used this very same organisation for her own dirty business’ (*Yeni Yuzyil*, 5 December 1996). Vice-Premier Çiller responded by saying, ‘I was a secondary school pupil when Mr Ecevit, opposition leader in Parliament at the time, revealed the existence of a counter-guerrilla, a kind a ‘state gang’. Similar claims are now being made. Mr Ecevit later served as Prime Minister twice. I investigated what Ecevit did about this. Nothing.’²

The people of Turkey were appalled by these revelations. Starting on 1 February 1997, millions of people there put all their lights out every evening at nine for one minute to protest the widespread corruption and abuse of power in political and official circles, and the gesture was supported by artists, journalists, trade union-

² This information about her age cannot be accurate. By the 1970s, Tansu Çiller had already got her university degree.

ists, politicians and businessmen alike. Two skyscrapers at the Sabanci Centre in Istanbul, the property of one of the country's biggest businessmen, were totally dark for a minute every evening starting on 1 February. Many radio and television broadcasting stations informed the audience at a certain moment that it was time to put off the lights, 'one minute without light to lead the country out of the darkness for good' (*NRC-Handelsblad*, 3 February 1997).

In January 1997, Parliament appointed a nine-man committee to investigate the Susurluk crash and leave no stone unturned. Mehmet Elkatmis, a religious Muslim, was appointed chairman and his political leader Erbakan said militantly, 'If we come across a gang (*cete*), we will wipe it out' (*Hürriyet*, 3 December 1996). The committee took more than three months to examine a good 100,000 relevant documents and accounts of interviews with 57 people at hearings. For our book on the Turkish mafia, we interviewed the chairman of the committee just before it published its final 300-page report on 3 April 1997 and another 2,500 pages of hearings (Bovenkerk and Yeşilgöz, 1998: 223-6). On the basis of this interview and the newspaper accounts of what Elkatmis said, we know that the committee was not able to go nearly as far as it intended at the start, or as far as Erbakan's statements suggested. The committee would have liked to be able to find out much more about the role of the unlawful, 'non-existent' secret organisation of the gendarmerie, the so-called JITEM. However, the chairman told us that the PKK was ultimately the villain because it was dealing in drugs, thus voicing the official government standpoint.

One of the most sensational committee findings was that the annual turnover of the drug trade was USD 50 billion, which was more than the total Turkish state budget of USD 48 billion! This figure might look more precise than it actually is, but it does give an indication of the dimensions of the drug trade. One of the problems the committee came up against was that individuals' financial information could not be examined because of the existing bank secrecy. Committee member Saglar regretted that this prevented the committee from gaining insight into how the profits from the drug trade were distributed. Another drawback for the committee was that the ex-head of the National Security Service at the time, Teoman Koman, and the head of the gendarmerie refused to appear before the committee (*Hürriyet*, 3 January 1997).

The problem of organised crime in Turkey is linked to the national state in a unique way. Susurluk is generally known in Turkey as proof of the existence of cooperation ties linking the state and the underworld. It is hard for Europeans or Americans to understand how a state gang like the one exposed after Susurluk is still essentially tolerated. Eight years later, we can now conclude that all the parties involved have been acquitted and cleared of criminal charges. Agar has been elected to Parliament again and Bucak was released because, as the court stated in June 2003, 'his clan has a long history and in the revolts of the Kurds, for example in

1925, his clan chose the side of the state.’ A short excursion into the history of the Turkish state might help make this easier to understand.

2. The Turkish State System

In theory, Turkey has the agencies and rules and regulations of a democracy, but in reality there is only a limited form of democracy, a political system with ‘the state’ as the centre of power – though in Turkey the state is not a collective term for the political parties and the government. In theory, the state includes the entire institutional power apparatus. In practice though, it pertains to the National Security Council founded in 1960 by the troops responsible for the first military coup that year. In Turkey, Parliament, the political associations, some of the press and everything we envision as part of a modern democracy only functions within the space the National Security Council allows for it. We need to explain how this system came into being and how it works before we can present the rise of Turkish mafia politics in the proper perspective.

The Republic of Turkey that was proclaimed on 29 October 1923 in Ankara is not the result of a social and economic revolution from the bottom up, it is the product of a social and cultural reform enforced from the top down that came into being within an authoritarian political structure. It was a grand effort to modernise the country in one fell swoop and there is no doubt that this reform jump-started the modern economic development, equal rights for women, and the secularisation of the country. The ideological foundation for the reforms, Kemalism (named after Mustafa Kemal Atatürk), was derived from fascism in general and the doctrines of Benito Mussolini in particular. Kemalism still constitutes the ideological basis for the state and as such, it is kept outside the political discussion. This ideology is strongly nationalistic and centres on a striving to cultivate unity among the various peoples and cultures that remained in Turkey after the Ottoman Empire. The Turks and their culture served as the basis for the unity the country aspired to. Kemalism is populist in the sense that class, religious and ethnic differences are overlooked, and organisations based upon them are not permitted to exist. It is statist to the extent that economic reforms are led by the state from above. Kemalism stands for a secular state, which does not necessarily mean church and state are separate, as is usually the case in modern societies, it simply means religion is subordinate to the state. The government pays all the expenses, the salaries of the imams, the construction of the mosques and so forth, for the one approved school of Islam, the Sunnite school.³

³ This means that by paying taxes, a third of the population of Turkey, the Alawites, subsidise a branch of Islam that they do not belong to.

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The authoritarian Turkish model is a unifying one. Based on equality as the point of departure, its aim is to turn all the people of the country into Turks. One of the ways this unity is created is by constantly citing new enemies who threaten the integrity of the Turkish nation. The internal enemies include Armenians, Kurds, communists and Muslim fundamentalists, and the external enemies are all the countries of the world, at any rate potentially, since 'the only friends Turks have are other Turks' (Yeşilgöz, 1995: 179-93).

The first military coup took place on 27 May 1960 and put an end to the Menderes government, which had been confronted with a great deal of political opposition, some of it originating in the Prime Minister's own Democratic Party, and had increasingly responded in an authoritarian fashion. The Kemalist system was for the first time essentially challenged by left-wing parties and movements in the 1960s when – under the influence of student movements in Germany, the United States and France – the country witnessed a lively intellectual debate. Small radical groups broke away in 1970 to engage in a battle with the state in the form of armed propaganda: terrorism, an urban guerrilla, and attacks. The response was the political mobilisation of ultra-right movements.

One of the strong men of the 1960 coup was Alparslan Türkeş, an officer in the Turkish army. In 1965 he converted an existing political party into an outright fascist group with a surprisingly nationalistic and reactionary party programme for the post-World War Two period – the MHP or Nationalist Action Party. A paramilitary organisation of *idealists* (*ulkücü*) called Grey Wolves was set up in these same circles, and they were to serve as storm troopers against left-wing groups.

For the military leaders, the political divisiveness resulting from the economic difficulties in the late 1960s and the growing anti-Americanism among left-wing intellectuals was ample reason to submit an ultimatum to the government on 12 March 1971 with the order to reform the country's politics in keeping with the spirit of Atatürk. Martial law was declared, and it was to last for two and a half years. The left-wing movement was purged and many of its militants went underground because there was no protection for them under the various right-wing regimes of the National Front, which the Nationalist Action Party was part of. The security service and police force had ties with the MHP, and consequently more or less gave the Grey Wolves free rein.

In the 1970s the Grey Wolves began a veritable reign of terror and shot and killed many people who had nothing to do with the violent side of the left-wing opposition: students, teachers, trade union leaders, booksellers and politicians. It was an extremely unequal battle since the ultra-right wing obviously had the support of the state. Via deliberate provocation the MHP stimulated clashes between the various segments of the population and reinforced the hatred of minorities.

The 1970s were plagued by severe economic setbacks and as a result of the destabilisation the decade culminated in a chaos that pushed the country to the verge of civil war. The left-wing movement started the violence and a ferocious battle

with the ultra-right groups erupted. There are various theories about the fighting. Prominent Turkey expert Feroz Ahmad does not exclude the possibility that the chaos was deliberately created by the military leaders to serve as an excuse for a new coup (Ahmad, 1993: 176).

Throughout this entire period, the underworld was smuggling arms into the country for right- as well as left-wing organisations, and heroin was being smuggled abroad to pay for these purchases, as has since been revealed by investigative reporter Ugur Mumcu (1995). To give an impression of the size of the trade and the profits the smugglers must have been making, the following illegal arms were confiscated from 1980 to 1984: 638,000 revolvers, 4,000 submachine guns, 48,000 rifles, 7,000 machine guns, 26 rocket launchers and one mortar (Ali Birand, 1984: 320).

On 12 September 1980, there was another military coup. Led by Kenan Evren, the junta did its best to present itself as the enforcer of law and order, and in an effort to do so systematically referred to suspects who had played a role in the growing violence as terrorists. People from the extreme right wing also disappeared into prison, be it not for as long. A number of them felt misunderstood in their patriotism, leading in turn to the formation of private violent gangs, such as those engaged in loansharking.

The major problem of the 1980s was the Kurdish issue, once again a typical product of the enemy theories the Kemalist state invented for itself. The Turks had always more or less looked down on the Kurds as a backward people and up until well into the 1960s, the state successfully implemented its assimilation policy. But by the end of the decade Kurds in the cities began to connect with the left-wing movement and a Kurdish consciousness grew that was based in part on an awareness that southeast Turkey had been deliberately kept underdeveloped. In the course of the 1970s, this Kurdish consciousness increased as part of the battle between the right and left wings. Immediately after the 1980 coup, the Kurds were subjected to measures designed to suppress their emancipation movement. A number of these measures now make a bizarre impression, and essentially can only be comprehended in the framework of the ideology described above. Even in private conversations, it was prohibited for Kurds to speak their own language since it might 'weaken their national feelings'. The PKK, the most radical Kurdish movement, was the only one to survive the repression. All Kurdish opposition that rejected violence as an instrument was effectively oppressed. In 1978 the Kurdish leader Abdullah Ocalan was able to escape to Syria. The complete Kurdish population was behind him, and today his movement, the PKK, still has the mass support of all Kurds. It is a totalitarian movement with a virtually religious culture of leadership and violence. Ocalan initially operated on the basis of an almost quaint revolutionary model that seemed to be rooted in the romantic period of the Third World revolution of the 1960s. He deliberately addressed the poorest and least educated youngsters in the villages and cities and stimulated their revolutionary potential by advising them

not to go to school. The movement was inspired by the PLO and launched its own guerrilla warfare in 1984, the Kurdish intifada. It lasted until the leader, Ocalan, was arrested on 15 February 1999 at the Greek Embassy in Kenya, where he had fled to. In 2003, after a self-proclaimed truce, the new PKK leaders announced that the armed struggle was to be resumed.

3. The Relation between the State and Organised Crime: The 1970s

It is no longer easy to separate crime and politics in Turkey. Representatives of the Turkish state claim the PKK funds its activities by engaging in the heroin trade and in extortion, which is why they ask foreign police forces to help them combat this form of crime. Representatives of the PKK say in turn that it is the Turkish state itself that is active in the drug trade and puts its own bands of assassins on their trail and is thus working towards the downfall of the constitutional state itself. What we are dealing with here are essentially political positions, but each of the parties in the conflict defines the conduct of the other as *criminal*. In themselves, these disputes are outside the scope of criminology and of this book. It should be noted though that the both PKK and the Turkish state, or at any rate parts of them, are involved in the drug trade and in extortion and murder. It does not particularly interest us whether they organise the drug trade themselves or indirectly profit from it via extortion or donations from drug dealers. What we are interested in is that by engaging in these activities, they enter the field of organised crime.

The unusual thing about the Turkish case is the unique relationship between organised crime and the state (see also Green and Ward, 2004: 100-4). In principle, the state and the underworld are antagonists. Organised crime can be defined as gangs that threaten the two major state monopolies, the right to levy taxes and the right to use violence. The traditional mafia of southern Italy organises the economy by means of alternative taxation in the form of protection rackets (Gambetta, 1993). The gangs of St. Petersburg and other cities in the former Soviet Union supply private violence to regulate the new market (Volkov, 2002; Varese, 2001). This produces a form of predatory crime: organised crime penetrates the legal economy and the political system by corrupting officials or using other counter-strategies against the authorities – see all the western European examples in this book and any book at all on organised crime in the United States or Canada – or goes beyond national borders and operates transnationally (see, for example, Lyman and Potter, 1997; Beare, 1996; Williams and Vlassis, 2001). This form of organised crime flourishes in countries with a weak state apparatus such as Colombia, or in various parts of Africa (Thoumi, 1995; Cilliers and Dietrich, 2002).

There are also more and more references to consensual crime in criminology literature, with the state summoning the help of organised crime to carry out political assignments. This is the case if political opponents are eliminated: consider, for

example, President Kennedy's request to the mob in Chicago to get rid of Fidel Castro.⁴ Or if the underworld helps preserve law and order in situations where the police or armed forces are deemed incapable of doing so. This was the case in Japan in 1960 when President Eisenhower was about to pay a state visit (which he never did). On the request of the Japanese state, yakuza member Kinosuke Oke, 'Tokyo's Al Capone', was put in charge of keeping him safe (Kaplan and Dubro, 2003). Or if criminal gangs are used to help commit the war crime of ethnic cleansing, as was done by the Serbs in the warfare in Croatia, Bosnia and Kosovo (Judah, 1997). It is also not uncommon for oppositional political movements to use organised crime to get funds to conduct their insurgent struggle, as in Lebanon, Ireland, Sri Lanka and numerous other countries (Naylor, 2002). The direct or indirect involvement of the Kurdish PKK in smuggling drugs and nowadays also trafficking in people in southeast Turkey is a good example of this.

What is unique about Turkey however is how a state that is in itself a strong one is covertly creating its own underworld. The state gangs are helpful in fighting the Kurdish separatists and donate funds to the secret national treasury to pay for a war that was never actually declared. And it is unique that the discovery of these state gangs does not lead to the perpetrators being brought to court and punished; it leads instead to a veneration of heroism on behalf of the state ideology.

In the political analysis of this phenomenon, authors usually go back to the year 1952. The secret organisation of the state was later to be known by various names: the counter-guerrilla, the special war division of the army, and more recently, Gladio, which came to the fore in Italy at the end of the 1980s as the name of a secret and illegal NATO organisation (Zürcher, 1993). Turkey joined NATO on 4 April 1952, and Seferberlik Tetkik Kurulu, later called Gladio, was founded in September that year (Celik, 1995: 29-32; Muller, 1991; Parlar, 1996: 55).⁵ It is clear from various sources that all this was done on orders from the United States, as is also confirmed in a publication by the former chief of the department in question (Aykol, 1990: 43-67). In 1994 there was also the confirmation of the Chief of Staff of

⁴ See Chambliss (1999) for a lengthy list of political murders ordered by American security services.

⁵ But Zürcher (1993) gives a different date. As he notes in his book, another organisation that seems to have played a role in the oppression of the left wing is the secretive counter-guerrilla, an underground organisation of right-wing civilians paid and equipped by the army. The counter-guerrilla was founded in 1959 with United States support to organise the opposition in the event of a communist takeover. Its existence was not made public until 20 years later (in the 1980s organisations of this kind in other NATO countries, such as Gladio in Italy, got a great deal of publicity). Zürcher's source is not known. But if we look at all the information, the existence of such an organisation in Turkey cannot be excluded.

the Turkish Army, who said the organisation would be active against the enemies in the event of war (*Milliyet*, 5 and 6 September 1992). To fully understand the Turkish tradition of state gangs, however, we need to go further back in the history of the Ottoman Empire.

The Ottoman ruler Sultan Selim III, who ruled at the end of the eighteenth century, is usually recalled as a progressive politician and a romantic poet. As one of his less renowned achievements, in 1792 he founded an illegal committee that was to make decisions on all the important matters (Parlar, 1996). The secret service would not be founded until almost a century later, and the committee was essentially a secret personal army to protect the sultan, since he had already been repeatedly attacked in those turbulent days of the war against Russia and Austria (Parlar, 1996: 17-28).⁶ The committee operated covertly in such a way that even the empire's second in command, the Grand Vizier, was kept in the dark. Historian Suat Parlar refers to an 'illegal' secret organisation that operated outside the official armed bodies (the police and the army) (Parlar, 1996: 9-13).

A tradition was thus established and all the sultans after Selim set up their own protection agencies. At the beginning of the twentieth century, the tradition was broken in the sense that organisations of this type were no longer directly under the authority of the sultan; they were now under the control of the army, and more specifically of certain high army officers. This became the new tradition, and when Turkey became a republic in 1923, the president, an army man himself, became the actual commander-in-chief of this secret unit.

On the eve of World War I, the group of officers who had come together at the turn of the century to form the last government of the Ottoman Empire, the Committee for Unity and Progress, organised the equivalent of a special unit, the *Teskilat-i-Mahsusa* under the leadership of Enver Pasha. This unit was directly under the authority of the Ministry of War. According to the American historian Philip Stoddard, who researched this organisation for his PhD dissertation in 1963, in addition to prominent army officers, the organisation's members were also intellectuals such as doctors, engineers and journalists (Stoddard, 1963). The rest were people from various ethnic minorities who, although they did have a sinister past, were nonetheless reliable for the organisation. They were 'of dubious origins, but there were no doubts about their loyalty' (Stoddard, 1963: 58a). In his memoirs,

⁶ Parlar (1996) and Ozkan (1996) both note that the first Turkish secret service was founded on the recommendation of the English ambassador Startfort Canning and the first head of the organisation was a foreigner, Civinis Efendi, who had been in the service of the Russian Czarina Catherine the Great. After stealing her diamonds, he fled to the Ottoman Empire, travelled to Anatolia as a rich Italian tourist and pretended to serve various functions, for example as imam. According to these sources, Civinis also worked for others besides the Ottoman Empire.

Husamettin Erturk, one of the former heads of Teskilat-i-Mahsusa, gave numerous examples of criminals who were members of the organisation (Tansu, 1964). In 1913 serious criminals were even given a special amnesty if they went to the front with Teskilat-i-Mahsusa.

The former commander presented these men as patriots who fought for a sacred cause, for their fatherland. They were deployed in the Balkan War to defend the Ottoman Empire from external enemies (including Libya, which was occupied by Italy), and retain the Suez Canal. They also went to battle against internal enemies said to be endangering 'the unity of the Ottoman Empire'. The Teskilat-i-Mahsusa played a role in the mass murder of Armenians in 1915 and 1916 and the aggression against religious minorities in the previous years. It is clear that prominent Turkish politicians were also active in the organisation from the fact that the members included Kemal Pasha, the first president of Turkey, and Celal Bayar, the third one (Stoddard, 1963: 175).

At the end of the First World War, there was a debate at the Parliament of the Ottoman Empire (Osmanli Meclisi Mebusani) about this organisation, which had since become notorious. The organisation was abolished at the time of the debate but Erturk, the leader, felt there was still a need for something of the kind: in 1918 the Umum Alem Islam Ihtilal Teskilati (Organisation of the Worldwide Islamic Revolt) was set up and had its first meeting in Berlin. After the war, the British rulers refused to give these allies of the Germans a chance, and the movement had no choice but to continue in secret.

Mustafa Kemal (Ataturk) was able to keep this group well under control (Ozkan, 1996: 59-62). In 1921 he founded a new secret group, Mudafaa-i Milliye (National Defence). Erturk, the former head of Teskilat-i-Mahsusa, was appointed to organise this group, which was later to become the national police force. Mustafa Kemal had also set up his own espionage agency in 1920, consisting solely of military men (Ozkan, 1996: 80). The agency was given a new name in 1927, Milli Amele Hizmeti (MAH), the uncurbed predecessor of contemporary secret service.

The organisation then remained in oblivion until the 1970s, when the Army Chief of Staff made a request to Prime Minister Ecevit for extra funding for special military troops. It turned out to be the Ozel Harp Dairesi (Special War Division) he wanted the funding for. The Prime Minister was surprised, 'Up until then I had never heard of any such organisation when I was Prime Minister or Minister (he had served in various Cabinets) or party chairman,' Ecevit was later quoted as saying (*Milliyet*, 28 November 1990). The Prime Minister ordered the organisation terminated, but it became clear later, and certainly nowadays after Susurluk, that the military men did not feel obliged to obey this political decision. There are still special units and secret gangs. The former Prime Minister and Minister of Foreign Affairs at the time, Mrs Çiller, even stated shortly after the Susurluk

car accident that the Turkish state cannot do without the defensive force of these gangs, and that their members are national heroes.⁷

4. Links with the Classic Mafia

In another contribution in this volume we present a historical picture of the classic underworld, which does not in itself have any institutional ties with the state. It is about social rebels in the countryside (*eskiya*) and neighbourhood potentates who went through life as urban knights (*kabadayi*). They made a living extorting money from small shopkeepers and market vendors, organising gambling, and smuggling liquor, American cigarettes and gold over the borders. In the course of the 1970s this group developed into fathers (*baba*) of mafia families who earned a fortune in international smuggling. They were initially arms dealers and sold to right- and left-wing groups who fought their battles on the streets. The flamboyant Dundar Kilić came to symbolise this period. He obeyed the old code of honour and refused to have anything to do with drugs. Kilić and his family wanted nothing more than to gain the respect of the Turkish bourgeoisie and was known as a philanthropist. He was a typical transition leader. Others however did not have his scruples about getting into the heroin trade.

In 1974 an American group of journalists from *Newsday* wrote a Pulitzer Prize-winning book called *The Heroin Trail* with an excellent description of the routes Turkish smugglers were using in those days. Heroin still came from the opium province of Afyon in Anatolia at the time. Nowadays there is strict supervision and opium is solely cultivated there for the pharmaceutical industry, so smugglers import it to Turkey and Europe from Afghanistan through Iran.

Less than four months after the coup in Turkey on 12 September 1980, an underworld meeting was organised in Sofia, the capital of Bulgaria, that was to drastically change the nature and the system of the international drug trade. The man in charge of the meeting was Oflu Ismail from the Black Sea coastal region, the home of the Lazes, a people with a long tradition in manufacturing arms. He was the up-and-coming man of the underworld, and stayed on top until he was locked up in 1987 in an Italian prison where he remains today. Kurdish smugglers were excluded from the meeting, but Canturk, one of their big bosses (liquidated in 1984), heard so much about it that he was later able to give the secret service some very exact information. It is through him that we know the men who did attend the meeting intended to plan the drug trade more efficiently. They divided Europe among themselves (Yalcin, 1996: 198-9).

⁷ See also for Mrs Çiller's *special bureau* Dundar and Kazdagili, op. cit.

We compared the names of the *baba* cited by the unknown American author in 1971 with the list of names in Sofia and later police records. There is no great overlap. The world of Turkish smugglers is more changeable than for example the mafia families in American cities. In general, or so we have noted in our research, police departments in Europe are still easily tempted to assume the existence of large pyramidal family structures. But the smuggling itself does not adhere to these structures, and it might be more accurate to speak of cooperating cells, which often consist of family members who can totally trust each other. It is hard for the police to tell exactly who is in charge. The business is kept tightly shut and it is impossible to see from outside who is the boss. The clothes of the poor guest worker are worn as a cover.

This development would have been inconceivable without the emigration of millions of Turkish guest workers to Germany, France, Belgium, the Netherlands, Italy and other countries in Europe in the 1960s and 1970s. In retrospect, it is clear that the migrants also included serious criminals looking for a good place to settle and set up bases for what was still mainly the heroin trade at the time. Police investigations in various countries have produced evidence that entire families in destination countries supplement their incomes by investing in the smuggling business. What is more, to a certain extent the Turkish and Kurdish communities in several western European cities came to depend on the income from smuggling and the heroin trade in the 1980s and 1990s. The close-knit Turkish communities also provide protection for people who are on the run.

A 1980 report of the Turkish secret service noted: 'According to our information, drugs are leaving our country and arms are coming in. But smuggling is a taboo subject and since we know that some military and civil customs officials are involved, the secret service could not conduct adequate investigations on the topic' (Eymur, 1991: 134-5). This was the first admission contacts had been established between the old underworld and secret organisations of the state. In the 1970s, during a large-scale police operation in Istanbul, the secret service mentioned Sükrü Balcı, who was a police chief himself, but was suspected of smuggling arms in from Bulgaria. Not only did his arrest not harm his career, he even ended up at a higher rank. This is one of the first times that the impression is given that a man was not individually bribed, but was actually acting on state orders.

After the 1980 coup, international drug smuggling seems to have been controlled by the Turkish army. For our book, we had the opportunity to discuss this issue at length with the well-known Kurdish mafia boss Huseyin Baybaşin, now serving a life sentence at a maximum security prison in the Netherlands. Baybaşin might seem like an unreliable source, but it is striking that all the information he gave us (and the interviews were carried out before the Susurluk incident) confirm what we have found out from other sources.

In 1982 Baybaşin travelled to Europe for the first time to help set up the smuggling network. The days were past when the chain of corruption solely consisted of

police officials and people from the secret service. According to Baybaşın, who gave us a lengthy interview, the government itself was now involved organising Turks residing in western Europe with funds drawn from the international heroin trade. For Baybaşın, the most important representative of the Turkish state controlling the drug business was Sükrü Balcı, who was then the chief of police in Istanbul.

Sükrü Balcı came to talk to us himself. Our money was coming in[to Turkey] from the Netherlands and Germany via the İşbank, but was not officially going on the books there. We went to our man at the bank and he would give us the money. The same was done at the Pamuk Bank. I didn't even realise that it was the state itself that was organising the whole thing, but after certain business dealings we were told that the money was for the development of the state. After every single transaction, certainly half the money would go to the state. To us it was like a tax in exchange for the all round protection we were getting. If the money was confiscated or we were arrested, our government contacts would come and pick us up and say we were working for the state. Even in Europe, they were still protecting us. When I made my second trip to Europe that year, I saw with my own eyes that all the consulates were in the business. At every consulate, there was a staff member officially assigned to found cultural centres and Turkish schools for example, and we would donate money for them. The *Türk Kültür Derneği* [Turkish Cultural Association] was completely funded by money from the drug trade. There was not a penny coming from Turkey itself. In all the European capitals, these officials would hold meetings and posters would be made to promote Turkey (Bovenkerk and Yeşilgöz, 1998: 273-4).

5. Newest Developments

In the late 1990s, the international heroin trade became a less important source of revenue for the Turkish underworld, as other drugs, in particular cocaine and ecstasy, became popular among European youth. We spoke to a Turkish smuggler in Amsterdam who told us, 'Heroin is out of fashion for good. People don't use it any more. Let's say you bring in a couple of kilogrammes, and your whole profit amounts to no more than a few thousand euros. And you are running the risk of ten years in prison!' Nowadays sizeable amounts of ecstasy are being smuggled into Turkey from abroad and then supplied to consumers in countries in the Arab world. The new business is smuggling people, Turkey is a big transit country for illegal migrants. A confidential report of the Illegal Migration and Refugee Affairs Agency in Ankara (2001) gives an impression of the size of this flow. A total of 29,426 illegal migrants were apprehended in Turkey in 1998, in 1999 this rose to 47,529, in 2000 it rose again to 94,514, and in the first nine months of 2001 the number of arrested undocumented migrants was 100,053. At the moment, the largest

numbers of migrants are from Iran, Iraq, Afghanistan and various countries in Africa. The average price for transportation to Europe is € 5,000. It is less dangerous for smugglers, the prison sentences are shorter, and they can more easily neutralise the criminality of their acts by stating they are helping people in need. And there is some truth to it! Faruk Akinbingol describes the system in detail in his book (Akinbingol, 2003). There is enormous pressure to leave the country. In 2001 A & G Research Bureau organised a survey among no fewer than 100,000 people in Turkey. When asked whether they would like to live abroad, 23 per cent said yes, as did 43.5 per cent in the poverty-stricken region of eastern Turkey where Kurds live. Akinbingol also notes that smugglers actively recruit their clients in Turkey's poorer villages. There is enough of a demand in western Europe for cheap illegal workers and the demand is now linked to the supply by a new underworld of Turkish and Kurdish entrepreneurs who set up temporary job agencies. Even more than drug smugglers, people smugglers work in a chain structure of independent cells. If one cell is taken out of the chain, police and justice departments are not apt to get any further. For example, things went dramatically wrong in 1999 when a lorry filled with illegal Chinese immigrants that had been chartered by a Turkish entrepreneur arrived in Dover, England, with the corpses of 58 people who had died from suffocation.

Before concluding, it is important to consider the extent to which the Turkish state is still involved in organised crime after the parliamentary investigations of 1997. According to Fikri Saglar, member of the commission and member of CHP (Republican People's Party) nothing much has changed since then:

We have not been able to retrieve the full truth as a result of political and bureaucratic repression and the fact that witnesses have not appeared or have given incomplete evidence. The report simply cannot be complete. (Saglar and Ozgonul, 1998: 376-98)

According to Saglar and Ozgonul (1998: 335), a first indication that links had not been severed was the scandal that involved the notorious ex-Grey Wolf and mafia boss Alaattin Cakici. Cakici was arrested in 1999 in France as he had allegedly threatened potential buyers of a Turkish bank (*Turk Ticaret Bankasi*) on the telephone! They were told they should not purchase the bank as there were other candidates. This criminal, who was wanted by Interpol, turned out to have had contact with cabinet ministers in Turkey. After his extradition, Cakici did spend some time in prison, but it was not long before this idealist (*ulkucu*) was released. On the day of his final arrest, 3 May 2004, Cakici escaped to Italy on a visa given to him at the Italian consulate. He was going to do business for the Besiktas football club there. The question still remains, though, as to whether the state is actually involved in smuggling people. It has become more difficult to neutralise state intervention. As long as a campaign was being waged against the Kurdish PKK, the

state could afford to take a lot of chances. Funding was needed and the state was in danger. The people who played an active role did not feel guilty because they were serving sacred state aims. After the arrest of PKK leader Öcalan however, when the PKK stopped its armed struggle, the matter was no longer as simple. Devlet Bahçeli, the new right-wing MHP leader of the Grey Wolves, made every effort to improve their image. And in part, his efforts were quite successful. People in the party who were involved with the underworld were removed from their positions – at any rate there is now no evidence of any such ties.

We would like to close though with a small challenge: in 1974, if Ecevit did not know that state gangs existed, then Erdogan, the present-day religious prime minister is certainly unaware of them. Kemalist circles distrust religious ones far too much for revealing their secret pacts with the underworld to them. And, if not even the Turkish prime minister is aware of the shady exchanges, then how could we know?

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Comparative Synthesis of Part II

Letizia Paoli and Cyrille Fijnaut

Growing concern for organised crime is the theme underlying all the papers in Part II of this book, which describe the patterns of organised crime now perceptible in thirteen European countries. In most of these, with the unique exception of Italy, this focus is relatively new: organised crime has only recently begun to be viewed as a serious problem, and its place on the political agenda and in public debate has been significant only since the late 1980s.

1. What We Now Know and Where We Need to Go

Throughout Europe, this growing concern about organised crime has stimulated an increase in government data and analyses and academic research. However, despite the recent substantial increases in the quality and quantity of available information, there is still much that we do not know. Due to both the illegal and secretive nature of organised crime and the shortcomings of information sources, we still have a very limited understanding of most organised crime groups and their activities, little capacity to prioritise the most dangerous forms of organised crime targeted, and no measures for the impact of control policies.

As we will see in Part III, most European governments have initiated a large number of legislative and institutional reforms to control, and even combat, organised crime. A minor, and in most cases neglected, component of these efforts has been the production of data on and analyses of organised crime and the funding of independent research. Notwithstanding some recent major improvements, there is still much to do in both spheres.

As a result of the 'catch-all' definitions of organised crime dominating the European (and international) debate, virtually all reports included in this Part point to the lack of meaningful criminal and judicial statistics referring exclusively to organised crime. The only statistical data meeting this criterion refer to the crime of membership of a criminal organisation, which is however used rarely by most criminal justice systems. As a result, official statistics on the number of people charged or convicted each year of the crime of membership of a criminal association capture only a small fraction of the organised crime activities taking place in most countries. For other profit-making criminal activities (ranging from

drug-trafficking to human smuggling, from gambling to robberies), most national statistical yearbooks do not provide any clear distinction between activities that are strictly related to organised crime and those that are not.

Unlike their United States counterparts, moreover, European domestic and intergovernmental law enforcement agencies are still unable (or unwilling) to collect and publish regular indicators of trends affecting illegal markets, or at least the drugs market, which is the largest illegal market in most European countries both in terms of number of participants and turnover. Whereas such data are routinely published by the Drug Enforcement Administration (DEA) and the Office for National Drug Control Policy (ONDCP) in the United States,¹ no European country except Spain (see Observatorio Espanol sobre Drogas, 2003: 129-30) publishes data on a regular basis on the retail and wholesale prices and purity levels of the main illegal drugs. At the European level, these difficulties are certainly due to the lack of federal institutions with the authority and human and financial resources to launch a system for standardised data collection. However, these difficulties could be overcome if there were more widespread awareness of these data's usefulness and the political will in the most important European Union institutions to understand and adequately monitor the functioning of illegal drug markets. For example, in less than ten years, the European Monitoring Centre for Drugs and Drug Addiction, a decentralised European Union agency based in Lisbon, has achieved astonishing results in harmonising the key indicators of illegal drug demand and addiction Europe-wide and in encouraging the less advanced countries to improve the quality of their data collection systems.

Despite the lack of focus on quantifiable data and indicators of trends, annual or *ad hoc* reports on organised crime have been made available by government agencies in most European countries. In many, usually under the pressure of exceptional events, systematic public reflections on organised crime were started by the national Parliaments, which set up commissions of inquiry into the problem of organised crime either in its entirety or on certain specific aspects. The oldest

¹ The three main programmes providing indicators about the United States illegal drugs market are the Heroin Signature Programme, which determines the purity and source of heroin seized at United States international borders; the Domestic Monitor Programme, which determines the price, purity and source of drugs obtained through random, undercover, retail-level purchases in specific cities; and Pulse Check, which reports national trends in illicit drug abuse and drug markets, drawing on conversations with ethnographers and epidemiologists, law enforcement agents, and drug treatment providers in selected cities (the reports of the first two programmes are published as DEA intelligence reports and can be downloaded from <<http://www.usdoj.gov/dea/pubs/intel.htm>>; Pulse Check reports are published by ONDCP and can be downloaded from <<http://www.whitehousedrugpolicy.gov/publications/index.html>>).

example of this parliamentary interest in organised crime is clearly represented by Italy's Parliamentary Commission to Investigate the Mafia Phenomenon in Sicily, which was first established in 1962 and became effectively operative after the Sicilian mafia murdered seven law enforcement officers with a car bomb on the outskirts of Palermo in June 1963. Since the early 1980s the Anti-mafia Commission has de facto become a standing committee of the Italian Parliament (see Paoli's contribution in this Part).

In all other countries concern for the problem of organised crime is – as shown by the introduction to Part I – much more recent, and parliamentary commissions of inquiry were first set up during the 1990s. Hence, for example, in late 1992 the French Parliament set up an investigation committee to assess the extent and risks of the penetration of the Italian mafia into France, after the Sicilian Cosa Nostra had murdered two of Italy's most prominent investigative judges, Giovanni Falcone and Paolo Borsellino, in the summer of same year. The commission, headed by François d'Aubert, published a report in early 1993. In November 1994 the Dutch Parliament also established an *ad hoc* commission of inquiry to assess the legitimacy of police investigative methods and the nature and scale of organised crime in the Netherlands. The so-called Van Traa Commission, named after its chairman, entrusted the assessment of organised crime to a research group headed by Cyrille Fijnaut and published both its final report and the study of the research group in early 1996. Likewise in 1997, the Turkish Parliament also set up a committee of inquiry and published a report on organised crime after a car accident near the town of Susurluk in western Turkey proved a long-suspected government connivance with right-wing paramilitary groups (in this case the Grey Wolves), despite their members' involvement in numerous criminal activities and presence in Turkish and international criminal records.

Reacting to requests for information from domestic legislative bodies or to the harmonising pressure of the European Council, the police authorities of most European Union Member States have prepared annual reports on organised crime since the mid-1990s. Several of these agencies, ranging from the German Bundeskriminalamt (BKA) to the Italian Ministero dell'Interno and the United Kingdom's National Criminal Intelligence Service (NCIS), also publish non-confidential versions of these reports. Though exclusively reflecting the police view of organised crime, these reports constitute a useful contribution to public debate. In some cases, however, the public versions of these reports are so heavily censored that they are – as Dick Hobbs notes in the case of the United Kingdom – of limited use to scholars. In turn, Jörg Kinzig and Anna Luczak point out the fact that the BKA annual report on organised crime – but the same is true for other national reports – is based exclusively on ongoing and recently closed police investigations regardless of their final judicial outcome. However, several studies – including one by Kinzig in 2004 – have demonstrated that the final court rulings often diverge substantially from the initial police assessments of the seriousness and sophistication

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of the organised crime scheme the investigation is targeting. It is also fair to say that annual reports on organised crime are frequently misinterpreted by the media, who present them as complete and objective assessments of the problem of organised crime in a single country, despite the fact that the 'real' – under- or over-assessed – dimensions of the phenomenon remain in the dark.

In most European countries neither the police nor other government agencies have shown much interest in funding or otherwise to support independent research on organised crime. This situation has improved, however, in most of the countries involved, due to a growing interest in the phenomenon and thanks to funding provided by the European Union Commission. Independent research projects on organised crime as a whole or on specific subsets of related illegal activities have occasionally been funded by public agencies in Germany, the Netherlands and the United Kingdom (respectively, the BKA, the Dutch Ministry of Justice, and the Home Office, as shown by the respective country reports and by the introduction to this Part). Only in Switzerland, however, was an *ad hoc* research programme to study organised crime launched in 1993 and funded for six years by the Swiss National Science Foundation.

Throughout Europe, single researchers have occasionally been given full assistance by their respective government counterparts (see Paoli, 2003 and Kinzig, 2004). Despite these few exceptions, however, cooperation between independent scholars and government agencies in the field of organised crime research is far from institutionalised. As mentioned in the general introduction, mistrust and a fear of squandering confidential information still plague the attitudes of most law enforcement agencies, whereas some academic researchers fear being regarded as compromising their independence if they agree to collaborate closely with public agencies.

In some countries, some of these difficulties are partially overcome by the fact that a considerable portion of national organised crime research is carried out directly by government institutions, such as the Research Development and Statistics Directorate of the United Kingdom Home Office, or by government-affiliated research institutes, such as the Institut des Hautes Etudes de la Sécurité Intérieure (IHESI, in September 2004 renamed as Institut des Hautes Etudes de Sécurité) and the Centre d'Etudes Sociologiques sur le Droit et les Institutions Pénales (CESDIP), affiliated respectively with the Ministries of Interior and Justice in France, and the Prague Institute for Criminology and Social Prevention (ICSP) of the Ministry of Justice in the Czech Republic. However, a continuous 'organised crime monitor', a systematic analysis of closed police investigations of criminal groups, is carried out only by the WODC, the Research and Documentation Centre of the Dutch Ministry of Justice. This periodic monitoring of organised crime continues work begun by the research group set up by the Van Traa parliamentary commission of inquiry and headed by Fijnaut in the mid-1990s.

Again, only in the Netherlands (and to some extent in Belgium, which is not included in our study) has stable and close cooperation between law enforcement agencies and academic researchers developed in the field of organised crime research. Some special investigative squads from the Dutch police have initiated strategic alliances with universities to study specific forms of organised crime – ranging from human trafficking to organised crime in eastern European or Turkey (see Kleemans' contribution in this volume; for Belgian examples see the introduction to this Part).

2. The Organisation of Organised Crime: Adieu to the Italian Mafia Model

Despite the lack of regular and reliable data on organised crime and poor cooperation between public agencies and independent researchers in most European countries, the main outline of the picture emerging from the papers published in Part II is fairly clear.

Though much of the concern about organised crime was initially dictated by fear of the expansion of the Italian mafia to the whole of Europe and to its becoming a model for others involved in organised crime, these pessimistic scenarios have not been realised. Despite the possibilities opened up by the fall of the Iron Curtain in 1989, Italian mafia groups seem to have representatives and, less often, branches only in those countries – Germany, Belgium and France – that have attracted consistent migration flows from southern Italy since at least the 1950s. Though these subsidiaries have shown themselves to be handy for running transnational illegal trades and hiding from Italian law enforcement agencies, and though they have occasionally done considerable harm to the host country,² the mafiosi's original migration was not the product of a strategy aimed at internationalising mafia activities but was due to the poverty of the mafiosi and their desire to improve their living conditions by emigrating.

A strategic migration of Italian mafiosi can be proven only in the case of two European countries: Spain, which has since the 1980s become a favourite hiding place for Italian mafia members thanks to its favourable legislation and pivotal position in the international cocaine and hashish trade; and the Czech Republic, which since the early 1990s has attracted several *camorristi* and gangsters from the region surrounding Naples seeking their fortune in smuggling and counterfeiting

² In 1990, for example, two Tunisian professional killers were hired in Sicily (presumably by Italians living in the Belgian city of Liege) to kill – for still unclear reasons – the leading socialist politician of the French speaking part of Belgium, André Cools (see Fijnaut, 1993).

(see respectively Gómez-Céspedes and Stangeland and Nožina's articles in this Part). In none of these countries nor in northern or central Italy, however, do Italian mafia groups control a significant portion of local illegal economies or exercise a systematic influence over the legal economy or the political system.

Nor does any other criminal group, at least in western Europe. Contrary to the exaggerated predictions of the early 1990s, other organised crime groups have not shown any interest in imitating the Italian mafia. Its complicated structure, culture and norms can hardly, as Italian mafia associations well know, be imposed credibly on people who have not themselves grown up in the southern Italian subculture. Moreover, even for these groups the mafia collective identity – the set of rites, symbols and norms explaining and justifying the existence and organisation of Italian mafia associations both to 'men of honour' themselves and to members of their local communities – has progressively lost its attractive and explicative power. Even for Italian mafia groups, it has become increasingly difficult to pass on the role of 'men of honour' to new adherents or for the majority of the southern Italian population to sanction their values.

Nor are the average perpetrators involved in European organised crime interested in, or capable of, exercising a quasi-political power similar to that of the largest and most stable mafia associations (*in primis* the Sicilian Cosa Nostra and the Calabrian 'Ndrangheta) in southern Italy. As even Europol recognises in its latest *European Union Organised Crime Report*, 'politically, few OC groups pose a direct threat to Member States' (2003: 10).

Most organised crime groups active in Europe are simply too small and ephemeral to be able to exercise such political power. To quote Europol again, 'the traditional perception of hierarchically structured organised crime groups is being challenged. There is now a development suggesting that a greater percentage of powerful organised crime groups are far more cellular in structure, with loose affiliations made and broken on a regular basis and less obvious chains of command' (2003: 8). Whereas it is disputable that non-Italian mafia groups have ever complied with the 'traditional perception of hierarchically structured organised crime groups', Europol's departure from the Italia mafia model can only be welcomed.

The articles collected here show that the great majority of illegal exchanges in western European countries are carried out by numerous, relatively small and often ephemeral enterprises. This is because all illegal market actors are subject to constraints deriving from the enforcement of prohibition. These constraints are to do with the fact that illegal market entrepreneurs are obliged to operate both without and against the state.

First, since the goods and services they provide are prohibited, illegal market suppliers cannot resort to state institutions to enforce contracts and have violations of contracts prosecuted. Nor does the illegal arena host an alternative sovereign power to which a party may appeal for redress of injury. As a result, property rights are poorly protected, employment contracts cannot be formalised, and the

development of large, formally organised, long-lasting companies is strongly discouraged (Reuter, 1983).

Second, all suppliers of illegal commodities are forced to operate under the constant threat of arrest and confiscation of their assets by law enforcement institutions. Participants in criminal trades will thus try to organise their activities in such a way as to assure that the risk of police detection is minimised. Incorporating drug transactions into kinship and friendship networks and reducing the number of customers and employees are two of the most frequent strategies illegal entrepreneurs employ to reduce their vulnerability to law enforcement moves (*ibid.*). As several contributors and above all Kleemans and Hobbs note, throughout Europe successful criminal enterprises rest upon family ties and bonds of friendship.

Due to the threat of police intervention, either in terms of seizing assets or imprisoning participants, the planning time horizons of illegal entrepreneurs are likely to be much shorter than those in legal markets. Since an illegal enterprise can hardly be sold as the entrepreneur ages, he is likely to divert an increasing share of his profits to legal assets which can be passed on to his heirs.

Finally, since they are operating against the state, illegal firms are prevented from marketing their products. They cannot create their own brand image and try to bind customers to it. Strong economies of scale, however, are associated with advertising and the advantages linked to the nationwide marketing of one's own products have long been recognised as a very important factor in the rise of modern large-scale corporations. According to most economists, for example, advertising represents the single most important basis of large-firm advantages (Scherer and Ross, 1990: 130-38). Illegal firms, however, are by definition excluded from the possibility of exploiting these advantages because, by doing so, they would obviously attract law enforcement attention and damage their own businesses.³

For all the above reasons, it is rather unlikely that large, hierarchically organised firms will emerge to mediate economic transactions in the illegal marketplace. The factors promoting the development of bureaucracies in the legal portion of the economy – namely taking advantage of economies of scale of operations and specialisation of roles – are outbalanced in the illegal arena by the very consequences

³ The only partial exception to this rule is represented by the marketing of prostitution services, which is possible because prostitution as such is not a crime in most European countries. The personal advertisement sections of many newspapers are, as a result, filled with announcements of sex-workers offering their services. Behind these announcements, however, one finds not only independent, adult prostitutes but also networks of traffickers and pimps exploiting women and men, sometimes still adolescent, who are often victims of veritable trafficking in human beings. Though helpful in finding customers, these ads often provide the starting point for police investigations throughout Europe on exploitation of prostitution and human trafficking.

of product illegality. Listing these constraints thus leads to the conclusion that, within the illegal economy of countries with efficient governments, there is no immanent tendency towards the consolidation of large-scale, modern illegal bureaucracies. In other words, in the illegal markets of most industrialised countries ruled by relatively strong and efficient state apparatuses, the dominant model is not organised crime, but – following the title of a famous book by Peter Reuter – ‘disorganised crime’ (1983).

3. The Expansion and Internationalisation of Illegal Markets

Recognising the relatively ‘disorganised’ nature of European organised crime does not imply an optimistic assessment of its nature, scale and danger. Forming flexible and changeable networks, the small and ephemeral enterprises comprising the bulk of western European organised crime have, since the mid-1970s, sustained a phenomenal expansion of illegal markets in western and, after the fall of the Berlin Wall, in eastern Europe as well.

Since the early 1970s, in particular, a rising demand for a variety of illegal drugs – predominantly cannabis and heroin in the 1970s and 1980s with the addition of cocaine, ecstasy and other amphetamine products since the early 1990s – has fostered the development of an international drug trade from producing to consumer countries and the emergence of nationwide drug distribution systems in all European states. This process has also entailed the consolidation of the professional role of the drug dealer. From the early 1970s in western Europe and from the early 1990s in the eastern part of the Continent, this role has emerged to link producers to consumers and to regularly supply large urban centres with a variety of illegal drugs from distant regions.

To meet expanding popular demand, pre-existing criminal associations – such as Italian mafia groups – and thousands of individuals, cliques and groups with and without previous criminal expertise have entered the drug trafficking business, attracted by the anticipation of large profits. The expansion of the drugs market has resulted, in particular, in the progressive re-conversion of professional crime to the drug business. From the late 1970s on, professional criminals in most western European countries began to deal in drugs, realising that they could earn much more and risk less than they would in their traditional occupations. This shift meant a decline of the ‘traditional’ underworld, with its well defined roles, thieves, robbers, ‘pimps’, ‘fences’, as well as managers and employees of gambling dens. To a large extent, their differentiated criminal expertise rapidly waned. Only in France did the traditional underworld (*le milieu*) manage to preserve its cultural identity and power, largely through the control of illegal gambling (see Lalam’s contribution on this point).

In the last two decades of the twentieth century, several European countries acquired a pivotal role in the world illegal drug trade. Though successfully eliminating illegal opium cultivation in the 1970s, Turkey has without interruptions been the main gate for Afghan heroin on its way to western European markets. To a considerable extent Turkish criminal groups and gangs are also in charge of the wholesale distribution of heroin in western Europe, as they can hide easily amongst the large, and for the most part unknowing, Turkish diaspora. Profits deriving from the heroin trade have become a relevant source of finance for both the Kurdish separatist movement and the paramilitary groups and clans supported by the Turkish government in the fight against the Kurds (see Bovenkerk and Yeşilgöz's contribution in this Part).

Due to its geographic position, Spain has since the 1980s become the main entry point for Moroccan hashish, with seizures recently accounting for 75 percent of all hashish seizures in Europe. For smuggling cocaine into Europe, Colombian traffickers also seem to prefer Spain (together with the Netherlands), as they are aided by a mutual language and by the presence of a consistent community of co-nationals (see Gómez-Céspedes and Stangeland's report).

In some countries, most notably the Netherlands and Belgium but also more recently Poland and Albania, we find not only illegal drug traffickers and distributors but drug producers as well. From the early 1990s onwards the Netherlands and Belgium have become the major European and, possibly, world producer of ecstasy. Polish chemists have specialised in the production of amphetamines for both western and eastern markets and Albanians have taken up the cultivation and sale of marijuana, re-launching a product that had for almost 20 years disappeared from many western European markets.

Despite the re-conversion of many professional criminals to drug trafficking and dealing, several – traditional and non-traditional – profit-making criminal activities have continued to proliferate. Some, such as the illegal trade in weapons, are instrumental to a life 'on the other side of the law'. As we will see in further detail later, other activities – ranging from car thefts, to robberies and the exploitation of prostitution – experienced an unexpected revival in the years immediately following the fall of the Iron Curtain, when eastern European criminals primarily resorted to violence and ruthlessness to earn a 'fast buck' in western Europe.

As a few scholars and particularly Mike Levi and Tom Naylor have shown, a third group of entrepreneurial crime activities also flourished in the 1980s and 1990s and continue to do so today, though they are hardly the prerogative of traditional underworld members. These activities range from fraud and other financial crimes to bid-rigging in public works tenders and the illegal wholesale trade in toxic waste, weapons, diamonds and gold. They undoubtedly form a part of organised crime, if one accepts the loose definitions of organised crime that dominate the political and scientific discourse on organised crime in Europe today (for a review of these definitions, see the introduction to Part I). As Dick Hobbs put it in his report on the

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United Kingdom, 'by acknowledging [these activities] as organised crime, both the *curricula vitae* of contemporary felons and the range of ideological and material support structures for their activities are considerably expanded'. Though difficult to estimate precisely, their financial turnover and the harm they cause to society may also be considerably higher than those of most types of crime traditionally considered to be an exemplification of organised crime.

Whereas the more white-collar forms of organised crime usually attract public attention only in the immediate aftermath of a big scandal, a second wave of expansion of European illegal markets, which started to develop 15 years after the first, drug-related wave, has raised much concern in government institutions and from the general public. This expansion was largely triggered by the enactment of increasingly restrictive immigration policies in most western European countries during the 1980s and 1990s, which created a large demand for human smuggling services. The number of potential customers as well as victims of veritable human trafficking suddenly multiplied, as the liberation of eastern Europe in 1989 and the collapse of the Soviet Union in 1991 finally abolished restrictions on the mobility of almost 400 million eastern European and former Soviet citizens. Crises in other parts of the world, ranging from several African countries to Iraq, Afghanistan and East Timor, also engorged the flow of prospective migrants, at the same time as growth and improvement of transportation facilitated their movements, by drastically reducing logistical constraints.

To meet this demand, human smuggling 'companies' popped up at all the crucial borders of 'Fortress Europe': along the German-Polish and -Czech borders in the north-east, the Austrian-Slovakian, Italian-Croatian and -Slovenian and Greek-Turkish borders in the south-east, and along the Italian and Spanish maritime borders in the south. Though many smugglers merely sell services desperately wanted by their customers, not only are their prices in most cases extortionate, but conditions are often inhuman, as proven by the many accidents all over Europe that cost the lives of undocumented migrants. Moreover, this flourishing black market has opened up space for all kinds of exploitation that sometimes end up as real trafficking in human beings.

Almost inevitably the internationalisation of European illegal markets has affected not only the demand but also the supply of illegal commodities. The irreversible globalisation of the licit economy and the erosion of national borders entail, as an unwanted side effect, a growing geographical mobility and exchange of goods, know-how and capital of criminal origin. Today in Milan, as in Frankfurt, London or Amsterdam, illicit goods and services are offered and exchanged by a multi-ethnic mob. Alongside local criminals one finds illicit entrepreneurs from all parts of the world.

This process of internationalisation of illegal markets started in most northern and central western European countries in the 1960s and 1970s following the legal migration of millions of people from former colonies and southern European

countries (see, for example, Bovenkerk, 2003). In the latter, including Italy, it took place very rapidly from the mid-1980s onwards, when even this part of the continent became the destination of considerable migration flows. Thus, instead of the feared 'Italianisation' of Europe, in most of continental Italy the opposite process has taken place: i.e. a more accelerated assimilation of local illicit markets to the organisational models and multi-ethnic composition of northern European markets.

In all countries, the over-representation of recent (but also sometimes not so recent) migrants in illicit activities is largely due to their social exclusion and poor integration into host societies. As the history of the United States also proves, a small but highly visible portion of migrants use crime – to use the famous expression of Daniel Bell ([1953] 1965) – as a 'queer ladder of social mobility'. To a greater extent than in the past, moreover, migrants today have a harder time accessing the legal economy and, due to the restrictive policies adopted by most western European states, are more likely to find a means of survival only in the informal and illegal economies.

A few of those willing to earn a living through crime are able to exploit contacts with producers and distributors of drugs and other illegal commodities in their home countries or the weakness of their native state institutions, to become involved in the wholesale and most profitable sections of illegal markets (especially drug markets). Most, however, end up working as crime labourers carrying out dangerous and not very profitable tasks neglected by autochthonous criminal entrepreneurs.

In most large western European cities these days, for example, the street drug market is dominated by foreign dealers, as several contributions to Part II point out. During the 1980s and 1990s a veritable substitution process has taken place at different paces in most western European countries. The lowest and most dangerous positions, which used to be occupied by the most marginalised local drug addicts, have been taken over by foreigners, especially those who have immigrated recently, are applicants for political asylum or do not have a residence permit.

Migrants are also responsible for the revival of numerous criminal activities typical of the traditional underworld, which had almost disappeared or considerably diminished in most western European countries since the consolidation of large-scale illegal drug markets. Criminal entrepreneurs from Albania and other eastern European countries, for example, established their footing in the illegal markets of many western European cities, by working as 'pimps' for co-nationals, who had usually been forced into this activity by their self-proclaimed 'protectors'. The entry of these eastern European (and also West African) profiteers has thoroughly changed the nature of the sex market in western Europe, which was until the 1990s relatively peaceful, as most native prostitutes worked by and for themselves and no longer had a 'protector'.

Property crime, especially violent property crime, also saw a considerable rise in many western European countries during the 1990s, as many eastern European

criminals committed these offences to accrue the initial capital necessary to start more profitable illegal businesses and had no scruples about using violence to achieve their goals. The phenomenal surge in car thefts, for example, recorded in many western European countries around the mid-1990s, constituted the first, visible manifestation of organised crime for many ordinary citizens throughout western Europe. Their feeling of insecurity was further compounded by the increase in other types of theft and robberies, burglaries and extortive kidnappings that was also recorded in many western European countries during the 1990s. Increasingly neglected by local underworld members eager to avoid the associated severe penalties, these offences are (and especially were) perpetrated by poorly skilled, violent and occasionally desperate eastern European criminals. Throughout western Europe, the most sensational cases were given great attention by the media, thus helping to spread the perception of a growing threat posed by organised crime.

Despite their violence and aggressiveness, the crime groups set up by migrants are hardly comparable to Italian mafia clans as they are usually poorly organised and ephemeral. Their degree of infiltration of government institutions and the licit economy is generally low. However, since most of them are mutable gangs that make use of different languages and cultural codes, they are hard to identify and repress.

4. The Infiltration of the Legitimate Economy and Politics: An Over-Estimated Threat

Organised crime's infiltration of the legitimate economy, civil society and politics has been investigated and studied much less than its illegal markets activities, so much so that some of the contributors have not been able to provide any information on these issues in their country reports. Given the poor data available, in some contexts it is indeed impossible to go beyond guess-estimates and speculations.

Despite the serious shortcomings of our sources of information, it can safely be stated that in most western European countries traditional organised crime groups' ability to infiltrate the legitimate economy and corrupt civil and political institutions was grossly overstated when organised crime began to attract media and political attention in the early 1990s.

In the Netherlands, for example, both the initial study carried out by the Fijnaut research group in the mid-1990s and the successive 'organised crime monitor' run by the WODC found that no criminal group at either national or local level has ever gained control of legitimate sectors of the economy by taking over crucial businesses or trade unions (see Kleemans' contribution). Likewise, no proof of systematic infiltration of organised crime into the legitimate economy emerges from the *Organised Crime Situation Reports* published annually by the German Bundeskriminalamt (see Kinzig and Luczak's contribution). Even in Switzerland,

according to Claudio Besozzi, the few empirical studies carried out on the topic do not support the view that the local financial system is infiltrated and threatened by foreign mafia-like organisations laundering money in the country. Despite numerous newspaper headlines reporting cases of money allegedly being laundered by foreign mafiosi, the bulk of criminal cases handled by Swiss courts reveal petty money-laundering schemes that are seldom carried out by large criminal organisations.

In many European countries, however, perpetrators of organised crime invest in several legitimate industries – above all in the transport, finance, real estate, hotel and night-life sectors – to facilitate their illegal activities and reinvest their illicit proceeds.

In addition to the papers already mentioned, this pattern of action clearly emerges from Lalam's and Gómez-Céspedes and Stangeland's reports on organised crime patterns in France and Spain, respectively. Organised crime's investment in hotels, night-clubs and pubs in several Dutch cities (especially in Amsterdam) and in real estate in the south of Spain are considered particularly worrying.

The picture becomes even less clear-cut if one considers the perpetrators of non-traditional organised crime activities, such as fraud, the manipulation of public tenders and the illegal trade in toxic waste, weapons and gold. These white-collar criminals have no need to 'infiltrate' into the legitimate economy as they are already an established part of it, and the revenues of their 'dirty' activities are barely distinguishable from the flows of 'clean' and 'hot' money that are traded incessantly around the world.

The ability of both traditional and non-traditional organised criminals to corrupt politicians and civil servants appear to be rather low in most western European countries. Despite occasional scandals and charges against single law enforcement officers and elected officials, Besozzi, Gómez-Céspedes and Stangeland, Hobbs, Kinzig and Luczak, Kleemans and Lalam all agree that in their respective countries there is no evidence of a systematic pattern of corruption and infiltration of political and government institutions by criminal groups.

Even in western Europe, however, there are two main exceptions to this rather reassuring picture: Italy and Turkey. Organised crime's infiltration of the legitimate and informal economies is, according to Paoli, an important specificity of Italian organised crime. This specificity largely derives from the claim of Italian mafia groups to exercise a political dominion within their communities, mainly expressed today by the extraction of a 'protection tax'. Through this systematic pattern of extortion, mafia families have been able to gain large and sometimes dominant positions, especially in the construction industry, but also in other entirely legitimate economic sectors in at least three southern Italian regions: Campania, Calabria, and Sicily.

Mafia groups' conditioning of Italian public life also finds no parallel in western (or even in eastern) Europe. The political power of mafia groups was not only accepted and even legalised by government representatives until the 1950s, but

systematic exchanges of favours and collusions have continued until the present, as the investigations against Giulio Andreotti (Italy's prime minister seven times) and Silvio Berlusconi (prime minister since 2001) indicate.

In contrast to Italy, Turkey does not host lasting and well-structured secret criminal societies comparable to the Sicilian Cosa Nostra and the Calabrian

'Ndrangheta. Nonetheless, in their strenuous fight against left-wing protestors in the 1970s and, later, against Kurdish separatist groups, several Turkish cabinets and the military have developed shady alliances with right-wing paramilitary groups. These and a variety of Kurdish clans that had sided with the government were often given *carte blanche*, including the authorisation to run illegal businesses, ranging from extortion and murder to drug trafficking (see Bovenkerk and Yeşilgöz's contribution in Part II).

Turkey's most profitable criminal activity – the smuggling of heroin into other European countries – has been long tolerated by the various governments, as the domestic heroin addiction problem has remained surprisingly low (given the high availability of opiates) and the country has largely profited from the remittances of its industrious criminal entrepreneurs working abroad. This 'benign neglect' was allegedly unaffected by the fact that an unknown percentage of heroin-trade profits ended up financing the Kurdish Communist Party (better known under the acronym of PPK), which was – well into the 1990s – the primary target of the Turkish state's repression.

5. Organised Crime in Eastern Europe: A Phenomenon of a Different Quality?

In answering the question posed in the title of this section, one at first notes numerous similarities between organised crime activities and participants in western and eastern Europe. Long curtailed by socialist dictatorships, illegal markets have boomed in all eastern European countries since the fall of the Iron Curtain in 1989. In particular, illegal drug consumption and trade have expanded phenomenally in Russia and most other former Warsaw Pact countries.

Illegal psychoactive substances were used even prior to 1991, but during the communist regimes both the number of consumers and the range of available substances were limited. Due to travel and trade restrictions, none of the former communist countries either constituted a single drug market or participated significantly in international narcotic exchanges as a consumer or supplier of illicit substances. However, this pattern of relative self-sufficiency changed drastically during the 1990s, as eastern Europe and Russia (see Paoli, 2001) rapidly became integrated into the international drug trade. Today large quantities of illegal drugs transit these countries to supply local demand and reach western European consumers. Growing domestic consumption is also increasingly fed by more powerful and easier-to-use

drugs imported from abroad. Since the mid-1990s, in particular, most eastern European countries and Russia have had to deal with a real heroin epidemic, which has become the primary means of spreading HIV and AIDS (these trends clearly emerge from Pływaczewski's report on organised crime in Poland).

Whereas the heroin sold in eastern (and western) Europe usually originates in Afghanistan, other drugs consumed in the entire post-Soviet area are produced in – or transit through – western European countries. This is first of all the case for ecstasy and other methamphetamines, which are predominantly fabricated in the Netherlands and Belgium. *Mutatis mutandis*, the same is also true for cocaine and to a more limited extent for hashish, which still frequently reach eastern European markets through western Europe. Moreover, drugs are not the only illegal commodities exported from western to eastern Europe: weapons, toxic waste and counterfeit objects also frequently travel from West to East to be sold on local black markets.

Though much emphasis has been placed by the western media – particularly in the mid-1990s – on the alleged invasion and growing threat of eastern European criminals, one should also not forget that a variety of western European criminal groups and entrepreneurs have tried and are still trying to get their share of the illegal markets in central and eastern Europe or for all sorts of reasons to relocate parts of their logistics there. Western European entrepreneurs and workers also routinely co-operate with, and provide financial, logistic and material support to, their eastern European counterparts, who commit typical organised and professional offences in western European territory.

Because of the increased mobility of western European and, even more so, other foreign criminals, eastern European illegal markets have undergone a rapid process of internationalisation since the early 1990s. Whereas Tajik groups and individuals today import and distribute most of the heroin consumed throughout Russia, eastern European cities have become venues for meetings and clashes between criminal groups and gangs from both farther east and west, ranging from Vietnamese and Chinese to Italian, Albanian and Russian-speaking groups. With their readiness to employ violence, their enormous and shady capital and high-level political connections, the latter are today considered by far the most dangerous people in organised crime.

A closer look at the Russian-speaking crime groups may help us identify the peculiarities and, eventually, the specific dangers of eastern European organised crime. Like the great majority of their Western counterparts, most Russian and eastern European organised crime groups are not strict hierarchical organisations, based on ritual family ties, permanent membership and initiation rituals. However, contrary to the situation in the West, Russian organised crime groups do not exclusively comprise 'standard' underworld criminals, but also overworld figures, who often originate from the ranks of the former Communist Party and state structures and are today successful entrepreneurs or high-ranking government officials.

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Exploiting their high-level contacts and the difficulties of the post-Soviet transition, many representatives of Russian organised crime made large fortunes through trade in commodities that would have been legitimate in capitalist societies, and managed to gain control of many, sometimes strategic, parts of the legitimate economy. Their entrepreneurial success was further enhanced by their unusual high-tech capacity, resulting from their well-educated backgrounds and connections with security services, as well as their readiness to use violence and military potential. Thanks to this combination of capabilities, for example, three crime bosses managed to acquire large shares of the strategic aluminium industry in Russia (see Shelley's contribution).

Due to its ambiguity and suggestiveness, the term 'organised crime' has also been employed – in Russia as in other eastern European countries – to characterise all those successful entrepreneurs who have rapidly built huge fortunes, usually by acquiring former state companies. It is indeed hard to separate this group clearly from 'normal' organised crime perpetrators, as their methods are quite similar. Both groups, in fact, rely on high-level political connections and shady strategies. As a rule, legitimate entrepreneurs cannot directly command violence, but many of them have had no restraints – or even worse, were obliged in the earliest and rockiest phases of the transition – to resort to the protection services offered by violent thugs.

Whereas most eastern European countries are well advanced in closing the legal and institutional gap separating them from Western standards, and some of them joined the European Union in 2004, two countries included in this survey, Russia and Albania, still need to set up a viable legal framework to regulate the legitimate economy and to separate clearly the latter from the underground and *tout court* criminal economies. In societies where until less than two decades ago all forms of entrepreneurship were considered criminal and where it is virtually impossible to conduct a business without violating some law, it is indeed still difficult for many Russian and Albanian citizens fully to appreciate the difference between legitimate business and organised crime.

Whether or not they should be termed organised crime, some activities at the crossroads of the legal and illegal economies have threatened the economic and political stability of the countries in transition. In both Russia and Albania, tax evasion and illegal export of capital remain widespread practices among many legitimate firms and members of the upper classes, constituting a serious impediment to the consolidation of the state. As late as 2000, for example, capital leakage from Russia exceeded USD 1 billion per month, down from USD 25 billion at the height of Russia's financial crisis in 1998 (see Shelley's contribution). At their peak, the nominal value of the pyramid schemes' liabilities, which became popular in Albania in the mid-1990s, amounted to almost half of the country's GDP (Jarvis, 2000). The burst of the pyramid scheme bubble in late 1996 ended up in deadly rioting and widespread chaos and resulted in a dramatic fall in the Albanian GDP

(see Hysi's contribution). Thus, according to the Council of Europe, the scale of organised crime and corruption constitutes 'the single most important problem for Albania' and 'the single most important threat to the functioning of democratic institutions and the rule of law in the country' (Council of Europe, 2004: 8; 2).

Two main conclusions can be drawn from a comparative analysis of the reports in Part II 'Contemporary Patterns of Organised Crime'. The first is that, as predicted by Roland Grassberger in an astonishing book published in 1933, the entrepreneurial and professional crime that had already developed in the United States in the 1920s and 1930s has today spread throughout the 'Old Continent'. Whereas the European and partially intercontinental illegal trades that flourished during the Second World War came to a rapid end during the late 1940s (see Von Hentig, 1959), European illegal markets have expanded rapidly since the late 1960s in Western states and, particularly since the fall of the Berlin Wall, in the eastern part of the continent as well. As mentioned earlier, there have been two main forces, though these are by no means exclusive, promoting the expansion of European illegal markets and their increasing assimilation to their United States counterparts: the phenomenal rises in the demand for both illegal drugs and smuggling services.

Once the protagonists and trends of illegal markets are in focus, considerable similarities can be identified throughout Europe and, indeed, between Europe and the United States. Nonetheless – and here is our second major concluding point – the overall picture of organised crime that emerges from the contributions in Part II is far from homogenous. Some tendencies – ranging from the increased globalisation of the world (legitimate and illegitimate) trade to the rising demand for a variety of illegal drugs – are truly international and affect the organised crime manifestations of all the thirteen countries considered here. Other trends, such as the progressive erosion of national borders, are engendered by the process of European integration and affect all countries that are members of the European Union, have hope of entering it in the near or distant future, or, as Switzerland, are surrounded by European Union Member States.

The concrete manifestations of organised crime in any specific country result, however, from the overall degree of development, geographic position and ethnic composition of the country itself and, above all, the strength of the state and the integrity of its civil servants. Where the state is weak and the government officials corrupt, people involved in criminal activities are unlikely to be badly hampered by the above-mentioned constraints of illegality. Though they may have to deal with the shortcomings of anarchy, more stable and structured forms of organised crime are likely to emerge, with extensive infiltration of the legitimate economy and political system. Where the state is strong and operates under the rule of law, these forms, for the reasons explained earlier, are unlikely to emerge.

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The country reports by the 16 contributors to this Part confirm this theoretical analysis: the organised crime problems of, say, Germany and the United Kingdom are fundamentally different from those afflicting countries such as Italy, Albania, Turkey, and Russia. The differences would most probably have been even larger if we had included smaller European Union Member States, such as Denmark, Ireland or Luxembourg, in our survey.

Despite the European Union's thrust for harmonisation, these differences should not go unaccounted when overall organised crime control policies are designed and implemented.

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PART II
CONTEMPORARY PATTERNS OF ORGANISED CRIME

Introduction to Part III: The Initiatives of the European Union and the Council of Europe

Cyrille Fijnaut and Letizia Paoli

The authors' contributions featured in this book focus on the situation in the respective European states. Part II explored the situation in terms of organised crime, while Part III focuses on the policies formulated and implemented to contain this set of criminal phenomena. Organised crime itself tends to cross borders to some extent; similarly, the organised crime control policies of all the European states are increasingly assuming a transnational dimension, specifically in two ways. They are increasingly influenced by the control measures adopted by the neighbouring states and, even more profoundly, by the policy that the European Union has been outlining since the late 1980s, either alone or in conjunction with the Council of Europe.

Whereas the introduction to Part II examined the official information sources and the journalistic and academic research on organised crime in Europe in general, the obvious course of action in this introduction is to outline the policy conducted by the European Union, since the European Union has become the leading institution in Europe in the field of combating organised crime.

An issue that will not be considered in any detail is the specific nature of the interaction between the European Union and its Member States in this area. Nor will we try to assess the consequences that this interaction has on the formulation and implementation of the actual policy. In itself this complex issue could be a good subject for a subsequent study. The European Union, and even more so the Council of Europe, are not supranational institutions, certainly as regards combating organised crime, although they do exhibit quasi-federal traits in some respects. The policy that they conduct in this area is ultimately the policy that their Member States have jointly agreed on under their auspices. However, to what extent do the Member States keep to these agreements? And what might this commitment actually entail? Do Member States merely transpose the policy of the European institutions into their national legislation? Or do they actually invest in the national institutions and agencies that have to implement this legislation?

Dissecting European policy on combating organised crime is less simple than it seems. It is actually quite a complex task, because this particular policy spans

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various 'routes' that also cross one another, without forming an integrated network. At the European Union level four separate routes can be identified.

The first stems from the aim to guarantee citizens in the territory covered by the European Union – in this context designated as an 'area of freedom, security and justice' – a 'high level of safety' in accordance with the principles and objectives set down in Title VI of the Treaty on European Union: 'Provisions on Police and Judicial Cooperation in Criminal Matters' (Peers, 2000). Article 29 of this Treaty, in which this objective is formulated, states that this cooperation specifically targets 'crime, organised and otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud'. A significant proportion of the policy that the European Union pursues in the area of organised crime is therefore dominated by the way in which police and judicial cooperation between the Member States of the European Union is implemented.

The second route is intertwined with the first in that it relates to the general policy that the European Union has conducted since 1997 through policy plans specifically directed at organised crime in the European Union. Understandably, the successive plans are also partly concerned with strengthening police and judicial cooperation in the European Union, since intensifying cooperation is a pre-condition for controlling this type of crime more effectively. The plans also examine issues that are unrelated to cooperation, however, for example socio-economic policy in urban areas and the prevention of organised crime through cooperation with the business community. For this reason the second route can partly be regarded as a separate route and must be treated as such.

The third route concerns the organised crime policy that the European Union is pursuing as part of its foreign policy. The development of this route naturally stems from the fact that organised crime is not a phenomenon that respects the borders of the European Union. Take drug trafficking for example: on the one hand, natural hard drugs – heroin and cocaine – are being smuggled into Europe from elsewhere in the world; on the other hand, synthetic drugs are being shipped from Member States of the European Union to other parts of the globe. So if the European Union really wants to do something about the various types of organised crime that in certain areas – primarily, transport, finance, communication – involve international forms of smuggling of goods (both illegal and legal), services, people and capital, it cannot confine its activities to taking measures 'on the home front', but is forced to take action 'on the foreign front' as well. And this is in fact what is happening more and more. At the end of the twentieth century foreign policy on combating organised crime was mainly shaped in relation to the then 'pre-accession states' that sought membership of the European Union. In December 2003, within the context of the European Security Strategy, the profile of this policy was raised when it was made an important regular part of the European Union's overall foreign policy.

The fourth and final route intersects the other three time and again. In fact it consists of the specific policy plans that relate – wholly or partly – to particular forms of organised crime. Examples include the Action Plan 2000-2004 concerning the drugs problem and the policy on illegal arms trafficking.¹ Furthermore, the policy plans on combating international terrorism should not be overlooked, certainly after the attacks in the United States on 11 September 2001.² Elements of the general policy that spans the first three routes are of course always taken into account in all these policy plans, but obviously they also propose measures that are specifically intended to control the problems encountered in the respective policy areas. This therefore means that the policy of the European Union on combating organised crime cannot be reduced to the policy that is outlined on this particular front in the general policy plans. We are forced to take into account the policy that is conducted via the fourth route, and also via the first and third routes. This explains why it is such a complicated exercise to adequately define the European Union's policy on combating organised crime.

The complications of the task at hand multiply, however, when the policy that the Council of Europe conducts with a view to combating organised crime is added into the equation. On the one hand, this policy does coincide with that of the European Union, since it can be described as a kind of co-production of the two institutions. This particularly applies to the policy on central, eastern and south-eastern European states that have already joined the Council of Europe, but are not yet Member States of the European Union. These programmes will be discussed in the following pages, when we consider the foreign policy initiatives of the European Union that are organised crime related.

On the other hand, the Council of Europe also takes initiatives of its own accord to combat organised crime and these are intended for all its Member States, whether they are in central, eastern or southern Europe or in western and northern Europe. Though they do not explicitly refer to organised crime as such, several conventions sponsored by the Council of Europe constitute important pieces of the European organised crime control policies, e.g. the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocols (1959) and the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (1990).

¹ With regard to drug policy, see the *EU Action Plan on Drugs 2000-2004*, which can be consulted on the website of the European Union <<http://www.eu.int>>. As regards efforts to combat illegal arms trafficking, see the 'Council Joint Action on the European Union's Contribution to Combating the Destabilising Accumulation and Spread of Small Arms and Light Weapons [...]', *Official Journal* L 191/1-191/4, 19 July 2002.

² See the *EU Plan of Action on Combating Terrorism* (Council of the European Union, JAI 185, Brussels, 11 June 2004).

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As already mentioned in the introduction to Part II, in 1997 the Committee of Ministers of the Council of Europe Member States also set up a Committee of Experts on Criminal Law and Criminological Aspects of Organised Crime (PC-CO), which in 2000 was replaced by the Group of Experts on Criminological and Criminal Law Aspects of Organised Crime (PC-S-CO). Under the authority of the European Committee on Crime Problems (CDPC), the new bodies are required to assess the organised crime control policies of the single Member States and to suggest ways of increasing the effectiveness of the national and international fight against organised crime measures taken in Europe to deal with this type of serious crime. On the basis of this work, the PC-S-CO has prepared several best practice surveys in the field of the fight against organised crime.³

In 2001 the Committee of Ministers issued an overarching recommendation to the Member States, providing guiding principles on the fight against organised crime.⁴ These guidelines cover the whole policy field in this area: from the prevention of organised crime to the use of the criminal justice system to control it and the mechanisms of international police and judicial cooperation. The guidelines not only refer to the use to be made of the criminal law conventions of the Council of Europe but also to the recommendations that were issued in the foregoing years.⁵

Anyone seeking a clear picture of European policy on organised crime cannot overlook the initiatives of the Council of Europe. The important role played by the European Court of Human Rights in Strasbourg should also be highlighted in this context. Through its judgments, this Court has had a major influence in the past few years on efforts to establish the legal limits within which the battle against organised crime in Europe must be waged. One example that springs to mind is the case law concerning the use of undercover agents and anonymous witnesses; another example relates to the direct and indirect interception of communication.⁶

³ Among these, the most relevant are the *Best Practice Survey No. 5: Cross Border Cooperation in the Combating of Organised Crime* (Strasbourg, January 2003), the *Best Practice Survey No. 8: Cooperation against Trafficking in Human Beings* (Strasbourg, September 2003) and the *Best Practice Survey No. 9: Preventive Legal Measures against Organised Crime* (Strasbourg, June 2003). The surveys can be all downloaded from the Council of Europe's website: <<http://www.coe.int>>.

⁴ The *Recommendation of the Committee of Ministers to Member States concerning Guiding Principles on the Fight against Organised Crime* – Rec (2001) 11 – can be downloaded from <<http://cm.coe.int/ta/rec/2001/2001r11.htm>>.

⁵ These are, for example, the *Recommendation with Regard to Criminal Policy in Europe in a Time of Change* – Rec (86) 8 – and the *Recommendation on Intimidation of Witnesses and the Rights of the Defence* – Rec (97) 13.

⁶ For example, see the case-law summary by Dutertre (2003).

It goes beyond the scope of this introduction to discuss the above-mentioned routes, five in all. We must necessarily concentrate on the following aspects: the way in which the fight against organised crime has taken shape within the framework of the Treaty on European Union (section 1), the general policy of the European Union on combating organised crime (section 2) and the relevance of this fight in the foreign policy of the European Union (section 3).

1. The Fight against Organised Crime in the ‘Area of Freedom, Security and Justice’

Anyone who kept track of the enactment of the Treaty on European Union (Treaty of Maastricht) knows that an enormous amount of effort was devoted at the time to structuring the Third Pillar of the European Union, as it eventually took shape in the provisions of Title VI: ‘Provisions in the Field of Justice and Home Affairs’. Political energy was largely absorbed by questions such as the division of power between the Member States and the various organs of the European Union, and the definition of the instruments that could be used to achieve the extraordinarily vague objective of the Third Pillar.

Anyone who reads these provisions will come to the conclusion that organised crime as such is not explicitly identified as a major problem. There is, however, an implicit reference, specifically in Article K.1.9., which proposes creating a European Police Office (Europol) with a view to improving police cooperation in criminal matters. For those behind this initiative, setting up such an agency was clearly part of a larger plan to increase resources to enable cross-border crime in the European Union to be tackled more effectively. The later Europol Convention 1995 leaves no doubt about this objective. Article 2, paragraph 1 literally states that Europol’s task is to improve the effectiveness of the competent authorities in the Member States and cooperation between them ‘[...] in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications that an organised crime structure is involved [...]’.⁷

The silence of the Treaty on European Union on this point was broken when the latter was reformulated by means of the Amsterdam Treaty. As part of this thorough revision of the Treaty, the Third Pillar also underwent a complete overhaul, resulting in the formulation of the aforementioned Article 29. Suddenly the fight against organised crime – in all its various guises – was now central to the Third

⁷ ‘Convention based on Article K.3 of the Treaty on European Union, on the Establishment of a European Police Office (Europol Convention)’, *Official Journal C 316/2-316/32*, 27 November 1995. On the subject of Europol, see also Sabatier (2001) and Gless, Grote and Heine (2001).

Pillar and strengthening police and judicial cooperation chiefly served just one purpose: to combat this type of crime. In order to define in detail the principles and objectives set out in the updated Title VI, the Justice and Home Affairs Council adopted an action plan on 3 December 1998: the *Action Plan of the Council and the Commission on How Best to Implement the Provisions of the Treaty of Amsterdam on an Area of Freedom, Security and Justice*.⁸

In this action plan it was emphasised that, as far as the principles were concerned, the Member States – among themselves and between them and the European institutions – should apply the ‘principle of solidarity [...] in facing the transnational challenges presented by organised crime [...]’. When it comes to actually achieving priorities, a distinction is made between priorities that have to be realised within two years and those that cover a longer time-scale of five years. The former entails greater involvement by Europol in cross-border criminal investigations in the Member States, the establishment of a common legal framework within which such investigations can take place, the strengthening of the European Judicial Network and the conclusion of talks on a Convention on Mutual Assistance in Criminal Matters. The latter set of priorities relates to such aspects as expanding the system of liaison officers in the fight against organised crime, stepping up efforts to combat money laundering and ensuring the approximation of criminal laws in specific areas with a view to promoting cooperation.

The 1998 action plan was given a boost in October 1999 with the programme that was adopted by the European Council at a special meeting in Tampere, Finland.⁹ ‘A Unionwide Fight against Crime’, primarily organised crime, featured prominently in the conclusions of this summit: ‘The European Council is deeply committed to reinforcing the fight against serious organised and transnational crime’. The following measures were among those taken to intensify this fight:

- the formation of joint investigation teams;
- the creation of a European Police Chiefs Operational Task Force ‘to exchange, in cooperation with Europol, experience, best practices and information on current trends in cross-border crime and contribute to the planning of operative actions’;
- the establishment of Eurojust with the task of ‘facilitating the proper coordination of national prosecuting authorities and of supporting criminal investigations in organised crime cases’; and

⁸ *Official Journal C* 19/1- 19/15, 23 January 1999.

⁹ See the *Presidency Conclusions, Tampere European Council, 15 and 16 October 1999*: <<http://ue.eu.int/newsroom>>.

- an intensification of efforts to combat money laundering (‘Money laundering is at the very heart of organised crime. It should be rooted out wherever it occurs’) through more rigorous implementation of the existing international instruments and closer cooperation between the Financial Intelligence Units.¹⁰

In order to monitor the implementation of the 1998 plan and the 1999 programme, the European Commission set up a *Scoreboard* indicating the current situation at six-month intervals. It would of course lead us too far afield to track the course of events on the *Scoreboard* in this introduction. If we look at the current situation indicated in the update of the *Scoreboard* on 30 December 2003, however, we can see that – with regard to measures specifically taken to ensure that organised crime and other forms of serious crime can be combated more effectively – a great many initiatives were introduced to implement the agreements reached.¹¹ For instance, Eurojust and the Police Chiefs Operational Task Force were set up, the talks on the Convention on Mutual Assistance in Criminal Matters were completed in 2000 and a framework was developed for the creation of joint investigation teams.

It therefore comes as no surprise that in its June 2004 assessment of the Tampere programme the European Commission made fairly positive comments about what had been achieved in the past few years: ‘substantial progress has been made in most areas of justice and home affairs’.¹² However, the Commission followed this positive assessment with a whole list of points that, in its view, should be specified in more detail in a new programme (‘Future of Justice and Home Affairs’). These points include developing a framework for the exchange of information between the Member States, strengthening the trust between the judicial authorities in the Member States, continuing the operational expansion of Europol and Eurojust while at the same time establishing a European Public Prosecutor’s Office and tightening up the policy on terrorism, trafficking in human beings and drug trafficking. This programme is due to be formulated in the autumn of 2004.

¹⁰ See, for example, Milke (2003) on the subject of Eurojust.

¹¹ Commission of the European Communities, *Biannual Update of the Scoreboard to Review Progress on the Creation of an Area of ‘Freedom, Security and Justice’ in the European Union (Second Half of 2003)*, COM (2003) 812 final, Brussels, 30 December 2003.

¹² Commission of the European Communities, *Area of Freedom, Security and Justice: Assessment of the Tampere Programme and Future Orientations*, COM (2004) 4002 final, Brussels, 2 June 2004.

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Attention must be also paid to the draft version of the *Constitution for Europe*, as adopted on 18 June 2004 at the Intergovernmental Conference.¹³ It is notable that the objective of the European Union, as formulated in Article 29 of the Treaty on European Union, is broadly incorporated into the general provisions of Chapter IV of Title III ('Internal Policies and Action'), but that the term 'organised crime' is no longer used (Article III-158, par. 3): 'The Union shall endeavour to ensure a high level of security by measures to prevent and combat crime, racism and xenophobia, and measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as by the mutual recognition of judgments in criminal matters and, if necessary, the approximation of criminal laws'.

One can well imagine that once the pillar structure of the European Union has been largely abandoned and maintaining domestic security becomes a joint task of the European Union and the Member States together, the distinction between 'crime' and 'organised crime' will no longer be so important. However, it is not very consistent to then use the latter term in subsequent articles, and sometimes incomprehensibly, for example in Article III-172, par. 1, which deals with the harmonisation of criminal provisions in particular areas: 'These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime'. Are the various types of crime listed not forms of organised crime?

Whatever the answer to this question may be, perhaps it is more important to point out that this treaty – if it were to be adopted – can also bring about significant changes in the field of cooperation in criminal matters. Not only because it resolutely sets its sights on approximation of the criminal laws of the Member States and their mutual recognition of judgments, but also because it aims to give a directing role to Eurojust and the European Judicial Network in tackling important criminal matters in the European Union (Article III-174), it proceeds on the assumption that a European Public Prosecutor's Office will be set up (Article III-175) and it wants to develop Europol into an effective linking pin between the various police forces involved in cross-border criminal investigations. The latter goals, however, should be reached without giving Europol executive powers: 'The application of coercive measures shall be the exclusive responsibility of the competent national authorities' (Article III-177; on the matter, see Garcia-Jourdan, 2003; see also Bigo, 1996 on the subject of police cooperation in Europe).

¹³ Conference of the Representatives of the Governments of the Member States, *Provisional Consolidated Version of the Draft Treaty Establishing a Constitution for Europe*, CIG 86/04, Brussels, 25 June 2004.

2. The General Policy of the European Union on Organised Crime

Let there be no mistake about it, it is clear from the above that the policy conducted within the context of the 'area of freedom, security and justice' in the fight against crime, organised or otherwise, mainly relates to the institutionalisation of cooperation in criminal matters in the European Union and, taking this one step further, to the creation of legal frameworks within which the Member States can readily and effectively ensure direct mutual cooperation in criminal matters in many different ways. This also reveals the one-sidedness and limited nature of the general policy straightaway. However necessary it may be to properly organise cooperation in criminal matters in order to combat various forms and cases of cross-border organised crime in the European Union, an improved judicial cooperation is certainly not sufficient to control this type of crime effectively.

In the 1980s this fact was not immediately recognised in the European Community or in the discussions between the Member States, which in the late 1970s began to exchange information on terrorism and, later on, on organised crime in the so-called TREVI working groups (the body was named after the fountain upon which the first meeting looked out upon). The idea that organised crime could only be combated through criminal law was still going strong. This emerges clearly from the 1990 Schengen Application Convention. The fight against organised crime, particularly drug trafficking and arms trafficking, was an important factor when drawing up this Convention. The main tools envisaged to actually wage this battle – apart from the exchange of information – were, however, of a penal nature: controlled delivery and cross-border surveillance.

In all fairness, it must be said that the Council Directive of 10 June 1991 on prevention of the use of the financial system for the purposes of money laundering was also clearly intended to preventively combat organised crime more effectively ('Whereas money laundering has an evident influence on the rise of organised crime in general and drug trafficking in particular [...]'). In that sense this directive appeared to realise that combating this type of crime by penal means certainly has its limits. This realisation was only partial, though. In the preamble of the directive it is, in fact, stated: 'Whereas money laundering must be combated mainly by penal means [...]' – and this actually means: the prevention of organised crime can only play a supplementary role in its repression.¹⁴

The murder of the Italian judges Giovanni Falcone and Paolo Borsellino prompted the Ministers of Justice and Interior to establish an Ad Hoc Working

¹⁴ 'Council Directive 91/308/EEC of 10 June 1991 on Prevention of the Use of the Financial System for the Purpose of Money Laundering', *Official Journal*, L166/77-166/83, 28 June 1991. For the important role played by the Council of Europe in developing the money laundering policy, see Gilmore (1999).

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Group on International Organised Crime on 18 September 1992 and to assign it the task of investigating ways of intensifying the joint efforts of the Member States against organised crime. The working group compiled two reports in 1993 on the results of its work.¹⁵ These reports portrayed organised crime as a body of internationally operating hierarchically structured criminal organisations that try to gain a foothold in both illegal and legal markets in all manner of ways – through their own financial resources and the advice of highly qualified experts, through corruption and violence, etc. In light of subsequent academic research, a lot can be said against this representation of the problem (see the introductions to Parts I and II and the country reports in Part II), but given the then dominant understanding of organised crime, the obvious course was to seek penal means to combat it, by strengthening judicial and police cooperation between the Member States.

Other means were by no means ruled out, however. The first report pointed to the importance of cooperation between customs authorities and a few lines were also devoted to the preventive approach to organised crime; more particularly, the report referred to the importance of combating corruption in the public sector. In the second report, the working group first put forward proposals to start systematically collecting information on organised crime in the European Union; the subsequent Europol reports stemmed from this recommendation (these were discussed in the introduction to Part II). Secondly, the report proposed improving legislation in the Member States in a number of areas, for example with respect to criminalising legal entities, using phone tapping and confiscating the proceeds of organised crime. Thirdly, the report recommended the use of ‘administrative measures likely to hinder the development of international organised crime’, such as preventive measures to combat money laundering, tighter independent surveillance of businesses and more cross-border cooperation between administrative authorities.

In the years that followed, none of these recommendations were translated in a coherent manner into a programme to combat organised crime in the European Union. It took another murder: the assassination of the Irish journalist Veronica Guerin in Dublin in November 1996 for her repeated attacks in print on organised crime in the Irish capital (Mooney, 2001). The fact that this murder was committed while Ireland held the Presidency of the European Union was an important factor in the decision taken at the Dublin Summit on 13 and 14 December 1996 to set up a High Level Group of Officials, who were to draw up a ‘comprehensive action plan’ before April 1997 for combating organised crime.

The report of this working group was adopted by the Council on 28 April 1997 and it was published in the *Official Journal of the European Communities*

¹⁵ These reports were not published. The first report was presented to the ministers in May 1993, the second at the end of October 1993.

(hereinafter *Official Journal*) on 15 August 1997.¹⁶ Broadly speaking, this comprehensive plan consisted of a raft of measures to forcefully promote cooperation between the Member States in criminal matters, as intended in the Treaty on European Union: expansion of the system of legal assistance, greater involvement of Europol in cooperation between the Member States, mutual evaluation of the legal and organisational measures that the Member States implement in this area in their own country, etc. The plan also included a few proposals to devote more attention to preventing organised crime: transparency in public administration, screening of individuals and companies in public tender procedures, and social and economic measures for cities to prevent them becoming ‘breeding grounds for organised crime’.

Following from this preventive section of the plan, the Council adopted a resolution on 21 December 1998 ‘on the prevention of organised crime with reference to the establishment of a comprehensive strategy for combating it’.¹⁷ This called for greater involvement on the part of civil society, interest groups and the business community in efforts to prevent organised crime, the evaluation of preventive measures that are implemented all over Europe in this context and the exchange of the findings of these evaluations. In particular, this resolution showed that over the years the prevention of organised crime had come to carry weight in the policy of the European Union.¹⁸

In the conclusion of the 1998 resolution, the European Commission and Europol were called on to prepare a report by the end of 2000 containing further proposals for preventing organised crime in the future. The ratification of the Amsterdam Treaty brought extra pressure to produce the report. It was published in May 2000 in the *Official Journal: The Prevention and Control of Organised Crime. A European Union Strategy for the Beginning of the New Millennium*.¹⁹ The strategy set down in this policy document is embodied in 39 recommendations, which build on the measures and initiatives that had been announced in all previously mentioned plans, both in the action plan to combat organised crime and in the Tampere programme.

¹⁶ ‘Action Plan to Combat Organised Crime’, *Official Journal* C 251/1-251/18, 15 August 1997.

¹⁷ ‘Council Resolution on the Prevention of Organised Crime with Reference to the Establishment of a Comprehensive Strategy for Combating it’, *Official Journal* C408/1-408/4, 29 December 1998.

¹⁸ In this connection see also the *Dublin Declaration* (‘Tackling Organised Crime in Partnership’), which was adopted in Dublin at a symposium on cooperation between the public and private sectors in the fight against organised crime (Council of the European Union, CRIMORG 96, Brussels, 19 December 2003).

¹⁹ *Official Journal* C124/1-124/33, 3 May 2000.

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To a large extent, therefore, they contain little that is new. The proposals have simply been worked out in more detail in a number of areas. Examples include the following recommendations:

- to improve the annual reports on organised crime in the European Union
- to make it possible to exclude individuals and businesses from tender procedures
- to intensify cooperation between the Member States in investigations of organised crime by improving the exchange of information
- to strengthen the position of Europol
- to disseminate experience of special methods of investigation
- to introduce a witness protection programme, etc.

To a certain extent, one new element is the emphasis placed on strengthening cooperation with countries outside the European Union, particularly countries that wish to join the European Union, and with other international institutions such as the Council of Europe and the United Nations. The recommendations made in this context naturally betray the growing importance of the fight against organised crime in the foreign policy of the European Union.

In June 2003 a report was submitted to both the Council and the European Parliament, which examined each recommendation in turn to ascertain which measures had been implemented or which steps had been taken with a view to implementing the aforementioned strategy of the European Union.²⁰ The results show that most of the recommendations were implemented to a greater or lesser extent at European Union level. The authors of the report think there is still a lot to be done in some areas, however, for example in relation to the analysis of organised crime in the European Union, the screening of individuals and companies in tender procedures, the connection between organised crime and terrorism (particularly as regards financing terrorism), the use of investigative powers and investigative techniques in cross-border criminal investigations, and the protection of witnesses.

Clearly, if the European Union wants to make progress in these areas, it will be necessary to carry out comparative law studies on national statutory regulations relating to the criminal and administrative fight against organised crime within and between the Member States, as well as empirical research into the actual effect of these regulations and of the bodies that are involved in their implementation. The fact that some progress has already been made in both kinds of research in the past few years is a welcome sign. With regard to the legal measures that European

²⁰ Council of the European Union, CRIMORG 49, Brussels, 30 June 2003.

states have generally taken to combat organised crime more effectively, we refer to the studies published in 2001 by Walter Gropp and Barbara Huber. Peter Tak (2000) has made a valuable initial contribution to the study of special methods of investigation with the publication of a collection of studies on this subject in the various Member States of the European Union. In 2002 Monica Den Boer worked with colleagues in an attempt to identify which organisational changes the fight against organised crime had entailed for the police forces and the public prosecution services in the Member States.²¹

All in all, these studies show that in most of the Member States organised crime has a considerable influence on how criminal proceedings are regulated and on how criminal procedure is organised. In most of the Member States special methods of investigation – in some form or another – have become established and criminal procedure has undergone a process of centralisation and specialisation to a certain extent.

Finally, a kind of quest is currently under way within the European Union to update the strategic policy on combating organised crime. The symposium that was organised by the incoming Dutch Presidency of the European Union on 10 and 11 June 2004 in The Hague on the development of a new strategic concept is part of this effort. Among the issues discussed at that meeting were establishing the key priorities of the policy of the European Union, ways of increasing insight into organised crime, improving the actual use of existing instruments within the European Union and new approaches in the fight against organised crime.²²

3. The Growing Relevance of the Fight against Organised Crime in Foreign Policy

At the special summit in Tampere in 1999 it was decided that foreign policy must also be brought in line to bring about the ‘area of freedom, security and justice’: ‘Clear priorities, policy objectives and measures for the Union’s external action in Justice and Home Affairs should be defined’. In particular, the European Council declared its support ‘for regional cooperation against organised crime involving Member States and third countries bordering on the Union. In this context it notes with satisfaction the concrete and practical results obtained by the surrounding countries in the Baltic Sea Region. The European Council attaches particular importance to regional cooperation and development in the Balkan Region’.

²¹ In this connection, see also the study by Aden (1998), which establishes a link between the developments in the European Union and some Member States.

²² For an unpublished report of this meeting, see Council of the European Union, CRIMORG 65, Brussels, 19 July 2004.

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Such an explicit expression of support might make us overlook the fact that the European Council had already issued a declaration at the Berlin Summit in September 1994 about the need for more cooperation between the Member States of the European Union and the states in northern, central and eastern Europe in the fight against organised crime.²³ This declaration pointed to the need to intensify operational cooperation, exchange liaison officers, ratify European conventions on mutual assistance and implement special cross-border investigation methods. This led in 1998 to the *Pre-Accession Pact on Organised Crime between the Member States of the European Union and the Applicant Countries of Central and Eastern Europe and Cyprus*,²⁴ which urged more detailed analysis of organised crime in Europe and more intensive organisation of police and judicial cooperation, practical assistance for future Member States and the exchange of liaison officers.

Following from the OCTOPUS project, which started as a joint programme of the European Commission and the Council of Europe in 1996 to help Central European countries organise their efforts to combat organised crime and corruption, assistance to former communist European countries was given through several specific programmes. Initially it was primarily the OCTOPUS project, but other more specific programmes followed, such as the MOLI project that was started in 2003 to help combat money laundering in Russia and the Ukraine, and the CARDS project that was launched on 1 March 2004 with the aim of strengthening police and judicial capacities in south-western Europe against organised crime.²⁵ This help comes in a variety of guises: practical training of police officers and judges, technical assistance in criminal matters, creation of specialised police units, exchange of police officers and initiatives to strengthen the role of Europol and Eurojust.²⁶ Other projects such as GRECO are also under way, which have already been discussed in the introduction to Part II.

One final point that should not be ignored is that since the Tampere Summit every Presidency of the European Union, together with its predecessor and successor, has formulated a JHA (Justice and Home Affairs) External Relations Multi-Presidency Programme. These programmes always give some consideration to the problems of organised crime and efforts to combat it. For example, the programme that was drawn up in January 2004 under the Irish Presidency devoted special attention to the

²³ *Berlin Declaration on Increased Cooperation in Combatting Drug Crime and Organised Crime*, Berlin, Pres/94/182, 8 September 1994.

²⁴ *Official Journal* C220/1-220/5, 15 July 1998.

²⁵ All these projects are described on the website of the Council of Europe: <http://www.coe.int/T/E/Legal_affairs/Legal_co-operation>.

²⁶ See the policy document *EU Action against Organised Crime in the Western Balkans*, Council of the European Union, CRIMORG 88, Brussels, 8 January 2004.

fight against organised crime in south-eastern Europe, police and judicial cooperation with Russia and discussions with the Ukraine on the aforementioned subjects. The fight against organised crime also features on the agenda with the United States and Canada, however, since late 2001 right up there with the campaign against terrorism. The same goes for the agenda with South American and Asian countries.²⁷

This important development – the interweaving of the domestic and foreign policies of the European Union, particularly in the field of combating organised crime – was put into effect in the European Security Strategy, which was adopted on 12 December 2003 in Brussels.²⁸ In this important document, organised crime is considered to be one of the key threats to Europe, alongside terrorism and regional conflicts:

Europe is a prime target for organised crime. This internal threat to our security has an important external dimension: cross-border trafficking in drugs, women, illegal immigrants and weapons accounts for a large part of the activities of criminal gangs. It can have links with terrorism. Such criminal activities are often associated with weak or failing states. Revenues from drugs have fuelled the weakening of state structures in several drug-producing countries. Revenues from trade in gemstones, timber and small arms, fuel conflict in other parts of the world. All these activities undermine both the rule of law and social order itself. In extreme cases, organised crime can come to dominate the state.

Clearly, this definition of the problem is of a much more serious nature than the one held by the Ad Hoc Working Group on International Organised Crime in the early 1990s. Organised crime may have been regarded as a serious issue at that time, but not as a problem that posed a direct threat to the security of the European Union. As a result of this negative assessment, the fight against organised crime has become an important part of the security strategy set out in the European Security Strategy. It has secured a place within the framework of the strategic objectives, with the result that in Europe too – as in the United States – crime control and foreign policies are inspired by the conviction that ‘the first line of defence will often be abroad’ and that ‘conflict prevention and threat prevention cannot start too early’. The result is that the fight against organised crime has become an integral part of the policy that must be conducted in order to achieve these and other objectives.

²⁷ Council of the European Union, JAI 1, Brussels, 7 January 2004.

²⁸ This document can be found on the website of the European Union: <<http://www.eu.int>>. It is worth mentioning that attempts have also been made in the past to consider the foreign dimension in the issue of organised crime. See, in particular, Rupprecht, Hellenthal et al. (1992).

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The specific measures proposed include a more active approach to issues such as organised crime abroad, a more appropriate approach to such issues based on thorough threat assessments and also a more consistent approach: 'Better coordination between external action and Justice and Home Affairs policies is crucial in the fight against both terrorism and organised crime'. With basic principles like these, the fight against organised crime by the European Union has clearly entered another phase. From being an internal European matter for the Member States, it has become a global priority of the European Union.

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The Paradox of Effectiveness: Growth, Institutionalisation and Evaluation of Anti-Mafia Policies in Italy

Antonio La Spina

1. Introduction

This contribution focuses on Italian policies that have been envisaged and implemented to combat, prevent or contain mafia-type organised crime.¹ After having shown that a proper analysis of anti-mafia policies is strangely lacking (section 2), policies *directly* addressing the mafia are dealt with, hinting at the norms concerning specific criminal offences, vast investigatory powers and penetrating preventive measures, financial transactions and money laundering, collaborators of justice, the peculiarity of mafia trials, judicial attitudes and sanctions (section 3.1). Section 3.2 presents the wide variety of other policies addressing civil society and public administrations, and only *indirectly* addressing the mafia: anti-racket legislation, the spread of a ‘legality’ culture, anti-mafia norms concerning economic activity, the possible impeachment of mayors and dissolution of local councils, European Union cohesion funds used to enhance the effectiveness of police action.²

¹ This is of course a specific form of organised crime. This contribution will not cover Italian measures concerning other forms of organised crime, insofar as they are distinct from the mafia (such as terrorism, kidnapping, and so on). The term ‘mafia’ will be used to refer to all those criminal associations (such as La Cosa Nostra, Camorra, ‘Ndrangheta, Sacra Corona Unita) which, according to territorial jurisdiction, interfere in a stable way upon licit economic activities, ‘selling’ protection to them, coercively guaranteeing agreements, and systematically altering competition. Mafia associations also organise on their own illicit economic activities (such as drug trafficking, smuggling, prostitution, and so on), raise huge profits (and tend to launder them or to reinvest them in licit activities), try to generate a social consensus (at least in some sectors of the population), and exploit relationships with local or sometimes national political élites. For an appropriate treatment of the topic, see Letizia Paoli’s article on organised crime in Part I.

² My distinction between direct and indirect policies (which I use to structure the exposition) is a rather crude one. On the one hand, some dimensions of criminal law concern ‘social’ effects, such as the spreading of a culture of legality. On the other hand, acts such as those concerning anti-racket or public works (which I place in the second group) also have implications for criminal law.

Section 4 focuses on the institutional innovations that over the years have been brought about by anti-mafia policies, with regard to the police forces and public prosecution, and more specifically to the Direzione Nazionale Antimafia (DNA, the National Anti-Mafia Directorate), Direzione Investigativa Antimafia (DIA, the Investigative Anti-Mafia Directorate), the *ad hoc* Anti-Mafia Parliamentary Committee, the various administrative organs dealing with the management and destination of confiscated goods, the protection programmes for collaborators of justice, the anti-racket and anti-usury initiatives and the solidarity initiatives for the victims of organised crime. Section 5 hints at some general concepts and problems concerning assessment research in the field of organised crime policies, and presents an apparent paradox – direct policies have proved to be very effective (while the same cannot be said for indirect policies, with the exception of cohesion funds). Nevertheless, many of the actors involved in the policy community tend to understate systematically the otherwise undeniable successes achieved so far. This tendency can be a partial explanation of the absence of proper analyses and evaluations of Italian relevant policies, and at the same time shows how necessary such analyses and evaluations would be. Section 6 contains a tentative and brief overall assessment of Italian anti-mafia policies.

2. Existing Research

When reviewing recent research about anti-mafia policies in Italy, it is easy to see that this subject has attracted, and still attracts today a lot of scholarly and not so scholarly attention. However, almost all Italian social scientists who have dealt with this phenomenon have concentrated on its features as well as on its evolution. They have rarely adopted a policy analysis perspective (even when the disciplinary field to which they belong is political science), both in terms of positive theory (that is, aiming to explain which policies are in fact adopted and why, features of the ‘policy community’, agenda setting, issue attention cycles, and so on) and policy evaluation (actual impact, level of effectiveness, possible collateral effects, given the official goals).

Italian sociologists, economists and political scientists who have devoted their attention to the mafia in the last two decades include Gambetta, Paoli, Arlacchi, Catanzaro, Sciarrone, Monzini, Massari, Becucci, Santoro, Armao, Costantino, Dino, Santino, Sciortino, Centorrino, Signorino, Becchi, Campiglio, Marselli, Vannini, Felli, Tria and Ofria. Some of their studies say something about policy ‘trends’, not infrequently with critical remarks, but almost never try to explain and evaluate them in a truly analytical fashion. Among the exceptions are some tentative evaluations of specific policy measures and some contributions by economists which are also in line with policy analysis considerations but rarely deal with the assessment of actual policies (one notable exception being Masciandaro).³

Therefore, notwithstanding the quantity of the literature on organised crime, comprehensive as well as specific academic policy analyses are lacking. Those who deal with policy content, aims and ‘evaluation’ are mostly legal scholars, or, more frequently, the protagonists of policy implementation (policemen, public prosecutors, judges, members of Parliament, members of the Executive, and so on), which in doing so normally do not assume a policy analysis perspective either. Nevertheless, some of the documents produced by such protagonists offer valuable data and materials for the work of policy analysts.

Space precludes me from engaging in an proper general analysis here, which would require several volumes as well as several authors with specific competencies on the many different sectors of Italian policies concerning the fight against organised crime at all levels. What I will try to do is give a very brief description of some of the main measures and institutional changes. I will take into account the way policy evaluation has been done so far, quoting some hard facts which in themselves allow a partial evaluation, so to indicate a possible ‘road-map’ to a systematic analysis of Italian anti-mafia-type organised crime policies.

3. An Overview of Anti-Mafia Policies

3.1. Policies Directly Addressing Mafia Crimes

Some of the most relevant anti-mafia measures were adopted as a result of specific events, such as homicides and attacks of criminal organisations against the state. Act 575/1965 regarding the forced residence of mafiosi far from their towns and other provisions against the mafia was adopted after the ‘Ciaculli’ slaughter in Palermo. The processes which led to the passing of Act 646 (so-called ‘Rognoni-La Torre’) and Act 726 (instituting the High Commissioner for the Coordination of the Fight against the Mafia) in 1982 were accelerated by the murders of the member of Parliament Pio La Torre and of the General Carlo Alberto Dalla Chiesa, both in Palermo. Further homicides of judges and policemen – the Capaci and the via D’Amelio slaughters in which Giovanni Falcone and Paolo Borsellino were killed – were related to other measures such as Decree-Act 306/1992 (so called ‘Falcone’, dealing with trials and police action in the fight against the mafia). The various

³ A group belonging to the Transcrime Research Centre in Trento directed by Ernesto Savona attempted a comparative evaluation of the policy concerning the confiscation of the proceeds of crime, with regard to its effectiveness. This piece of research, however, concentrates on the content of norms more than on how they are actually enforced and with what results (Vettori, 2002).

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innovations introduced concern new criminal offences, investigatory powers and preventive measures (including those concerning patrimonial measures), checks relating to suspicious financial transactions and money laundering, the extensive use of collaborators of justice, special norms regarding mafia trials, judicial decisions concerning the interpretation of criminal and procedural norms and the regime of sanctions (the main aspects being punishment, incarceration and confiscation of assets).

Criminal offences. In the 1980s and 1990s in particular, some important innovations in the field of criminal law were launched. The Rognoni-La Torre Act introduced a new crime, that of criminal association of a *mafioso* type – Article 416bis in the Criminal Code. In 1992 another specific crime was also foreseen (through a modification of the Criminal Code) concerning the exchange of money for votes offered by mafiosi to elected officials.

Investigatory powers and preventive measures. When investigations concern the mafia, the police as well as the public prosecutor can exercise powers not only related to the judicial action, but also of a preventive kind (i.e. aimed at hindering the accomplishment of mafioso crimes which have not yet happened), concerning interception of communications (on wire or by other means), proposals for precautionary forced residence or seizure of assets, covert operations carried out by undercover agents, search of buildings and utilisation of information offered by intelligence services. Preventive actions are proposed by the police force or by the public prosecutor and decided by the judicial authority.

Patrimonial preventive measures. Mafia-type organisations exploit their threatening power to manage illicit trafficking, exact unlawful profits, and to control directly or indirectly private economic activities as well as public tenders, and other administrative and political decisions. The Rognoni-La Torre Act, reforming the previous Act 575/1965, granted the public prosecutor and the police chief at district level relevant powers to investigate the standard of living, income and assets of suspected mafiosi, their families and employees, as well as to seize assets when they appear to have stemmed from criminal activities, which happens when their value is disproportionate to the official income of the accused person.

Such investigations can be based on the declarations of collaborators of justice, or even more frequently on the tapping of conversations between mafiosi, their relatives or their henchmen. Once this information is acquired, the seizure can take place immediately, long before the conclusion of the often lengthy financial and patrimonial inquiries. Any kind of goods can be seized (buildings, country estates, firms, shares, and so on). The preventive measure is independent of the judicial process aimed at ascertaining specific and concrete criminal responsibilities. According to the Constitutional Court and the Court of Cassation, even if a suspected mafia member is absolved, this does not automatically imply that the

judgment of his threat to society is revoked. And it is this judgment which gives the basis for patrimonial measures, which therefore might be maintained even after absolution. Such an approach is rather unique in the Western world. Seized goods, especially when they are in the form of companies, are not easy to manage, because once they are entrusted to an administrator nominated by the court their market value collapses.

Suspicious financial transactions and money laundering. Other norms (including Decree-Act 143/1991, Articles 648*bis* and 648*ter* Criminal Code, modified in 1993 as a response to the Council of Europe Anti-Money Laundering Convention of 1990 and the complementary European Economic Community (EEC) Directive 308/91, and Legislative Decree 153/1997) deal with suspicious financial transactions and money laundering. The attempt to obscure the fact that some money, goods or other valuable utility has an illicit origin can be connected both to typical mafioso activities (such as extortion or drug trafficking) and to ordinary crimes committed with malice not related to mafioso activities. Police officers can also act as infiltrators and simulate money laundering, in order to discover the various ramifications of mafia associations. The object of investigation, therefore, becomes the transaction, and no longer the person. The role of banks and financial brokers is much more relevant than it used to be, insofar as they are obliged to keep a register of all transactions exceeding a certain amount. Suspicious transactions (e.g. multiple transactions made by the same person or by his relatives or collaborators) must be reported to the UIC (Italian Exchange Office) in order to detect those which may be linked with mafioso organisations.

Collaborators. An important policy development, especially from 1990 onwards, had to do with promoting, rewarding and utilising ‘collaborators of justice’, who can be private witnesses or victims – or even, and much more significantly, people who used to be involved in the mafia who have decided, usually once they are in jail, to cooperate with public prosecutors and policemen (the so-called *pentiti*). Such a policy, which has proved very successful, involves several complex questions. First, these people and their relatives are in danger of being attacked because of their collaboration. Therefore, the law envisaged that the same public prosecutor who deals with the collaborator (and was also in charge of judging the collaborator’s reliability and the significance of his contribution) should propose a protection programme to an *ad hoc* central commission. The programme is then managed by a central protection service. Such programmes provide that the collaborator (and his relatives) change residence, is held in custody according to a special and very favourable regime (including the possibility to benefit from the various ‘alternatives’ to jail), is given new identity documents, obtains substantial penalty reductions, as well as financial assistance. Specific precautions are taken when the collaborator is examined by the prosecutor and during the trial, including the

utilisation of videoconference techniques, to allow the collaborators to be heard from their safe residences.

The norms on collaboration were revised by Act 45/2001, with several aims and questions in mind: the promotion of the cooperation of witnesses not coming from the mafia; the need for the collaborator to indicate those assets that he has earned illicitly, so to make his declarations more credible; the necessity for a cross-examination of such declarations during the trial; the necessity that he serves a minimum part of his sentence; the avoidance of coordinated declarations between him and other collaborators, or other interested parties. Furthermore, there should be a restriction in so-called 'declarations by instalment', given that it was often the case that, after one or more years since their initial 'repentance', some collaborators sometimes 'remembered' that it would have been appropriate to accuse persons that they had not mentioned at all in their previous declarations. Therefore, a collaborator now has to state what he knows only within six months of his decision to cooperate. This term is often deemed too short by public prosecutors. In any event, when evaluating this new statute, the general prosecutor of the Court of Cassation (who speaks on behalf of the whole judiciary at the opening of the judicial year) said that it 'should make the phenomenon of collaboration more effective from the trial's point of view, as well as more socially acceptable, thus dispelling the thick halo of mistrust that surrounds it' (Favara, 2002).

Mafia trials. The procedural rules concerning the treatment of mafioso crimes in court were modified so to allow trials with hundreds of defendants. They also make the most effective use of the evidence available, as well as its circulation between connected trials and its secrecy. The reasons expressed by a court to justify a given sentence in a given trial can serve as evidence in other trials. The participation of defendants in hearings can also take place in a 'virtual' way, through multi-videoconferences, while they stay in their maximum security jails (but in separate halls, so that they remain unable to communicate with each other). Act 63/2001 (about the so-called 'fair trial', which also required a constitutional amendment) introduced some general innovations, which are also important in mafia trials. One is about the intricate case of the 'defendant-witness' (which typically occurs when the defendant is also a collaborator). In the past many collaborators had the opportunity to accuse somebody as a witness, at the same time refusing to answer embarrassing questions during cross-examination, as allowed by the defendant's right to silence. The new act stated that if the defendant-witness made declarations accusing somebody else, he should be warned that he will be treated as a simple witness with regard to such declarations, with all the connected obligations and responsibilities.

Act 63/2001 also restricted the possibility of connections between trials, favouring instead distinct, less complex and hopefully quicker lawsuits. Furthermore, it rendered the depositions given to the public prosecutor or to the police totally useless

(apart from giving grounds for evaluating a witness's reliability) if they were not confirmed during the hearing. Many judges and public prosecutors criticise this provision, especially with regard to mafia-related lawsuits, where witnesses can be particularly frightened in view of possible retaliations. If the process is based on the depositions of 'pure' witnesses, there is a strong probability that such declarations will not be repeated in the hearing. Secondly, the new provisions require much more cumbersome proceedings, because they force the public prosecutor to lay his cards on the table earlier in order to allow for cross-examination, especially with regard to defendants' declarations concerning other persons, or to witness-defendants. A possible consequence of the new 'fair trial', however, might be (and perhaps already is) that of 'forcing' prosecutors to rely more and more on 'objective' evidence, obtained through tapping, videotaping, satellites, and so on.

Judge-made policies. It is also possible to detect a normative policy of judicial origin concerning the mafia, the most outstanding examples of which are the construction of the crime of 'external participation' in a mafia-type association (which is already a collective crime, being based on the participation of several people) and the treatment of collaborators' declarations. As far as external participation is concerned, this judicial construction was applied to prosecute 'white collar workers' such as professionals, entrepreneurs and politicians. A notorious lawsuit which was originally based on external participation was the case against the former prime minister Giulio Andreotti (in a subsequent phase of which the prosecutors accused him of being directly involved in a mafia-type association).⁴ In some cases, entrepreneurs who had been victims of extortion were also deemed guilty of having abetted mafiosi because they had not reported it. With regard to the second point, collaborators' declarations, some decisions of the Court of Cassation recognised as valid and sufficient the 'cross-confirmation' evidence of the depositions of different collaborators, even in the absence of 'objective' counterparts. Other decisions deemed admissible a *de relato* declaration, that is information not based on what the collaborator says he has directly experienced, but rather on other declarations, allegedly issued in the past to him by people that now might be dead, missing or unwilling to confirm.

Penalties and incarceration. The penalties and the imprisonment regime for mafiosi are severe. They cannot benefit from any measures which allow for treatments

⁴ The accused was acquitted of first degree charges. However, the Appellate Court stated afterwards that he, together with some Sicilian Christian Democrats, had close relationships with La Cosa Nostra in the period before 1980. According to the latter decision, Andreotti begun to act effectively against the mafia only after the homicide of the President of the Sicilian Region, Piersanti Mattarella.

which are 'alternative' to detention. Further, contacts between prisoners and with the outside world are restricted and strictly checked, in order to avoid that such people communicate between themselves in order to continue to exert their influence in the organisation, as was the case with some mafia bosses until the 1970s. A special incarceration regime is selectively applied to the most dangerous and prominent mafiosi. Act 279/2002 recently confirmed, made permanent and extended such a special treatment.

Confiscation of assets. If somebody is found guilty of mafia-related conduct and is unable to show how he acquired certain assets, they will be confiscated. The burden of proving that disproportionate assets were acquired on the basis of a licit income is therefore upon the defendant. However, significant difficulties are met concerning definitively confiscated goods, as we shall see later.

3.2. Policies Addressing Civil Society and Public Administrations, and Indirectly the Mafia

All the policies hinted at in the previous section belong to the field of criminal law, and are aimed at improving the suppression as well as the prevention of mafia-type associations and mafia-related individual crimes. Therefore, they more or less directly address mafiosi and their conduct. Other policies are of a more indirect kind, insofar as they try to promote a 'culture of legality' and the reaction of civil society against mafia, or to render public administration and public acts more impermeable to it, or to strengthen the capabilities and performance of police forces.

In 1991, after the murder of the entrepreneur Libero Grassi, who had publicly announced his choice to refuse paying the protection racket, a Decree-Act was adopted (419/1991) and subsequently converted into a Act (172/1992). It aimed at restoring various costs borne by people who resist the protection racket. At the same time some anti-racket associations were created between small and medium-sized firms. Act 44/1999 reformed the 1991 Act. It increased the amount of benefits granted to racket victims by extending the scope of reimbursable damages to cover all their costs, made payment quicker and more reliable, involved the anti-racket associations in its management, eased the obligation of cooperation between victim and investigator and created an *ad hoc* Commissioner responsible for coordinating actions against usury.

In many cases sub-national and local public institutions act to support the spread of collective movements against mafia, as well as to sensitise the younger generations. In 1980, the Sicilian region approved an act aimed at financing projects prepared by schools or universities, concerning the analysis and the spread of knowledge about the mafia phenomenon and the fight against it. In 1999, the same region added other provisions concerning benefits for mafia victims and subsidies for entrepreneurs, to allow them to acquire equipment for intruder detection as well

as for audio and video registration. Municipalities launched several initiatives, also at school level. Another instrument used at the local level concerned experiences of ‘bargained programming’ such as *patti territoriali* and *contratti d’area*. These aimed at promoting socio-economic development at the local level involving municipalities, other public administrations, entrepreneurs and their organisations, and social partners. Most of these agreements included ‘legality protocols’ with the participation of the prefect and the police forces, through which parties assume reciprocal obligations concerning the strengthening of security conditions and public order in the area (with regard both to economic activities and to the community level), and can obtain financial support through a national security fund.

Firms or individuals dealing with the public sector (i.e. those asking for public aids or bidding for public contracts) were requested (for the first time in 1982, according to Act 936, Art. 2, and then by Act 55/1990, Art. 7) to exhibit an ‘anti-mafia certificate’ attesting that they had not been involved in mafia-type associations, which means not only were they not deemed guilty of mafia-related lawbreaking, but also that they were not subject to the preventive measures foreseen by Act 575/1965. This administrative burden was subsequently simplified and mitigated. Now, if the amount of the aid or contract does not exceed € 154,937.07 then no formalities are required. Besides the private subject, also the public administration involved now asks for a certification concerning the firm or the individual to the Chamber of Commerce or to the prefecture, depending on the amount of aid or contract.

The sector of public works and procurements is one of those in which the mafia traditionally tries to determine winners by organising ‘a queue’ of firms which conspire among themselves with regard to many tenders in order to coordinate the bids and influence the result, so that each one of them will have the opportunity to win in due time. This normally also requires a favourable attitude on the part of political and administrative decision-makers. Before the period known as *Tangentopoli*, Italian legislation on public works and procurements had followed a different approach. Corruption was widely practiced, albeit not always in connection with mafia. After many false starts, in 1999 the Authority for the Supervision of Public Works (*Autorità per la vigilanza sui lavori pubblici*) began to work to guarantee legality, efficiency and accountability in that sector. Such an independent commission was established to inspect and sanction firms, as well as request documentation and information from any public body concerned. It must then inform the judiciary of any irregularity detected. Some regions with special autonomy (notably Sicily) have their own legislation concerning public procurement. At the beginning of the 1990s it was reformed in such a way to avoid any possible exercise of discretion, to consolidate procurement operations, and to make them impermeable to external pressures. It was then reformed again, making use of ‘automatic’ procedures (not resorting to the maximum bid, but rather to a complex mechanism based on the average of the bids).

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Some measures (Act 142/1990 and especially Act 55/1990 as integrated by the Decree-Act 164/1991, converted by Act 221/1991, and subsequently by Acts 16/1992, 120/1993, 30/1994, 108/1994, which converted the Decree-Act 529/1993) and now Legislative Decree 267/2000 allow for the dissolution of municipal and provincial councils as well as for the suspension or dismissal of mayors and presidents of provinces in cases when a connection between the local administrators and the mafia can be shown. These measures only affect political personnel, while appropriate treatment for the compulsory transfer or expulsion of civil servants colluding with mafia is still lacking.

For some years immediately after the Capaci and via D'Amelio slaughters, (during the so-called *Operazione Primavera*) the army was used instead of ordinary police forces in the most dangerous cities and zones, to improve the protection of judges and other probable targets of criminal attack, and to relieve detectives and the police from generic surveillance tasks. Notwithstanding some criticisms in the first months, the army soon enjoyed immense popular support. Apart from protecting the above-mentioned targets, its presence also brought about a reduction in some ordinary offences.

European Union cohesion policy aims at reducing the imbalance between the most developed European areas and those whose domestic product is below 75 per cent of community average. This is the primary objective of European Union structural funds. In Italy such 'Objective 1' areas include Sicily, Campania, Calabria, Basilicata, Apulia and Sardinia. Basilicata and Sardinia will soon be phased out from the list of Objective 1 areas. The four Italian regions which still exhibit the most worrying economic underdevelopment are exactly those in which mafia presence is strongest. The second Community Support Framework (1994-1999) for Italy included a National Operational Programme (PON) called 'Security and Development for the Mezzogiorno' (SDM), with an endowment of around € 280 million. In this first version the PON SDM focused on selected industrial areas (to prevent violent actions, such as bombing or arson from damaging the manufacturing plants), in Sicily, Sardinia, Apulia, Calabria and Campania, and on the Salerno-Reggio Calabria highway. The aim was to improve security standards and the quickness of response by special police units by means of an integrated system of satellite telecommunications, technologically advanced sensors located in such areas and interconnected control rooms. Other projects included those concerning the strengthening of national border controls, and technological and human resource development in fields such as network infrastructure for radio communications, identity verification and X-ray control equipment.

In the third Community Support Framework (2000-2006) for Italy the PON SDM has an endowment of around € 1,120 million (Public Security Department, 2000, 2003). In this second phase, the PON SDM covers all the territories of all Objective 1 Italian regions. Besides the three police forces, the programme now involves the Presidency of the Council, the Ministry of Justice, local levels of government

(southern regions, provinces, municipalities), organisations of entrepreneurs, trade unions and non-governmental organisations. The global objective is now to produce and stabilise security standards in the Mezzogiorno so that they are equal or at least close to those that can be found in the rest of the country. More specific objectives are, *inter alia*, a further strengthening in the use of new technology, quicker responses and decisions by police forces and courts, the diffusion of a culture of legality, a closer involvement of civil society, the use of technology for the protection of environmental and cultural resources, and social and economic development at the local level.

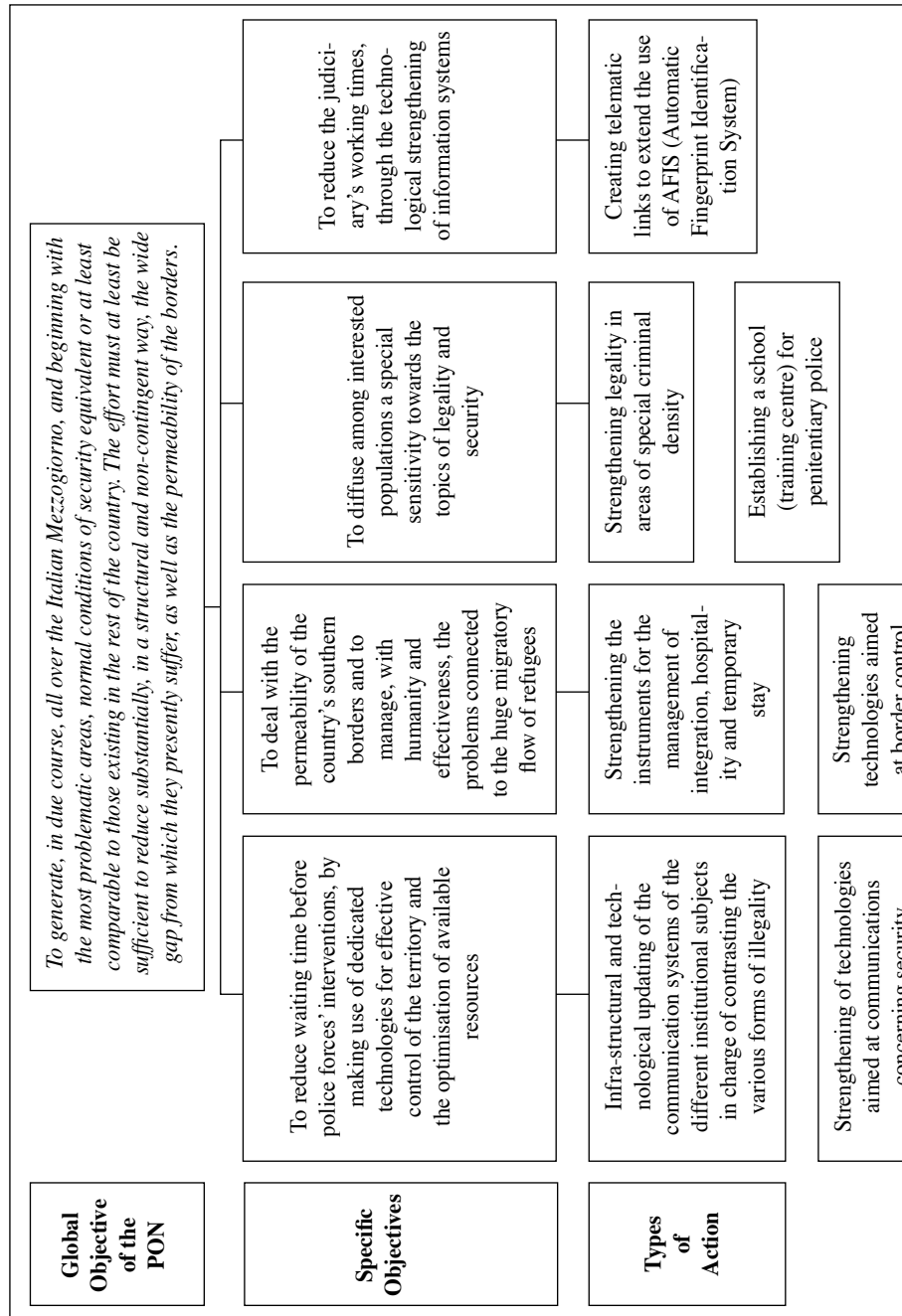
To quote just a few examples, projects already in the implementation phase include – AFIS (Automatic Fingerprint Identification System), which enables prisons and courts located in Objective 1 areas to use a special SPAID (*Sistema periferico per l'acquisizione delle impronte digitali*) equipment to systematically acquire fingerprints which are stored in a centralised archive managed by the Service of Scientific Police of the Ministry of the Interior; SIPPI (Information System for Prosecutor's Offices and Prefectures), for the exchange of mafia-related data and the creation of databases, such as one concerning seized or confiscated assets; the improvement of the digital 'interpolice' network for radio-mobile communication between different police forces; 'Police online', specialised courses for policemen at all levels; measures for the improvement of security of railway, trains and stations; transparency in public works; and 'Legality and Development', a consortium of some Palermo municipalities, including Corleone, aimed at generating occupational opportunities related to the use of confiscated goods and to educational initiatives aimed at spreading the culture of legality.

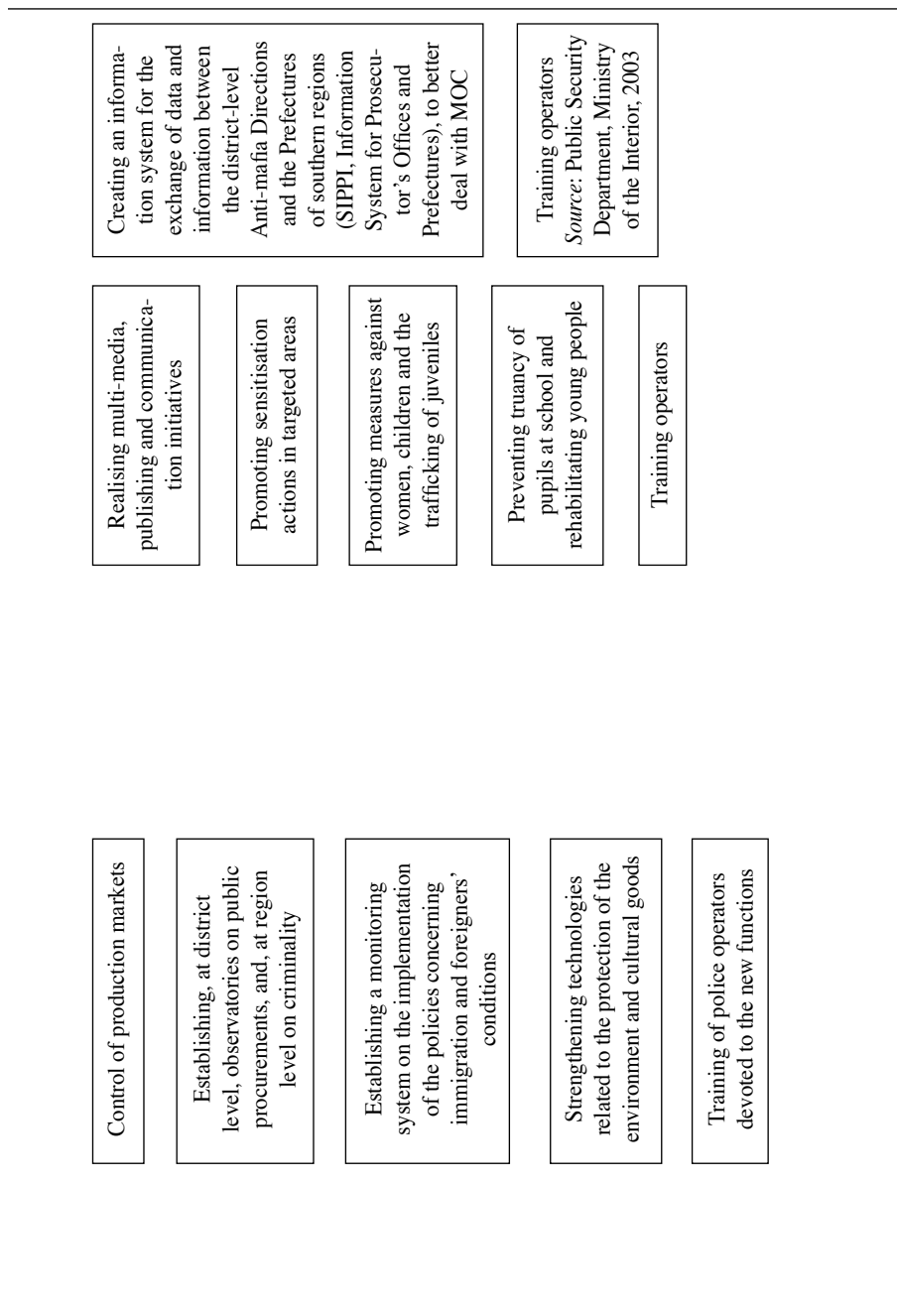
4. Institutional Aspects and International Cooperation

Having discussed the structure of Italian police forces, we will now focus on the main institutions introduced by anti-mafia measures: the DIA, the DNA, the *ad hoc* Anti-Mafia Parliamentary Committee, and the various commissioners and committees dealing with administrative issues (such as the management and destination of confiscated goods, protection programmes for collaborators and witnesses, anti-racket and anti-usury initiatives and solidarity initiatives for the victims of organised crime).

In Italy, the keeping of public order and prevention of crimes (security police) is under the general responsibility of the Ministry of the Interior, which coordinates the various police forces (through the Public Security Department), while the enforcement of criminal norms (judicial police) is performed by the police organs under the direction of the judicial authorities.

The three main police forces are the State Police, which directly belongs to the Ministry of the Interior, the Arma dei Carabinieri, linked to the Ministries of





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Defence and of the Interior, and the Guardia di Finanza, a military force which is under the responsibility of the Ministry of Economy and Finance. Other police forces are the penitentiary police, under the Ministry of Justice, and the State Corps of Foresters, under the Ministry for Agricultural and Forest Policies.

The Public Security Department has various general directorates, including the Central Directorate for Criminal Police, which coordinates all the actions aimed at crime prevention and territory control, with specific regard to organised crime. It is also responsible for international cooperation, management of collaborators, technical and scientific support to investigators and prosecutors, and data gathering and analysis.

The Arma dei Carabinieri was created as a military corps with public order functions. The nature of this force was recently confirmed in its restructuring which occurred in 2001 (Legislative Decrees 297 and 298), where Carabinieri are regarded as an army corps under the direct responsibility of the commander-in-chief of Defence. They therefore perform military tasks in Italy as well as abroad and both security and judicial police tasks. With regard to police tasks, the Carabinieri are functionally linked to the Ministry of Justice. They directly maintain initiatives of international police cooperation, concerning exchange of information, improvement of operating procedures, and dissemination of investigative best practices (for instance by participating in the 'Lyon' and 'Terrorism' G-8 groups; in the working groups stemming from the Schengen Agreement; in the European Union Justice and Home Affairs Third Pillar; in Europol, also with specific regard to organised crime, human trafficking in eastern Europe and terrorism; and in the Phare programmes concerning the adequacy of candidate countries for European Union enlargement).

The Guardia di Finanza is a military police force whose tasks originally concerned fiscal evasion, but were subsequently extended to cover more general violations of norms concerning financial and economic activities, as well as the keeping of public order and the control of borders, especially maritime borders. The Guardia di Finanza also maintains direct international cooperation relationships.

The Intelligence and Democratic Security Service (SISDE) also deserves mention. It carries out all intelligence and security tasks to defend democracy and the institutions against any attack and all forms of subversion, by gaining as much information as possible (from those who least expect to be intercepted) on potential threats, including mafioso activities. This requires the creation of a network of secret informants wherever a threat to security is present. The SISDE reports directly to the Minister of the Interior.⁵

⁵ Another Service, the Intelligence and Military Security Service (SISMI, Servizio per le Informazioni e le Sicurezza Militare) is under the authority of the Minister of Defence, with intelligence and security tasks aimed at enhancing military defence. There is also

It is evident that such a multiplicity of institutions poses problems of duplication, overlap and coordination. On the one hand, a degree of 'institutional competition' can be healthy and stimulating. On the other hand, it is possible for one police force to hold information (for example on the actual role played by a given mafioso) which might be crucial for investigations pursued by some other force. This is why the DIA was created (by Decree-Act 345/1991, converted by Act 410/1991) to unify the action of all players involved in the fight against the mafia. After more than a decade of operation, however, it must be doubted that such a goal has been completely achieved. Difficulties of communication and coordination, even in the field of intelligence activities, still persist.

Each police force has also its own anti-organised crime centralised unit (SCO for the National Police, ROS for the Carabinieri, SCICO for the Guardia di Finanza). In 1996 an Inter-forces Working Group including representatives of these three units was formed within the DIA. The same Act, 410/1991, abolished the High Commissioner for the Coordination of the Fight against the Mafia (although the effect was postponed to 1995), and instituted the General Council for the Fight against the Mafia, chaired by the Minister of the Interior (and including the chief of the National Police, the general director of Public Security, the commanding general of the Carabinieri, the commanding general of the Guardia di Finanza, the director of the Intelligence and Democratic Security Service, and the director of the Intelligence and Military Security Service). This Council sets out the guidelines for prevention and investigation activities, determines the necessary resources, means and equipment, verifies the accomplishment of results related to the strategic objectives and proposes, whenever necessary, measures for removing deficiencies and malfunctions and for establishing responsibilities.

The DIA staff (of approximately 1500) comes, in equal proportion, from the National Police, the Carabinieri and the Guardia di Finanza. According to Act 410/1991 the DIA's mission is 'to carry out, in coordinated manner, intelligence activities targeting organised crime and to conduct investigations exclusively concerning mafia and mafia-related matters. DIA intelligence activities focus on the structures of criminal organisations, their national and international connections, their objectives and modes of action as well as upon any other mafia criminal activities, including extortion.' Therefore, the DIA is supposed to engage in coordinated intelligence efforts, focusing on the whole mafia phenomenon and on criminal subjects, rather than on single crimes, while at the same time pursuing its investigation activity

the Executive Committee for the Intelligence and Security Services (CESIS, Comitato Esecutivo per i Servizi di Informazione e Sicurezza), which conveys the information provided by the two other intelligence services to the Prime Minister and interfaces between the intelligence sector and the other public administration departments. Intelligence services have no law enforcement powers.

at the international level. The DIA is headed by a director of operations selected from the highest ranking officers of the police force, with specific experience in mafia investigation. The department has three branches: preventive investigations (central intelligence unit, collecting and analysing information), criminal investigations (planning of investigative activities and coordinating police operations), and international investigation relations (relations with foreign counterparts and bilateral or multilateral agreements). Its peripheral structure includes 12 field offices and 7 resident offices, with no fixed territorial jurisdiction.

The DIA, and under certain circumstances its director, act in fields such as the control of tenders, suspicious transactions (assessing those received by the UIC, but also proposing individualised checks), and the proposal of preventive measures for suspected mafia members, of both a personal and patrimonial kind. As far as tenders are concerned, the DIA monitors the economic operators in public works, such as the national 'high speed' railway network (TAV), or the 'Operational Programme concerning Water Resources in Southern Italy', and (according to an order issued in 1999 by the National Police chief) 'in all other public works where police authorities can detect the danger of infiltration or influence by organised crime groups'. To this end, a project of the PON SDM is being implemented.

In 2003, a coordination committee for the high-level supervision of major public works began to act. Its members are representatives of the Ministry of the Interior, the Ministry of Infrastructures and Transportation, the DNA (which will be discussed further), the Authority for the Supervision of Public Works, the DIA, and the Central Directorate of the Criminal Police. Its task is to prevent mafioso organisations from penetrating major infrastructural investments.

The DIA is one of the members of the G-8, the Expert Working Group for the Fight against Eastern European Organised Crime (EEOC) (others are the American FBI, German BKA, Russian GUBOP, Canadian RCMP, British NCIS, French CRACO, and the Japanese National Police). It also participates in the Financial Action Task Force (FATF) for the fight against money laundering, and in the Central European Initiative (CEI) against organised crime, with a special reference to money laundering.

In the framework of the Europol Convention, the DIA is one of the administrations participating in the Europol National Unit (ENU). The DIA (but also some police forces, such as the Carabinieri) cooperates in the production of analytical working file archives (AWFs) that are the main instrument of investigative cooperation, for the building of a Europol Information System (EIS). More specifically, it works on such AWFs as the Eastern European Organised Crime (EEOC) Top 100 (has information on the most dangerous eastern European criminals on European Union territory) and SUSTRANS (a database of suspicious transactions detected by European Union Member States). The DIA also prepares criminal analyses and individual informative and operational projects for preventive actions concerning surveillance and specific investigations for Europol.

The option of having a national police body to fight the mafia is grounded in a view of such criminal organisations as unitary and pervasive phenomena, systematically capable of transcending individual offences, investigations and lawsuits. The judicial counterpart of the DIA is the National Anti-Mafia Directorate (DNA, instituted by Decree-Act 367/1991, converted into Act 8/1992), which coordinates the 26 district-level Anti-Mafia Directorates (DDAs). This is a rather complex and delicate task. The DNA cannot carry out investigations on its own, but can obtain information, including that on the existence of an offence (which frequently happens from statements by collaborators). The DNA also holds frequent meetings with the DDAs, so to homogenise interpretation and *modi operandi* (this happened, for instance, with the introduction by Act 45/2001 of new norms concerning collaborators). The DNA prosecutor cooperates with other prosecutors in mafia-related investigations, resolves possible conflicts concerning the way these are carried out, and undertakes those preliminary investigations started at the DDA level, such as when general directives are not respected or coordination is not effectively realised. According to Act 367/2001, when public prosecutors require the acquisition of evidence abroad, they must inform the National Anti-Mafia Prosecutor if mafia-related offences are concerned. At present, the DNA does not have the power to propose preventive measures concerning the seizure of assets, nor that of ordering interception of communications.

The DNA has a Public Tenders Service, with the task of acquiring and analysing relevant information in this field. An agreement between the DNA and the Authority for the Supervision of Public Works is also in operation, so that the two institutions can elaborate some 'indicators of anomaly' that can serve to detect possible mafioso infiltration. The DNA also participates in the Committee for Financial Security (Decree-Act 369/2001, converted into Act 431/2001), in order to explore financial movements traceable to the mafia.

The DNA also instituted an International Cooperation Service, to which adhered those prosecutors who are the persons in charge of participation in the European Judicial Network. With regard to mafia-related offences, the DNA has the status of 'central contact point'. An information service for connecting the activities of the DNA and DDAs (SIDNA/SIDDA) is in place, supported by the SIA Directorate of the Ministry (Direzione Generale dei Sistemi Informativi Automatizzati). The Italian Ministry of Justice will be the leader of a pilot project for an information system that should assist cooperation between different investigation groups of different European countries in the Eurojust framework. The Commission of the European Communities declared that it will support such a project also on the basis of the relevant experience of the SIDNA/SIDDA system.

An important institution was, and to a certain extent still is, the Parliamentary Inter-Chambers Committee for enquiry into the phenomenon of the mafia and other similar criminal associations. It oversees the implementation of Act 646/1982, other related legislation, parliamentary indications; formulates proposals to improve exist-

ing legislation; reports to the Parliament about the results of its operations; conducts studies and enquiries to ascertain the evolution of the mafia. In this respect it acts with the same powers and has the same limitations as the judicial authority.

Act 109/1996 provides that confiscated real estate goods belonging to mafia members must be devolved to the state, and that they can be held at its disposal, or be distributed to the municipalities. The municipalities can administer the goods directly, or instead assign them without charge to private non-profit bodies (including therapy centres and drug rehabilitation centres). To this end an Extraordinary Commissioner for the Management and Distribution of Confiscated Goods was created by the Executive. The aforementioned SIPPI project in the framework of the PON SDM, managed by the General Directorate for Criminal Justice within the Ministry of Justice, aims among other things to develop a data-bank of seized or confiscated goods, with the cooperation of the Extraordinary Commissioner, the Ministry of the Interior and the Ministry of Economy and Finance.

A Central Commission and a Central Protection Service manage protection programmes for the security of collaborators with justice and their families. Operational Units for Protection exist at the local level.

As was already mentioned, Act 44/1999 created within the Ministry of the Interior the post of a commissioner for coordinating anti-racket and anti-usury initiatives. Two solidarity funds correspondingly exist, for the victims of extortion and for the victims of usury. The commissioner chairs a Solidarity Committee, which includes, amongst others, representatives of anti-racket associations, the National Council for the Economy and Labour, the Ministry of Economy and Finance, the Ministry of Productive Activities, and provides for the redress of the damages suffered by both kinds of victims.

Act 512/1999 instituted, within the Ministry of the Interior, a commissioner for coordinating the solidarity initiatives for the victims of offences related to organised crime which have already been the subject of judicial decisions. An *ad hoc* Solidarity Fund was also established, with the aim of assisting with the payments to victims. This fund receives an annual endowment from the state of € 10,329,138, as well as revenues from confiscated goods of mafioso origin.

5. Policy Assessment and the Paradox of Effectiveness

A proper evaluative analysis should concentrate on individual measures, assessing for each of them the relationships between inputs of resources, process features, outputs and outcomes. The expected outcome is the eradication of the mafia, or at least a remarkable weakening of it, in the medium term. One might think that if the bosses are arrested and kept in jail, we already have an important outcome. This might be, but normally the reverse is true (even if public institutions manage to hinder any communication between a chief and its organisation). Most of the

time a mafia-type association continues to exist because somebody else soon fills the empty positions in its hierarchy.⁶ Therefore, in my view, it is better to consider seizures, forced residences, arrests, sentences and the actual enforcement of a strict incarceration regime not as outcomes, but rather as outputs. Some obvious inputs are staff, equipment, money and so on. With regard to police and public prosecutors' operations, some examples of process features – from the qualitative point of view – are training, analyses of suspicious transactions, preliminary investigations, interception of communications, patrolling, searches, and so on. The same applies to the hearings of a trial before the final decision. This is because such activities are preparatory steps towards the final ones: an arrest, a forced residence, a seizure, a sentence. But this is not always appropriate, especially in investigative activities. It might well be that even after months of interceptions, the involvement of thousands of hours of staff time, the search of several premises, the intended arrests do not take place, due to imponderable reasons.

It follows that it might be advisable, from a quantitative point of view, to regard as physical outputs the number and length of interceptions, the weighted hours devoted to the various activities (from patrolling to seeking information, from covert actions to searches), and generally speaking the actual execution of operations. Otherwise, in extreme cases (which are not so infrequent) we would have vast amounts of inputs and process without any output. This does not apply to trials, where you always have the output of a decision. But even so, if we merely use decisions as counting units, we will miss the fact that some trials (and this is especially true when the mafia is concerned) can be much more complex than others. Therefore, different decisions must be grouped as outputs of very different weight, and again this crucially depends on the intricacy of the aspects of the process, which is also measured by the amount of interaction between participants in the process. The quantity of hearings, witnesses, collaborators' declarations and evidence is therefore again crucial to properly assess the importance of any given output.

What was just mentioned should serve to give a very partial idea of how complex the evaluation of specific segments of action within measures against the mafia can be. But this cannot be the task here, not only for reasons of space, but also because this is a more general presentation of Italian policies. Therefore, what I can present here is neither an efficiency, productivity, or a cost-effectiveness analysis, but rather a much simpler and rough presentation of 'historic' performance and effectiveness data, that is a comparison between the outputs and possibly the outcomes produced in the past with the outputs and outcomes produced in recent times, leaving the ratio to inputs out of consideration. I nevertheless believe that even such an approximate

⁶ We would have 'complete' effectiveness only if *all* mafiosi were condemned and in jail, *and* nobody else had in mind to create or rebuild mafia-type organisations.

and partial assessment is in itself instructive, and can serve to clarify points that are often obscured, as well as overcome some strange paradoxes.

I refer to what can be labelled the 'paradox of effectiveness'. As it will be better shown in the next section, it is difficult to deny that policies against the mafia have produced outstanding results in Italy in the last 20 years. Most of the chiefs and many 'soldiers' are in jail, and a vast amount of their goods are seized or confiscated. Once, being a mafia member was rather rewarding (also in terms of social prestige), and impunity was the rule. Now the expected costs involved are much higher. This is also shown by a change in the overall strategy of the main criminal organisation, La Cosa Nostra, which chose to become as 'invisible' as possible. Another indicator is that some bosses ask from their jail cells for a 'bargain' with the state, to ease the strict incarceration regime that is seen by many as unbearable. These and other facts were recently interpreted by Giovanni Fiandaca (a professor of criminal law who was also a member of the Italian Higher Council for the Judiciary, and cannot be accused of sympathy towards those who attack the judiciary) as signs of a 'crisis' within La Cosa Nostra. He stated his opinion in a long article (indeed a short essay) in the Sicilian edition of a national newspaper well known for its anti-mafia stance (Fiandaca, 2002). Several public prosecutors, judges, and academics immediately felt the need to answer that such a position was wrong, because La Cosa Nostra is still strong, and because whoever says the contrary helps those who want to weaken the fight against it.

An explanation of these apparently strange attitudes is that at least some of the players engaged in policy implementation (also indirectly, as is the case with opinion-makers who specialise in the mafia) have an incentive to *understate* actual achievements, so as to maintain a perennial state of mobilisation and to preserve certain policy features from being changed. Therefore, different players give contrasting evaluations of the same results.

It must also be remembered that on a very important and official occasion (the Palermo United Nations Convention against Transnational Organised Crime of December 2000) the sociologist and, at that time, Executive Director of the United Nations Office for Drug Control and Crime Prevention Pino Arlacchi stated that La Cosa Nostra was almost defeated. Apart from the fierce reactions that this utterance provoked (which might be partly explained in the terms of the aforementioned paradox of effectiveness), it is necessary to admit that we are still very far away from the situation to which Arlacchi refers. Still today, according to estimates produced by entrepreneurial associations, 50 to 80 per cent of shopkeepers in southern towns traditionally affected by the mafia pay the *pizzo* for 'protection' (Svimez, 2001: 909). This means beyond any possible doubt that such organised crime is still there, doing its more traditional and typical business, keeping control of the territory, oppressing economic players, challenging the state, albeit in a more discreet fashion.

Trying to be a bit more precise, it is advisable to distinguish between *defeat* or destruction (that occurs when a given social practice is totally eradicated), *crisis* (that occurs when the same practice is near to collapse, or otherwise will not be able to survive unless it undergoes radical structural alterations) and *stress* (which we have when the participation in that practice becomes much more costly than it used to be). It is wrong to say that the mafia is defeated. Nor would I accept that it is in crisis (because what appears is that its 'classical' structural features are still present). I would rather say that it is under heavy stress. Not only mafiosi, but also 'adjacent' social figures (especially white-collar workers) find it more and more difficult to do 'their job'. And this happens more and more as a consequence of 'objective' investigative instruments that (in Italy, as a matter of fact) are relatively legitimate. In this sense, anti-mafia policies today are not *completely* effective. But, as I have tried to show, they are dramatically more effective than they used to be a decade ago, and they will presumably be more effective in the future.

6. A Tentative Overall Assessment of Italian Anti-Mafia Policies

According to a DIA estimate, at the end of 1996 the members of the four Italian main mafia-type associations (La Cosa Nostra, camorra, 'Ndrangheta, sacra corona unita) numbered 20,857, while in December 1995 they were supposed to be 20,200 (quoted in Svimez, 1997: 457). The DIA (2003) reports today on its website that in the period 1992-2002 it enabled a total of 7,193 arrest warrants to be issued by the judicial authorities (La Cosa Nostra 1,701; camorra 1,968; 'Ndrangheta 1,956; sacra corona unita 967; others 601). These data do not of course represent the total number of arrested persons. Another partial source is the Ministry of the Interior (2001), which reports the data concerning dangerous fugitives, most of which are mafia bosses or at least mafia members. They show a remarkable performance improvement in terms of capacity to arrest such fugitives. As is evident (given that Sicily, Campania, Calabria and Apulia account for 1551 arrests out of 2118), this capacity is very much focused on the mafia.

The data concerning incarcerations are also interesting, and represent the situation in a more complete way. On 31 December 2002, according to the statistics of the Department of Penitentiary Administration (DAP, 2003), a total of 5,295 persons were in jail in connection with the crime of mafia association foreseen by Article 416*bis* of the Criminal Code (of which 5,113 male Italians, 47 female Italians, 177 male foreigners, 18 female foreigners). Just to quote a term of comparison, there were 2,130 incarcerations in 1992, 3,340 in 1993, and 3,997 in 1994. Persons held under the special incarceration regime (Art. 41*bis* of the penitentiary law) numbered 672 on December 2002 (Ministry of Justice, 2003).

If the 1996 estimate was correct, and if we suppose for the sake of argument that today members of mafia-type organisations do not number more than 25,000,

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Table 1. Dangerous fugitives arrested in Italy, according to the region in which they were captured

	1992	1993	1994	1995	1996	1997	1998	1999	2000	Total
Abruzzo	1	1	0	0	3	1	1	3	2	12
Basilicata	0	0	2	1	0	0	1	0	1	5
Calabria	29	47	34	59	66	34	68	48	37	422
Campania	24	30	44	43	49	33	102	107	77	509
Emilia R	0	5	2	8	6	1	5	7	8	42
Friuli VG	0	0	0	1	2	0	1	0	0	4
Lazio	7	20	23	17	30	13	32	16	19	177
Liguria	1	2	2	5	4	2	4	4	5	29
Lombardia	2	14	23	15	16	15	14	20	11	130
Marche	1	2	0	1	2	1	1	1	1	10
Molise	0	0	0	0	0	0	0	0	1	1
Piemonte	3	9	7	5	4	2	7	9	7	53
Puglia	12	22	20	20	18	21	21	18	24	176
Sardegna	2	3	2	8	3	0	3	4	7	32
Sicilia	12	69	71	90	56	39	46	33	28	444
Toscana	0	5	4	2	4	2	7	5	6	35
Trentino AA	0	0	1	0	1	1	1	1	1	6
Umbria	1	0	1	0	1	0	0	1	3	7
Valle d'Aosta	0	0	0	1	0	0	1	0	0	2
Veneto	4	1	5	3	2	0	0	4	3	22
Total for Italy	99	230	241	279	267	165	315	281	241	2118

Source: Ministry of the Interior, 2001: 428.

the above figures indicate that we are still far away from having all affiliates in jail, but also that the probability of being arrested and staying in jail for a long time is now very high. From the point of view of a person who is considering whether to become or remain a member, such a fact cannot be without weight. Furthermore, the fact that all these people are in jail imposes a huge economic cost on mafioso organisations, which have to pay for the lawyers and give financial assistance to the families of arrested persons.

Another unmistakable sign of impact can be shown in qualitative terms. Again according to the DIA (2000), a plan was designed by the boss Bernardo Provenzano to restructure La Cosa Nostra (which used to be the most powerful and structured mafia-type association) in order to achieve three goals:

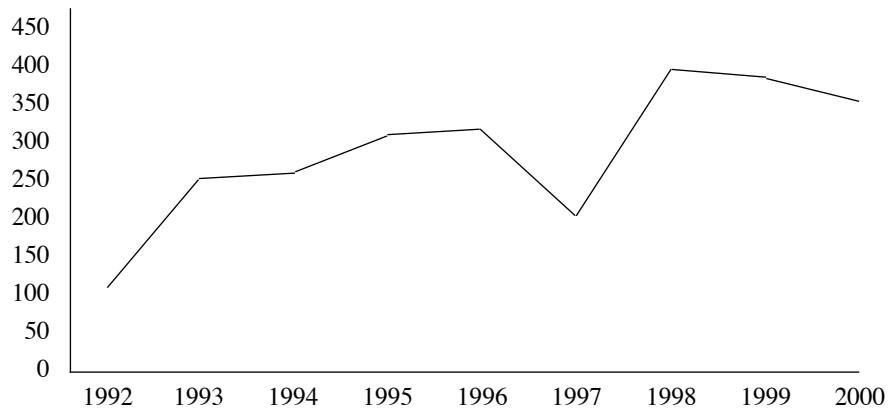
- bringing back Cosa Nostra to a unified *modus operandi* aligned with the previous mafia ‘rules’; these rules, in the past, allowed the organisation to operate inconspicuously thus reducing opportunities for any possible internal conflict;
- drastically reducing the number of ‘men of honour’, forming in fact a criminal *élite* set apart from ‘manpower’, allegedly used to manage the criminal activities on their territory, headed by leaders who remain in the shadows; the aim of such conduct is to avoid any form of collaboration with justice and any behaviour that will bring them to the attention of the police;
- raising the cultural standard of Cosa Nostra leaders, aiming to charge ‘men of honour’ with major tasks; they should have high educational standards and a good social position.

Such a plan is obviously a reaction to the menace of being discovered on the basis of the declarations issued by collaborators, coupled with the use of pervasive and effective technological means for the interception of communication, the consequence of which is that it is more and more difficult to remain unknown and to escape arrest.

A further qualitative consideration is based on the proposal advanced by the boss Pietro Aglieri, currently in jail, who spoke of a possible ‘treaty of peace’ between the state and Cosa Nostra, whose members would dissolve the organisation on condition they were freed. It is of course a rather unrealistic proposal, not only because the state would lose its credibility if it renounced its punitive power (however, this has already happened in significant cases with some collaborators), but also because it is difficult for imprisoned bosses to reach a consensus between themselves, and for it to be binding for other Cosa Nostra members. Nevertheless, the fact that such a proposal was conceived and delivered shows that those who are in jail are much less ready than they used to be to bear long periods of detention for the sake of the organisation. In the past imprisoned bosses were few, and their

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Figure 1. Total data concerning captures of especially dangerous fugitives, 1992-2000



Source: Ministry of the Interior, 2001: 427.

Table 2. Trends in main mafia-related offences, % variations 1996-2001

<i>Offences</i>	<i>Centre-North</i>	<i>Mezzogiorno</i>	<i>Italy</i>
Homicides	-9.5	-33.7	-23.3
Mafia-related homicides	-71.4	-41.2	-42.3
Extortion	-2.9	-2.0	-2.4
Malicious fires	35.2	30.2	32.3
Smuggling	-81.2	-94.8	-93.1
Bombing	-25.6	25.8	15.6
Mafia association (Art. 416bis Criminal Code)	-34.2	18.1	7.1
Production and trade of drugs	-12.9	7.2	-7.5

Source: Elaboration of Istat, Judicial Statistics, of the Ministry of Economy and Finance (2002)

incarceration conditions were much more comfortable than they are now. Today the possibility that a boss exerts his decision-making power from jail is much more limited than it used to be.

Also of interest are criminal statistics concerning mafia-related offences. In the south, mafioso homicides undergo a steady and strong reduction. In 2001 there were 114, while in 1990 there had been 506, of which 201 were in Campania (where the camorra rule is divided and more controversial compared to what happens in Sicily and Calabria, where the decrease is higher). Smuggling diminishes dramatically (–94.8 per cent in the period 1996-2001), also as a consequence of the improvement of the border control made possible by the PON SDM.

In the Mezzogiorno, denunciations concerning fires of a malicious origin and bombing grew remarkably. This means both that the mafia still wants to keep exploiting many economic activities in these areas, but perhaps also that resistance on the side of entrepreneurs is gradually increasing. However, denunciations concerning extortion do not appear to be growing.

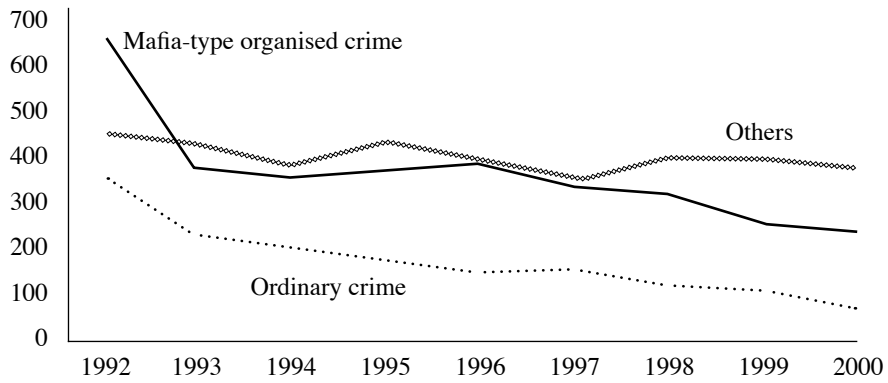
Some attention must be devoted to the data concerning mafia-type associations (Art. 416*bis* Criminal Code). According to the statistics published by the Ministry of the Interior (2003), the denunciations of such associations are diminishing. Indeed, all over Italy there were 232 denunciations of such associations in 2000 and 195 in 2001, with a decrease of 15 per cent.⁷ At the same time, the persons denounced for being involved in such associations numbered 3,147 in 2000 and 3,302 in 2001, with an increase of 4.93 per cent all over Italy.⁸ The interpretation of such data must be very cautious. The fact that there are less denunciations might simply mean that there are less collaborators, or that some strategy of ‘submersion’ *à la* Provenzano is being followed. If some associations were not denounced in a given year this does not mean that they do not exist. *Per se* less denunciations still do not imply that generally speaking there are less criminal associations. But at least this decrease gives some reason to believe that on the whole such associations might not be remarkably increasing anymore. If this was the case, some of them would be new (maybe in the north central, or in areas like Basilicata), and possibly some of them have been dismantled (maybe in southern areas traditionally affected by the mafia). In order to check and if possible support such impressions a closer analysis of the various denunciations over a series of years (concerning both associations and individuals) would be needed.

⁷ More specifically, in 2001 we find 68 denunciations in Sicily (–15 per cent compared to 2000), 42 in Campania (–33 per cent), 32 in Calabria (–22 per cent), 25 in Apulia (there were 22 in 2000), 1 in Basilicata (0 in 2000), 0 in Sardinia (0 in 2000).

⁸ In Sicily there were 1,228 (+6 compared to 2000), 586 in Calabria (+20), 519 in Campania (–150), 489 in Apulia (–86), 48 in Basilicata (0 in 2000), and 0 in Sardinia (0 in 2000).

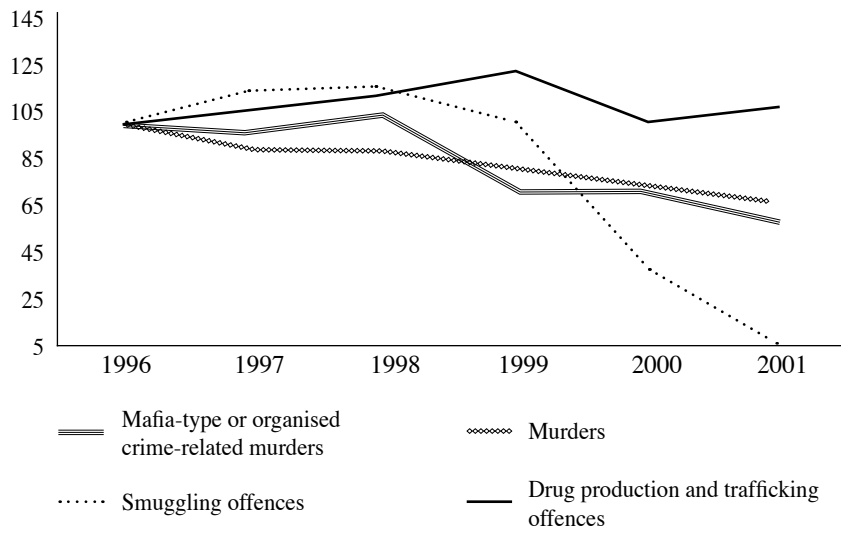
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Figure 2. Number of homicides in Italy (related to mafia, ordinary crime and other types), 1992-2000.



Source: Ministry of the Interior, 2001: 41.

Figure 3. Crime trends in southern Italy (1996=100)



Source: Elaboration of Istat, Judicial Statistics, of the Ministry of Economy and Finance (2002)

A very effective instrument, as it has been said, is that of preventive measures concerning the proceeds of crime. The DIA (2003) reports that in the period 1992-2002 the economic value of the assets seized and confiscated on the basis of its proposals can be summarised as in Table 3.

Again, this is a very partial representation of the impact of patrimonial preventive measures. I quote the data of a single judicial district, Palermo, given in the inaugural speech delivered at the 2003 opening of the judicial year by the general prosecutor at the appellate court, Salvatore Celesti (2003). After having underlined that Italian legislation allows assets of huge value to be seized in an extremely rapid way, and men of straw to be identified even outside familiar bonds, on the basis of collaborators' declarations or interceptions of communications, he reported that 'in the period 1993/2001 assets for a value of approximately € 5.6 billion were seized enforcing orders of the Section on Preventive Measures of the Palermo Court'.

As a matter of fact, what proves enormously difficult is on the one hand to evaluate such assets, and on the other to assign them to alternative uses. According to a report of the Government's Extraordinary Commissioner (quoted in Svimez, 2001: 910), confiscated goods until 2000 totalled 5,809 (of which 2,785 were immovable, 2,800 movable, and 224 firms), but only 1,161 of these at that time had been evaluated (for a total value of approximately € 140 million), and only

Table 3. The economic value of seized/confiscated assets (1992-2002)

<i>Organisations</i>	Seizures in €		Confiscation in €
	<i>Art. 321 cpp</i>	<i>Lex 575/65</i>	<i>Lex 575/65</i>
Mafia	260,211,373	316,494,747	12,852,810
Camorra	1,396,047,002	509,295,379	430,608,278
'Ndrangheta	63,605,282	86,490,674	26,004,275
Sacra Corona	33,069,819	44,410,128,72	49,575,720
Others	19,431,554	49,572,817	17,351,678
Total	1,772,365,030	1,011,429,337	516,495,833

Source: DIA (2003)

480 had been assigned to the entitled subjects (the state, the municipalities, some non-profit organisations).⁹

The fact that the value of most assets remains unknown is not only a sign of tardiness and inefficiency. What frequently happens is that the actual utilisation of such assets is not monitored, and that sometimes mafia members in fact continue to take advantage of them, through their relatives or men of straw. The office of the Extraordinary Commissioner analysed a sample of 100 assets and found that from the moment of seizure to confiscation takes on average 13 months. But a final decision of confiscation takes three years, and assignment to the entitled subjects another six years. Of course, during such a long time the economic value of some assets diminishes or vanishes altogether. Immovables deteriorate, so that municipalities or non-profit organisations which are supposed to obtain them may find it too costly, because of the restoration expenses. A recent estimate made by Legambiente (reported in Svimez, 2002: 753) found that confiscated goods totalled 7,337 in 2001 (of which 1,850 were in Palermo province, 1,019 in Naples, 639 in Bari, and 528 in Reggio Calabria). Immovable goods numbered 3,396 and firms 343, of which there were in southern Italy 2,914 and 252 respectively. Only 1,108 of immovable goods were in fact devoted to social utility ends, and of these only 584 were actually consigned to the entitled subjects.

Therefore, although the policy on seizures and confiscation proved extremely effective, there is a common understanding that it needs to be reformed. Some of the problems are the need to reorder and consolidate the relevant norms, the need to deal with the relationship between preventive measures and bankruptcy, and, more generally, the need to safeguard the interests of third parties, which can be spoiled by a preventive measure if they relied in good faith on a legal relationship concerning assets seized as the proceeds of crime. These aspects are very important (Celesti, 2003), because if policy-makers manage to avoid damaging economic players this would increase the social legitimacy of anti-mafia policies, and also because other European states are presently rather diffident towards a system of preventive measures that sometimes has devastating economic consequences.

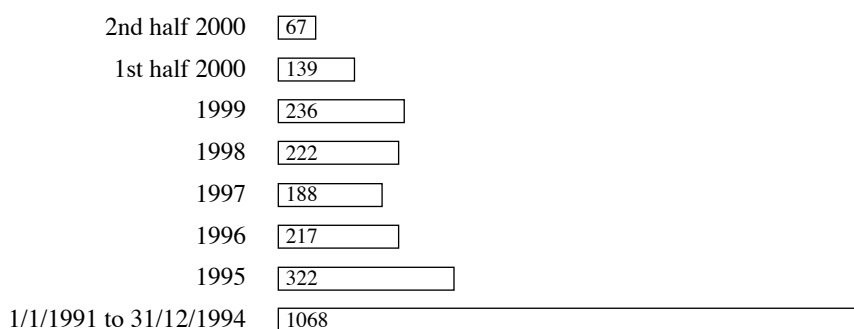
Another proposal is that of creating a dedicated and specialised agency to speed up the process of assigning the assets to entitled bodies, and to guarantee that all the complex aspects related to third parties are appropriately dealt with. A different proposal, that of selling such goods through auctions, is criticised because there is a serious risk that mafia members may use men of straw to re-acquire the confiscated assets for them.

As far as collaborators are concerned, from 1997 onwards there has been a decrease in their number. When Act 45/2001 was passed, many judges feared that it

⁹ 928 immovable, 214 movable, 19 firms. The above-mentioned value almost totally corresponds to that of immovable assets.

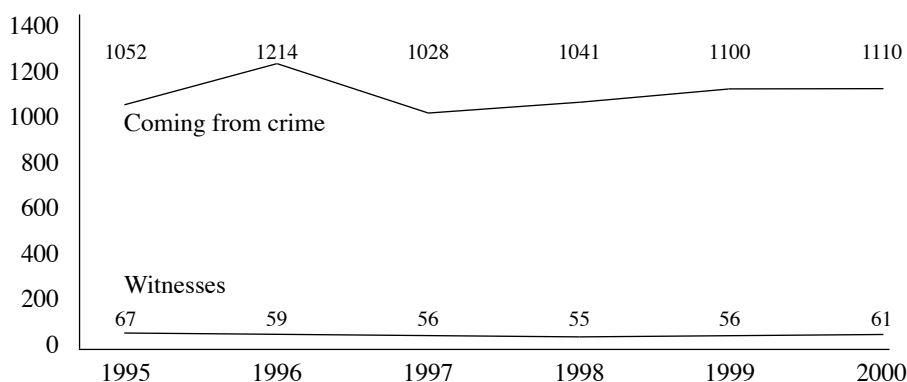
would encourage a further decrease in new collaborations, as well as a lower profile of the new *pentiti*. Actually, a remarkable shrinking of the amount of collaborators took place *before* the new statute, because the Central Commission adopted stricter criteria for admitting new collaborators. This means that there were probably too many before 1997. From that moment on the number of *pentiti* begins to increase again, although not with the same pace as registered earlier. Also in 2001 and 2002 some new collaborations were proposed. Again, the fact that they are not as

Figure 4. Proposals for special protection programme



Source: Ministry of the Interior, 2000.

Figure 5. Quantitative trend concerning collaborators with justice from 1995-2000



Source: Ministry of the Interior, 2000.

many as they were before 1997 depends on the new criteria adopted. On the other hand, a strong incentive to collaborate is given by the special incarceration regime, which as it has been said was made permanent by Act 279/2002. Another thing that must be stressed is that also, in very recent times, important bosses have chosen to collaborate (one Sicilian example being that of Giuffrè in 2002).

On the basis of the data presented so far, it can be said that *direct* policies were and are still today quite effective, especially in the 1990s and after (although some problems concerning the utilisation of confiscated goods remain to be faced). Such an effectiveness was based on rather extraordinary norms and behaviours concerning, among other things, collaborators, property-related preventive measures, mafia trials, interception of communications, 'extensive' interpretations of norms concerning offences or the treatment of evidence, new centralised and powerful institutions. All these novelties sometimes generated a perverse effect, i.e. the loss of legitimacy of the anti-mafia effort, most of the time in connection with the way collaborators were actually used in some trials, especially when people outside the mafia were concerned. Vast sectors of public opinion have begun to think that a certain way of treating the sources of information might manipulate the reality, and might have been manipulated in turn. Some people might be particularly worried about the economic consequences. Some of the recent innovations concerning the rules about trials and the treatment of collaborators can actually diminish somehow police's and public prosecutors' capacity to produce new information as well as new decisions of condemnation concerning suspected mafiosi. However, as some representatives of the judiciary are well aware, this 'loss' in effectiveness can be counter-balanced by a crucial gain in legitimacy.¹⁰ I stress it again: to say that such anti-mafia policies were rather effective does not at all mean that the mafia is already defeated, nor that it is advisable to reduce the effort.

Let us now come very rapidly to *indirect* policies. As far as the norms concerning the impeachment of mayors and the dissolution of councils at municipality level are concerned, it must be considered that such measures are enforced by the national executive, which will have a certain political orientation. To act against local mayors and council of the same orientation will therefore be uncomfortable, while if the political affiliation of such local authorities is that of the opposition, they might accuse the national executive of being partial. As a matter of fact, such measures were applied more frequently in the first half of the 1990s, and less frequently afterwards.

¹⁰ It must be remarked that Italian public opinion is less shocked by the wide use of very intrusive instruments such as interceptions of communication and preventive measures than would be the case in other European countries such as Germany or the United Kingdom.

The first version of the anti-racket legislation was totally unsuccessful. Financial resources devoted to it remained largely unspent. From this point of view the situation has improved with the 1999 act and the institution of the commissioner, who acted to speed up the processing of requests and the subsequent payments, as well as to favour the diffusion of information about the measure. However, an unmistakable indicator of ineffectiveness is the fact that from 1996 onwards the number of denunciations for extortion did not grow, but rather decreased.

Top-down initiatives aimed at spreading a 'culture of legality' at first glance do not look particularly effective either. In the case of the Sicilian Act concerning anti-mafia projects in schools and universities, there is not any feedback on their impact. On the other hand, the way in which such projects are normally financed (by simply dividing the available money among their number, which steadily increased over time) gives the impression that for many educational institutions this is only one of many routine and paperwork activities. Something similar can be said about the legality protocols, whose impact in terms of an increase in security standards is impossible to assess as well. Such protocols frequently do not include the institutions which monitor money laundering and the business system, and do not make any reference to the recent legislation on public works and services. Therefore, the main goal of such protocols seems to be that of enabling the subscribers to participate in the distribution of the funds concerning security (Svimez, 2001: 921). A very different judgment should be given about 'grassroots' initiatives of a more spontaneous kind, which in important cases contributed to a genuine social mobilisation (Ramella and Trigilia, 1997). Generally speaking, it can be said that other possible perverse effects of promotional policies are those of ritualism (some people can assume a routine attitude), symbolism (some policies announce results which they are unable to generate), and opportunism (some people become interested in anti-mafia policies mainly on the basis of personal usefulness considerations).

It is probably still too soon, and anyway difficult to evaluate the effectiveness of the legislation on public works and procurements in terms of avoiding mafioso infiltration. The aforementioned cooperation between the Authority for the Supervision of Public Works, the DNA, the DIA, and the relevant ministries looks very promising. The different solutions experienced in Sicily were disastrous. The first version of the relevant regional statute produced a block on public works. But its second version introduced an 'automatic' mechanism which enabled mafiosi to intervene, by managing 'chains' of entrepreneurs able to determine the results of bidding procedures. This statute was recently reformed again.

Finally, the PON SDM can be regarded as a success. From the point of view of project design and expenditure management, it is well above the average for the Italian-style implementation of European Union cohesion policies. Especially when regional administrations are involved, the inability to produce projects and to spend resources are normal conditions, with the subsequent usual resort to

reprogramming, so as to include low quality projects which were not considered in the original programmes, but are ready and allow European Union resources not to be lost. The PON SDM is centrally managed, based on past experience, includes measures which were projected by specialists, and exhibits a good performance in terms of their implementation. In the period 1994-1999 all the programmed expenditures were implemented successfully (with the exception of the measure concerning 'strengthening social and local systems', which required the involvement of local administrations, whose expenditure performance was 83 per cent of the programmed amount). With regard to the 2000-2006 period the performance is wholly satisfactory.

A more detailed evaluation would require the precise quantification of the values of expected results and impacts. These indicators are absent in the 1994-1999 programming, and their elaboration is underway for the 2000-2006 period. But the very fact that such a problem is perceived is in itself an indicator of the quality (compared to Italian standards) of the PON SDM, whose technical secretariat obtained in January 2003 the UNI EN ISO 9001:2000 quality certificate (being the first European public institution to get such a certification in the field of security). Actually, at present the PON SDM is the only programme in Europe which couples the aims of socio-economic development with that of the security of citizens. Therefore, it is already regarded as a 'best practice', whose 'transferability' outside Italy, and more especially to the eastern European countries of the enlarged European Union is being considered by a team formed by the representatives of the Commission of the European Communities (Directorate-General Justice and Internal Affairs) and of the Italian Ministries of the Interiors and Economy (PON SDM 2003).

7. Conclusions

A book written in 1998 by two well-known journalists known as mafia specialists was entitled *Once Upon a Time There was Anti-Mafia Fight*, implying that after a short and exceptional period of real effort such a fight was weakening and maybe was almost over (Bolzoni and Lodato, 1998). In actual fact, at that time state action was at its peak (as the data quoted in the previous section demonstrates beyond doubt). But hard facts sometimes are of no importance, and can be apparently ignored without hesitation.

The denial of the reality is not only objectionable from a deontological point of view – it can also produce practical consequences. If somebody who is widely deemed an expert and an opinion maker in a given field asserts that despite appearances the rulers are really willing to give up acting against the mafia, this might also generate a perverse effect: people will be convinced that nothing can be changed, that the mafia is omnipotent, that Italian political decision-makers are always opportunistic, corrupt and unwilling to change. The result of this, paradoxically again,

is a confirmation of the traditional fatalistic attitude, as well as the strengthening of the belief in the mafia's invincibility.

Policy analysis is an antidote to ideological and unfounded assessments, and in this special case, can also be an antidote to frustration. We have shown that in the last two decades anti-mafia policies grew steadily, covering more and more different aspects of economic, social and administrative life, well beyond the criminal sphere. We have also shown that the resources devoted to them grew remarkably as well; and that in many respects they were more and more effective (although this does not apply to many indirect policies). At the end of the 1990s some signs of criticism and 'revisionism' were evident, with regard to crucial aspects such as the use of collaborators and the rules concerning evidence and 'fair trial'. According to involved commentators, these innovations should have produced a halt in the effectiveness of the anti-mafia effort. We have shown that this is not the case.

The new majority coalition which won the 2001 general election unmistakably holds a strongly critical attitude towards the judiciary, which is also evident in its choices concerning recurring cuts in financial resources and the use of inspection powers. Besides this, some legislative measures adopted (as well as some direct interventions by the Ministry of Justice) were strictly related to the position of the premier in lawsuits concerning his person.¹¹ Other measures such as generalised remission in the fiscal field, also with regard to sums unlawfully exported abroad, certainly do not make for an image of strict legality, nor for an improvement in the fight against money laundering. A fourth important fact is that several lawyers whose usual clients were mafiosi ran for the prime minister's party (Forza Italia) in the general election, and eventually became members of Parliament, consequently becoming in principle in a position to influence new legislation concerning the mafia. Therefore, the first impression is that the intention of the executive in charge after 2001 might actually be that of weakening the action of the judiciary, *and therefore* also anti-mafia policies. Even if such a judgment is grounded upon some relevant and hard facts, it must be refined. First of all, it must be remembered that one of the heaviest measures (from the point of view of the mafiosi), which concerns the strict incarceration regime, was confirmed and stabilised by the same majority. This provoked a strong and publicly expressed dissatisfaction towards lawyer-representatives and the executive on the side of some mafiosi and their 'social *milieu*'. On

¹¹ After the adoption of norms about international relationships between courts, which submit the utilisation of proof acquired abroad to Italian standards, or of norms about the possibility to refuse the natural judge, if there is a legitimate suspicion of partiality, and after official opposition to the possibility of an European Arrest Warrant (all of this is related to the personal position of the premier) the latest act of such script is the approval of a statute which excludes the five most important officials of the state (including the prime minister) from being tried.

the one hand, such people ostensibly had a realistic expectation, but, on the other, their official 'interlocutors' did not subsequently meet it, at least not so far.

More generally, existing policies are now so vast and robust that I would venture to speak of an institutional *inertial* strength, which is not easy to eliminate or curtail all of a sudden. To oppose such an institutional inertial strength, some exceptional policy reversals would be needed. Nobody can exclude that they might be adopted in the future, but at present all the choices related to the prime minister's interests, however embarrassing and worrying they might be, are not equivalent to such a reversal, and are not immediately related to anti-mafia policies. On the other hand, the stabilisation of the strict incarceration regime might be seen as a signal of goodwill directed not only to a right-wing electorate, traditionally attentive to security, but also and, perhaps primarily, to the judiciary (exactly because the premier's position was vulnerable in other contexts).

The effectiveness of direct policies has been shown here by considering quantitative data concerning mafiosi arrested, incarcerated and condemned, seized or confiscated assets and mafia-related crimes, as well as changes in the strategy of the main organisations. However, it has been said that if we admit this, then we must also admit that the anti-mafia effort can and must be weakened. But this proposition contains a *non sequitur*. The opposite conclusion might well be more compelling. Exactly because the mafia shows evident signs of stress (thanks to the effectiveness of anti-mafia policies) this is the right moment to intensify the fight against it, until its final destruction.

I thank Cyrille Fijnaut and Letizia Paoli for having involved me in their project and having set the framework. With the premise that responsibility for the opinions expressed and all the weaknesses that might have survived is entirely mine, I thank again Letizia Paoli for her insightful remarks and competent suggestions, which helped me very much to enrich and improve the text, as well as to eliminate obscurities and inaccuracies. I also thank Vincenzo Militello, whose standpoint does not always coincide with mine. He pushed me to be more rigorous and complete, and to think about my thesis in more depth.

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Organised Crime Policies in the Netherlands

Henk Van de Bunt

1. Introduction

A relatively high level of social stability and a certain degree of tolerance are characteristic of Dutch society to the present day. In spite of the influx of immigrants and the presence of ethnic minorities there is very little racial conflict. Even in these times of economic depression, disputes between unions and employers are not fought to the bitter end. In the political decision-making process compromises are preferred over polarisation.¹ Experts play an important role in bridging the differences. There is a tendency in the Netherlands to leave it to the experts to decide on normative issues, such as under which circumstances euthanasia is admissible or whether or not the sale of certain drugs should be tolerated. Normative issues are reduced to technical, empirical questions for the experts to answer. In this way the issues are depoliticised: they are still on the political agenda, but the fierceness of the debate is tempered by the facts and rational considerations provided by the experts. The land of ministers and merchants is now the land of experts.

Experts also dominate the administration of justice. There is no jury system in the Netherlands and neither is there any input from laymen in the judiciary. Judges are formally appointed by the Minister of Justice, but they are de facto appointed on the recommendation of their peers. The administration of criminal justice is equally dominated by professionals. Police chiefs and public prosecutors are appointed on merit, not democratically elected based on their political preferences. This professionalisation is based on a firm belief in the democratic benefits of the *trias politica*, which finds particular expression in the relatively autonomous position assigned to the judiciary. The boundary between 'politics' and 'justice' is carefully guarded for the sake of the rule of law. There is a general wariness among judges and public prosecutors of the politicisation of the administration of justice. Opinions expressed by the Minister of Justice or statements by politicians on specific criminal cases are easily interpreted by the professionals as attacks on their independence. According to a recent poll, 85 per

¹ For an informative 'guidebook' to the Netherlands, see Shetter (2002).

cent of judges and prosecutors hold the view that politicians should not express any opinions on cases that are still under judicial consideration.²

The non-political, professional character of the administration of justice in the Netherlands proved to be a fertile breeding ground for the emergence of another type of expert: the research scholar. The ministries involved, the police, the public prosecutor, the judiciary, as well as the prison and probation services show a great deal of interest in research results. Scientific research plays an important role in the planning and assessment of government policies. Since 1973 the Ministry of Justice has its own research institute (the WODC – the Research and Documentation Centre), the largest Dutch institute in the field of justice, employing over 75 researchers and statisticians. Also other major research groups were formed at a number of universities. It is important that the services involved are, generally speaking, willing to cooperate with the research projects. The researchers are usually allowed to conduct observations and interviews and have access to case files. Over the past 30 years, a series of empirical studies was carried out into subjects as diverse as selectiveness in prosecution and the meting out of punishment, evaluations of new measures and sanctions, the effects of sanctions and patterns of recidivism. The field of organised crime has also been studied extensively since the early 1990s.³ In this context, the research by Van Duyne (Van Duyne et al., 1990; Van Duyne, 1995), the research group Fijnaut (Parlementaire Enquêtecommissie, 1996; Fijnaut et al. 1998), Bovenkerk (Bovenkerk and Yeşilgöz, 1998; Bovenkerk, 2001), and the research group of the organised crime monitor (Kleemans et al., 1998, 2002) must be mentioned.

Other research projects were carried out on the effects of policies against organised crime. In a large-scale empirical study the effectiveness of new legislation aimed at depriving organised crime of its illicit earnings was evaluated by Nelen and Sabee (1998). The researchers examined the effects of the law, using interviews and official statistics, on the number of dispossession proceedings and the actual recoveries as ruled by the courts. In 1999, Kruissink, Van Hoorn and Boek published their research into the effects of the deployment of infiltrators in major investigations of organised crime (1999). What is remarkable about this project was the access the researchers gained to police files describing the infiltrations. Based on these files and on interviews with police officers and public prosecutors,

² ‘Rechterlijke macht onder vuur’, *Vrij Nederland*, 11 October 2003.

³ With a few exceptions, all Dutch professors of criminology have shown an interest in studying organised crime and/or the fight against this phenomenon. Frank Bovenkerk (Utrecht), Gerben Bruinsma (Leiden), Henk Van de Bunt (Amsterdam, Rotterdam), Petrus Van Duyne (Tilburg), and Cyrille Fijnaut (Tilburg) have all published on organised crime in recent years.

Kruissink et al. assessed the effectiveness of the deployment of undercover agents in view of the final results of the investigation. The effectiveness of legal measures targeting money laundering, such as the obligation for financial service providers to report all unusual financial transactions to a focal point within the police force, was studied by Terlouw and Aron (1996) and by Faber and Van Nunen (2004).

During the course of these projects, all the above-mentioned researchers – with the exception of most members of the Fijnaut group⁴ – were employed by the WODC. The WODC has therefore been the leading centre for research on the effects of policies designed to combat organised crime. The standing of the centre, as part of the Ministry of Justice, turned out to be an advantage in carrying out research on sometimes highly delicate matters. More recently, research on policies was also undertaken outside of the WODC: a commercial agency studied the effects of financial police investigations (Faber and Van Nunen, 2002) and the Vrije Universiteit (Free University) is evaluating the results of the administrative approach to organised crime in Amsterdam (Huisman et al., 2004).

The results of these research projects will be discussed later on, but one can already conclude that a lively tradition of research into the delicate theme of organised crime is developing in the Netherlands. The question is, of course, whether or not the results of these scholarly inquiries are of any importance to the authorities and the general public when it comes to the issue of tackling organised crime. For instance, how have government policies to fight organised crime developed over the years? What was the role of research in this development? In section 2, it will be argued that organised crime appeared high on the political agenda in the early 1990s, in marked contrast to the Dutch tradition of politicians staying away from judicial matters. The general public as well as the politicians were seriously concerned about the problem of organised crime and both were in favour of far-reaching measures. Incidents and journalists' opinions rather than scholarly knowledge determined the substance and the outcome of the public debate. Section 3, describes the most significant measures taken in the fight against organised crime, and discusses their effectiveness in the light of the available figures and evaluation studies. Section 4 deals with a number of organisational developments in the police and in the Public Prosecutor's Office. In conclusion, section 5 offers a summary and discussion.

⁴ The research group consisted of Cyrille Fijnaut, Frank Bovenkerk, Gerben Bruinsma and Henk Van de Bunt. The first three members were professors of criminology at different universities, during the time of the research Van de Bunt was the director of the WODC and professor of criminology in Amsterdam.

2. Developments in Organised Crime Policies

Over the past two decades, major changes have taken place in the public debate on crime and crime prevention. Crime has undoubtedly become a political issue. Since the early 1980s the general public as well as many politicians became increasingly critical of the effectiveness and efficiency of the administration of criminal justice, whereas in the past the fight against crime was entirely entrusted to the professionals. Between 1980 and 1984 recorded crime doubled in the Netherlands. Compared to the situation in 1970 the numbers quadrupled, while the expenditure on the police force and the justice system lagged far behind. Crime became a visible problem, a reality facing every citizen directly or indirectly, at one time or another, and for many citizens and politicians this constituted proof that the administration of criminal justice was not effective. In addition, the overburdening of the justice system led to sensational mistakes, as well as capacity problems resulting in cases being held over and a shortage of prison cells.

2.1. Policy Plan *Society and Criminality* (1985)

In 1985, the government drew up a white paper on the fight against crime that was to have major consequences for the administration of criminal justice in the Netherlands. For the first time in Dutch parliamentary history, politicians concerned themselves in-depth with the future direction of crime control. The white paper, entitled *Samenleving en criminaliteit (Society and Criminality)*, was met with approval from political parties on all sides of the political spectrum. The plan was typically Dutch in that it managed to forge a compromise between the right and the left on a subject as charged as crime control, but it was by no means a watered-down document. It had a visionary quality and it contained an innovative policy plan pointing to new directions in crime prevention.

The document did *not* propose a 'more-of-the-same approach' to keep up with the rise in crime, i.e. more personnel for the police force and the justice system and more prison cells. More money was certainly allocated to these areas, but the most important message of the white paper was that the effort to control the crime problem should no longer be a matter for the police and the justice system alone. The paper stated:

Maintaining law and order is not exclusively the task of the police and the justice system. In the judgment of the government, the rise in petty crimes, mostly committed by minors, could and should be halted by inducing an increased sense of responsibility in parents, local residents, local authorities and other social organisations with a view to crime prevention (*Samenleving en criminaliteit*, 1985: 13).

The document refers to increased surveillance by individuals and organisations, as well as to ‘techno-prevention’. It also suggests a strengthening of the ties between adolescents and society. The emphasis in this policy document is clearly on *preventing* crime, especially by mobilising people and services outside of the justice system.

In dealing with serious crime, ‘especially organised crime, including trafficking in hard drugs’, the paper announced a policy of tough criminal prosecution, ‘the exclusive task of the police force and the justice system’.⁵ This repressive side of the white paper did not receive as much attention in the mass media and in the political debate as the more benevolent approach to petty crime propagated in the same document. The plan stated, without a clear empirical foundation, that although the Netherlands had long been exempt from the problem of organised crime, a ‘large-scale underworld rooted in society’ was now threatening to emerge. The white paper allocated considerable funds to the strengthening of inter-regional police cooperation in the areas of intelligence and investigation dealing with organised crime.

The parties on the left as well as the right agreed with the two-pronged strategy: the prevention of petty crimes and a tough approach to organised crime. The policy plan is an example of what Garland terms the ‘responsibilisation’ of society (Garland, 1996: 445-71). Encouraged and partially funded by central government, local authorities and the business community did indeed invest in the prevention of petty crime. By emphasising the role of society as a whole the white paper indicated that the fight against crime is not only the mandate of professionals, but also of the political community. In this way, the government document confirmed the growing interest in the fight against crime from local political authorities. At the local level, mayors and public prosecutors became partners in consultations with the police on their priorities and procedures.

Crime policies embedded at the local political level resulted in the neglect of supra-local organised crime. Why would the mayor of a town plagued by burglaries and robberies, have detectives work many months on international organised crime that did little visible damage to the community? In other words, the short-term effects of the white paper were an increase in funds for the criminal justice system’s fight against organised crime, but in the public and political arena the attention was still focused on the problem of petty crimes. This situation would change dramatically at the end of the 1980s.

⁵ Bank fraud, environmental crimes, and illegal gambling are also mentioned in the document. All these different kinds of crime were classified as organised crime.

2.2. The Turnabout

In 1988, crime journalist Bart Middelburg published a book with the ominous title *The Mafia in Amsterdam* (Middelburg, 1988). He described how members of American mafia families had tried to run illegal casinos in Amsterdam in the 1970s. His findings were later confirmed by Block (1991) and by Fijnaut and Bovenkerk (1996), but at the time his book was met with disbelief. These reactions were typical of the prevailing climate, where stories about the seriousness of organised crime were laughed off as myths. However, at the end of the 1980s the Amsterdam police pointed for the first time to the threat posed by organised crime. Leading police officers confidentially briefed members of Parliament and prosecutors, especially on the dominant position of several Dutch and Surinamese criminals in the international trafficking of cannabis and cocaine. Possible penetration by these criminals into the legitimate world (economy, real estate, politics) was at the forefront of the discussions.

A team of police crime analysts drew up a nationwide quantitative overview of criminal groups in the Netherlands in 1988. The analysts' definition of organised crime leaned heavily on images of organised crime in the United States and on American publications. The team sent questionnaires to police forces all over the country asking them if they were aware of the existence of groups that would meet one or more of the following five criteria:

- Is the group active in several fields (drugs, weapons, fraud, among others)?
- Is there a hierarchy and a fixed assignment of tasks?
- Is there an internal system of sanctions, with rewards and punishments?
- Are the proceeds of crime being laundered with the aid of experts?
- Does the group make use of corruption (business world, government)?

It was left to the police forces to answer the questions per group. It later turned out that different police forces answered the questions differently and there were also problems with non-response and double-counting. The results of this nationwide stock-taking were nevertheless published without reservations: according to the report there were 189 criminal groups that met one or more criteria. Three groups were supposed to meet all five of them (Fijnaut et al., 1998: 10-13). The problem with this statement of affairs was that the results were published but the methodology kept secret.

The publication of the number of cases of organised crime drew considerable media attention. The public at large as well as the politicians became convinced that the problem of organised crime in the Netherlands had been grossly underestimated. In 1990 this impression was reinforced by an empirical study published by the WODC, written by Petrus Van Duyne, Ruud Kouwenberg and Gerard Romeijn,

who made use of police files to sketch a broad panorama of 'organised crime', ranging from drug trafficking to cases of entrepreneurial crime, including trading in waste material and value added tax (VAT) fraud. The unintended result of this publication was a growing unease, mainly because the authors used the rather broad definition of organised crime as crime committed by 'criminal entrepreneurs.' Petrus Van Duyne put the distinction between criminal entrepreneurs and the legitimate industry into perspective. He objected to the idea of organised crime penetrating into the legitimate world by stating that 'more and more sections [of the legitimate industry] are affected by crime enterprises, not because of an outward threat by the superior "evil genius" of organised crime, but because of the venality of the so-called "upperworld"' (Van Duyne, 1991: 69).

In addition to these research publications, a number of incidents played an important role in making the public aware of the problem of organised crime, particularly the killing of the so-called mafia boss Klaas Bruinsma on the streets of Amsterdam in 1991. For several years newspapers had been reporting on his involvement in the import and wholesale trafficking of cannabis. The newspaper articles about his 'empire', his wealth and the killings he ordered, were met with disbelief at first, but his assassination was proof to many that the Netherlands was facing a serious social problem, the contours of which were still unclear. The initial disbelief turned into a sense of urgency. In 1992, the Dutch government, at the request of Parliament, issued a white paper on the fight against organised crime.

2.3. White Paper 'Organised Crime in the Netherlands' (1992)

In spite of the fact that there was little precise information in 1992 on the true nature and size of organised crime in the Netherlands, the Minister of Justice made some firm statements in that same year. He argued that as a result of the large profits made by drug dealers 'modern criminal organisations and the legal economy are interwoven to a much larger degree than in the past' (Nota, 1992-1993: 2). The fact that not much was known empirically about the exact shape of the problem did not stop him from reaching firm conclusions; rather, the lack of hard facts was presented as a subject of concern, to the extent that the problem of organised crime was its invisibility: 'It goes without saying that all we know about organised crime is merely the tip of the iceberg' (Nota, 1992-1993: 3). The white paper continued with a reinforcement of the anxiety existing in society: 'In our judgment, the threat to the Dutch society emanating from present-day criminal organisations should be taken very seriously in view of the far-reaching economic and moral implications' (Nota, 1992-1993: 8). The paper further stated that these organisations were active in the illegal drug trade, prostitution, gambling and the arms trade, and engaged in fraud. In addition to the material and financial damage these organisations caused, there was also the danger of their gradually becoming embedded in the legitimate world, with all the corrupting influences that entailed

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for Dutch society. The importance of this white paper lies in the fact that it not only advocated a tougher, more repressive approach to organised crime, but also suggested preventive measures allowing a role for society. In this respect, the white paper departed from the approach advocated in 1985, which placed the responsibility for the fight against organised crime exclusively in the hands of the police and the justice system.

The 1992 paper cited the results achieved locally in the United States through an integrated approach by the administration and the criminal justice system regarding certain forms of organised crime. It mentioned the New York State Organised Crime Task Force, which successfully tackled organised fraud and corruption in the construction industry (Nota, 1992-1993: 9).

The interest in the American preventive approach was the direct result of the initiative taken by Cyrille Fijnaut, then professor of criminology in Rotterdam and Leuven, to organise a conference attended by members of the New York State Task Force and Dutch officials and academics. Fijnaut thought the Dutch could benefit from the American experiences. He praised the Task Force's innovative recommendations, which focus on the need for preventive strategies, and suggest pro-active strategies that differ markedly from traditional reactive law enforcement approaches that have proved inadequate in fighting organised crime (Fijnaut and Jacobs, 1991: vi). There is no doubt that this conference has had a major impact on the development of Dutch strategies to combat organised crime, because, in spite of the sense of urgency, the 1992 white paper contained preventive measures as well as the reflex of tough repression.

In the policy plan, several measures concerning preventive action against organised crime were mentioned, such as enlarging the defensibility of the public administration against the threat of infiltration by criminal organisations, intensifying efforts to keep criminal organisations out of certain service and goods sectors by not granting them licences or subsidies, and cooperating with relevant professions (accountancy, notaries, lawyers) to prevent culpable involvement with organised criminals. The proposals to combat organised crime by penal methods sounded somewhat more familiar: the intensification of cooperation between public prosecutors and police officials, the formation of regional criminal investigation units, the improvement of the exchange of information between police forces and regulatory agencies (tax authorities, for example), the growth of the expertise on organised crime and the expansion of international cooperation.

The 1992 plan acquired great significance. First, it provided a basis for the preventive approach of organised crime that would come to gain recognition in the Netherlands. Secondly, the paper cleared the way for police officers and public prosecutors who were willing to fight organised crime by fire or by sword. The policy plan and the subsequent discussions in Parliament created an environment where the end – combating organised crime – seemed to justify all means and methods

in advance. Only a year after these discussions, a full-blown drama ensued. The 'IRT affair' was born.

2.4. An Unparalleled Internal Struggle within the Justice System: The 'IRT Scandal'

Even in a small country like the Netherlands, the debate on the centralisation or decentralisation of the administration of criminal justice runs through the many reorganisations of the police force and the Public Prosecutor's Office that have taken place in the past decades.

Originally the structure of both official bodies was decentralised, but there is a definite tendency towards centralisation. At the end of the 1980s, there was a growing demand for more cooperation between the locally organised police forces, in particular with a view to the fight against organised crime. From 1987 onward, several inter-regional investigation teams (Interregionale Recherche Teams, IRTs) were set up in the Netherlands. The largest one was a collaboration between three forces (Amsterdam, Utrecht, Haarlem/Schiphol Airport). It took more than two years of consultation with the relevant authorities in the police forces and the offices of the public prosecutor before this team could begin targeting criminal organisations. Notwithstanding the previous deliberations, it turned out that no clear agreements were made on which authority was responsible for the actual operations of the IRT, in this case for the deployment and the implementation of special methods of investigation. Right from the start, consultations on the supervision and the responsibility for the operations were hindered by the strained relations between the different police forces and offices of the public prosecutor.

Once the IRT got into its stride, Klaas Bruinsma, one of its main targets, was murdered. The IRT continued the fight against what was then called the 'Bruinsma heirs', a trio also known as the 'Delta group'. A small circle of intelligence officers and a public prosecutor came up with a method to gain more insight into the closed world of this Delta group. The idea was to approach a number of criminals with known contacts to the group and ask them to work as police informers. In order for these people to be valuable to the police, and to give them a chance to rise in the supposed hierarchy of the Delta group, they were allowed to engage in criminal practices. They were permitted to import large amounts of soft drugs into the Netherlands and to trade with, among others, members of the Delta group. As a result, containers full of drugs owned by these police informers were guided through customs under police protection. This was supposed to enhance the reputation of the informers in the eyes of the Delta group which could improve their status within the hierarchy. The drugs were meant to be seized by the police later on, but on many occasions that never happened. Later on, it has been established that the method of 'controlled delivery' resulted in 285 tons of cannabis entering the Netherlands, 160 tons of which were never found by the police. As a consequence

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of poor regulation and poor supervision of the police informers, the method of controlled delivery boiled down to 'uncontrolled deliveries' on the drugs market. The same method of 'uncontrolled delivery' was used to ship ecstasy tablets from the Netherlands to England. It is not clear exactly how many tablets were exported under the watchful eye of the Dutch police, but a parliamentary investigation later estimated that there must have been millions. Part of the deal between the police and their informers was that the smugglers were allowed to keep the proceeds. At the end of 1993, the leaders of the Amsterdam police force found out about these operations, which were devised by officers from the other two police forces in the IRT. The Amsterdam police stated that they could not take responsibility for these poorly regulated and poorly supervised methods and cancelled the agreement with the other two forces. To the dismay of the general public and the politicians, the IRT was dissolved. The decision was announced in a press release, but in view of the secret nature of the investigation methods, no further statements were made about the motive behind the decision.

The dissolution of the IRT dominated the minds of the police and the justice system throughout the 1990s. The parties involved hurled reproaches at one another about incompetence, mismanagement and even corruption. Almost immediately after the disbandment of the IRT, the Ministers of Justice and Interior decided to use a tried and trusted method to depoliticise the issue: they appointed a commission of experts, named after its chairman Wierenga. The commission was not allowed much time for its inquiry into the causes of the dissolution of the IRT. Handicapped by this and by the opacity of the case, the Wierenga commission came to conclusions that later turned out to be wrong. Peace was not restored. On the contrary, the Wierenga commission only fuelled the crisis. The blame was placed squarely on the shoulders of Amsterdam. The commission concluded that the method used by the IRT was not illegal and that there were no indications that things had got out of hand.⁶ Under turbulent circumstances Parliament involved itself in the matter and this resulted in a preliminary study by a parliamentary working group. In October 1994, the working group advised Parliament to launch a parliamentary inquiry into the methods used by the police and the Public Prosecutor's Office to investigate organised crime. The working group suggested that the dissolution of the IRT was not an isolated incident. Parliament agreed and a Parliamentary Commission of Inquiry, named after its chairman Van Traa, was set up, with the objective of bringing clarity to what was going on in the circles of the police and the public prosecutors.

⁶ For more information on the Wierenga commission, see Van de Bunt et al. (2001).

2.5. Controlling the Police

As a result of the IRT scandal, the performance by the police and the justice system faced tough public scrutiny. It almost seemed like the crime fighters posed a bigger threat to the rule of law than organised crime itself. In its report (1996), the commission published a great deal of inside information about the way the fight against organised crime had been conducted so far. First of all, the commission gave a clear insight into the nature of the crime problem, using extensive criminological research carried out by the Fijnaut research group. The threat posed by organised crime – expressed in no uncertain terms in 1992 – was now reduced to its proper proportions. There was no evidence found that criminal groups at either the national or the local level had gained control of legitimate sectors of the economy by taking over crucial businesses or trade unions. Neither were there any indications that organised crime had penetrated the public administration or the political decision-making process. The research group nevertheless concluded that there were worrying developments in Amsterdam. Most of the real estate in the Red Light District was apparently in the hands of a number of criminal organisations and the local authorities had lost their grip of the situation.

Secondly, the Van Traa commission entered at length into the use of special methods of investigation (infiltration, observation, wire-tapping) and the manner in which judges and public prosecutors supervised the application of these methods. The commission's analysis of the fight against organised crime forms the principal part of the parliamentary inquiry. The commission concluded that there was a 'crisis'. In the period between 1990 and 1995 all parties were convinced of the need for firm action against organised crime, but there was a lack of clear and adequate guidelines. The legislator and the judiciary gave too much latitude to the police and the Public Prosecutor's Office, who did not know exactly what to do, as the report states (*Enquêtecommissie Opsporingsmethoden, 1995-1996: 414*).

The commission also criticised the large number of separate organisations and collaborating bodies within the police, the justice system and the public administration, all playing their part in the fight against organised crime. There was too much professional jealousy and not enough exchange of knowledge and information. Finally, the commission condemned the breakdown of authority in the police forces and the offices of the public prosecutor, referring in particular to the lack of clear guidance from public prosecutors in criminal investigations. Too many decisions were left to the discretion of individual police officers; the obscure method of the 'uncontrolled delivery' became one of the most talked-about examples of this state of affairs (*Enquêtecommissie Opsporingsmethoden, 1995-1996*). The IRT scandal resulted in major changes in Dutch law. A few years ago several special investigative powers were regulated by law and more adequate supervision of these powers was established (see also section 3, *infra*).

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As a result of the involvement of Parliament in the 1990s, more information came to light about police operating procedures, the supervision by the public prosecutors and the criminals involved in the IRT scandal as either informers or targets. Unintentionally, secret information was also revealed, including the identity of several police informers. One of them demanded money from the Minister of Justice to seek refuge abroad. He received € 800,000 in compensation, but instead of fleeing the country, he bought a villa in the Netherlands. This anecdote illustrates the distinct possibility that the police and the justice system had been taken for a ride. Who was running whom? Did the police get information about the criminal world through the informers, or did the criminals use these same informers to gain insight into police operations?

Three years later, in 1999, another parliamentary commission made a name for itself by claiming – on the basis of interviews with several intelligence officers and a public prosecutor – that in the period 1992-1993 not only soft drugs and ecstasy, but also 15,000 kilos of cocaine (representing a street value of € 500 million) had been imported and sold under the protection of the IRT. The commission added that such large amounts of cocaine could not have been smuggled into the country without corrupt intelligence officers. Between 1996 and 2001 an extensive criminal investigation was conducted into possible corrupt actions by a few investigators who had been involved – as was evident from the parliamentary inquiry – in the ‘uncontrolled deliveries’. Because this method of investigation never yielded any relevant information but had been very profitable to certain informers, it seemed that the officers involved were corrupt and perhaps benefited financially from the ‘uncontrolled deliveries’. After years of investigation by a large investigative team, no indications have come to light that the police officers involved were indeed corrupt. They probably only acted clumsily, but they most certainly did not adequately justify their actions to their superiors and to the public prosecutors. It also appeared from the criminal investigation that there was no proof whatsoever for the statement made in 1999 by the parliamentary commission that 15,000 kilos of cocaine were imported through the ‘uncontrolled deliveries’.⁷

⁷ Its results were so disappointing to many that they doubted whether the investigation was carried out properly. Together with Cyrille Fijnaut and the criminologist Hans Nelen, the author conducted an evaluation study into the course of this criminal investigation. Van de Bunt et al. (2001) concluded that the investigation may have been hampered by bureaucratic tensions and conflicts, but that the possibility of corruption was nonetheless investigated in a serious manner.

2.6. Towards a Safer Society (from 1996 to the Present)

It was to be expected that the storm died down after all the excitement about organised crime and the fight against it. At the end of the 1990s new crime problems, such as ‘senseless violence’ in the streets, incivilities, domestic violence and feelings of insecurity, demanded the attention of the media, the politicians and the administration of criminal justice. Citizens’ feelings of insecurity have become an issue in the political debate. To the extent that these feelings are related to actual crimes, they are affected by street crime rather than organised crime. The most recent white paper from the Dutch government on crime prevention *Towards a Safer Society (Naar een veiliger samenleving)* pays little attention to organised crime, let alone to more specific themes like money laundering or contract killings.

These days attention is focused on visible forms of crime, such as street violence, and forms of behaviour that are not so much ‘illegal’ as ‘asocial’ – loitering, begging and traffic offences.⁸

The fact that the public debate has calmed down cannot just be explained by other forms of crime demanding attention. Peace has returned to the Netherlands regarding the threat of organised crime. Unfounded fear gave way to conceptions of the nature of organised crime based on facts. Police officers and politicians no longer equate organised crime in the Netherlands with the mafia. There is now talk of ‘networks’ and ‘fluid social groups’, which at least sound less threatening than ‘mafia’. Ideas about the criminal penetration of legitimate sectors gave way to the concept of ‘symbiosis’, again less threatening than ‘penetration’. We also have to bear in mind that the problem of organised crime in the Netherlands is unlike that in some other European countries. For example, the Netherlands is not faced with the pressing problem of terrorism that monopolised the debate on organised crime in Spain, and it does not suffer from the intertwining between organised crime, the economic sectors and the political institutions, as is the case in Italy. Extortion, political corruption, and kidnapping connected with organised crime rarely happen in the Netherlands, if at all. Many forms of organised crime in the Netherlands boil down to international smuggling activities. Hence, the nature of organised crime in the Netherlands might be described as ‘transit crime’. Incidents such as the discovery of a large weapons cache, or the liquidation of well-known criminals in the streets, still draw the attention of the public and the politicians, but there is no

⁸ Recently, the Dutch newspaper *Trouw* conducted a public opinion poll on the police and on public safety. A small majority agreed with the statement: ‘it is more important that the justice system deals with violence and burglary than with drug bosses’. In an earlier poll, conducted in 1998, only 30 per cent of those questioned agreed with this statement. These data illustrate the decline in public fear about the problem of organised crime (*Trouw*, 14 January 2004).

longer any serious public anxiety in the Netherlands about the threat of organised crime, despite the fact that the police have not been able to solve any of the cases of the murdered criminal figures and are still in the dark about what is behind the weapons caches.

The police and the justice system seem somewhat tired of the traditional nucleus of the Dutch organised crime problem, which is the trafficking of illegal drugs. A white paper on the administration of criminal justice states that police attention should be focused 'to a substantial degree' on other forms of organised crime rather than on drugs trafficking. Reference is made to the trade in chemical waste, medicines, blood or organs, and endangered species (Ministerie van Justitie et al., 2001:34). But these new priorities do not seem very realistic, since there is hardly any known involvement from organised crime in these areas. Furthermore, it remains to be seen whether or not the Netherlands has a lot of choice when listing its priorities. The transnational character of its organised crime problem calls for a certain amount of modesty in this respect. In the past years, foreign pressure and criticism have kept organised crime on the Dutch political agenda. The United States in particular has criticised the Netherlands for not doing enough to investigate and prosecute criminal organisations involved in the production and international trade of ecstasy. As a result of this kind of criticism, an additional € 20 million is spent annually on investigating this form of organised crime in the Netherlands. Many Dutch citizens consider these foreign comments an exaggeration of the situation and they view them as an uncalled-for criticism of the liberal Dutch drugs policies. The public's interest in the subject of organised crime has subsided. After all the excitement in the 1990s, the pendulum has now swung back.

3. Crime Policies: Theory and Practice

In contrast to the fluctuation in public attitudes, institutional attention to organised crime has been relatively consistent from the early 1990s to the present. Two different tacks have been taken. First of all, the Netherlands invested considerable effort in the prevention of organised crime, or more specifically, in measures not pertaining to criminal law. The innovative aspect of this approach lies in the fact that it is not primarily aimed at the perpetrators of organised crime, but rather at the various circumstances which facilitate organised crime. The second track followed the criminal approach, referred to here as 'repression'. Over the past 15 years, the repressive approach, aimed at catching the criminals, has seen some major developments. The most important changes in these two areas are described in the following.

3.1. Prevention

3.1.1. Anti-Money Laundering Efforts

The anti-money laundering effort is one of the cornerstones of the fight against organised crime in the Netherlands. Money laundering was a non-issue until the end of the 1980s. It was associated with the 'black money' that ordinary citizens and companies tried to hide from the view of the tax authorities. It was not until the early 1990s that in the national political debate the connection was made between money laundering and the fight against organised crime. This came about as a result of international discussions on the laundering of the proceeds of drug-related crimes, and not because the problem of the laundering and reinvestment of proceeds of crime had actually manifested itself in the Netherlands. The introduction in the Netherlands of anti-money laundering legislation was a direct consequence of the 1991 European Economic Community (EEC) Directive on the Prevention of the Abuse of the Financial System (Van de Bunt and Van der Schoot, 2003: 18).⁹ Since the introduction of the MOT Act (Act on the Disclosure of Unusual Transactions – *Wet Melding Ongebruikelijke Transacties*) in 1994, financial institutions such as banks, exchange offices, casinos and credit card companies are obliged by law to report unusual financial transactions to a Financial Intelligence Unit (*Meldpunt Ongebruikelijke Transacties*).¹⁰ The police and public prosecutors have no direct access to the database of this unit, to ensure the privacy of legal and natural persons whose financial transactions have been reported as unusual. It is up to the officials of the unit to decide whether or not to transmit the reported transactions to the police and to a police unit called BLOM (*Bureau Landelijk Officier van Justitie Meldingen Ongebruikelijke Transacties – Public Prosecutor's Office for Anti-Money Laundering*).

The purpose of the MOT Act is twofold: the prevention of the abuse of the financial system by laundering criminal funds, and the repression of money laundering itself. The emphasis is therefore not on combating organised crime, but in the political climate described in section 2 it was obvious to anyone that this sort of legislation was primarily intended to counteract money laundering by organised crime. Because of the perceived threat posed by organised crime and because there was already the anti-money laundering Directive, the government managed to pass the bill through Parliament in a relatively short time. There was considerable opposition at first, especially voiced by the banks. They took the

⁹ For a history of the Dutch law, see Mul (1999).

¹⁰ At the same time, the Act on Customer Identification for Financial Services was introduced, which obliges financial institutions to ask customers for identification. All records of financial transactions must be stored for five years.

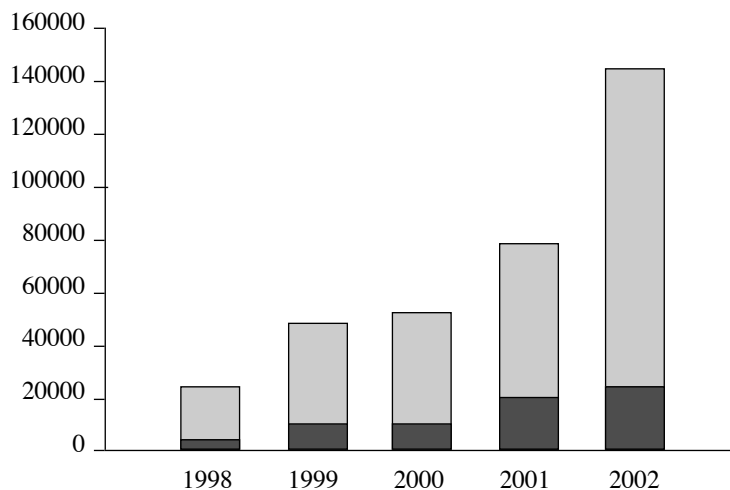
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view that the government was trying to burden them with a supervisory task not suitable for a commercial enterprise. It was also pointed out that banks would run the risk of damage claims from customers disagreeing with the disclosure of their financial transactions. For this reason a legal stipulation was added protecting financial institutions from civil suits resulting from unjust reports to the Financial Intelligence Unit.

Whereas the EEC Directive was limited to organised drug-related crimes, the Dutch legislator took a general approach to money laundering. The Act targets all financial transactions, irrespective of the nature of the crimes connected with it, and opted for mandatory reporting of unusual financial transactions. Objective as well as subjective indicators were developed to determine the unusual nature of a transaction.

3.1.2. Reports of Unusual and Suspicious Transactions

Over the past ten years, hundreds of thousands of unusual transactions were reported to the Financial Intelligence Unit. The year 2002 in particular saw a marked increase, largely attributable to the growing number of reports of money transfers. The number of reports to the police of suspicious transactions also shows an upward trend:



Source: Financial Intelligence Unit, Annual Report 2003.

It appears from information provided by the unit that the use of objective and subjective indicators in determining the unusual nature of transactions varies with the type

of financial service provider. The vast majority of reports by exchange offices turn out to be based on an objective indicator (for instance, the amount changed is in excess of € 10,000), while almost 70 per cent of all reports by banks are based on the subjective assessment that the client's behaviour and/or the type of transaction was 'unusual' or, that a large amount was probably divided up into smaller amounts to stay within the € 10,000 limit. From this relatively high percentage of subjective decisions it can be deduced that banks no longer report all transactions that should have been reported, based on the implementation of objective indicators. In actual practice, the duty to report has evolved into the right or the possibility to report and this is recognised in the most recent annual report of the unit, which concludes that a system has developed in which the detection of unusual transactions is left to the discretion of the banks themselves (Meldpunt, 2003: 14). This is in anticipation of a development supported by the government to prevent over-reporting based on objective criteria only. In a recent white paper on *The Integrity of the Financial Sector and the Fight against Terrorism* the government announced that in future the emphasis should be on a risk-based rather than a rule-based system of reporting (Tweede Kamer, 2001-2002: 46).

3.1.3. Effectiveness of the MOT Act

The Financial Intelligence Unit decides whether or not to transmit unusual transactions as suspicious transactions to the police and to the BLOM, the police unit in charge of the database of suspicious transactions. Officials of the unit make their assessments by matching the names of legal and natural persons against the names of persons on whom there is intelligence information available, or who are currently under police investigation. They also use their own research and experience to look for suspicious patterns in the lists of transactions.¹¹ It is striking that over the past ten years much effort has been devoted to the drawing up of criteria for unusual transactions, while far less attention was paid to the question how the unit decides which transactions should be transmitted as suspicious to the BLOM.

What are the effects of this system of mandatory reporting, or to be more specific, how many suspicious transactions are used in criminal investigations or actually lead to the launch of an investigation? Two researchers from the WODC published an empirical study in 1996. They concluded that in 1995 approximately 2500 suspicious transactions were reported to the police (around 14 per cent of the total number of unusual transactions). Of these 2500 around 20 per cent were used, i.e. added to 45 ongoing criminal investigations. Only rarely did the information

¹¹ The unit developed a programme for the analysis of networks, resulting in 2001 in the uncovering of a criminal collaboration, based on 1100 money transfers (Meldpunt, 2001: 31).

lead to the launch of an investigation by the police (Terlouw and Aron, 1996: 97). Since 1999, the BLOM has carried out random checks to find out if suspicious transactions are used in police investigations. Of over 1900 cases, 15 per cent were used by the police to strengthen evidence and 14 per cent were used as 'guiding information', which played a role in establishing priorities or a shift of focus in ongoing criminal investigations (BLOM, 2000).

The MOT Act system allows transactions to take place even when the financial service providers regard them to be 'unusual'. In 2002, almost all of the 24,741 suspicious transactions were actually executed, only 145 were not (Meldpunt, 2003: 7). What this means is that financial service providers can execute transactions without reserve, even when they are convinced they are collaborating in money laundering. Disclosure to the Financial Intelligence Unit serves to exculpate them in this respect. If it turns out that the feedback from the justice system is inadequate, the Act unintentionally assists in the laundering of criminal funds under the watchful eye of the financial service providers, and contributes towards the 'uncontrolled delivery' of the proceeds of crime.

Recently, a new extensive MOT Act evaluation study was carried out, in particular into the services involved in the MOT Act chain. It concluded that all those concerned seemed to have lost sight of the original purpose, namely the prevention and detection of criminal offences, with a view to protecting the integrity of the financial sector. The researchers concluded that after several years the interests of the reporting bodies have come to dominate the project. Many transactions are dutifully reported and the unit keeps track of the numbers, but it is unclear how all this relates to the integrity of the financial sector or the fight against money laundering. According to the researchers, the unit draws few lessons from the mass of information, and the preventive intentions of the Act (identifying patterns of money laundering, giving advice and making recommendations) do not live up to their promise (Faber and Van Nunen, 2004: ch. 5).

3.1.4. Recent MOT Act Developments

At the end of 2001, a separate penalty provision for money laundering offences was created. Until then, money laundering was regarded as a form of receiving stolen goods, but since this implied profiting from someone else's crimes, there was no possibility to prosecute criminals for laundering the proceeds of their own crimes. In 2002, charges were brought for money laundering on 107 occasions, in many cases against persons found in possession of large sums of money from unknown sources (Faber and Van Nunen, 2004: ch. 5).

Since the terrorist attacks in 2001, the financing of terrorism has taken on a new urgency. The strong focus on the fight against terrorism has revitalised the efforts put into controlling the integrity of the financial sector. In 2002, the white paper on *The Integrity of the Financial Sector and the Fight against Terrorism* was

published (Tweede Kamer, 2001-2002). It stated in so many words that the fight against money laundering must be intensified in light of the terrorist threat. Building on an EEC directive on money laundering, one of its intentions was to extend the system of mandatory reporting to such occupational groups as accountants, notaries, real estate agents and tax consultants.¹² Despite heavy criticism from lawyers and notaries, the favourable momentum allowed the government to issue a decree in 2003, which made a number of services by notaries, lawyers, accountants and real estate agents subject to powers of the MOT Act. According to this decree mandatory reporting should only apply to giving advice or the provision of assistance by, *inter alia*, lawyers and notaries for sale and purchase of property or companies, and the administration of cash, securities, and so on.¹³

Other ways to improve the effectiveness of the MOT Act were also suggested, such as by simplifying and speeding up procedures and methods. However, the forthcoming evaluation study mentioned above indicates that the relevant parties are pessimistic about the net result of these points of action in regard to the fight against terrorism. They all emphasise the mainly symbolic value of these plans and argue that too much is expected from the system of mandatory reporting when it comes to terrorism (Faber and Van Nunen, 2004).

3.1.5. The Preventive Approach Takes Root

The MOT Act is just one of many examples of preventive measures against organised crime and it is clear that the prevention of organised crime is becoming increasingly accepted in the Netherlands. The preventive approach is characterised by the fact that it is not primarily aimed at the perpetrators of organised crime, but rather at the various circumstances that facilitate organised crime. The preventive approach addresses governments, civilians and enterprises and it attempts to make them feel responsible for reducing the opportunities for organised crime.

It was noted in section 2 that the minds of policy-makers in the Netherlands were greatly influenced by a conference with members of the New York State Organised Crime Task Force, organised by Fijnaut in 1990. The Dutch emphasis on prevention was later taken on board by the European Union. Major European milestones showing the influence of Dutch policies were the Treaty of Amsterdam, which stressed the importance of preventing crime (organised or otherwise) and the

¹² Directive 2001/97/EG of the European Parliament and European Council, *Official Journal*, L344/7.

¹³ In June 2003, by governmental decree, a number of services by notaries, lawyers, auditors and real estate agents have been subject to powers of the MOT Act. See Lankhorst and Nelen (2003) for more details.

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Action Plan to Combat Organised Crime (1997).¹⁴ This plan stated that ‘prevention is no less important than repression in any integrated approach to organised crime, to the extent that it aims at reducing the circumstances in which organised crime can operate’. It also formulated a number of recommendations to make the preventive approach more specific: developing an anti-corruption policy within the public administration, making it possible to exclude persons convicted of offences relating to organised crime from tendering procedures, and introducing measures for the improved protection of certain vulnerable branches and professions.

In the last ten years, a large number of measures with regard to the prevention of organised crime were taken in the Netherlands (Van de Bunt and Van der Schoot, 2003). On the one hand, these measures aimed to improve the integrity and upgrade the instruments of public administration, in order to prevent its penetration by organised crime. On the other hand, legislation has focused on commercial enterprises and professions, with instructions to conduct transactions with greater diligence and to report any unusual transactions.

In order to improve the integrity of its public administration, the Netherlands has worked on tightening up its corruption laws and increasing the maximum penalties.¹⁵ Within many areas of the civil service, codes of conduct were introduced and organisational arrangements were made to ensure better supervision of civil servants in vulnerable positions.¹⁶ In many areas of *business*, it has become common practice that corporations and even individuals are required to engage in the systematic ‘surveillance’ of normal business activities in order to detect and report signs of illegal activity or suspicious transactions. To avoid illegal migration, for example, Royal Dutch Airlines (KLM) has stepped up its efforts to ensure that travellers have the proper documentation. In such cases, a system of fines imposed upon the carriers has provided a strong stimulus. In the chemical industry, companies and traders are required to report suspicious transactions involving approximately 25 chemical products that can be used for the production of illegal narcotics.¹⁷

¹⁴ This aspect was once again emphasised in the European Council Summit of Tampere in 1999. See the *Presidency Conclusions Tampere European Council of 15-16 October 1999*, points 41-2.

¹⁵ These changes took effect in 2001. See Hartmann (2001: 31-50).

¹⁶ Civil servants applying for ‘sensitive’ positions are better screened and job rotation is stimulated in order to prevent civil servants from getting too deeply involved in certain tasks or situations.

¹⁷ *The Coordinated Struggle against Ecstasy (Samenspannen tegen XTC)*, *Handelingen II* 2000/2001, 23 760, no. 14, 10-11.

In Rotterdam, a platform for crime control was established with the purpose of reducing the crime risks in the port and the risks for businesses unwittingly involved in illegal activities. Participants are the relevant businesses in the harbour and state agencies, such as the police, customs, public prosecutor's office and various municipal agencies. Together they aim to increase the awareness of all parties in the main port and their activities are not limited to merely offering vague advice.¹⁸ In 2000, a guidebook was produced entitled *Security Main Port Rotterdam* (Regionaal Platform Criminaliteitsbeheersing Rotterdam, 2000). The guide examines security management in general and the risks in business processes, personnel management, finances, information technology and computerisation, company grounds and premises in particular.

From the mid-1990s onwards, occupational groups, such as lawyers and notaries, started developing their own internal guidelines on how to avoid culpable involvement with criminal organisations. The guidelines for the legal profession drawn up in 1995 require lawyers to check the identity of clients with unusual requests. When a lawyer has doubts about the integrity and the intentions of a client, he is supposed to find out more by questioning him, which may result in the termination of their relationship. This does not apply to clients seeking legal aid relating to a trial, but only to clients who ask lawyers for advice on, for instance, legal entities which seem to serve no other purpose than to mislead the tax department or the public prosecutor (Lankhorst and Nelen, 2003: ch. 7). It is not clear to what extent these guidelines are being observed. In the last few years, only a handful of violations of the guidelines came to the attention of a disciplinary tribunal (Spronken, 2001: 627).

3.1.6. The Case of Amsterdam

One section of the report by the parliamentary inquiry commission pertained to the organised crime situation in Amsterdam. The research for this part of the inquiry was carried out by Cyrille Fijnaut and Frank Bovenkerk. The results of their study sent shock waves through Amsterdam. On the basis of conversations with well-informed police officers, Fijnaut and Bovenkerk concluded that 16 criminal organisations had been able to build up positions of economic power in real estate, bars and restaurants, especially in the famous Red Light District in the city centre. The report stated that the indecisiveness of the local authorities had created a fertile breeding ground for illegal and criminal activities in the district (Fijnaut et al., 1998: 138). In response to this, the city administration set up a special preventive programme to combat organised crime. As a result of this programme, action was taken on several fronts regarding, first, the integrity of the civil service apparatus; secondly, the screening

¹⁸ The complete guide as well as other information can be found at <<http://www.portofrotterdam.com>>.

processes in the framework of public tender procedures; and thirdly, the infiltration of organised crime in certain areas and branches of industry in the city.¹⁹

First, a project was set up aimed at creating awareness amongst executives and civil servants on the nature, scope and development of corruption and fraud, and to update them on better ways to master these issues. The most important principle that arose was that an awareness of the risks of criminality should be institutionalised in the entire bureaucratic and political organisation of Amsterdam. This meant that in every service or branch concrete action had to be taken (vulnerability analysis; detecting opportunities for corruption and fraud). In addition, a special Integrity Bureau was set up, which was made responsible for the further implementation of prevention policies and the investigation of suspected cases of fraud or corruption. In 1996, a municipal directive was issued, making it mandatory for civil servants to report suspicions of fraud and corruption among colleagues to the Bureau.

This directive was later widened to include conflicts of interest, physical violence and intimidation, deviant behaviour off duty, and misuse of authority. This broad definition of offences illustrates that the integrity policy has drifted away from its original goal, namely to stem the tide of organised crime. A recent evaluation study indicates that between 1996 and 2002, a total of 286 cases were reported, many of them concerned with suspicions of employee fraud and employee theft (129) and a lesser number with corruption (33 reports) (Nelen, 2003). The study concludes that the number of reports may have gone up, but that it is impossible to determine the meaning of this increase. Is this an increase in irregular behaviour, in awareness or in the willingness to report a colleague?

Secondly, screening and security procedures were enacted to prevent companies with criminal connections from participating in public tendering procedures. Screening is conducted by a special agency, the Screening and Audit Bureau (SBA), under the direct authority of the mayor. To carry out its tasks properly, this agency not only uses its own expert analysts but also cooperates closely with the police, the Public Prosecution Service, the fiscal authorities and the municipal services. An evaluation study published in 2001 revealed that 20 per cent of the approximately 100 screenings that were carried out resulted in the exclusion of one or more companies from the public tender process. In the majority of cases companies were excluded because of insufficient information or a lack of financial guarantees. Some cases involved companies that were probably financed with criminal money (Van der Wielen, 2001: 63-78).

Thirdly, a project was set up to keep organised crime away from certain regional areas and economic branches of the city. Initially, this project focused on the notorious Red Light District, but after three years of operating successfully, the project expanded to other areas and branches in the city. Some examples of the

¹⁹ For an overview, see Fijnaut (2002).

selected areas are run-down streets in poor areas with a high number of immigrants; the most expensive shopping street in the city; and the industrial harbour district. Some examples of the selected branches are the so-called smart shops that may participate in drug trafficking, phone centres that may be used for illegal money transfers, and the escort business that may be used for the exploitation of trafficked women. Basically, the project team follows a two-step approach. The first step is the collection and analysis of data on the selected areas or branches. The team is given access to all the relevant information from the local authorities on the housing situation and the use of the real estate in the selected areas and branches. By linking this information to open sources, such as the municipal register and the land registry, the team should be able to map out which legal and natural persons are the owners of the real estate and the local businesses. The project team is then given special authority by the Minister of Justice to collect data from the police, the public prosecutor and in some cases the fiscal authorities. Through the combination of this information with data from the municipal authorities, an assessment can be made of the involvement of criminals in the selected area. The second step is to take measures on the basis of this assessment. Besides criminal investigations and fiscal claims, administrative measures can be taken such as the refusal or withdrawal of permits and the closure of certain establishments, for instance when a bar plays a role in drug trafficking. Finally, the project team also takes civil measures, such as purchasing real estate to prevent it from falling into the hands of criminal organisations.

The project in Amsterdam is an example of a multi-agency approach in which several agencies cooperate by sharing information and integral enforcement. Although an evaluation is still in progress, the project in Amsterdam is considered a success by those involved. It has created awareness of the threats of organised crime within the civil service, the city and neighbourhood councils, and it has produced results in preventing organised crime infiltrating certain businesses.

3.1.7. The BIBOB Act

Following the example of Italy and New York, the Netherlands has also developed an administrative approach to organised crime. A draft bill was passed by Parliament and implemented mid-2003. The new BIBOB Act (*Bevordering Integriteitsbeoordelingen door het Openbaar Bestuur – Ensuring Integrity of Decisions by the Public Administration*) creates a legal basis to refuse or withdraw permits, licences, grants and subsidies when there is a serious threat of abuse by criminals.²⁰

²⁰ The scope of the BIBOB screening system is limited to certain branches of industry which are considered to be vulnerable to organised crime: hotels and restaurants, the sex industry, the construction industry, waste processing, public housing and transport.

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It must be noted that the original purpose of the law was to prevent organised crime from infiltrating legitimate sectors, but the text of the law leaves room for broader measures. The act aims to avert the danger of subsidies or licences being used to spend the proceeds of crime, or that subsidies or licences are used to commit a punishable offence (for example, a transport company is established with the purpose of moving drugs). Permits and subsidies will be refused if punishable offences (such as corruption) are committed during the application procedure. All decisions must be based on a screening process and risk assessment of the integrity of the applicant, which is not conducted by the governmental body itself, but by a special agency, the BIBOB Bureau, which is located at the Department of Justice in The Hague. This body also screens participants in public tender procedures for the application of the grounds for exclusion in European Union Directives.

The purpose of this bureau is to support local public authorities, such as city administrations, municipalities and provinces, in enforcing the law. The bureau has the authority to consult criminal and tax records as well as police intelligence on organised crime. On the basis of the administrative and financial information, the bureau provides the requesting authority with written advice, in which it indicates the seriousness of the threat of abuse. The requesting authority remains responsible and may disregard the advice of the BIBOB. When an application is denied, the public authority itself must explain its reasons for doing so to the applicant.

The BIBOB Act has been widely discussed in the Netherlands, both inside and outside of Parliament. Attention was drawn to the discriminatory nature of the act and the stigmatising effects of singling out specific branches for screening. The issue of false positives and negatives was also raised. Dubious applicants would be able to learn from earlier negative experiences and use 'straw men' or complex legal entities to assume an appearance of honesty.

Conversely, applicants with prior convictions, but with honourable intentions, would run the risk of being unfairly excluded. The government countered the criticism by pointing out that the BIBOB Bureau would have access to a wide range of databases, thus ensuring effective and well-founded advice.²¹

Six months after the BIBOB Act came into force, it is too early to judge its effectiveness. The governmental bodies involved seem reticent, and the number of requests for advice is still low.²² The main objection that can be raised to the BIBOB Act is that it is not precisely tailored to organised crime in the Netherlands. While the New York mob tried to acquire positions of power in legal markets, the core business of criminal organisations in the Netherlands lies within illegal markets.

²¹ For an overview of the debate, see Heddeghem (2002).

²² In a discussion with the author in December 2003 a BIBOB officer said that since the Act came into force, only three requests for advice had been submitted.

This type of crime – mostly transit crime – tends to move about. The perpetrators are not interested in establishing themselves in the legal world to dominate a legal market. Of course, organised crime in the Netherlands will indeed acquire property and buy itself into companies, if only to invest the proceeds of crime. In this sense, the BIBOB approach could have some value, but given the nature of criminal organisations in the Netherlands, we should not expect too much of the BIBOB Act as an instrument to contain organised crime.

3.2. Repression

In addition to the attention given to preventive measures, the police and the justice system have obviously devoted much of their attention to repression, i.e. criminal investigations with a view to prosecute organised criminals and see them sentenced. During the 1990s, there were two important developments in the repressive approach. First, an attempt was made to better tackle the problem through a financial approach. The second track was aimed at expanding and regulating special methods of investigation.

3.2.1. The Financial Approach

Until well into the 1980s, the existing legal possibilities to seize the proceeds of crime were rarely used. The authorities were focused on convicting the perpetrators and seemed blind to the financial aspects of criminal cases. All this changed in the mid-1980s. The argument for criminal prosecution ‘with an eye on the money’ was increasingly voiced (Keyser-Ringnalda, 1994: 128). At the time, this heightened awareness among police officers and public prosecutors was certainly not unique to the Netherlands. There was a growing interest around the world in retrieving and seizing the proceeds of crime, especially when they were linked to drug trafficking. The Treaty of Vienna (1988), drawn up under the auspices of the United Nations, stipulated that international cooperation should be improved, in order to advance the confiscation of the proceeds of drug crimes (Keyser-Ringnalda, 1994: 167-8).

In the Netherlands, the forfeiture of the direct proceeds of criminal offences and working capital used for the committing of crimes was already a legal option. There was also a sanction in Dutch law aimed at the confiscation of the proceeds of crime. In 1993, this sanction was enlarged to include new applications. Before this change was effected, proceeds of crime could only be confiscated if a direct link was proven between the proceeds and the offence for which the defendant was convicted. Since 1993, proceeds can be confiscated from offences *similar* to the offence for which the defendant is convicted or other serious offences. It is however required that there are sufficient indications that the convicted person has indeed committed these crimes. The burden of proof is even lower if a convicted person

has considerable assets but no regular income: if he cannot make a reasonable case for the legitimate origin of his capital, it can be confiscated.

The 1993 Act also enlarged the possibilities for tracing the profits of crime. In cases of serious offences, a special financial investigation can be launched. Police and judicial authorities now have special powers to investigate the financial aspects of crime. Police officers can coerce people with financial relations to the person under investigation to give information about his financial affairs. Within the framework of a financial investigation, regular powers of investigation, such as a house search and the seizure of goods, can also be brought into action. The financial investigation can even continue after the conviction of the person under investigation, but it must be completed within two years of him or her being found guilty. The new Act was severely criticised for all these far-reaching elements, but the Minister of Justice succeeded in gaining a parliamentary majority. As mentioned earlier, this was not the time to raise critical questions as far as dealing with organised crime was concerned. Besides, the Minister played his trump card: he suggested that the benefits of broadening the law (which would entail investing in the police force and the justice system) would soon outweigh the costs, since the confiscated funds would flood back into the treasury.²³

Two evaluation studies (1998 and 2002) have assessed the effectiveness of the proceeds-of-crime approach in the 1990s (Nelen and Sabee, 1998; Faber and Van Nunen, 2002). Both indicated that the 1993 Act has not delivered on its promises, at least not yet. Between 1996 and 2001, public prosecutors have tried to use the Act to confiscate proceeds of crime in approximately 9,000 cases, according to a detailed study by Faber and Van Nunen (2004). Forty per cent of these cases were drug-related, and 30 per cent concerned theft. In the majority of these cases the amounts of money involved were relatively low. In 84 per cent of the cases the estimated amount of illegally obtained income did not exceed € 45,000. Only in 2 per cent of the cases the estimated level of criminal profits exceeded € 450,000 (Faber et al., 2002: 461-72). A large number of cases were settled out of court or are still waiting for a final ruling. Judges ruled on approximately 5,500 cases between 1995 and 2000. The sum total of the monies that were actually deprived during the period 1995-2001 amounted to no more than € 27 million. Another striking result is the huge gap between the values of the deprivation orders passed by the courts (€ 129 million) and the execution of these deprivation orders (€ 9 million) (Faber et al., 2002).

It appears from both evaluation studies that the application of the new legal possibilities has been frustrated by a severe lack of knowledge within the police and the public prosecution department about financial matters, civil law, banking regulations, and other relevant non-penal laws and practices (Nelen, 2000). But there is a normative as well as a cognitive aspect to the problem: judges still seem

²³ For a detailed analysis of the debate, see Nelen (2000: 51-5).

rather ambivalent towards the legislation as a whole, mostly because of certain unclear provisions and the far-reaching elements of the law.²⁴ The majority of police officers, in their turn, do not regard the deprivation of assets as an important and rewarding element of their job. The proceeds-of-crime approach is primarily regarded as an activity that is complex, not very exciting and, above all, generates poor results. The concept of financial policing is not in line with their perceptions of what real policing should be about. The confiscation of illegally obtained assets is still considered a fairly low priority among the list of daily tasks (Nelen and Sabee, 1998; Faber and Van Nunen, 2002).

The question arises as to whether the broadening of the legislation in 1993 was really necessary. A remarkable finding in the study by Nelen and Sabee (1998) tells us that between 1993 and 1998 the police officers and judicial authorities, who had claimed these new statutory powers, relied almost entirely on the 'old' legal instruments in deprivation procedures. The proceeds-of-crime approach aimed at demonstrating the power of the judicial authorities in their struggle against organised crime. The results of the evaluation studies show quite the opposite: instead of its strength, the proceeds-of-crime-approach has revealed the weakness of the state in its efforts to counteract organised crime (Nelen, 2003: 127-36). These results are not unique to the Netherlands. Studies from abroad also underline the difficulties in actually depriving criminals of their assets.²⁵

3.2.2. The Special Powers of Investigation Act (BOB Act 2000)

In the 1990s, especially after the IRT scandal, in-depth discussions were held in the Netherlands on the acceptability and the standardisation of special methods of investigation in the fight against organised crime. As a result of the analysis made by the Van Traa parliamentary inquiry commission a bill was drafted, which became the Special Powers of Investigation Act (BOB Act – *Wet Bijzondere Opsporingsbevoegdheden*), with the purpose of regulating special investigative methods and improving the administration of police investigations.²⁶

²⁴ Nelen and Sabee (1998). The judges criticised in particular the vague definition of 'proceeds of crime'.

²⁵ For an overview of the situation in the United Kingdom, see Levi et al. (1995); for the German experience, see Gradowski and Siegler (1997).

²⁶ The Supreme Court of the Netherlands was another stimulating factor. Two months before the publication of the final report of the Van Traa commission in 1996, the Supreme Court ruled that unlawful actions during a criminal investigation could lead to the inadmissibility of a case (HR 19-12-1995, NJ 1996, 249). While the Van Traa commission focused on the integrity of the police force and the public prosecutors, the judges emphasised the importance of the legal standardisation of methods of investigation, with a view to protecting the basic civil rights of citizens.

Responding to the situation in the early 1990s, when investigative methods without a statutory basis were developed on the shop floor, the new Act is based on the premise that particularly those methods of investigation that could seriously affect the integrity of the investigation or the ability to monitor it, or could infringe on civil rights, should have a statutory basis. This is why the new Act does not contain a systematic description of all methods, but focuses instead on a number of 'special' investigative methods. A recurring theme is the need to monitor the decision-making process to apply a certain method, as well as the actual implementation. The Act confirms that the public prosecutor is the appropriate official in leading police investigations and that special powers of investigation can only be used after the public prosecutor has issued a warrant. The judicial authorities must be open with the person under investigation. This means that the public prosecutor must inform the person who is the subject of the special investigation as soon as the interests of the investigation allow for it, as a safeguard against the secret use of special investigative methods, particularly if the investigation preliminary to prosecution does not lead to a criminal trial. The Act greatly values accountability to both the judiciary and the defence regarding the use of special investigative methods. This is why the Act requires proper recording of all the steps that were taken when special methods were used during the investigation.

The Act provides for three undercover powers: covert investigation (infiltration), pseudo-purchase/services, and systematically obtaining intelligence about suspects through undercover investigation. Infiltration is defined as participating with a group of people believed to have committed crimes or to be planning crimes. Contrary to existing practices, the Act states that civilians can only act as infiltrators under exceptional circumstances.²⁷ As a result of the experiences with criminal police informers that were at the heart of the IRT scandal, it is expressly stated that criminals may not be deployed as civilian infiltrators. The Act assigns a special status to pseudo-purchase/services, because this method can also be used without it being part of an infiltration. The Act confirms existing case law and directives by the Public Prosecutor's Office in stating that pseudo-purchase/services is only permitted if the person under investigation is not entrapped by the investigative method; his 'original' intent must be on the transaction. Systematically gathering intelligence entails undercover activities such as frequenting the suspect's haunts, without it being apparent that the investigator is a police officer. This special investigative power is bound by fewer conditions than infiltration, because the

²⁷ For example, if the public prosecutor finds that infiltration (covert investigation) by a police officer is impossible, he can deploy a civilian infiltrator. A written agreement must be drafted containing the reward and possible indemnification. The same applies to the involvement of civilians in pseudo-purchase/services.

investigating officer is not committing punishable acts, and is not exposed to as much risk as an infiltrator.

The new Act has also defined powers that were not exercised in practice before. A striking example is the recording of conversations behind closed doors. Recording confidential communications in a private residence is now permitted under strict conditions.²⁸ Another major diversion from existing practices is that the Act prohibits harmful or dangerous substances or goods from entering the market. If an investigative officer is aware of the location of prohibited objects through using one of the special investigative powers, he or she is obliged to seize these objects. In other words, the Act puts a stop to the police strategy of controlled delivery. However, it allows for an exception: the public prosecutor can decide not to seize the objects if a serious investigative interest is at stake.²⁹

In 2002, the WODC evaluated the first experiences of police officers and justice authorities (Bokhorst et al., 2002). Their exploratory research was based on a total of 45 interviews, mainly with police officers and public prosecutors.³⁰ The research showed that the new Act has been well received by practitioners. The interviewees were generally positive about the clarity that the Act provides on the limits and possibilities of the application of special investigative powers, but they tended to comment on the proscription of controlled delivery. They criticised the fact that they were sometimes confronted with the obligation to seize small amounts of drugs, while they would have liked to let them slip by in order to get a clearer picture of the parties involved in the deal. The seizure of a shipment of any size tells the criminals involved that the police is on their trail. The respondents admitted to devising ways of avoiding these situations during the course of their work.³¹

The 2000 BOB Act has already been amended in one respect. Within the framework of the fight against terrorism the explicit ban on the deployment of criminal civilian infiltrators was toned down. In March 2003, the Minister of Justice decided that the deployment of criminals as infiltrators should be possible 'under very exceptional circumstances'. These circumstances could occur, he added, during investigations relating to terrorism (Tweede Kamer, 2002-2003).

²⁸ It is permitted if it is urgently required for the investigation, if the offence carries a term of imprisonment of eight years or more, and the examining magistrate has given explicit authority.

²⁹ This is governed by a stringent approval procedure; the board of procurators general must agree on a decision not to seize the objects. This decision must be presented in advance to the Minister of Justice.

³⁰ Some interviews were conducted with judges and lawyers.

³¹ Allegedly, the police listen in on the suspect's telephone conversations in a 'selective' manner, purposely 'remaining in the dark' about the transport of banned objects or substances. In this way, they can avoid the obligation to intervene.

3.2.3. The Effectiveness of the Different Methods of Investigation

With all the emphasis on special methods of investigation, one would almost forget that ‘ordinary’ methods are still being used, such as interrogating suspects and witnesses, conducting house searches, observing and tailing persons under investigation in the streets or in public spaces, and monitoring telephone conversations. How do the police manage to solve organised crime cases and which methods contribute most to their success?

The Dutch Organised Crime Monitor³² looked at 40 criminal investigations into organised crime in order to determine which methods contributed most to putting a case together.³³ It turned out that wire-tapping (whether or not in combination with other methods) delivered the best results. In a large number of cases significant evidence was obtained through observation.³⁴ Statements from suspects and witnesses made during interrogation provide the third largest contribution to the evidence (Kleemans et al., 2002: 88-92). These three methods of investigation have been in use in the Netherlands for a long time, and in this sense they could be termed ‘traditional’. In other words, it was neither financial detective work, nor the application of the special methods in use at the time (controlled delivery and infiltration, including pseudo-purchase), that brought results, but ‘traditional’ ways of collecting evidence.

Insofar as the researchers were able to determine, the method of infiltration was used in 3 out of the 40 cases, but in none of the cases did these actions contribute to the successful conclusion of the investigation. The method of long-term infiltration is not used in the Netherlands – undercover operations are usually short and relatively superficial. In 1999, a unique empirical research study was published on the effectiveness of all infiltration operations conducted in the Netherlands during 1996 (involving 12 criminal investigations). On the basis of interviews with police officers, public prosecutors and examining judges, and after studying the relevant police files, the researchers concluded that in only five investigations the infiltration operations contributed (partially or fully) to realising the initial goals of the operation (Kruissink et al., 1999).

In conclusion, it has to be said that despite high hopes, the financial approach to organised crime never really got off the ground. Broadening the legal framework

³² For more on this, see Kleemans’s contribution in Part II. The Organised Crime Monitor is a continuing research project using police files on major criminal investigations to describe and analyse organised crime. The project started in 1996 and is still running. Up to December 2003, a total of 83 cases have been studied.

³³ The police investigation in these cases was closed in 1998 or in 1999.

³⁴ Observation can be ‘static’ (e.g. installing cameras trained at a warehouse or a place of residence), or ‘dynamic’ (e.g. placing a bug in order to trace a suspect’s car).

for confiscation did not lead to any major claims against criminal organisations, with the exception of only a handful of cases. In practice, the application of the law resulted in small amounts of money recovered and in relatively insignificant cases, which were not related to organised crime.

The second track, the specification and the regulation of special investigative methods, has more importance for the fight against organised crime. It remains to be seen how effective the BOB Act will actually be, but it is a considerable improvement over the murky situation that existed before the IRT scandal. Despite all the discussions in the Netherlands about these matters, the investigating, prosecuting and trying of criminals did not suddenly come to a halt in the 1990s. It turned out that ordinary and 'traditional' methods of investigation, such as wire-taps, observation and interrogating suspects and witnesses, also yield a return when applied to the fight against organised crime.

4. Law Enforcement Agencies

Dutch citizens have an ambivalent attitude towards powerful state agencies, such as the army and the police. Their existence is recognised as a necessary evil. The Netherlands is a constitutional democracy with a fundamental distinction between Parliament and government (legislature), administration (executive) and jurisdiction (the independent judiciary). In this system the police is one of the agencies of the administration, bound by the law and controlled by the judiciary. But even inside the administration, control is institutionalised by the division of authority. Dutch police are hierarchically controlled both on the national and the local level by a dual authority: the public administrator³⁵ and the public prosecutor.³⁶ The public administrator is responsible for the management of the police and the execution of non-criminal police duties such as patrolling, while the public prosecutor is responsible for police investigations. In this way, the police are prevented from gaining too powerful a stronghold in society

In addition to this dual authority, there was always another means to control police power and that was decentralisation. Less than 15 years ago, the Dutch police consisted of approximately 150 local forces, but this fragmentation was gradually reduced and there are now 25 regional forces in the Netherlands. Against this historical background, the call for inter-regional cooperation in the fight against organised crime that was heard in the late 1980s was somewhat unusual.

³⁵ At the national level, public administration exercises authority through the Minister of the Interior, at the local level through the mayor.

³⁶ At the national level by the Minister of Justice and the national leadership of the Public Prosecutor's Office, at the local level by the local public prosecutor.

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As described earlier, the largest inter-regional collaboration (between the forces of Amsterdam, Haarlem/Schiphol and Utrecht) came to a tumultuous end in 1993, but cooperation between the police forces did not die with it. On the contrary, away from the public clamour about the IRT scandal, all over the country collaborations or 'core teams' were formed that are still operational today. More than that, in the summer of 2003 these core teams (organised crime squads) were extracted from the regional forces and made into an independent National Criminal Investigation Service (Nationale Recherche). By Dutch standards this is an unusual situation and it deserves somewhat greater attention.

It should be noted that the repression of organised crime is not just a job for the 'ordinary' police force. In the Netherlands, certain police tasks (such as detective work) are also carried out by agencies other than the police. These 'special' police organisations are charged with detecting specific types of crime such as tax fraud, economic crime and environmental crime. Because organised crime involved in the production of illegal drugs or human smuggling is usually also in breach of these specific laws, the specialised agencies participate in large-scale police investigations into organised crime. The role of the Royal Marechaussee and Customs should be mentioned in this context, since both are involved in border control (persons and goods) and investigations. A public prosecutor is always in charge of an investigation, but different ministers are responsible for the management and deployment of personnel of these agencies. The Minister of Finance, for instance, manages the Tax and Customs Services, while the Minister of Defence is responsible for the management of the Royal Marechaussee. In the past few years, cooperation between ordinary and special police branches has intensified (Fijnaut and Van de Bunt, 2000: 7-40). In investigations into certain forms of organised crime there is intensive cooperation between the ordinary police forces and other agencies, for instance in the approach to the production and export of ecstasy. The Synthetic Drugs Unit (which is one of the core teams) is a 'multidisciplinary' team. The Economic Inspection Service, to give another example, is responsible for tackling precursors. Customs and the Royal Marechaussee control the border traffic (outgoing parcel post, baggage scanners, and so on). The National Traffic Inspectorate analyses and controls the transport sector, including ecstasy couriers. And of course the regular police will carry out police investigations (Ministerie van Justitie et al., 2001). In concrete police investigations the members of all the agencies involved are supposed to work together.

4.1. From Core Teams to a National Criminal Investigation Service

Between 1993 and 1995, six core teams (former IRTs) were set up with the purpose of combating supra-regional organised crime. They were composed of 55-100 officers serving on the different regional forces. Each core team had its own area for special attention, such as a geographical region (South America, eastern Europe), infrastructure (Schiphol Airport, the port of Rotterdam), or type of organised crime

(human smuggling, heroin, synthetic drugs). Furthermore, in 1995 a so-called 'nationwide investigation team' was established to carry out investigations of national importance and, in particular, to respond to international requests for support in criminal investigations. From 1995 until the present, a total of some 800 police officers have participated in the core teams on a yearly basis, which is about 2 per cent of the total Dutch police force. In addition, separate departments to combat organised crime were created within the larger regional forces. A conservative estimate puts the total number of police officers responsible for the investigation of organised crime at 1,000. Despite the wide range of areas for special attention, a great deal of time and resources are spent on one type of organised crime, i.e. the drugs trade. An inventory of ongoing investigations into organised crime revealed that in 2001 the majority of police investigations were focused on the production, trade and/or transport of drugs.³⁷

An evaluation study concluded that the core teams performed reasonably well (Klerks et al., 2002). The added value of the core teams depended not so much on a surplus of expertise, but on cohesion and continuity. Because a core team was able to devote years of investigation into, for instance, Turkish heroin cases, knowledge based on experience increased significantly, according to the researchers (Klerks et al., 2002: 86). The evaluation study was particularly critical of the way the core teams were managed, especially of the decision-making structure that assigned cases to the teams. Sometimes it took a year or more before a core team received permission to start an investigation into a certain criminal group. The researchers concluded that too many judicial and administrative authorities were allowed to have their say in the decision-making process (Klerks et al., 2002: 73-4).

In 2002, the newly formed Cabinet decided to place the assignment of cases in the hands of a central body consisting of a number of public prosecutors and public administrators, chaired by an attorney general of the Public Prosecutor's Office (Minister van Binnenlandse Zaken et al., 2002). A strong argument for this centralised arrangement was that the position of the national public prosecutor would be reinforced and that priorities in tackling organised crime could be established on the basis of a nationwide understanding of the problems involved. Another important consideration was that a national body could serve as a focal point for communicating with foreign police forces, establishing a national investigation service would improve international police cooperation, the government stated (Minister van Binnenlandse Zaken et al., 2002: 8). The different core teams would remain housed at a number of police forces all over the country, but in a formal

³⁷ In 2001, 146 investigations into organised crime in the Netherlands were listed and 90 of them (62 per cent) were related to drugs crimes. In 2000 slightly more than half of the investigations (53 per cent) were drug related. See *Nationale Drugmonitor* (2002).

sense a new National Criminal Investigation Service would come into existence, in which a total of 900 police officers would participate (Minister van Justitie et al., 2002). In mid-2003 this service became a reality. It is interesting to note that there was another argument put forward for a National Criminal Investigation Service, which may shed light on what is perhaps the hidden agenda. A preliminary study on this unit stated in so many words that the citizens feel unprotected by the police and that a loss of legitimacy could be imminent. The regional forces 'should give the highest priority to combating violent criminality and harassment in the public space'. The formation of a National Criminal Investigation Service was then justified with the argument that the regional police forces would be better able to focus on preventing the loss of legitimacy in the eyes of the citizens.³⁸

When the unit was formally launched, ministers explicitly stated that the National Criminal Investigation Service is aimed at the investigation of organised crime (Ministerie van Justitie et al., 2002). International fraud or corporate crime are not within its scope of interest. A document that was recently published by the National Criminal Investigation Service elaborates on the interpretation of its task. It seems to copy its areas of special interest from the former core teams, but in some respects the document is innovative. It emphasises a crime-prevention approach to organised crime; its central point is that the investigative strategy should not focus on seizing the drugs or arresting the perpetrators, but on tackling the facilitating circumstances. Referring to the results of a recent report by the Organised Crime Monitor the document states:

The fact that organised crime in the Netherlands is to a large extent transit crime, (implies that) the National Criminal Investigation Service will have to focus a lot of its attention on the intersections of the physical infrastructure; harbours, airports, roads, waterways. It is in these areas that the Service must gather intelligence (Korps Landelijk Politiediensten, 2003: 50).

The document also argues strongly in favour of police intervention in the logistics of organised crime. To this end 'knowledge [must be] acquired about local patterns of meeting places, storage facilities, monetary transactions and other logistic facilities'. The Service should also 'try to learn more about the contacts and connections between local (often ethnic) communities and source countries for contraband' (Korps Landelijk Politiediensten, 2003: 51). Time will tell to what extent these ambitions can be realised; as it stands, the thinking on the implementation of these intentions is still developing.

³⁸ Working paper, *Misdaad laat zich tegenhouden*. Amsterdam, 2001, 11 (unpublished).

4.2. Centralising the Public Prosecutor's Office

In the last few decades, the Public Prosecutor's Office has been at the centre of the debate on the administration of criminal justice. In light of the delicate relations between politics and the judiciary, the Public Prosecutor's Office is in a precarious position. In a formal sense, it is, on the one hand, part of the independent judiciary, and, on the other hand, an administrative service within the area of responsibility of the Minister of Justice. The increased political interest in the administration of criminal justice in the Netherlands has had a direct impact on the position of the Public Prosecutor's Office. At the risk of simplifying matters, it seems clear that, partly as a result of a change in the law, the Public Prosecutor's Office is now more a part of the Department of Justice than before, and the Minister of Justice exercises more control over the actions of the public prosecutors through a strengthened central leadership. The IRT scandal and the ensuing legislation accelerated this development to a considerable extent; after all, the BOB Act requires the approval of the central leadership of the Public Prosecutor's Office (the council of Attorney Generals) and the approval of the Minister of Justice for the use of special powers (such as the deployment of civilian infiltrators, criminal infiltrators, and controlled deliveries). This structure of responsibility calls for a different type of organisation. Instead of the Public Prosecutor's Office of the recent past, with its decentralised organisation, which left more than a little discretionary room to individual public prosecutors, there is now an organisation in place where decisions are guided by directives and consultations within a hierarchical structure.

The Public Prosecutor's Office finds itself, of course, in another intermediate position: the one between investigation and trial. Public prosecutors direct the investigation and they are the only ones to decide whether or not a case comes before a judge. Until not too long ago, the general requirement that a public prosecutor direct the investigation, was almost a dead letter. In practice, the police were given a fairly free reign to conduct criminal investigations, unless there was a need for the public prosecutor or the examining judge regarding the use of methods of coercion, such as a wire-tap or a search of someone's premises. As a result of this attitude of aloofness, all sorts of investigative methods were thought out on the shop floor which would eventually lead to the IRT scandal in the 1990s. Since then, the position of the public prosecutor during the investigation has changed dramatically. The Special Powers of Investigation Act assumes his or her direct involvement in criminal investigations, whereas the role of the examining judge has been reduced. The first evaluation studies indicate that public prosecutors are indeed taking more control of investigations, although the police officers who were interviewed criticised the divergence in approach and in the interpretation of the task as used by individual public prosecutors (Bokhorst et al., 2002: 94-101). As with the National Criminal Investigation Service, the increasing need for international cooperation led to the creation of a focal point

within the organisation and, in addition to the 19 local offices, a separate Public Prosecutor's Office was created in 1996. It is in charge of enhancing international judicial and police cooperation and is responsible for managing investigations of national or international importance. Nowadays, the Public Prosecutor's Office is also responsible for the National Criminal Investigation Service.

5. Conclusions

During the 1990s, organised crime was a major issue in the Netherlands. It has left its mark on the legislation and on the organisation of the administration of criminal justice. The IRT scandal heavily influenced this process. The changes that were made have led to a situation where the police and the justice system are better prepared to combat organised crime. The crime fighters now have a better understanding of the legal opportunities and boundaries of the different methods of investigation. The organisation of the police and the Public Prosecutor's Office is more tailored to the demands of the fight against international crime. Centralisation, a hierarchical structure and pooling of knowledge and information are some of the catchwords that characterise these changes.

Attempts were also made to confront organised crime with financial repercussions. In the 1990s, this approach, aimed at taking away the proceeds of crime, rarely produced the desired results. The application of this method was frustrated by a lack of expertise and motivation among the officers responsible. The recently established National Criminal Investigation Service has devised a new strategy, designed to disrupt criminal groups' logistic operations. The benefits of this strategy are still obscure. For the time being, there is the hard fact that many cases are solved using 'traditional' police methods, such as observation, interrogation and wire-tapping. The effects of the recent Special Powers of Investigation Act on criminal investigations are also not yet clear.

In addition to the criminal approach, a course of action based on prevention was developed from the early 1990s onwards. The administrative approach of the BIBOB Act and the MOT Act are the main examples of this trend. The preventive approach has clearly taken root in the Netherlands, but the problem of measuring its effects remains an issue. Under the MOT Act, many unusual transactions are being reported by financial institutions, but it is unclear whether or not the MOT regime has managed to stop criminals from laundering the proceeds of their crimes. In a more general sense, it can be said that it is difficult to gauge the effects of preventive measures. The question for the near future will be how long the services involved are willing to incur visible costs for invisible results.

While all sorts of measures were taken to tackle organised crime and while the police and the Public Prosecutor's Office were reorganised to deal with this type of criminality, the public's interest in organised crime waned considerably. These

days, the minds of the Dutch citizens are occupied by feelings of insecurity in their own neighbourhood, by loitering youngsters and by various kinds of antisocial behaviour. Organised crime remains an important issue nonetheless. The attention given to incidents such as the killing of a well-known criminal or the publication of a research report on organised crime demonstrates that the theme of organised crime still generates a great deal of interest and concern.³⁹

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³⁹ As a result of the report written by Kleemans et al. (2002) – at the request of the Minister of Justice – no less than 66 questions were put to the Minister by members of Parliament (Tweede Kamer, 2002-2003).

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Organised Crime Policies in Germany

Michael Kilchling

1. Introduction: Organised Crime Policies – A Mirror of the Public, Political and Academic Discussion of the 1990s

During the 1990s, organised crime and the ways to react to this empirically rather unknown phenomenon (Albrecht, 1998) was the subject of highly controversial debates in Germany. Sometimes strong disputes between pro and contra organised-crime ideologies could be witnessed which, in retrospect, appear to some degree irrational. Just one highlight in this context shall be mentioned here: the profound disagreement on how to write the term organised crime in a politically correct manner – an issue that was cultivated in politics as well as in academic circles. On the one side there were the proponents of capital letters – *Organisierte Kriminalität* – who accused those who wrote the adjective ‘organised’ in accordance with the rules of German grammar with a small initial letter of underestimating or even trivialising the threat of organised crime. The ‘small writers’ on the other hand saw the capitalisation as a symbol of the exaggeration or even creation of a (virtual) danger that in reality does not exist.¹ It is certainly true that for both sides, the writing style was used as a political symbol. Even today no uniform style of writing has been established. From a present point of view, however, such an ideological involvement which is without precedence within the usually quite austere disciplines of criminal law and criminal procedure appears rather strange. Nowadays most authors choose their own style presumably without reflecting any longer on the possible political message of a capital or a small letter.²

¹ Compare also Kerner (1995: 40) who explains his choice for capital letters with reference to the additional grammar rule that allows capitalisation as an exception in the case of technical terms.

² Interestingly, no-one in Germany has so far come up with the idea to write about terrorist crimes with a capital ‘T’ – although the challenges for security caused by the new international terrorism can be deemed to be even bigger than those of organised crime. Quite obviously, the climate in the debate of criminal policy has become much less ideological. Of course it might also be that terrorism is such a visible and undeniable phenomenon in the post 9/11 era that it need not be visually upgraded.

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This is, of course, not more than a marginal episode. But I think it provides a rather realistic feeling of the atmosphere in which the criminal political discussion on organised crime grew in the late 1980s before it came to its peak during the 1990s. A further characteristic of the criminal policy debate of those days was that the different groups were composed rather heterogeneously, in particular not along the usual lines of the traditional (political) camps. The most essential critique of the new organised crime legislation was expressed not only from the liberal side, which feared a loss of civil rights and liberties,³ but also by representatives of a more traditional perspective, who wanted to defend the classical principles of criminal doctrine against an ‘Americanisation of justice’ (Arzt, 1996) – a label that was referred to in particular with regard to the introduction of money laundering control.⁴ At the same time, some of the most radical legislative proposals in areas such as asset confiscation were originally launched by the parliamentary left;⁵ and it was the federal Minister of the Interior who declared, not long ago, that inner security – which had been a traditional domain of the conservatives for decades – is a genuine left-wing issue.⁶

In retrospect, the 1990s were in fact the decade that brought the most frequent and far-reaching activities in organised crime policies. Whilst the problem of sex crime, which received enormous mass media coverage, seemed to alarm the general public more than did organised crime, which to a large extent is perceived as crime without individual and direct victims (Albrecht, 1998), organised crime was the dominating issue in criminal policy. Sexual delinquency, however, is a conventional type of crime that is subject to exclusive national regulation, whereas organised crime legislation is more and more dominated by European and international policies which clearly set the standards. In this area, national legislatures are being forced to amend their national law more or less permanently, in particular through binding European Union legislation (Krehl, 2003: par. 22).⁷ Therefore, the predominance of organised crime on the political agenda of those days – a fact that also usually affects, at least indirectly, academic discussion – was also a result of international influence.

³ Compare, e.g., Hassemer (1990, 1995); Krehl (2003: par. 22) is afraid that even the rule of law might be abandoned or at least undermined by the Europeanisation of criminal law; Albrecht (2004: 3) diagnoses its heavy erosion caused by the executivist character of European criminal law.

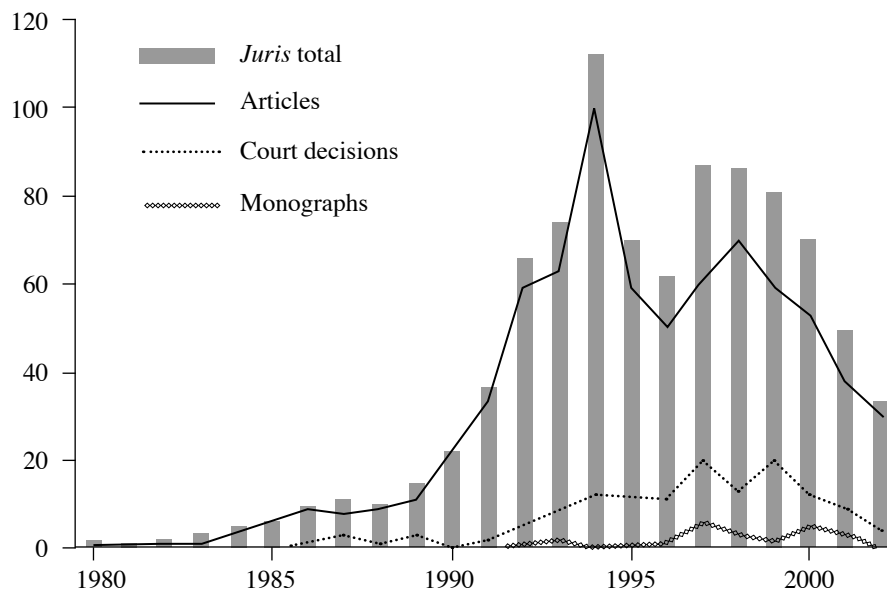
⁴ For more details on this point, compare Scherp (1998) and Kilchling (2000).

⁵ See below, 2.2.

⁶ Statement of minister Otto Schily at a convention of his Social Democratic Party held in spring 2003.

⁷ In light of this development, Schünemann (2003) considers the national legislature now to be nothing more than a ‘lackey of Brussels’.

Figure 1. Bibliographic relevance of 'organised crime' in Germany



The history of organised crime policy is well mirrored by the rise and decline in the frequency of relevant articles and court decisions published in the country. In the preparation phase of this book, a systematic search was conducted in three of the most relevant bibliographic database systems for legal and criminological texts in Germany.⁸ Figure 1 shows the bibliographic relevance of 'organised crime' as provided by the JURIS system.⁹ In the other two systems,¹⁰ the number of hits

⁸ The search strings used were: 'organisiert', 'organisierte Kriminalität', 'Organisierte Kriminalität', 'OK', 'Mafia'.

⁹ JURIS is the most important system in the legal sector, covering more than 600 legal periodicals and all relevant case law. It is the only resource that systematically differentiates monographs, articles and court decisions.

¹⁰ KrimDok, i.e. the criminological database provided by the Institute of Criminology of the University of Tübingen, and SWBV, the joint information system of all universities and research institutions in south-west Germany, including the library of the Max Planck Institute.

was much lower. Nevertheless, on the time axis, all results have shown similar patterns, in particular the peak of 1994 and the significant decline since 1998. For the peak year 1994, JURIS brought a total of 112 hits, of these 100 were relevant articles. In light of this picture it is certainly appropriate to speak of the 1990s as the decade of organised crime.

2. Developments in Organised Crime Legislation

Not surprisingly, all governments – be it before 1998 when the present red/green coalition replaced the former conservative/liberal one, or afterwards – concentrated their political action on legislation. As mentioned already, many of the amendments implemented in Germany originate from international agreements and European legislation (joint actions, framework decisions). But, notwithstanding these international linkages, the new laws still are, of course, part of the national legislation and represent not only the national tradition of law-making but also the legal programme and the political priorities and identities of the different governments. The so-called ‘Al Capone’ approach for example, i.e. the concept of attacking organised criminals by way of taxation, was an idea that was steadily promoted by a group of social democrats throughout the 1990s before it was introduced in the course of the big organised crime package of 1998 which was based on a political compromise between the two political blocks; and in the first legislative period after the government had changed it was significantly tightened up.¹¹

There exists, however, no genuine organised crime law as such, even if the titles of the bills sometimes contain an explicit reference to organised crime. According to the legislative traditions in Germany, these acts have been introduced as so-called ‘article bills’. These are not self-executing, i.e. they are not substantive law in themselves. They are only formal acts of legislation which provide different articles by which new provisions are implemented into already existing laws, in particular into the Criminal Code (*StGB*) and the Code of Criminal Procedure (*StPO*), or already existing provisions are modified or deleted. Only in exceptional cases totally new *material* laws are introduced. In our context, the Money Laundering Control Act has been the most important example.

In this chapter, the most important pieces of organised crime legislation are chronologically reviewed in more detail (see 2.1). In order to portray the political discussion and decision-making processes as comprehensively as possible, some draft bills that were launched without success by the parliamentary opposition or

¹¹ For more details, see below 2.1.

by the federal states are also noted (2.2).¹² This information about which (even more far-reaching) ideas were discussed but *not* introduced in the end can provide additional insights for a comprehensive characterisation and assessment of the existing legislation. A review like this would, however, remain incomplete without also taking into consideration how the new laws are being assessed and interpreted by the judiciary.

2.1. New Legislation Implemented

The present state of organised crime law in Germany is the result of a remarkable number of different amendment bills¹³ that were implemented throughout the past decade.¹⁴ In retrospect, seven legislative steps can be identified as the most important stages on the way to the present situation. Only some of these were exclusively devoted to the regulation of organised crime issues whereas other provisions aimed at combating organised crime were also introduced in the context of bills dealing primarily with totally different legal matters. And sometimes, organised crime legislation passed the Parliament as so-called ‘packages’ of different acts that had been subject of long-lasting negotiations between the different political actors, mainly the Bundestag and the Bundesrat. This type of legislation became necessary when the Constitution had to be amended with the consent of two thirds of the votes in both parliamentary bodies.¹⁵

Step 1

The first important piece of legislation was the Act to Combat Drug Trafficking and Other Forms of Organised Crime (Organised Crime Act) of 1992.¹⁶ The extended

¹² The federal states are also entitled to propose national legislation via their representative body, the Bundesrat; these acts, however, have to pass the federal Parliament (Bundestag), too.

¹³ In the following text, references to ‘*BGBl. I*’ mean the Official Law Gazette, part I, those to ‘*BT-Drucks.*’ the official documents of the Bundestag (*Bundestags-Drucksache*), specified by legislation period and document number, available at <<http://dip.bundestag.de/parfors/parfors.htm>>.

¹⁴ For a more extended general overview, see Gropp et al. (2001), for an English summary Gropp (2001).

¹⁵ The political majorities between Bundestag and Bundesrat regularly differ.

¹⁶ *Gesetz zur Bekämpfung des illegalen Rauschgifthandels und anderer Erscheinungsformen der Organisierten Kriminalität* of 15 July 1992, *BGBl. I*: 1302, see also *BT-Drucks.* 12/989.

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original title of that bill as well as its explanatory clearly indicate that the legislator in those days still focused on drug trafficking which was deemed not only the most significant and the most widespread offence but even the model type of organised crime.¹⁷ As a result of the shift from a drug-trafficking biased to a more generalised approach to organised crime, which could be witnessed in the following years as a clear trend in international policy, drug trafficking is no longer explicitly mentioned in the title of more recent legislation in the field of organised crime.¹⁸

Through the Organised Crime Act, a variety of existing laws were amended. In particular, new substantial and procedural provisions were implemented.¹⁹ The most significant innovation was certainly the introduction of the new offence of money laundering into the Criminal Code.²⁰ As money laundering is considered to be an indicator of organised crime and, at the same time, its Achilles' heel (Hund, 1996: 1), money laundering control is commonly deemed to be the most important element in the fight against organised crime.²¹ Its criminalisation by the 1992 Organised Crime Act can therefore be acknowledged as having been a logical starting point of all subsequent legislation in this field.

However, from the beginning, the contourlessness and the regulatory style of the new statutory provision was subject to serious academic critique.²² Indeed, the new article extends over more than one page and is one of the longest in the Criminal Code. This is, however, not only a product of the general trend according to which modern law-making tends to create longer provisions than in the past. Another reason is that, unlike most other European countries, the German legislature has not adopted the 'all-crime approach'. Instead, the catalogue principle was chosen because criminal prosecution of money laundering should be limited to cases of

¹⁷ Compare, e.g., *BT-Drucks.* 12/989: 23.

¹⁸ The title of the German Act is more or less closely based on the subject of the 1988 Vienna Convention which also had such an implicit focus on drug trafficking. Just a few years later this focus disappeared. In the Financial Action Task Force recommendations of February 1990, as well as in the European Convention of November 1990, already, a more generalised concept of organised crime that was not so centred on drug crime was already recognisable. See also below, footnote 28.

¹⁹ For a more detailed general overview on the new provisions and all relevant parliamentary documents, see Hilger (1992) and Möhrenschrager (1992).

²⁰ Article 261 *StGB*.

²¹ For detailed references, see Kilchling (2000).

²² Compare, e.g., Schittenhelm (1998); Gropp et al. (2001: 91 et seq.); Kilchling (2002a: 21 et seq.).

organised crime.²³ Due to the absence of a general statutory definition of organised crime in German law, any specific regulation aiming at organised crime has to provide a list of offences to which it applies.²⁴ Accordingly, money laundering requires that the suspicious money derives from selected predicate offences which are explicitly enumerated in the statute itself. These are all those crimes which are deemed – for the time being – to be organised crime. This entails, however, that proceeds deriving from any other offence cannot be subject to money laundering from the outset.²⁵ Originally – in its first version as introduced by the Organised Crime Act – only (i) felonies,²⁶ (ii) any kind of drug offence and (iii) all offences committed by a member of a criminal organisation were on the list.²⁷ Once again, the drug crime centred approach to organised crime of that time becomes obvious.

In addition to this amendment, initiated also in order to meet international obligations,²⁸ new instruments for the confiscation of assets actually or presumably deriving from organised criminal conduct were added to the traditional provisions on forfeiture and confiscation in the general part of the Criminal Code²⁹: extended forfeiture and the so-called ‘asset penalty’. The latter instrument was designed to enable the deprivation of convicted perpetrators of their financial funds on a correctional basis.³⁰ Notwithstanding its explicit confiscatory purpose, the asset penalty was, strictly speaking, designed as a – patrimonial – sanction.³¹ Unlike the case of ‘genuine’ confiscation which is always directed against particular and

²³ In order to meet the international obligations, Germany deposited a formal reservation against the ‘all-crime principle’ as contractually laid down in the Council of Europe Convention; for more details, see Kreß (1998: 124).

²⁴ See also below, 3.2.

²⁵ Compare *BT-Drucks.* 12/989: 26.

²⁶ According to German criminal law, a crime is an offence with a statutory minimum penalty of 1 year of imprisonment (Art. 12 *StGB*).

²⁷ Compare *BT-Drucks.* 12/989: 7.

²⁸ These were, in particular, the UN Convention on Combating Illicit Drug Trafficking and Psychotropic Substances of 20 December 1988 (Vienna Convention), the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 January 1990 (European Convention) and the [first] European Union money laundering directive of 10 June 1991.

²⁹ For a more detailed description of the German system of forfeiture and confiscation, see Kilchling (2001); for statistics on the imposition of the different instruments in police and court practice, Kilchling (2002a).

³⁰ *Vermögensstrafe*, Article 43a *StGB*.

³¹ *BT-Drucks.* 12/989: 22.

concretised assets, it was provided that the court could adjudge payment of a sum which, in contrast to the day fine system which has a ceiling set at € 1.8 million, was limited solely by the value of the offender's total assets – be they procured illegally or legally.³² Due to its repressive legal character this highly controversial instrument was out of place within the German system of forfeiture and confiscation from the outset (Kaiser, 1999: 146).³³ So it was not really surprising that this instrument, which had never gained any practical relevance,³⁴ was eventually declared unconstitutional.³⁵

In its decision, the Constitutional Court ruled that a statutory penalty which provides neither general criteria for its determination nor an abstract limit, is a breach of the constitutional principle of clarity and definiteness.³⁶ As the asset penalty was explicitly designed as a flexible instrument that should be concretised solely on the basis of the assets of the individual offender, it totally lacked such general criteria. The Court further held, as the Federal Court of Appeals had before, that a penalty has to reflect the individual guilt of the offender.³⁷ Based on this principle, the Court came to the conclusion that, in contradiction to the explicit intention of the legislative, confiscatory purposes must not play any role in such a context.³⁸ Taking these judicial considerations on the exclusiveness of the two domains seriously, confiscation can never be carried out by correctional means. In review of all the interpreting and transforming efforts conducted by the Federal Court of Appeals and academics in order to find a reasonable way for its application, the

³² Article 40 *StGB* limits both, the number of day fine units that can be imposed (360 at maximum) as well as the daily amount (no more than € 5,000).

³³ See, for critical assessments, e.g., Meyer (1990) and Hassemer (1995).

³⁴ According to the figures published in the *Situation Report Organised Crime*, it was applied only in 42 cases in which assets were provisionally seized; for more details on these statistics, see Kinzig and Luczak (in this volume); the number of definite asset penalties is unknown, estimates suggest that it totals less than a dozen (Gradowski and Ziegler (1997) counted five such convictions between 1992 and 1995; in its situation reports, the Federal Criminal Police Office (*BKA*) reports of six cases from 1994 to 1998). See also Kaiser (2000: 125).

³⁵ Decision of the Federal Constitutional Court (*Bundesverfassungsgericht*) of 20 March 2002, 2002 *NJW*: 1779.

³⁶ Article 103 s. 2 of the Constitution (*Grundgesetz – GG*).

³⁷ Decision of the Federal Court of Appeals (*Bundesgerichtshof – BGH*) of 8 February 1995, 1995 *NJW*: 1367, 1995 *NSiZ*: 333, 1995 *wistra*: 183.

³⁸ See above, footnote 31.

asset penalty can be said to have been a total failure; in literary terms one could also say *much ado about nothing*.³⁹

Extended forfeiture, in contrast, was introduced as an additional confiscatory measure to supplement regular forfeiture. It has been particularly designed for cases in which suspicious assets cannot be assigned to a specific offence from which it might derive. Therefore, the strict accessory offence connection (nexus) was lowered.⁴⁰ Once an offender is being tried, assets deriving from further, *unspecified* illegal conduct that is not subject of the actual criminal trial, can also be confiscated without presenting formal evidence, 'if the assumption is justified by the circumstances' that the assets in question have been acquired through unlawful action.⁴¹ It has to be mentioned, though, that the legislators explicitly rejected introducing a reversal of the burden of proof.⁴² Although the effects are comparable, the different legal function of an accessory offence connection on the one hand and burden of proof on the other should not be mixed up.⁴³

Unlike the regular type of forfeiture which, in principle, is a compulsory – additional – consequence to be ordered if an offender who has taken any financial benefit from his or her offence is being convicted, this new instrument can also be applied in the case of organised crimes only. In this context, however, we find not only an inverse technique of referral as compared to that used in the money laundering statute (instead of providing one comprehensive list as part of the basic regulation itself, an explicit link must be provided in each statutory offence that declares its suitability for extended forfeiture); we also find that the number of such crimes is significantly smaller than that of the 'money laundering offences'. Although all new provisions deal with 'organised crime' in general, the understanding of what such organised crimes in concrete terms should be is rather incoherent.⁴⁴

In addition to some additional minor changes to the provisions on forfeiture and confiscation which are not so much in the focus of interest here, a final innovation has to be mentioned. As a general measure, a general system change from the net to the gross principle was introduced. Offenders should no longer have the possibility to set off their costs against the amount to be confiscated. This change was subject to serious academic critique arguing that any confiscation

³⁹ See, e.g., Hassemer (1995) and Hörnle (1996).

⁴⁰ According to the *Tatkonnex* requirement, it must be proved that an illegal asset derives from a concrete crime that is charged in the complaint.

⁴¹ Article 73d *StGB*.

⁴² *BT-Drucks.* 12/989: 23.

⁴³ For more details, see Kilchling (1997a/b).

⁴⁴ For an analysis of the problems caused by incoherent offence catalogues, see below, 3.5 and 3.6.

exceeding the net profit had the character of an additional punishment.⁴⁵ I do not think that this conclusion is compelling. The rationale behind this approach is to hold perpetrators responsible for illegal proceeds once they have obtained them. Therefore the gross principle is an additional element in a system that generally assigns the liability of consumption, loss or damage of illegally obtained assets to the perpetrator. It finds its final consequence in the legal possibility of confiscation of equivalent values which even allows seizing legal assets if the original (illegal) value cannot be confiscated.⁴⁶ This option, which is also promoted by the European Union, was a traditional element of the German forfeiture system even before the Organised Crime Act.⁴⁷ Quite recently, this whole approach composed of the three elements of extended forfeiture, gross principle and forfeiture of equivalent values successfully passed the examination by the Constitutional Court. In its decision, formally an adjudication upon extended forfeiture only, the Court declared the constitutionality of all three elements.⁴⁸ It explicitly held that neither extended forfeiture nor the gross principle have a punitive character and, therefore, cannot violate the constitutional principle of guilt. In an *obiter dictum* the Court made further considerations on forfeiture of equivalent values. According to the opinion of the Court, the gross approach including the responsibility of perpetrators to return illegally obtained assets by means of legal assets follows the traditional principles of civil *mala fide* liability and is not an issue of criminal responsibility or even guilt at all.

In procedural law, the possibilities for undercover measures such as telephone tapping and other means of technical surveillance were expanded. The applicability of wiretapping goes back to the year 1968, when this measure, based on an amendment to the Constitution, was first introduced.⁴⁹ This prototype regulation (Gropp, 2001: 147) for undercover techniques of investigation was complemented now by implementation of surveillance by technical devices,⁵⁰ computer-based screening⁵¹

⁴⁵ Compare, e.g., Eser (1993).

⁴⁶ Article 73a *StGB*.

⁴⁷ Framework Decision of 26 June 2001 on Money Laundering, the Identification, Tracing, Freezing, Seizing and Confiscation of Instrumentalities and the Proceeds from Crime (2001/500/JHA), 2001 *OJL* 333/1.

⁴⁸ Decision of the Federal Constitutional Court (*Bundesverfassungsgericht*) of 14 January 2004, 2004 *wistra*: 255.

⁴⁹ Article 100a and 100b *StPO*.

⁵⁰ Article 100c *StPO*.

⁵¹ Article 98 *StPO*.

and matching of data⁵² and the deployment of undercover agents.⁵³ Whereas, on the one hand, the applicability of telephone tapping and the deployment of technical devices for electronic surveillance was limited to *concrete* (serious) crimes defined on the basis of another exclusive list of crimes (which, by the way, was never congruent with that provided for money laundering), computer-based matching and screening as well as the deployment of undercover agents, on the other hand, were made applicable more generally on the basis of an *abstract* definition. These measures were allowed *inter alia* in the case of crimes committed by a gang or in an organised manner. This is only the most obvious example of quite a number of further gaps and inconsistencies of all the new provisions introduced in 1992.⁵⁴

Step 2

The introduction of the criminal offence of money laundering into the Criminal Code in 1992 was only the first step on the way to the full adoption of a comprehensive concept of money laundering control. The second, complementary module was realised in October 1993, when the Money Laundering Control Act was enacted.⁵⁵ Unlike most other legislation in the field of organised crime, including the 1992 bill, the Money Laundering Control Act, which followed the standards set on European Union level is a self-executing law that provides binding regulations for banking institutions and other addressees.⁵⁶ In fact, these institutions were made kind of auxiliary sheriffs.⁵⁷ Without recourse to their professional knowledge on the money flows and persons involved in such transactions, the whole approach would be like a shot in the dark. Notwithstanding the fact that the act was introduced in order to generate the factual basis for prosecution, it is not criminal law. Instead, it can be characterised as administrative in the widest sense.

It should also be mentioned that at that time there was still a higher sensitivity towards the desirable reach and limits of money laundering control. Although the taxation approach had reached the political discussion already, the legislators

⁵² Article 98c *StPO*.

⁵³ Article 110a – 110e *StPO*.

⁵⁴ For more critical considerations, see Gropp et al. (2001).

⁵⁵ *Gesetz über das Aufspüren von Gewinnen aus schweren Straftaten – Geldwäschegesetz (GwG)* of 25 October 1993, *BGBI. I*: 1770; see also *BT-Drucks.* 12/2404.

⁵⁶ These were the [first] European Union money laundering directive 91/308/EEC of 10 June 1991, 1991 *OJ L* 166/77, and the Framework Decision of 26 June 2001 (see above, footnote 47).

⁵⁷ Critically towards such recruitment of the private banking sector, Werner (1996: 65 et seq.).

explicitly avoided establishing any kind of linkage between any of the provisions on administrative and penal money laundering control on the one hand and tax control on the other. One of the main reasons for this restraint is certainly that the barriers between criminal investigations and taxation were traditionally rather strict in Germany. In retrospect it appears as if the time was not yet ripe for a breach of the fundamental separation of the two areas. However, also the political constellation during the mid-1990s played a certain role. It was the liberal party that held the Ministry of Justice at that time, a party which praised itself to be not only the defenders of civil rights but also – it was the heyday of the new economy years – the ‘party of the wealthier’.⁵⁸ Hence, the political majority was still hesitant to mix the instruments designed for the combat of organised crime, in particular money laundering, and those applicable for the combat of tax evasion. Not surprisingly, this liberal principle was doomed to fail only a few years later.⁵⁹

Step 3

However, before this, a further intermediate step in the long term extension of the penal money laundering regime was initiated by a significant expansion of the list of predicate offences through which the former focus on drug-related crime was abandoned. This reform was part of the so-called Act to Combat Serious Crime of October 1994.⁶⁰ This was a rather hybrid bill through which a wide range of different changes were introduced that ranged from the implementation of victim/offender mediation in the Criminal Code – one of the most far-reaching and generous regulations in Europe, by the way⁶¹ – on the one hand to a significant increase of the statutory penalties for a variety of organised and non-organised crimes on the other hand, in particular sexual crimes which were in the centre of public attention at that time. With regard to organised crime, various statutory offences were amended by an aggravating rule for professional or business-like commission, or commission by a gang. In addition, the applicability of extended forfeiture (and the asset penalty) was made possible for more offences. Accordingly, the list of predicate offences as provided in the money laundering statute was also expanded by introducing an extra subparagraph that complemented the existing subparagraphs 1 to 3.⁶² In

⁵⁸ The original political slogan was *Partei der Besserverdienenden*.

⁵⁹ See below, step 5.

⁶⁰ *Gesetz zur Änderung des Strafgesetzbuches, der Strafprozeßordnung und anderer Gesetze* of 28 October 1994, *BGBI. I*: 3186; see also *BT-Drucks.* 12/6853 and, for a more detailed general overview on the new provisions and all changes made in the course of the legislation process, König and Seitz (1995).

⁶¹ § 46 a *StGB*; for more details, see Kilchling and Löschnig-Gspandl (2000).

⁶² See above, step 1.

the new subparagraph, offences such as fraud, embezzlement, breach of trust and corruption were put together to form a new category of predicate offences that are neither drug-related nor organised crime-related *per se*. In order to limit the application to cases with an organised criminal background, it was further provided that the new predicate offences enumerated in this subparagraph must have been committed (i) by a member of a gang *and* (ii) in a professional manner.

The 1994 Serious Crime Act also came up with a new procedural instrument: the key witness regulation that had been introduced for terrorists in 1989 was expanded now to offenders involved in organised crime.⁶³ According to the Key Witness Act, a dismissal of prosecution could be granted under certain circumstances to key witnesses in cases of terrorism⁶⁴ and organised crime.⁶⁵ The necessary statutory definition of organised crime was provided here by restricting the application to those offences for which extended forfeiture was also applicable. A quite unique technicality for legislation in Germany, the Act was enacted with a limited duration from the outset; it had been extended once already before it was expanded to organised crime (1993)⁶⁶ and was renewed, once again, in 1996⁶⁷ before it definitely expired at the end of 1999. During the decade in which it was in force this highly controversial law was applied in no more than a handful of cases.

Since then, the Criminal Code still provides an incomplete (or non-genuine) exemption rule for key witnesses⁶⁸ in the case of two statutory offences: participation in a criminal organisation⁶⁹ and money laundering.⁷⁰ Unlike a genuine key witness

⁶³ *Gesetz zur Änderung des Strafgesetzbuches, der Strafprozessordnung und des Versammlungsgesetzes und zur Einführung einer Kronzeugenregelung bei terroristischen Straftaten* of 9 June 1989, *BGBI. I*: 1059; for critical considerations on this highly controversial instrument, see Gropp et al. (2001) and Mehrens (2001).

⁶⁴ Article 4 s. 1 of the Key Witness Act.

⁶⁵ Article 5 of the Key Witness Act as amended by Article 5 of the Act to Combat Serious Crime of 1994.

⁶⁶ *Gesetz zur Änderung des Gesetzes zur Änderung des Strafgesetzbuches, der Strafprozessordnung und des Versammlungsgesetzes und zur Einführung einer Kronzeugenregelung bei terroristischen Straftaten* of 16 February 1993, *BGBI. I*: 238.

⁶⁷ *Zweites Gesetz zur Änderung des Gesetzes zur Änderung des Strafgesetzbuches, der Strafprozessordnung und des Versammlungsgesetzes und zur Einführung einer Kronzeugenregelung bei terroristischen Straftaten* of 19 January 1996, *BGBI. I*: 58.

⁶⁸ So-called *kleine Kronzeugenregelung* (limited witness regulation).

⁶⁹ See Article 129 s. 6 *StGB*.

⁷⁰ See Article 261 s. 10 *StGB*.

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rule⁷¹ according to which prosecution as a whole can be quashed, the incomplete regulation provides only for a material exemption from punishment with regard to the 'organisational' offence or the money laundering activities. Prosecution of other crimes – including predicate offences committed by the repentant gang member or money launderer – cannot be suspended.

Step 4

A further, purely substantive amendment was implemented by the Act to Combat Corruption of August 1997.⁷² Based on the expert report and the resolutions of the criminal law section at the annual Forum of the German Jurists' Association of 1996,⁷³ on the principles set by the OECD recommendation, on the convention on corruption involving officials of the European Union or the European Union Member States of 1997,⁷⁴ as well as in anticipation of further European Union activities,⁷⁵ the provisions on corruption were totally revised.⁷⁶ In light of the variety of national and international activities that were on the agenda at that time, Überhofen (1999: 15) even wondered whether corruption had developed to be the new highlight on the political agenda, displacing organised crime from the top position.

The most significant change in the sector of criminal law was the extension of the definition of corruption which was traditionally a crime in Germany in the public sector only.⁷⁷ Now, a totally new chapter entitled 'offences against fair

⁷¹ So-called *große Kronzeugenregelung* (grand witness regulation); such a genuine key witness regulation is currently available in the field of drug crime only: see Article 31 of the Illegal Drugs Act (*Betäubungsmittelgesetz – BtMG*).

⁷² *Gesetz zur Bekämpfung der Korruption* of 13 August 1997, *BGBI. I*: 2038; see also *BT-Drucks.* 13/5584 of 24 September 1996 and 13/8079 of 26 June 1997.

⁷³ *Deutscher Juristentag*; for a short overview on the proceedings, see 1996 *NJW*: 2995 et seq.

⁷⁴ Revised Recommendation on Combating Bribery in International Business Transactions, prepared by the OECD Working Group on Corruption and adopted by the committee of ministers on 23 May 1997 (C(97)123/FINAL); Council Act 97/C 195/01 of 26 May 1997 drawing up the Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union, 1997 *OJ C* 195/1.

⁷⁵ Joint Action of 22 December 1998 on Corruption in the Private Sector (98/742/JHA), 1998 *OJ L* 358/2.

⁷⁶ For more detailed overviews, see Korte (1997) and Gropp et al. (2001: 100 et seq.).

⁷⁷ Additional amendments were made to a variety of laws related to the public service such as the law regulating the rights and duties of civil servants (*Beamtenrechtsrahmengesetz*) or those of the military personnel (*Soldatengesetz*).

competition' was introduced into the Criminal Code.⁷⁸ The central provisions within this chapter were new statutory offences on corruption and aggravated corruption in the private business sector. An extra article further regulates the applicability of extended forfeiture (and the asset penalty) in those cases. Simultaneously, the corruption offences in the public sector were modified as well. In particular, the statutory penalties were increased, and the legal and evidential requirements for the so-called 'wrongful agreement' between the giving and the receiving party as a necessary element of the crime were lowered. For private corruption, such an agreement has not been made necessary at all.

Step 5

With the Act to Improve the Combat of Organised Crime of 1998 the second 'grand' piece of (genuine) organised crime legislation was implemented.⁷⁹ Whereas the first Organised Crime Act of 1992 had concentrated more on substantive regulations, the 1998 Act had its main focus fully on the procedural side. In order to facilitate investigations into organised crime, the scope of the existing instruments such as telephone tapping were extended. Furthermore, the new instrument of acoustic surveillance of private premises was introduced. This had already been discussed during the preparation of the 1992 Act. At that time however, the idea had been rejected due to the fact that an amendment to the Constitution would have been necessary in order to provide the basis for the introduction of acoustic surveillance of private premises. The constitutional guarantee of the inviolability of private premises which still had the status of an unrestrictable civil right so far (*Grundrecht*) had to be made restrictable first – an undertaking that was still too controversial. In 1998, however, consent between the two major political parties was reached which made it possible to prepare and pass the new Organised Crime Act in concert with an amendment to the Constitution by means of a so-called package legislation.⁸⁰

So first of all, the Constitutional Amendment Act of March 1998 was adopted.⁸¹ Not surprisingly, this measure was highly controversial, and critical voices were in the majority.⁸² In the course of the public discussion this measure of electronic

⁷⁸ Chapter 26: Article 298 through 302 *StGB*.

⁷⁹ *Gesetz zur Verbesserung der Bekämpfung der Organisierten Kriminalität* of 4 May 1998, *BGBI. I*: 845, see also *BT-Drucks.* 13/8651, 13/9644, 13/9661.

⁸⁰ For more details, see Maaßen (1997), and Meyer and Hetzer (1998).

⁸¹ *Gesetz zur Änderung des Grundgesetzes* (Art. 13 GG) – *elektronische Wohnraumüberwachung* of 26 March 1998, *BGBI. I*: 610, see also *BT-Drucks.* 13/8650, 13/9642, 13/9660.

⁸² For critical considerations, see Gropp et al. (2001: 114 et seq.).

surveillance was often denoted as *Großer Lauschangriff*, an eye-catching term which can be translated best as ‘extended eavesdropping attack’. What in the beginning had certainly been a political battle term, developed to become the most frequently used key term for eavesdropping. Others, however, criticised the polemic character of that term (Hetzer, 1999: 131) and praised the broad political consensus as a good example of political rationality (Meyer and Hetzer, 1997). A clear example of political irrationality was witnessed in the course of the legislative process. After the federal government had, based on cabinet decision, filed the draft eavesdropping bill to Parliament, the Minister of Justice – a member of that same cabinet – resigned.⁸³ This happened due to the fact that the liberal members of Parliament had given their explicit consent to the draft, knowingly disregarding the opposition of their own minister. According to the minister’s point of view, such a restriction of the constitutional inviolability of the private premises had been a massive and unparalleled infringement of the private sphere of all citizens and contradictory to her understanding of the most fundamental political principles of her liberal party.⁸⁴ In order to get a free hand for carrying out the envisaged restriction of a further constitutional liberty, the majority of party functionaries calculatedly sacrificed their own minister.

For reasons of proportionality, electronic surveillance of private premises would be possible only for investigation into most serious crimes. The amended article of the Constitution⁸⁵ therefore provides that the application of surveillance has to be restricted to ‘extremely serious crimes’⁸⁶ which have to be explicitly enumerated in the Code of Criminal Procedure.⁸⁷ As this was a new legal term that was never used before in constitutional or procedural law, it was decided to classify such crimes according to the penalties provided in the criminal statutes. In application of this criterion, only those crimes for which a fine does not apply were deemed sufficiently serious.⁸⁸ In German criminal law this is generally the exception rather than the rule and reserved for the most serious crimes. These were specified again by a list of explicitly enumerated ‘eavesdropping crimes’ which was made part of the new procedural provision on eavesdropping.⁸⁹ With regard to the number of offences the list is reminiscent of the predicate crimes to money laundering. And even money laundering itself was made part of the new list of ‘eavesdropping

⁸³ For more details, see Hetzer (1999).

⁸⁴ For the ex-minister’s point of view, compare Leutheusser-Schnarrenberger (1998).

⁸⁵ Article 13 s. 3 *GG*.

⁸⁶ *Besonders schwere Straftaten*.

⁸⁷ For more details, see Hetzer (1999).

⁸⁸ See *BT-Drucks.* 13/9661: 6.

⁸⁹ Article 100c s. 1 no. 3 *StPO*.

crimes'. Doubts come up as to how money laundering can be deemed such an 'extremely serious crime' as the Constitution requires.

Some plausibility might, at first glance, arise from the fact that, simultaneously, the statutory penalty for money laundering was significantly increased by the 1998 Act. First, the possibility of imposing a fine instead of a prison sentence was deleted. And secondly, a statutory minimum was introduced: imprisonment of 3 months. As a consequence of this reform, the penalty provided for money laundering is more severe now than that of quite a number of the predicate crimes. However, the legislation lacks any substantive explanation on this point. In particular, no argument can be found as to why the handling of illegal proceeds sometimes deserves a harsher punishment than the commission of the crime through which it was obtained. The new situation is even more questionable in light of the fact that, according to traditional doctrine, the exploitation of benefits from crime by the offender himself used to be a subsequent act that in itself was not punishable in German criminal law.⁹⁰ Furthermore, it appears even more remarkable that none of the considerations provided in the parliamentary documents were related to the offence of money laundering as such. This is regrettable since no academic consensus on the doctrinal character of money laundering and its criminal 'weight' within the whole of statutory offences has been established to date.⁹¹ Reasonable particulars on these points could have brought more clarity into this area.⁹²

Instead, the main argument of the legislator was the necessity to make it an offence for which eavesdropping is allowed (see Meyer and Hetzer, 1998: 1020). This makes clear that it was *not* the assessment of money laundering to be generally of such a serious character that it always requires a mandatory prison sentence – an assessment that can hardly be justified regarding a more or less victimless offence such as money laundering – that drove the legislator. The penalty was increased for the purpose only to upgrade it to an offence for which eavesdropping is allowed. According to Meyer and Hetzer and others this was a technical adaptation only, necessary 'to make the Constitution and the criminal procedure compatible'. In my eyes this is a rather obscure argument. In reality, this was certainly one of the first cases ever in which a penalty was made *more severe* in order to make its application *proportional* in a different procedural context (i.e. surveillance). From a critical point of view one could also argue that the list of 'eavesdropping crimes' was intentionally manipulated by such upgrading of an offence in order to *qualify* it as an applicable crime first. The question as to whether and how this amendment can,

⁹⁰ For more details, see Schittenhelm (1998).

⁹¹ To date, there is not even agreement on basic issues such as the concrete value(s) to be protected by the provision (*Rechtsgut*). For more details, see, e.g., Vogel (1997).

⁹² For more details on this topic, see Kilchling (2000) (with further references).

with regard to the abstract criminal weight of money laundering, really be justified for restricting a fundamental right which, unlike many other fundamental rights, was unrestrained before, has not even been raised in the explanatory materials.⁹³ This appears even more questionable in light of the fact that the Criminal Code *had* provided a well-established traditional measure: the statutory minimum of one year of imprisonment which divides felonies from misdemeanours.⁹⁴ Furthermore, the Criminal Code further provides that the courts shall avoid prison sentences of less than six months.⁹⁵ Obviously, there was at least hesitation to classify money laundering *that serious* what made the legislator choose the shortest duration that is presently in use for crimes with an exclusive prison sanction. So once again: does such a low quantity really qualify a crime to be ‘most serious’, as the Constitution requires? I think, not. In light of all the inconsistencies mentioned here, this was the most critical piece of any of the organised crime amendments implemented during the whole period covered here. And even the Constitutional Court – although it accepts the measure in principle – recently came to the conclusion that the procedural regulations on eavesdropping are not fully in accordance with the principles of due process and proportionality as required by the Constitution.⁹⁶

With the argument that it would be inconsistent to allow eavesdropping in cases of money laundering, but not the less intrusive measure of telephone tapping, money laundering was (together with a number of further offences) also added to the list of telephone tapping offences during the political negotiations preparing the 1998 package, although this had originally not been proposed in the draft bill.

Furthermore, the money laundering provision was widened even further. The statutory definition according to which the money launderer and the predicate offender had to be two different individuals was repealed. Instead, a new subsidiarity clause was introduced according to which a person is only exempt from punishment for money laundering if he or she is being punished for having been involved in the commission of the predicate offence.⁹⁷ The purpose of this change

⁹³ Compare *BT-Drucks.* 13/9644: 5, 13/9661: 10.

⁹⁴ Article 12 *StGB*.

⁹⁵ Article 47 s. 2 *StGB* provides that if ever possible the courts shall, in substitution, impose a fine. In light of this legal background, two possible explanations seem plausible: either the politicians responsible for the bill were not aware of this rule, or the qualification of money laundering as an ‘eavesdropping crime’ was based on an obviously false declaration, i.e. money laundering being such a severe crime that a prison sentence is the only possible sanction. For further critical remarks on this point, see also Kreß (1998: 127) and Kilchling (2000: 243 et seq.) (with further references).

⁹⁶ Decision of the Federal Constitutional Court (*Bundesverfassungsgericht*) of 3 March 2004, 2004 *NJW*: 999.

⁹⁷ Article 261 s. 9 s. 2 *StGB*.

was to allow for the better prosecution of accomplices. Previously, it was difficult to prosecute them in these cases because there was no reference offence to which they had contributed.⁹⁸ In addition, no less than 17 further statutory offences were added to the list of predicate crimes, amongst them such conventional offences as theft and embezzlement, which lack any specific organised crime content.⁹⁹ In light of this development the list of predicate offences became more and more a product of occasional policy which – unlike the case of money laundering statutes based upon the all-crime principle – lack any inner coherence (Hetzer, 2002: 642). Moreover, for the majority of offences the two cumulative conditions of a business-like (professional) commission by a member of a gang were changed into an alternative regulation that provides now that either of the two criteria is sufficient for prosecution. And in the case of corruption neither of the two is now required.

All these changes in the substance of the money laundering law have, of course, a procedural impact as well. It is known that, in practice, investigations into money laundering cannot be separated from investigations into predicate crimes – at least not in the initial phase of an investigation when the question as to whether special investigation measures such as telephone tapping and eavesdropping should be initiated usually comes up.¹⁰⁰ And in all these cases, a further procedural innovation applies. The degree of suspicion upon which assets can be provisionally seized was generally downgraded from ‘strong cause’ to ‘reasonable cause’; i.e. the minimum degree of suspicion which is also required for a formal opening of a criminal investigation.¹⁰¹ In other words: once an investigation has been initiated, assets can be frozen immediately.

A final important point has to be highlighted. After long political discussions, the legislature took this opportunity to implement the above-mentioned taxation track which, in reference to American history, is often referred to as the ‘Al Capone’ approach. First of all, the list of predicate offences was amended by a fifth subparagraph which enumerates, for the first time, two tax-related offences: professional tax fraud as well as professional tax relevant smuggling or customs violation. Furthermore, the Money Laundering Control Act now provides that the tax authorities have to be informed about any relevant information gathered in the context of criminal investigations based on suspicion of money laundering.¹⁰²

⁹⁸ Compare *BT-Drucks.* 13/8651: 10.

⁹⁹ For more details, see Maaßen (1997: 137).

¹⁰⁰ See also below, 3.6.

¹⁰¹ Article 111b *StPO*; see also *BT-Drucks.* 13/8651: 15.

¹⁰² Article 10 and 11 *GwG* as amended by Article 3 of the 1998 Organised Crime Act.

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This applies at the early stage of an initial suspicion. And all facts can be used for further investigations by the tax authorities – even if the criminal suspicion has proved to be unsubstantiated (Hetzer, 1999: 145). The intention is clear: assets that cannot be confiscated by means of a criminal prosecution due to insufficient evidence shall be ‘taxed away’.¹⁰³

In retrospect, this change appears to be most significant. A new multi-agency alliance of intervention (Hetzer, 1999: 141) in which public prosecutors, customs and financial administration cooperate was established. In addition to the primary intention according to which criminals shall be forced to pay tax on their illegal income, a second idea plays a role, especially in the German discussion: the financial information gathered by the tax authorities shall be used in the criminal investigations as well. The most critical point of such a concept is that according to tax law everybody has the duty to provide all necessary information. If a person refuses to cooperate, the income is subject to estimation. However, with regard to the principle of proportionality, any calculation or estimation based on the intention to strip a suspicious person of their illegal income came close to arbitrariness and had nothing to do with legitimate taxation (Thiele, 1999: 510).

Due to the principal differences regarding the character and the purpose of the two sectors, taxation on the one hand and penal intervention on the other should not be mixed up.¹⁰⁴ The attraction for criminal investigators to grasp information gathered by the tax authorities is, of course, huge. One has to keep in mind, however, that such information is obtained by means of the general duty of the citizens to present any necessary information to the tax office. This duty finds its justification mainly in the fact that taxation is a universal instrument which is of an absolutely neutral character. Any recourse to such information for penal purposes would be a breach of the *nemo tenetur* principle.

Step 6

Despite all the serious critique,¹⁰⁵ the ‘Al Capone’ approach was further extended by the Act to Combat Unlawful Reduction of Taxes of December 2001.¹⁰⁶ At first glance, a more or less ‘technical’ change was introduced into tax law that raised

¹⁰³ See Meyer and Hetzer (1998: 1017 et seq.) and Hetzer (1999).

¹⁰⁴ For more details on these differences, see Von Selle (1995).

¹⁰⁵ Compare, e.g., Scherp (1998) and Thiele (1999).

¹⁰⁶ *Steuerverkürzungsbekämpfungsgesetz* of 19 December 2001, *BGBI.* I: 3922, see also *BT-Drucks.* 14/6883.

the statutory penalty provided in the fiscal code for professional tax evasion.¹⁰⁷ As a consequence of this increase, professional tax evasion became a felony. And that is the point: through this upgrading manoeuvre the new felony – without an explicit change in the Criminal Code – became a predicate offence to money laundering. What might appear to be a purely fiscal matter, proves to be, according to its promoters, a ‘new dimension of money laundering control’ (Hetzer, 2002). Since tax evasion is usually followed by some concealing action, any such case can more or less automatically lead now to a criminal money laundering investigation.

I personally think that, as in the case of money laundering, the true and final aim is not taxation but prosecution and confiscation. This new, post-modern approach to taxation brought at least a problematic penal bias into the traditionally neutral area of fiscal law.

Step 7

Although there is no general provision for organised commission of offences available in Germany, the Criminal Code provides for a particular statutory offence of ‘participation in a criminal association’. In August 2002, this article¹⁰⁸ was amended by the 34th Criminal Code Amendment Act¹⁰⁹ through which a new by-article was introduced according to which criminal organisations which have their main field of action outside the German territory are also in the scope of the provision.¹¹⁰ Due to earlier case law which is characterised by a very restrictive interpretation of the Federal Court of Appeals, this constellation was not included before.¹¹¹ The amendment became necessary in order to implement the European Union Joint Action of 1998 ‘on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union’.¹¹² The legislature took the opportunity to make Article 129 also subject to the special forfeiture

¹⁰⁷ Article 370a *Abgabenordnung*; for more details, see Hetzer (2002). In a recent decision, the Federal Court of Appeals (*BGH*) seriously questioned the constitutionality of this statutory offence. Unfortunately, the court avoided referring the case to the Constitutional Court which is formally entitled to decide about constitutionality issues alone. For more details on the *BGH* verdict, see Gaede (2004).

¹⁰⁸ Article 129 *StGB*. For more details on the history of this provision, see below, 3.2.

¹⁰⁹ 34. *Strafrechtsänderungsgesetz* of 22 August 2002, *BGBl.* I: 3390.

¹¹⁰ Article 129b *StGB*.

¹¹¹ For more details, see Kinzig (2004).

¹¹² Joint Action of 21 December 1998 (98/733/JHA), 1998 *OJ L* 351/1.

instruments for organised crime.¹¹³ The low statutory penalty, however, which is deemed a counter-effective factor for its application, was not altered.¹¹⁴ Moreover, the provision covers exclusively the organisational component as such. It does not include the basic, or 'front' crime of organised crime, i.e. the commission of particular crimes within the organisational framework.¹¹⁵

At the same time – it might appear as a running gag to the reader, but I suppose it is only the provisional halt in a never-ending story – the money laundering legislation was revised and amended yet again. In order to implement the second European Union directive on money laundering¹¹⁶ into domestic law, the Money Laundering Control Act was totally revised by the Act to Improve the Combat of Money Laundering and Terrorist Financing.¹¹⁷ Following the content of the European Union directive, all relevant provisions were also made applicable to investigations into terrorist financing.¹¹⁸ Whereas this aspect was not controversial at all, the inclusion of more professionals such as attorneys, accountants and tax consultants into the control system was subject to heated debate.¹¹⁹ The professional organisations issued announcements in which they accused the new rules of inciting their members to unlawfully breach their duty of confidentiality to their clients.

Whilst the reform of the money laundering control act was so strongly disputed, a further amendment which again broadened the range of the statutory offence of money laundering, was (cleverly?) hidden in an administrative side law and did not arouse so much public attention in advance.¹²⁰ Actually, according to the logic of tax crime, only evaded taxes were the object of money laundering. As a result

¹¹³ Article 129b s. 2 StGB; for critical remarks on the absence of such an explicit link to the provisions of organised crime confiscation here of all possible crimes, see Kilchling (1997a, 2000).

¹¹⁴ See also Kinzig and Luczak (in this volume).

¹¹⁵ For more detailed considerations on the categorisation of the different types of organised crime, see Kilchling (2002).

¹¹⁶ Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering, 2001 *OJ L* 344/76.

¹¹⁷ *Gesetz zur Verbesserung der Bekämpfung der Geldwäsche und der Bekämpfung der Finanzierung des Terrorismus* of 8 August 2002, *BGBI. I*: 3105.

¹¹⁸ See Kilchling (2004).

¹¹⁹ For more details, compare Hetzer (2002).

¹²⁰ *Fünftes Gesetz zur Änderung des Steuerbeamten-Ausbildungsgesetzes und zur Änderung von Steuergesetzen* [Fifth Act Amending the Law Regulating the Education of Taxation Officers and Other Tax Laws] of 23 July 2002, *BGBI. I*: 2715.

of the new amendment, the money laundering statute declares now that in cases of professional tax evasion – which was introduced as a predicate crime just eight months ago – not only the amount of taxes that were not paid is subject to money laundering (and confiscation). In addition, also the entire asset upon which a tax evasion is based is included now – and can be taken away.¹²¹ The initiators of this bill proudly refer to this piece for its further tightening up of the ‘Al Capone’ principle. However, I have at least doubts whether this expanded possibility of de facto confiscation will find approval with the Constitutional Court. It clearly goes beyond the conditions of a reasonable gross principle based system of confiscation upon which the Court had decided in spring 2004.¹²² With regard to its aggressiveness the new provision can hardly appear compatible with the non-punitive character of such a measure as required by the Court.

2.2. Legislation Proposed but not Enacted

An even more intrusive system of confiscation was the subject of the draft bill for a Second Organised Crime Act which had been launched some years previously by the social democratic fraction of Parliament that was in opposition at the time.¹²³ Although the (first) Organised Crime Act had entered into force for not much more than a year then, the draft already came to the quite courageous conclusion that ‘the efforts of the legislature clearly failed to bring the necessary success’ (*BT-Drucks.* 12/6784: 1). With regard to the explanatory to this proposal, Hassemer identified a style of argumentation that is typical for the organised crime policies of those days: ‘[... the pictures of] threats of a new type of criminality on the one hand together with totally inadequate legal counter-instruments on the other are being painted in gaudy colours’; this style of drafting of bills lacks any reference to empirical sources, although ‘such knowledge is being suggested’ (Hassemer, 1995: 14/15). Experts who have real practical experience, such as the former president of the Federal Criminal Police Office (*BKA*) argued much more carefully and pleaded for a longer test period in order to assess how the new instruments work and how practitioners can handle them (Zachert, 1997); from a public prosecutorial perspective, the former attorney general of the federal state of Hesse argued in a similar way (Schäfer, 1998). Indeed, as regards the lack of serious evaluation of all the new instruments, Albrecht’s (1998: 5) critical notion that ‘credit on the grounds for the reform of criminal procedure’ was granted to politicians ‘which is still waiting to be justified’ actually has not lost any of its plausibility even today.

¹²¹ Article 261 s. 1 ss. 3 StGB as amended by Article 8 of the aforementioned Taxation Officers Education Act.

¹²² See above, step 1.

The most important parts of the draft bill had been two articles dealing with confiscation. Under Article 1, an amendment to the Constitution was proposed according to which assets deriving from crime were to be generally excluded from the scope of the constitutional guarantee of private property. However, apart from the fact that a constitutional article providing a kind of ‘negative protection clause’ appears somewhat unusual, such a more or less symbolic statement had been absolutely superfluous as it had already been explicitly ruled out by the Constitutional Court long ago, such assets by tradition are generally not part of the constitutional protection.¹²⁴ For no reason whatsoever, this very clear standpoint of the court has been ignored, both in political and academic discussions.¹²⁵ In its recent decision on extended forfeiture, the court explicitly upheld its earlier interpretation.¹²⁶ It was further proposed to anchor the legal option for a reversal of the burden of proof in confiscation matters in the Constitution as well. With regard to this point, the draft took up manifold voices, especially from police and prosecution practitioners,¹²⁷ suggesting that successful confiscation would not be feasible unless the burden of proof be reversed.¹²⁸ Interestingly, this issue has meanwhile more or less completely disappeared from the political agenda. The main reason for this loss of attention lies certainly in the – unexpected – success of confiscation practice which, based on advances made in the training of financial investigators, can be witnessed since the late 1990s.¹²⁹

The proposed anchoring of a – complete – reversal of the burden of proof in the constitutional text had certainly been incalculably problematic. Dencker is right in referring to a dissenting vote to the very first decision of the Constitutional Court of 1971 on the principal constitutionality of telephone interception, where it has been clearly pointed out that legal concepts, once they have been explicitly implemented in the Constitution, tend to be subsequently expanded and applied to – be it by indirect or sometimes even direct analogy – in other cases or situations as well (Dencker, 1998: 42).¹³⁰

¹²³ *Entwurf eines Zweiten Gesetzes zur Bekämpfung des illegalen Rauschgift Handels und anderer Erscheinungsformen der Organisierten Kriminalität, BT-Drucks. 12/6784*; for further critical comments, see also Welp (1994).

¹²⁴ BVerfGE 22: 387 (422).

¹²⁵ Compare Kilchling (1997: 634).

¹²⁶ See above, footnote 48.

¹²⁷ See, e.g., Hertweck (1996) and Schäfer (1998).

¹²⁸ For more details and references, see Kaiser (2000).

¹²⁹ See below, 3.7.

¹³⁰ BVerfGE 30: 1.

The subject of the second article of the proposed bill was the introduction of a totally new law. Based on an Asset Confiscation Act, a new track of preventive confiscation of suspicious assets was to be implemented.¹³¹ The main argument raised against such an administrative approach focused around the question as to whether it is correct to assess money, which in its legal character (and economic function) is designed as a neutral valuable, to be a 'dangerous object'.¹³² Additional critical comments against such an approach came even from prosecution practitioners who expressed disapproval towards the inevitable shift in the organisational responsibility resulting from the dislocation of such a kind of patrimonial forfeiture from criminal to administrative law. In particular, the public prosecutors feared that they would no longer have control if the whole procedure was conducted outside the criminal justice system (Hertweck, 1996: 26). In the end, the idea of implementing such an additional system of *in rem* forfeitures was a total failure, not least due to the fact that the idea was not born under the auspices of the governmental majority.

In 1998, the draft for an Act to Improve Criminal Confiscation of Proceeds Deriving from Crime which had already been adopted by the federal Parliament, happened to face a last minute rejection by the Bundesrat.¹³³ Contrary to the aforementioned initiative, only system-concurring improvements within the existing penal provisions on confiscation were proposed. Nobody had expected that failure; the new provisions had already been published and distributed as a supplement to the weekly German legal journal *Neue Juristische Wochenschrift*.

In 2001, the Bundesrat launched the proposal for a new Key Witness Act.¹³⁴ In deviation from the former act that expired in 1999,¹³⁵ a new regulation style similar to that used for the applicability of extended forfeiture was proposed: instead of a comprehensive regulation, the possibility for exemption from punishment had to be explicitly provided in each applicable statutory offence; only the legal consequences should be subject of the new Key Witness Act itself. In its final part, the draft unexpectedly came up with an additional proposal that nobody would look for in the proposal for a 'key witness bill': the list of telephone surveillance

¹³¹ *Vermögenseinziehungsgesetz*.

¹³² For more details, see Hassemer (1995), Heckmann (1995), Benseler (1997) and Thiele (1999).

¹³³ *Entwurf eines Gesetzes zur verbesserten Abschöpfung von Vermögensvorteilen aus Straftaten*, *BT-Drucks.* 13/9742; the draft bill is summarised in the ZRP-Gesetzgebungs-Report, 1998 *Zeitschrift für Rechtspolitik*, 154-158; see also Thiele (1999).

¹³⁴ Draft for a *Gesetz zur Ergänzung der Kronzeugenregelungen im Strafrecht (KrZErgG)*, *BT-Drucks.* 14/5938 of 26 April 2001.

¹³⁵ See above, 2.1. step 2.

crimes in the Code of Criminal Procedure should be further expanded. Based on an *argumentum a maiore ad minus*, the authors of the draft argued that all crimes for which a more intrusive measure of investigation is applicable should be made suitable for any less intrusive one as well. In concrete terms, all those offences where eavesdropping is allowed but telephone tapping is not, should be added to the list of telephone surveillance crimes.¹³⁶ Based on a negative opinion communicated by the federal government, the Bundestag voted down the Bundesrat and rejected the proposed bill.

Despite this failure of the conservative states¹³⁷ that are the majority leaders in the *Bundesrat*, a similar proposal was reintroduced quite recently by the conservative opposition in the Bundestag.¹³⁸ What makes this 'dragged up' submission worthy of mention are a number of changes which become apparent in comparison to the original as it had been launched three years ago. Apart from the metamorphosis of the capital Z in the abridged title of the 2001 bill into a small z, also the wording in the formulation of the purpose provided in the explanatory to the bills was altered. Whereas the 2001 draft was designed 'to improve the substantive and procedural instruments for combating organised crime and terrorism', the current proposal formulates its aim being 'to improve the substantive and procedural instruments for combating terrorism and organised crime'.¹³⁹ This change in the order in which the two criminal phenomena are mentioned is, I think, not only a politically motivated attempt to make the new proposal appear more urgent; it also mirrors the priority shift in post-9/11 policies in which organised crime has clearly lost its top position to terrorism. A further, at first glance even more inconspicuous modification indicates the same: 'organised crime', all of a sudden, has been written in lower case. It is the first time that such an orthographic downgrading of organised crime can be found in an official criminal policy document of the conservative angle in Parliament. In light of the orthographic history of the term it is tempting to speak of a quite revolutionary change.¹⁴⁰ The fourth difference, finally, is of real substance.

¹³⁶ Compare *BT-Drucks.* 14/5938: 6. As these inconsistencies do indeed exist, e.g., in the area of corruption crimes (see below, 3.1.), the argument has something to be said for it.

¹³⁷ For more details on the political distinction of 'A states' and 'B states', see below 3.1.

¹³⁸ Draft for a *Gesetz zur Ergänzung der Kronzeugenregelungen im Strafrecht und zur Wiedereinführung einer Kronzeugenregelung bei terroristischen Straftaten (KrzErgG)*, *BT-Drucks.* 15/2333 of 13 January 2004.

¹³⁹ Compare *BT-Drucks.* 14/5939: 1 and 10 versus *BT-Drucks.* 15/2333: 1 and 8. With the exception of the differences mentioned here, most parts of the explanatory texts to the two proposals are identical.

¹⁴⁰ See above, 1.

The proposal of a further extension of the list of telephone surveillance crimes, which was the more or less hidden last part of the crown witness draft of 2001, was now abandoned.

3. General Analysis

In the review of the policies presented in the preceding section, one can hardly identify a comprehensive conceptual approach of the German legislature to organised crime. Due to the high political priority of the issue during the afore-mentioned 'decade of organised crime', the *ad hoc* character of the legislation becomes even more significant as is generally the case in criminal policy. Notwithstanding a basic consent of all major political parties in Germany about the importance and urgency of the problem in general, significant nuances can be identified. Different political concepts, or preferences, become explicitly obvious outside the core area of substantive criminal law where, as a common feature, all governments so far were rather hesitant towards making extensive changes. Prior to the change of the federal government of 1998, all the former conservative-liberal cabinets concentrated more on procedural issues. As can be concluded from the latest proposals, this preference continued even in their present opposition role.¹⁴¹ In contrast to these procedure-oriented concepts, the red-green policy is more in favour of the taxation approach which was steadily expanded since 1998. The situation is, however, further complicated as criminal policy has to deal with a very complicated distribution of power and control set by the federal system which makes it more or less impossible to speak of a single German organised crime policy.

3.1. Institutional Competition and Overlaps

The political landscape in Germany is generally characterised by institutional competition and overlaps which clearly slow down the preparation and implementation of new legislation in penal matters. As a consequence, organised crime legislation quite often has to be based upon political compromise between manifold political and institutional bodies and committees which are involved in the process of legislation. This is particularly true when constitutional amendments have to be initiated as could be witnessed in the preparatory phase of the 1998 Act to Improve the Combat of Organised Crime.¹⁴²

¹⁴¹ See above, 2.2.

¹⁴² See above, 2.1., step 5.

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The most significant element of the distribution of power is the strict division of competence between the federal level on the one hand and the federal states on the other, with a clear allocation of the principal power in police matters at state level. In addition, the states themselves are further divided into two groups, i.e. the so-called 'A states' led by a government headed by a prime minister of the social democratic party, and the conservative 'B states'. Depending on whether the governments politically coincide or not, the states are carefully considered to demarcate themselves not only from the federal government but from the other states as well, in particular those belonging to the opposite block.

As a consequence of the independence of the states in police and prosecution matters, the state governments are most anxious to prevent the establishment of federal police structures. One explicitly questionable example of such a counter-productive competition in the field of organised crime policies was the fact that, notwithstanding explicit critique in the Financial Action Task Force reports, all efforts to establish a nationwide agency for the collection of suspicious transaction reports according to the Money Laundering Control Act failed for nearly a decade. It was not until the threat of 11 September and the subsequent national and international initiatives to combat terrorist financing¹⁴³ that consent for such an agency could be reached. Through the 2002 Act to Improve the Combat of Money Laundering and Terrorist Financing¹⁴⁴ the Federal Criminal Police Office (*BKA*) was determined to take the function of a central financial intelligence unit (FIU) according to the Financial Action Task Force standards.¹⁴⁵ However, as a federal institution it can act only as a clearing agency; it still has no operational power.¹⁴⁶ At least, when the new *BKA Act* was introduced in 1997, the agency received some investigative powers in the context of international crime.¹⁴⁷

As a precondition for a uniform policy, the ministers of home affairs of the federal government and those of the 16 states have to come to an agreement. The necessary discussions – which often have the character of political negation – are to be conducted in the conference of the ministers of home affairs. The same procedure applies within the justice department. Normally, the two divisions work

¹⁴³ For more details on financial counter-terrorism initiatives, see Kilchling (2004).

¹⁴⁴ See above, 2.1., step 7.

¹⁴⁵ Article 5 *GwG 2002*.

¹⁴⁶ For the first annual report of the 'FIU – Germany', see <http://www.bka.de/profil/zentralstellen/fiu/fiu_germany_annual_report_2002.pdf> [in English].

¹⁴⁷ Act Regulating the Competences of the Federal Criminal Police Office and the Cooperation between the Federation and the Federal States in Police Matters (*Bundeskriminalamtsgesetz*) of 7 July 1997, *BGBI. I*: 1685. For more details, see Maaßen (1997: 135).

more or less separately, and sometimes it can even happen that they work against one another. A striking example could be witnessed in 1999. Whilst the growing asset-freezing activities of the police resulted in an increasing success, critique or even mistrust towards these police activities could be witnessed by the judiciary (Schürholz, 1999: 261). The dissatisfaction was even the subject of discussion in the conference of the ministers of justice, and in the protocol it has been pointed out that the justice division, in particular the public prosecutors and the courts must undertake the necessary efforts to gain back their control over the area of asset confiscation.¹⁴⁸

Theoretically, if a coordinated and uniform measure is to be implemented for which both sides have to cooperate, the consent of 34 ministers is necessary.¹⁴⁹ One is likely to compare this situation with the conditions under which criminal policy in the European Union is being conducted under the third pillar. The significant difference is, however, that the federal government in Berlin, unlike the Justice and Home Affairs Directorate in Brussels, has of course, based upon the majority in Parliament, its own legislative power. Nevertheless, each piece of federal legislation has to be executed and administered by the state governments. And these have, of course, their own specific ideas of the 'right' organised crime policy.

Moreover, the responsibility for organised crime policies is also split inside the federal government as (at least) two ministries are usually involved in penal legislation. On the one hand, there is the Ministry of Home Affairs, on the other hand, the Ministry of Justice. Traditionally, the interplay of the two divisions in the government is not free of tension. Roughly speaking, the Ministry of Home Affairs is a promoter of an improvement in possibilities for criminal prosecution. In this role, it often launches proposals which are then rejected by the Department of Justice which in a certain way is acting according to its own self perception as the defender of the constitutional freedom.

3.2. Restraint in the Area of Substantive Law

Over the whole period that is the subject of this review, a certain restraint to make significant changes in substantive law can be observed. In fact, only a handful of really new provisions were introduced: money laundering and corruption in the private sector and, in the general part, extended forfeiture. It has to be taken into consideration, too, that most of these amendments were based on international and

¹⁴⁸ Protocol of the conference of spring 1999, in Baden-Baden (unpublished).

¹⁴⁹ I.e. the two federal ministers plus the 16 state ministers of each of the two sides.

European obligations. Some of these were even implemented in a rather fragmentary way such as, in particular, the penal provision on money laundering.¹⁵⁰

However, in regard to the statutory regulation of organised crime as such, there still exists no general substantive provision. This is the result of the fact that, in the absence of a satisfactory definition, 'organised crime' is neither a legal figure nor a technical term of its own. Instead, the law refers to professional or business-like commission and commission by a gang as aggravating factors.¹⁵¹

At first glance this finding may appear surprising as the Criminal Code offers a particular 'organisational offence' under which participation in or support of a criminal association is penalised.¹⁵² In practice, however, this provision never played a significant role. This somewhat absurd situation has a historical background. In order to intensify the fight against the domestic terrorism problem of the 1970s, the legislature had amended the already existing Article 129 by a new Article 129a, dealing with participation or support of a terrorist association.¹⁵³ In the following years, the courts tended to interpret terrorist activities pursuant to Article 129a as an aggravated form of Article 129 activities – to the effect that the latter statute became a kind of 'fall-back offence' for cases in which sufficient evidence for the terrorism element could not be established. In order to avoid the abuse of the two provisions as pure political offences upon which mental attitudes are penalised, the Federal Court of Appeals established very high evidentiary standards regarding the subjective elements of the offence. It is obvious that the necessary evidence can hardly be established before the courts. Furthermore, as an additional – non-written – element, the court required that the criminal or terrorist groups have to be based inside Germany.¹⁵⁴

In light of this particular situation the legislature refrained from any efforts to update or amend Article 129 throughout the 1990s. And it appears somewhat ironic that this organisational offence had not even been made an eligible reference offence for the particular confiscation instruments that were introduced by the First Organised Crime Act of 1992.¹⁵⁵ It was not until August 2002 that these statutes were altered, as a further consequence of the 9/11 shock. As with the establishment

¹⁵⁰ Article 261 *StGB*.

¹⁵¹ For more details, see above 2.1., step 7, and the contribution by Kinzig and Luczak (in this volume).

¹⁵² Article 129 *StGB*.

¹⁵³ The most important terrorist groups were the so-called Red Army Fraction and the Revolutionary Cells.

¹⁵⁴ For more details, see Arnold (2001) and Kinzig (2004).

¹⁵⁵ See above, footnote 113.

of the FIU, the legislature took firm action by making use of this extraordinary situation as an opportunity to achieve at least some projects which had been in the pipeline for quite a long time without a realistic chance for realisation in ‘normal circumstances’.¹⁵⁶

3.3. Money Laundering as a Material Investigation Strategy

The thesis of the reluctance of the legislature in matters of substantive penal law might, at first glance, be questioned by the manifold activities in the regulation of money laundering. With regard to the numerous amendments, this provision proved to be a kind of the experimental field – if not even to say a playground – of criminal politicians in substantive criminal law. It appears as if, from all categories of secondary crime, money laundering developed to be *the* ‘substitute’ crime in dealing with organised crime. In technical terms the statutory offence is the material anchoring point for proactive financial as well as other investigatory measures. From a doctrinal perspective it is a type of offence that has no real substance and therefore can find only weak justification in traditional terms. In particular, the definition of the concrete values or interests to be protected by the statutory offence is in doubt. In Germany, an academic debate is still going on upon this point; the most plausible assumption is that the statutory money laundering offence has to protect the interests of the state in effective public prosecution and confiscation. From a functional perspective, the statutory offence is more a *material investigation strategy* than a real substantive crime. Actually, the final purpose is not to punish money laundering itself.¹⁵⁷ This assumption is also proved by the fact that any offender who has been involved in a predicate offence is generally exempt from punishment for money laundering by an explicit exemption clause.¹⁵⁸ In any case of suspicion, however, all the special measures of investigation are eligible in money laundering investigations. It is not clear yet whether these also apply if the suspect is also the predicate offender.¹⁵⁹

In light of this practical function of suspicion of money laundering, it is not surprising that convictions for this particular offence are quite rare. In 2002, only 148 final convictions for money laundering were registered. Within the first decade

¹⁵⁶ The same tactic was, by the way, successfully employed by the European Commission in convincing the European Parliament to finally adopt the second money laundering directive, which had been extraordinarily controversial.

¹⁵⁷ For more details, see Kilchling (2000).

¹⁵⁸ Article 261 s. 9 *StGB*.

¹⁵⁹ See also below, 3.6.

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since the provision was introduced in late 1992, no more than 485 individuals were convicted. In comparison with a total of some 720,000 convictions per year, this is really not that much.¹⁶⁰ The figures are a mirror of the fact that the provision no longer plays a significant role once the investigations come to an end. A review of court files of the conviction cases shows that the crime mostly serves to punish accomplices of retail drug dealers who in earlier years had been punished according to the general rules for aiding and abetting (Kilchling, 2002). In particular in the real – ‘big’ – organised crime trials, money laundering does not play any significant role at all (Kinzig, 2004).

The number of suspicious transactions reports was, incidentally, unclear for a long time. The first report of the FIU shows relatively stable numbers between some 2,700 and 3,700 for the years 1994 to 1999. The number then significantly increased to some 4,401 in 2000, 7,284 in 2001 and 8,261 in 2002.¹⁶¹ At the same time, the total number of formal investigations opened steadily increased, starting from some 200 cases in 1994 to 543 in 1997 and 877 in 2001. In 2002, the number rose to 1,061.¹⁶²

Despite these general limits to money laundering which arise due to its primary procedural function, the practical applicability of the provision is further challenged by the permanent changes of the legal statute. Prosecution authorities sometimes have serious problems of establishing charges in money laundering cases because it can be very difficult to allocate concrete laundering offences to a particular moment in time – to the effect that it is not always clear which version of the statute is relevant for a certain case. These frequent changes are a direct consequence fact that Germany, as mentioned already, is one of the very few countries which still limit the scope of application of money laundering to an exclusive catalogue of offences. From a practical as well as from a doctrinal point of view it just does not make sense to declare the financial management with moneys from certain explicitly enumerated predicate offences to be money laundering which has to be severely punished – whereas the same type of action by definition lacks any criminal relevance if the money derives from other crimes. The German way is even more questionable in light of the fact that the international trend towards the ‘generalisation of the concept of money laundering’ (Pieth, 2002: 120) has accelerated even more in post-9/11 times. As a consequence of this general development

¹⁶⁰ Figures taken from the annual statistics of convictions, issued by the Federal Office for Statistics (*Statistisches Bundesamt*) <<http://www.destatis.de>>; see also Kilchling (2001, 2002a).

¹⁶¹ First annual report of the ‘FIU – Germany’: 24.

¹⁶² Figures taken from the National Police Statistics, issued by the Federal Criminal Police Office <<http://www.bka.de>>; see also Kilchling (2001, 2002a).

as well as with regard to the harmonisation on the European level, Germany will have to make an about turn and implement the all-crime principle at least in a mid-range perspective.

3.4. More Important Changes in the Area of Procedural Law

Unlike in the area of substantive law, the Code of Criminal Procedure was subject to significant amendments regarding both the intensity for the individuals confronted as well as the impact on the criminal justice system as a whole. On the one hand, new provisions which allow the police to conduct special measures of investigation were introduced, most of which characterised by a direct or indirect constitutional impact. In order to introduce the possibility of conducting eavesdropping operations, the Constitution was even amended. On the other hand, the applicability of any of the special measures of investigation was steadily expanded, also that of already existing instruments such as, in particular, telephone interception. As a consequence, the number of telephones under surveillance steadily increased, although it has to be admitted that Germany is not a suspect of a record-breaking frequency of application (Berger, 1998) because this increase is not significantly higher than the very dynamic growth in the number of telephones, both in the conventional telecommunications network and in the sector of mobile phones (Albrecht et al., 2003: 27 et seq.).

These special rules for investigation were restricted in their application to cases of organised crime. As in the case of money laundering, the law does not rely on the term organised crime. Instead, the legislator has provided lists of offences that are deemed to be typically linked to organised crime. Due to the absence of a general definition or even an idea of – for not to say even a consensus on – the substance of organised crime, the ‘definition problem’ came up as a regular part of each of the legislation debates: in any of the legislation procedures a new political compromise had to be reached in order to find an agreement on the particular catalogue of offences. Not surprisingly, the lists of eligible offences that are relevant for the application of the different legal instruments for the investigation into and prosecution of organised crime are not always compatible.

3.5. No Clear Contours of Organised Crime

The legal inconsistencies that come up as a result of the aforementioned technique of regulation, clearly contribute to the lack of clear contours of organised crime in general. After having been translated into the concrete lists, ‘organised crime’ has rather different meanings. For example, ‘organised [predicate] crimes’ in the context of money laundering are significantly different from those types of ‘organised crimes’ in which the special anti-organised crime instrument of

eavesdropping is eligible. In addition, the application of the new instruments has been made dependent upon additional preconditions which also differ from each other. Such legal conditions are, in particular, qualified degrees of suspicion, and some kind of subsidiarity clauses. Further inconsistencies arise from different legal techniques – crime lists versus explicit linkages – but these details are not the point of interest here.

The extent of the inconsistencies can be exemplified by an comparison of the predicate, reference or catalogue crimes of money laundering, extended forfeiture, telephone tapping and acoustic surveillance. Such a comparison shows to what extent the crime lists of the four instruments differ: to come back to the two aforementioned examples, the money laundering statute enumerates some 50 relevant predicate – ‘organised’ – crimes, whereas the list that is relevant in the context of acoustic surveillance only consists of some 25 ‘organised crimes’, including money laundering itself. The direct comparison of money laundering and extended forfeiture – i.e. the instrument that was explicitly designed to enable a better grasp on laundered moneys – is 50 offences against 34. By such a comparative breakdown it becomes obvious how far from a coherent or at least a systematic conception the German legislation in the field of organised crime really is.

3.6. The ‘Inconsistency Gap’ and its Impact on Prosecution Practice

These inconsistencies are more than just an indicator of the lack of a general concept. The different lists of catalogue offences also result in a serious ‘consistency gap’ (Kudlich and Melloh, 2004) that also affects the application of the different measures by the prosecution authorities in cases for which different lists apply. This is particularly relevant in the case of money laundering. Article 261 *StGB* comprises an array of offences, which would not independently permit measures of telephone surveillance pursuant to Article 100a *StPO*. As mentioned earlier there is always an initial suspicion of money laundering in the majority of cases of crimes against property, at least at the stage of preliminary investigations. As a consequence, a multitude of moderate offences against property would indirectly fall under the scope of the provision on telephone tapping as well. It was certainly the interest of the legislators in effectively combating organised crime which was the driving legislative goal in making money laundering a catalogue offence for telephone tapping.¹⁶³ Therefore, the aim ‘to verify the link between the perpetrator of the predicate offence and the perpetrator of money laundering’¹⁶⁴ would lead to

¹⁶³ Compare *BT-Drucks.* 13/8651: 9.

¹⁶⁴ *Ibid.*, 13.

an unlimited applicability of telephone tapping in the case of money laundering (Kudlich and Melloh, 2004: par. 13).

Recently, however, the Federal Court of Appeals (*BGH*) declared surveillance measures in connection with money laundering to be unlawful if the suspect cannot be tried for money laundering because of the subsidiary clause and if the predicate crime is not one of the catalogue offences for wire tapping.¹⁶⁵ With regard to this new limitation of telephone surveillance established by the *BGH* in cases of suspicion of money laundering an even larger gap of inconsistency comes up: the limitation of the scope of wire tapping according to the subsidiary clause of the money laundering statute leads to the unsatisfying result that a perpetrator suspected of having committed money laundering *and* a predicate offence cannot be intercepted while a person not involved in the predicate crime but *solely* being involved in the follow-up action (i.e. the money laundering) would fall into the scope of telephone surveillance (Kudlich and Melloh, 2004: par. 15).

An offender can only be convicted of one crime, either for money laundering, or – due to the subsidiary clause – for the predicate crime. However, a more or less valid or secure prognosis for which of the alternatives a suspect will be liable can only be ascertained based on the later outcome of the investigation (Kudlich and Melloh, 2004: par. 16). Based on these simple facts, a consequent orientation towards the restrictions established by the *BGH* might lead to a significant self-restriction of the surveillance measures by the prosecution authorities – and, perhaps, even to a kind of ‘double investigation ban’ (Kudlich and Melloh, 2004: par. 16).¹⁶⁶

3.7. Practicability as a Decisive Factor for Success

The new provisions, in particular the penal norms, were highlighted more by their punitive threat than by their practicability (Gropp, 2001: 145). The former president of the Federal Criminal Police Office (*BKA*) earlier argued in a similar direction by clearly stating that the steady expansion of the procedural provisions cannot be the ‘panacea solution’ (Kersten, 1998: 137) in the fight against organised crime. Indeed, a policy that concentrates too much on legislation tends to ignore the main problem of investigations into organised crime: i.e. the complexity and the sheer duration of such investigations, including the subsequent criminal procedures. The case files analysed by Kinzig (2004) provide very good insight

¹⁶⁵ Decision of the *BGH* of 26 February 2003, 2003 *NJW*: 1880. For a critical assessment of the reasons given by the Court, see Kudlich and Melloh (2004).

¹⁶⁶ The inconsistency gap identified by Kudlich and Melloh (2004) is even larger in the case of eavesdropping in which the principles developed by the *BGH* would apply accordingly.

into this complexity. The case of money laundering is only the most prominent example for the tendency of the legislature to try to make investigations easier by continuous efforts to 'improve' the penal provision. However, apart from the fact that these steady changes in the legal framework confront the practitioners with the aforementioned legal problems, this kind of policy ignores the simple fact that it is the *complexity* of money laundering that makes such investigations so difficult – and not the legal definition of money laundering or other technicalities in the design of the statute. It is solely the criminal origin of assets that decisively divides legal and illegal financial transactions and, thus, constitutes the offence of money laundering. Therefore the investigators cannot be relieved of the search for evidence in the end. Law, at any rate, is not capable to simplify such a complex matter of facts (Hund, 1997: 183).

The most important lesson that can be learned, however, can (and should) be drawn from the successful confiscation practice. Based on new organisational structures within the police and prosecution authorities, financial investigations were established in all 16 federal states.¹⁶⁷ As a consequence, seizure and confiscation has developed into a great success story throughout the last five years in Germany. Whereas in the mid-1990s, assets in value of no more than € 20 million were seized in the context of the organised crime investigations registered in the *Situation Report Organised Crime*,¹⁶⁸ figures for the total of proceedings were not available at that time. Meanwhile, this situation has totally changed. In 1999, assets in value of € 219 million were seized, of these € 118.5 million in the registered organised crime cases alone. In 2000, the figure peaked at € 536.9 million, later on it declined again to € 332.6 million in 2001 and € 294 million in 2002.¹⁶⁹ Practitioners explain this decrease by the fact that some of the best financial investigators were withdrawn from organised crime cases and moved to investigations into terrorist money flows.

However, notwithstanding the recent terrorism-influenced decline, these are indeed remarkable figures. Although there are no official statistics available, one can suppose that these are to a great extent either confiscated by court or returned to victims. The latter option is called 'recovery assistance' and has been developed and frequently practised by German police.¹⁷⁰ Although the law does not provide an explicit regulation on it, it finds its basis in the general priority of victim claims over confiscation. This example proves to what extent methods developed by the police practitioners who are experienced in a certain working area can result in success

¹⁶⁷ For more details, see Kilchling (2002a).

¹⁶⁸ For more details on these statistics, see above, footnote 34.

¹⁶⁹ Internal figures provided by the BKA (unpublished).

¹⁷⁰ *Rückgewinnungshilfe*; for more details see Kilchling (2002a).

that was totally unanticipated. In 1998, the explanatory to the draft for the Act to Improve Confiscation had stressed that the present set of regulations did not provide for a sufficient legal basis for a successful grasp on illegal assets.¹⁷¹ From today's perspective it can be supposed that one important factor for that success was the fact that the law was *not* changed. Unlike the practitioners from police and prosecution – especially those involved in investigations related to money laundering – who are more or less steadily being confronted with the somewhat de-motivating situation that it is rather likely that a penal provision will have changed yet again each time they have to apply it, their colleagues responsible for financial investigations and the freezing of assets have the real chance to improve their professional skills based on a non-altered, *continuously applicable* legal basis.

But the most interesting finding in this context, is that the success does not come from a frequent application of extended forfeiture. This instrument, which had been explicitly designed for better confiscation of assets particularly deriving from organised crime, was only very rarely applied. Instead, more than 90 per cent of all confiscations were ordered into equivalent values. This focus on *legal* assets which is also promoted by the European Union framework decision of June 2001 can be ordered without affecting or even violating the classical (criminal) principles of onus of proof.¹⁷² Practice has shown that the provision on confiscation of equivalent values can be applied as a kind of functional equivalent to a reversal of the burden of proof. The advantage of confiscation of equivalent values becomes obvious by a quite simple consideration: why should criminal policy focus on the problems of how the illegal origin of a specific asset could be proved – and how that proof can, in case of difficulties, be evaded – if the police can easily grasp other, legal values instead? I think the German example can further demonstrate that it is not necessarily the most aggressive legal provisions that result in the greatest success rates.

3.8. Personnel and Financial Constraints

A further problem of great practical importance arises from the financial constraints the criminal justice system, including the police, is confronted with. Most of the legal reforms were not sufficiently supported by improvement of the financial endowment, in particular as far as personnel and equipment are concerned. The low number of measures of acoustic surveillance requested from the courts, for example, has not so much to do with a supposedly careful application or even low interest by the police regarding this special means of investigation. It is nothing more than a result of the

¹⁷¹ See above, 2.2. and footnote 133.

¹⁷² See above, footnote 47.

fact that there is not enough of the expensive technical equipment available. And often, of course, not even sufficient personnel to conduct such manpower-intensive eavesdropping measures over a longer time span as it may, from an investigation perspective, be necessary in one case or another. Moreover, even in cases in which personnel, time and cost-intensive investigations were brought to a successful end, it can happen that the subsequent criminal trial is ‘sacrificed on the altar of process economy’ (Kersten, 1998: 137), due to a lack of capacity.

Such financial constraints are, of course, significant in light of the nature of organised crime. One striking example on the interdependence of manpower on the one hand and the outcome of cases on the other hand, can be seen in the latest *Situation Report Organised Crime* as issued by the *BKA*.¹⁷³ During the 1990s, the number of registered organised crime cases moderately increased and reached its peak with a total of 854 investigations. Since then, the annual number significantly decreased to some 637 cases in 2003.¹⁷⁴ Most interestingly, for the same time span the number of personnel involved in organised crime investigations developed in a parallel way: after some growth during the 1990s, the number reached its peak of some 3,000 persons in 2000. And in the following three years it continuously reduced by approximately 500 per year.¹⁷⁵ Here the reason also is obvious: personnel were removed from organised crime into terrorism investigations. Although the report refrains from drawing a direct conclusion from the two patterns, it is explicitly pointed out that the investigations depend upon the availability of resources and that the decline in the number of registered cases must not be interpreted as if there was really a drop in organised crime.¹⁷⁶

3.9. Tendency to Escape from Criminal Law and Criminal Prosecution

And last but not least, we will consider the taxation approach once again. The growing political attention to the underlying principle has, of course, a clear criminal-political impact. It can be interpreted as a move from confiscation through asset penalty (Meyer, 1990) towards forfeiture through taxation (Ehlscheid, 1999). It is still not really clear whether the new policy has to be seen as a kind of escape from criminal law or whether it is a more or less utilitarian occupation of another branch of law in order to ‘exploit’ it for the tackling of organised crime. Taxation law is known to be one of the most powerful instruments for the prosecution authorities

¹⁷³ See <http://www.bka.de/lageberichte/ok/2003kf/lagebild_ok_2003_kurzlage_englisch.pdf>.

¹⁷⁴ *Ibid.*, 14.

¹⁷⁵ *Ibid.*, 13.

¹⁷⁶ *Ibid.*, 14.

as it provides low standards of proof that are based upon a duty of declaration, but has drastic sanctions.¹⁷⁷ Therefore, taxation should be kept absolutely free from any connection to criminal prosecution, in particular in reflection of the fact that taxation is an area that is very critically viewed in the greater public anyway. Even worse, in a formalistic perspective, one could even argue that taxing illegal proceeds be a kind of money laundering by the state ...

From a *political* point of view I am not really convinced whether such a strategy is wise. I think that after long political debates about the possibility to get the tax debt reduced for bribes which were paid in a foreign country by an individual or an entity, this isolated perspective which does not take into consideration the principles of criminal law, has become outdated. Meanwhile agreement on a new principle could be reached, based on the convincing argument that the tax system should not and cannot be neutral as far as punishable matters are concerned. Consequently, this new principle should not be ignored again once it is to the benefit of the state. A further argument is that the confiscatory effect of taxation is being reduced the more the tax rates, according to the present political mainstream, are going down in general. Moreover, as in the legal economy, tax might be no more than a factor of calculation that will increase the price level on the supply side rather than to act as a deterrent.

Should it happen that the Constitutional Court, in the foreseeable future, finds the underlying statutory offence of professional tax evasion, which is the material anchoring point of the taxation approach so far, to be incompatible with the constitutional principle of certainty and definiteness, the chance for a review of the whole approach would come up.¹⁷⁸

4. Conclusions

The first, most obvious conclusion that can be drawn from our review is that as a result of the organised crime policies conducted in Germany throughout the 1990s manifold new legal means of intervention have been introduced. All these changes, together with other measures taken by the legislators, contribute to the finding that the criminal law of 2002 is no longer comparable with that of 1975 when the last general reform entered into force (Krehl, 2003: par. 9). Is it – after all the amendments made and all the inconsistencies referred to above – possible to say what organised crime, from the point of view of the German legislature, really *is*?

¹⁷⁷ For a detailed introduction, see Ehlscheid (1999).

¹⁷⁸ See above, footnote 107.

First, in light of the rather blurred picture that comes up from all the different regulations implemented, organised crime is a *functional* rather than a *substantive* concept. Kinzig is totally right with his characterisation of organised crime as a formula for a ‘new criminal procedure’ rather than a substantive concept (Kinzig, 2004: 787).¹⁷⁹ Indeed, a transformation in the function of the Code of Criminal Procedure from a pure legal guidance of the *criminal procedure* which primarily sets the rules and limits for prosecutorial action, towards a framework for *operative action* (Hetzer, 1999: 134) can be witnessed, which is a direct effect of the various amendments that were implemented to strengthen the legal instruments against organised crime. Pro-active measures of investigation are certainly the most obvious examples in this context. Classical prosecution is re-active in nature whereas organised crime investigations have become more and more pro-active. As a consequence, a clear shift from an offence-centred perspective towards an offender-centred perspective can be identified. In addition, the ‘classical’ proceedings *in personam* are appended by *in rem* proceedings.

Secondly, especially in light of these developments in the area of criminal procedure, ‘organised crime law’ appears more and more a step towards a *special regime of prosecution*. Many of the new measures and instruments of investigation introduced were made applicable in cases of organised crime only. As a consequence of this development, a kind of separate, or parallel procedure came into existence to the effect that organised crime investigations nowadays are based on rules that are significantly different from those applicable in ‘ordinary proceedings’. On the one hand, there are the ‘special’ proceedings during which extended investigative powers are eligible in order to get the investigatory advantages. In the ‘regular’ proceedings, however, all these special possibilities do not apply. As a consequence of this, one can clearly point out that the same law no longer applies to everybody, in procedural as well as in substantive terms (if one thinks, e.g., of the laundering of criminal proceeds, which is sometimes a criminal offence, and sometimes not).

At first glance, this differentiation might appear to be not problematic at all. This is particularly true in light of the fact that the German Constitutional Court, in its decision on extended forfeiture, ruled that the implementation of penal provisions that exclusively aim at combating organised crime is no violation of the constitutional guarantee of equal treatment.¹⁸⁰ However, this decision was made with regard to the regime of forfeiture that is part of substantive law. It should be taken into consideration that the inequalities referred to here as ‘parallel procedures’ come up in a totally different context: that of the criminal procedure. This deals

¹⁷⁹ The original German term used is *Chiffre*; see also Kinzig (2004) and Kinzig and Luczak (in this volume).

¹⁸⁰ See above, footnote 48.

with individuals, not with criminal phenomena. And it is obvious that individuals, once they reach the status of suspects according to the procedural criteria which makes them subject to a coercive procedure, must be treated equally from that point on. In addition, the issue of equal treatment even has an additional dimension. The concentration of all (notably limited) resources towards organised crime (or terrorism), supported by providing more and more special investigative powers exclusively for the prosecution of organised criminals (or terrorists), could in fact result in a *discrimination of the victims of conventional crime* as investigations into ‘their cases’ would be made more difficult, jeopardising the success of investigations and prosecutions in those cases.

The most extreme variant of a parallel kind of procedure or treatment has been developed by Jakobs. According to his approach of a so-called ‘enemy law’ (*Feindstrafrecht*), the separation of the procedures aims to isolate the enemies of a society that expose a permanent turn away from the law, especially those involved in organised crime and terrorism.¹⁸¹ Indeed, the traditional aims and rationales of punishment become irrelevant in the context of organised crime and terrorism as they require (individual) offenders who are ready or capable of rehabilitation; at least, they must be reachable addressees of deterrence. With regard to Jakobs’ vision, Volk (2003) speaks of an apocalyptic vision, where a state governed by the rule of law should not create a special law for its enemies. It must also remain true to its basic values when dealing with the enemies of the constitutional state.

These considerations remind us that we need a balance between repression and prevention. Criminal law is generally re-active in nature. The scope for pro-active intervention is limited in this field. Otherwise we would risk offenders ending up in detention based on mere suspicion. I am sure that the idea of a ‘Guantanamo for organised criminals’ is not a desirable goal.

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The Control of Organised Crime in France: A Fuzzy Concept but a Handy Reference

Thierry Godefroy

1. Introduction

To point out the vagueness surrounding the concept of organised crime is nothing new. The paradoxes and imprecision of the concept have been shown repeatedly (Paoli, 2002; Levi, 1998; Brodeur, 1998, 2002; Ruggiero, 1996, 2002; Quelo, 1999; Naylor, 1997, 2002). Criticism has come from a number of disciplines. The lack of a juridical definition, for example, has irritated penalists for years.¹ The unrealistic statistics have been contradicted by the work of economists (Cartier-Bresson, 2002; Cartier-Bresson et al., 2001; Kopp, 2001a, 2001b), whereas fantasising about global crime syndicates endangering the power of states has been exposed by specialists in international relations (Friman, 2002; Friman and Andreas, 1999) to the point where one wonders whether the concept should not be dropped altogether (Favarel-Garrigues, 2001, 2002).

Despite this criticism, reference to organised crime still prevails in many international meetings, and this has led to the development in many countries of new instruments, the validity of which nonetheless remains to be established.

Although there are no structured criminal organisations operating permanently in France, the country has not been spared by this trend. Police and judicial reports on the French situation depict the scene as relatively untouched by such phenomena, a far cry from the media-propounded alarms and the superficial studies on threats on which all sorts of fears can converge (foreign criminal groups, terrorism, suburban youth of immigrant descent, money from the underworld economy).² These reports emphasise the absence, in France, of structured criminal groups with diversified activities, such as may be found in Italy or Japan. While some criminal groups do exist, they usually do not have the sociological roots, the hierarchical structure or the capacity for corruption found elsewhere, and the various manifestations of

¹ See the 1999 conference on criminal law (AIDP, 1999).

² See, for instance Raufer (1996, 1999); and Raufer and Quéré (2000). For criticism of the formulation of the issue in terms of mafias in the sense of criminal groups with an ethnically defined component, see Bigo (1999).

organised crime that do exist are confined to the southern and south-eastern part of the country. France seems to serve more as a place of transit, then, and as a refuge, except with respect to money laundering, for which it is viewed as attractive, and as an element in the obfuscation of illegal financial transactions.

Against the backdrop of this sketchy picture of organised crime, we will now consider the arguments developed in the public debates of the last decade, in which politicians have repeatedly descended into the arena, and will then take a look at the legal instruments discussed and the schemes produced.

2. Political Mobilisation Crosses Party Lines

The issue of organised crime has galvanised politicians and public debate in France over the last ten years or so, as has been the case repeatedly in the United States.³ Right-wing representatives were the first to move, in the early 1990s, on the issue of the penetration of foreign criminal organisations – initially Italian (with the d'Aubert Commission), and more recently from eastern Europe (d'Aubert, 1993). In the latter half of the 1990s, representatives of the left pursued the issue, raising questions on serious economic and financial crime and money laundering (with the Montebourg Task force), and ways of fighting tax evasion (Brard, 1999).⁴

In the last analysis, despite partisan (right/left) political differences or disagreements over the objects (foreign criminal organisations in the one case, economic and financial crime and money laundering in the other), this combined mobilisation produced similar proposals, crossing political lines, pushing for proactive policing, inter-agency cooperation, specialised agencies and so forth.

2.1. The Extent of Penetration by Foreign Mafias

The Italian problems of the early 1990s, which moved people enormously – with the mafia attack on Italian institutions by a series of *crimini eccellenti*⁵ in 1992 in particular, followed by successful police action based on reinforced control measures – raised the issue of the internationalisation of these organisations, their

³ Beginning with the 1919 Chicago Crime Commission, the first of its kind, then the Kefauver Committee and on to the hearings of Joseph Valachi (United States Senate, 1963; Kefauver, 1951).

⁴ *Mission d'information sur les obstacles au contrôle de la délinquance financière et du blanchiment* (Montebourg, all references).

⁵ The assassination of Giovanni Falcone and Paolo Borsellino. 'Excellent crimes', perpetrated in spectacularly brutal fashion, aimed at weakening the state.

establishment in southern France, and the eventuality of reforming French control measures. In late 1992 the French right-wing parliamentary majority set up a Parliamentary Investigation Committee. The first European mobilisations on the question took place at the same time, with Trevi, for example, and the shift from 'major' crime to 'serious' crime and subsequently to 'organised' crime (Group IV, 1992) or, again, with the changes in German legislation (with what is known as the OrgKGesetz, 1992).

This Committee, headed by François d'Aubert (of the right-wing UDF party), was relatively expedient, but worked in secrecy. Having conducted 16 hearings— not disclosed to the public — it handed in its report in late January 1993. The committee's evaluation of the phenomenon was measured — it came to the conclusion that infiltration by the mafia is more a threat than an existing 'scourge', but that France, although as yet spared, is vulnerable and should remain vigilant. It advanced several recommendations for strengthening the administrative and judicial apparatus (d'Aubert, 1993).

In the meanwhile, the Ministry of the Interior, probably in an attempt to anticipate these recommendations, created a structure in charge of collecting and analysing intelligence on the mafia (UCRAM).⁶ This did not coincide with the committee's final recommendations, however. The committee called for the creation of an inter-ministerial group for intelligence on and study of the mafia, and the establishment of specialised courts at an inter-regional level. It remained reluctant as to the need for the creation of a new criminal offence — membership of a criminal organisation or a mafia-type gang — but stressed the importance of boosting the investigation resources of law enforcement agencies.

In particular the committee suggests that the above-named group, with no operational assignment, composed 'of specialists in anthropology and in the methods used by the mafia', should depend directly on the Prime Minister and receive support from regional groups which differ from it in that they have the power to investigate, in conjunction with special inter-regional courts presided by judges specialised in 'serious economic and financial crime and mafia-like criminal activities'.

Lastly, it advocates the reinforcement of means of investigation, including the extension of controlled deliveries to illicit activities in general, the interception of communications and the protection of witnesses.

Whereas this set of recommendations did not receive an immediate follow-up, they are finally coming into effect now, ten years later, with the bill on organised crime presently up for examination (Bill on the Adjustment of the Justice System to New Trends in Crime, June 2003), based essentially on the committee's conclusions. Meanwhile, the subject again became a major political issue during

⁶ *Unité de coordination et de recherche anti-mafia (Journal Officiel, 24 December 1992).*

the parliamentary debate on reforming the scheme for fighting money laundering (the legislation on the New Economic Regulations (NER), adopted in 2001) and the conclusions of the Parliamentary Investigation Task Force on Economic and Financial Crime (EFC) created by the socialist representatives in 1999 (the Montebourg task force).

There continued to be concern, however, with the extent to which foreign crime rings had penetrated south-eastern France, a question brought up again several years later with reference to the ‘mafias from eastern Europe’ by a right-wing representative from the French Riviera and former member of the 1993 committee, Christian Estrosi. His suggestion that another investigation committee be created was finally rejected by the Legislative Committee of the National Assembly, which alleged that France and the French Riviera tend to be vacation places in the vicinity of such tax havens as Monaco, Switzerland and the Anglo-Norman Islands rather than places where these rings indulge in their criminal activities (Estrosi, 2000). The problem is therefore more generally that of money laundering in Europe – considered by the 1999 task force – which the government felt it was addressing by its bill on new economic regulations.

2.2. Action to Combat White Collar Crime and Money Laundering

This is the second line of action adopted by Parliament. The fight against economic and financial crime and money laundering was implemented by the parliamentary left following the 1997 legislative elections, which gave the majority to the socialists and put Lionel Jospin at the head of the new government.

Impelled by socialist Arnaud Montebourg, a Parliamentary Investigation Task Force was set up in June 1999 and charged with studying ‘the obstacles to fighting and punishing economic and financial crime and money laundering in Europe’. This task force was to function for three years (one of the longest missions in parliamentary history) and to extend its investigations to Europe as a whole. It visited 14 countries and destinations, and wrote five critical reports: on Liechtenstein, Monaco, Switzerland, Great Britain and Luxembourg (Montebourg, all references). It emphasised a strong call for European mobilisation, and resulted in a Conference of European Parliaments in Paris in February 2002 (see section 5.3, *infra*).

But it was mostly in its last report devoted to France, that it broached the subjects of organised crime, the penetration of criminal organisations in south-eastern France and the necessary reinforcement of the corresponding criminal justice procedures, all prominent elements of its recommendations (Montebourg, 2000a).

Meanwhile, another attempt was being made to reform schemes for fighting money laundering, with the legislation on the NER. This introduced new means of controlling financial movements by, among other things, lengthening the list of professions subject to compulsory notification, reducing the required evidence from suspicion of a link between specific funds and organised criminal activities,

to the mere probability of such a link, and reinforcing surveillance of (and in some cases even prohibiting) operations involving countries on the FATF list. The discussion took place between the spring of 2000 and the spring of 2001, and primarily represented an opportunity for the Montebourg task force to introduce one of its recommendations, a sort of reversal of the burden of proof in charges of criminal conspiracy.⁷ Moreover, this law also expands the definition of criminal conspiracy, one of the d'Aubert committee recommendations, but rejects its proposal to copy the Italian and United States model by creating a new criminal offence of membership of a criminal organisation.⁸

During the debates on the NER, this task force succeeded in getting several of its recommendations adopted, while others are still in the 'forthcoming combats' category, aiming above all at bolstering the fight against organised crime through a number of measures. These include heightened cooperation between administrative, police and judicial agencies throughout Europe, entailing the amplification of operational Europol and Eurojust missions, the adjustment of the Code of Criminal Proceedings 'to the fight against organised crime' and the criminalisation of 'membership of a criminal organisation', which the task force had not supported during the parliamentary debate on the NER Act, but subsequently agreed to defend on the insistence of d'Aubert, a member of the task force.

This last recommendation (No. 32), aimed at adding a new criminal offence – membership of a criminal organisation – to the Criminal Code, represents a political compromise with one of its most consistent champions, representative François d'Aubert, rather than a response to any strong requests by operatives. Throughout the hearings, the operatives were clearly more anxious to obtain additional means for investigation than an additional criminal category which they considered extremely difficult to put to practical use.

The idea of reinforcing criminal procedural means actually corresponds much more adequately to the wishes of the operatives heard by the committee. When heard, both police officers and judges concurred on the need for extended investigative means, restricted until then to drug trafficking only. In response, the task force offered to adjust the Code of Criminal Proceedings to the fight against organised crime by creating a specific title devoted to 'special dispensations with respect to the prosecution and investigation of offences involving organised criminality' (Recommendation No. 18). The task force suggested that the field of application of undercover operations be extended to offences coming under the heading of

⁷ When a person habitually in contact with a criminal conspiracy is unable to provide proof of income consonant with his/her lifestyle (Art. 450-2-1 of the Criminal Code, see *infra*).

⁸ The minimum sentence is reduced from ten to five years for these offences (see the new Article 450-1 of the Criminal Code)

organised crime and that protection be afforded for infiltrated agents, essentially by exempting foreign agents from criminal responsibility.⁹

Whereas its point of departure was economic and financial crime among prominent public figures and the European Union's difficulties in pursuing cooperation, and judicial cooperation in particular, in fighting white collar crime, the committee concluded its work three years later with a strong inclination towards issues involving organised crime, and the adoption of several of the d'Aubert committee recommendations. It still remained somewhat more reluctant on the organisation of policing and judicial agencies and above all on the assignments of the financial cells, on which subjects the task force did not formulate any recommendations.

The Palermo Convention was finally ratified by the French Parliament in the summer of 2002, another sign of general agreement among politicians. The vote was unanimous in both the Senate (on 21 February 2002) and the National Assembly (on 24 July 2002). The Convention was in fact one of the very first bills submitted to the special session of the new Assembly whose representatives were elected in June 2002. It is indicative of the continuing emphasis placed on these subjects by the political personnel that the vote came immediately after the guidelines and programmes for domestic security legislation.¹⁰ Thus, one of the first decisions made by this newly elected Assembly was the creation of a working party on organised crime headed by a former socialist minister, Michel Delbarre, a prelude to a new period of consensual political mobilisation.

3. Hesitation and Gradual Adjustment of Legal Instruments

Well before there had been any talk about criminal organisations or organised crime, the French Criminal Code already contained specific provisions for the punishment of structured groups, be it for the preparation of serious offences (criminal conspiracy has been mentioned in the French code since 1810) or through heavier punishment of offences committed collectively (the notion of the organised gang was introduced in the 1980s).

⁹ More or less, those in the Europol sphere: kidnapping and illegal sequestering, procuring, circulation of pornographic pictures of juveniles, theft in organised gangs, extortion of money, receiving/handling of stolen goods in organised gangs, money laundering, trafficking of firearms in relation to a terrorist undertaking, coinage offences, criminal conspiracy.

¹⁰ One priority proclaimed by this Act is the fight against terrorist threats and organised crime, with an increase of 600 jobs over the 2003-2007 period, primarily in the intelligence agencies (National Assembly, 31 July 2002).

Despite the lack of any definition, the terms ‘organised crime’ and ‘criminal organisation’ have been wielded increasingly over the last decade, indicating the gradual, hesitating adjustment of legal instruments to this new terminology.¹¹

3.1. The Legal Environment

French law clearly addresses the illicit activities of groups, or criminal organisations, through two provisions – one dealing with conspiracy aimed at preparing an offence (criminal conspiracy) and the other making participation in an organised gang an aggravating circumstance for offending. These clauses recently modified are generally considered adequate and in conformity with the international recommendations formulated by the European Union and the United Nations.

3.1.1. Conspiracy Aimed at Preparing an Offence (Criminal Conspiracy)

Criminal conspiracy (Art. 450-1 of the Criminal Code) is an independent criminal category aimed at criminalising prior arrangements.¹² It is viewed by jurists as referring to preparation of an offence and is analysed as a ‘barrier’ offence – one which, by constituting a separate offence, criminalises behaviour which is actually preparatory to the perpetration of more serious offences and thus prevents their punishment as attempted acts (Desportes and Le Gunehec, 2000).¹³ It supposes the existence of material proof pertaining to the preparation of a serious or moderately serious criminal offence.

This provision was written into the French code in 1810, when it was introduced to punish the workings of gangs produced by the revolution. It remained unchanged, except for minor adjustments (in 1893 and 1981) until recent years. In the mid-1990s its field was extended, with the new 1994 Criminal Code (the size of the group or the length of the conspiracy are no longer specified) followed by the very recent NER Act which extends criminalisation to offences punishable by a prison sentence of at least five years (Act 2001-420 of 15 May 2001).¹⁴

¹¹ The bill, finally passed in February 2004, defines the offences coming under the heading of organised crime, in an attempt to give content to what was previously an empty concept (Loi 2004-204 du 9 mars 2004 portant adaptation de la justice aux évolutions de la criminalité).

¹² Article 450-1 of the Criminal Code punishes ‘any group or agreement characteristically aimed at the preparation, by one or several material facts, of one or several offences punishable by a prison sentence of at least five years’.

¹³ ‘The legislator criminalises preparatory acts [...] which do not yet constitute a normally punishable attempt’ (Cédras, 1998).

¹⁴ Loi 2001-420 du 15 mai 2001 relative aux nouvelles régulations économiques (NRE).

3.1.2. An Aggravating Circumstance in the Perpetration of an Offence (the Organised Gang)

Illegal activities in organised gangs (Art. 132-71) and agreements for the purpose of committing an offence call for heavier sentences.¹⁵ According to jurists this provision may be interpreted as applying to *a posteriori* agreements, as seemingly indicated by a Ministerial Order from the Ministry of Justice.¹⁶ This article, inserted in the French Criminal Code in 1981 (at the end of President Giscard d'Estaing's mandate), had a relatively restricted field of application (thefts and destruction by bombing) until the 1994 Criminal Code extended it considerably. Today, this clause may be used to inflict heavier punishment for a great many offences including drug trafficking, fraud and extortion, making sentences as long as for serious offences.¹⁷

3.2. Reluctance and Adaptation in the Last Decade

Recently legislation has tended to adjust, sometimes reluctantly but nevertheless continually, to the new terminology – ‘criminal organisation’ and ‘organised crime’ – previously unknown in the French tradition. The gradual introduction of these notions in the legal provisions has elicited a great deal of hesitation. Many people still do not find the practical implementation of these notions very convincing, while the criminal proceedings have been reformed to respond to the repeated demands of the agencies operating in the field.

Simple membership of a group or organisation dubbed ‘criminal’ is still not punishable in France, if it is not tied to the preparation of an offence. For advocates of such criminalisation, its absence is an obstacle to the punishment of the illicit

¹⁵ Article 132-71 of the Criminal Code stipulates that: ‘an organised gang is any group formed or any agreement established with a view to the preparation, characterised by one or several material facts, of one or several offences’.

¹⁶ ‘It may be analysed as a way of taking into consideration the existence of a criminal conspiracy *aimed at* committing that offence once the offence has been committed.’ Ministerial Order, 14 May 1993, Ministry of Justice.

¹⁷ French law divides offences into three categories, on the basis of increasing seriousness:

- *contraventions* (termed ‘minor offences’ in the text), which are judged by *tribunaux de police*;
- *délits* (termed ‘moderately serious offences’), which are judged by *tribunaux correctionnels*;
- *crimes* (termed ‘major or serious offences’), which are judged by *cours d’assises*, in which a jury sits.

activities of organisations which are not preparing to commit any offence on the French territory.

Over the last decade controversy has waged on this notion of criminal organisation and on whether or not there is a need for a new criminal category referring to such membership.

3.2.1. Advances in 1993-1995

The first references to the activities of criminal organisations and to the fight against organised crime may be found in the two legislative texts first seen in 1993 and 1995. Although the lawmakers did not define these expressions, their use marks a first step toward their introduction in legal instruments.

The first reference to the activity of criminal organisations is found in the 29 January 1993 Act on the financing of political parties and the transparency of public procurement contracts. This Act, a response to the persistent problem of how to reform the financing of political activities, was passed at precisely the time when the d'Aubert committee was terminating its work. Concomitantly, an article modifying the policy measures set up by the 12 July 1990 Act to combat money laundering was introduced. It extends the obligation for financial institutions to file a report of suspicion regarding sums generated by 'the activity of criminal organisations', but still does not provide any definition of such organisations.¹⁸

Shortly thereafter, with the creation of a special unit for the investigation of organised crime within the judicial police force,¹⁹ the fight against organised crime was first mentioned officially, in the 21 January 1995 Act relative to the police.²⁰

3.2.2. Hesitancy in the 1996 Policy Measures for Fighting Money Laundering

The policy measures for fighting money laundering were again modified in 1996. The debate in the legislature at the time is indicative of the hesitancy to introduce a definition of criminal organisations.

In response to the recommendations of the FATF, the definition of the offence behind money laundering, previously confined to drug trafficking, was reformulated.

¹⁸ Loi 90-614 du 12 juillet 1990 relative à la participation des organismes financiers à la lutte contre le blanchiment des capitaux provenant du trafic de stupéfiants, and Loi 93-122 du 29 janvier 1993 relative à la prévention de la corruption et à la transparence de la vie économique et des procédures publiques, *Journal Officiel*, 30 January 1993.

¹⁹ The *Section centrale d'investigations sur le crime organisé* (SCICO).

²⁰ Article 4 of the Act of 21 January 1995 containing guidelines and programmes relative to security (Loi du 21 janvier 1995 d'orientation et de programmation relative à la sécurité, *Journal Officiel*, 24 January 1995).

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In the course of the debate some right-wing representatives, fearing the extension of the definition of laundering to funds derived from tax evasion, suggested that the criminalisation of money laundering be confined to money produced by criminal organisations. Overriding the objections of part of its majority, the government (on the right at the time) finally succeeded in obtaining the rejection of an amendment aimed at defining criminal organisations and punishing membership of them (the proposed definitions were deemed too vague). The Act finally did not mention organised crime and the activities of criminal organisations, and in the last analysis, a broad, moderately serious offence – money laundering – was created. It makes the laundering of money generated by any major or moderately serious offence punishable,²¹ whereas the obligation to file a report of suspicion continued to be defined by the 1993 Act – sums generated by ‘the activity of criminal organisations’. There was thus created an imbalance between a broad offence (with no reference to organised crime) and the obligations of certain categories of professionals who are bound to report any suspicion regarding funds ‘apparently’ coming from criminal organisations. It is the ministerial enforcement order, issued shortly thereafter, which first provides the specifics of a terminology now used in several legislative acts. In terms similar to those contained in the 1991 European Union directive on money laundering, it states that the fight against organised crime is aimed at ‘structured networks recycling income from illicit activities of an international nature’.²²

Along with this reform a new charge was introduced, involving a sort of reversal of the burden of proof patterned after the procedure applied to procuring. It calls for punishment of the inability to account for income consonant with one’s lifestyle, for individuals in contact with people involved in drug trafficking.

3.2.3. The Ambiguities of the 2000-2001 Period

Provisions on money laundering were again modified in 2001 in the legislation on NER.²³ During examination of the bill, the question arose of the field to which the obligation to file a report of suspicion applies, with the extension of the professions concerned. The formula in force since 1993, designating sums *apparently* derived from the *activity* of criminal *organisations*, was replaced by an expression designating income *susceptible* of being derived from organised *criminal activities*. This modification strengthens the obligation to report in the sense that the criterion is simple suspicion of a probability (‘susceptible of being derived’) rather than

²¹ Act 96-392 of 13 May 1996 (Loi 96-392 du 13 mai 1996 relative à la lutte contre le blanchiment et le trafic de stupéfiants et à la coopération internationale en matière de saisie et de confiscation des produits du crime).

²² Enforcement order for Act 96-392 of 13 May 1996, Ministry of Justice.

²³ Loi 2001-420 du 15 mai 2001 relative aux nouvelles régulations économiques (NRE).

appearance, but above all, it emphasises the illicit origin of the income rather than the criminal nature of the organisation (which is always difficult to prove). These reversals of the terms 'are explicitly aimed at the perpetration of offences and elude the question of membership of an organisation, in all phases of the procedure', according to the preamble stating the grounds for the adoption of the NER bill.

Two other provisions relative to the fight against organised crime were also voted on. To improve consonance with European Union recommendations, the definition of criminal conspiracy was extended (now applying to all offences punishable by at least five years imprisonment). However, an amendment proposed by representative d'Aubert defining criminal organisations and criminalising membership of such an organisation was rejected.²⁴ Neither the left nor the right supported the proposal, but the Montebourg task force finally agreed to include it in its conclusions. Lastly, the sort of reversal of the burden of proof introduced in 1996 for individuals in contact with drug traffickers was extended, as recommended by the task force, to individuals in contact with a criminal conspiracy.²⁵

3.2.4 The Latest Advances (2002-2003): The Ratification of the Palermo Convention

The question of criminal organisation as a charge in its own right surfaced once more during the brief parliamentary debate prior to the ratification, by France, of the Palermo Convention against organised transnational crime.

During the debate, the spokespersons for both the Senate and the National Assembly stressed the improvement of this broad-based Convention over earlier, specialised schemes devoted to specific forms of criminality. They pointed out that the overall criminalisation of participation in a criminal organisation requires the corresponding criminalisation, in domestic law, of participation in an organised criminal group (Art. 5 of the Convention). In the French case, however, this ratification should not result in any legislative modification criminalising participation in an organised criminal group, which offence, in their opinion, actually corresponds to what French law designates as criminal conspiracy (Art. 450-1 of the Criminal Code), applicable, since the 15 May 2001 NER Act, to the preparation of a serious

²⁴ François d'Aubert proposed the creation of a sixth title of book IV of the Criminal Code on membership of a criminal organisation and the introduction of an Article, 460-1, defining criminal organisations.

²⁵ Article 450-2-1 of the Criminal Code: 'for a person habitually in contact with one or several individuals indulging in activities designated in Article 450-1 (criminal conspiracy), the fact of not being able to account for income corresponding to that person's lifestyle is punishable by [...]'

offence or of a moderately serious offence punishable by a prison term of at least five years.²⁶

Despite these assertions that French criminal law already conforms to the requirements of the Convention, the idea expressed by several representatives during the National Assembly debate (24 July 2002) according to which the creation of a specific charge of ‘criminal conspiracy connected with a criminal organisation’ would be more in step with the spirit of the Convention definitely seems to be progressing. If that charge were to be adopted, it would be more for reasons of international opportunity than for any domestic necessity.

Lastly, the debate again highlighted the demands for special investigation techniques and for the reinforcement of procedural means and resulted in their inclusion in the bill under discussion in June 2003.

3.3. Reinforced Procedural Means

The utility of creating a new charge for membership of a criminal organisation is questioned by both judges and the police. Such criminalisation is difficult to implement and is not very fruitful in terms of repressive efficiency, whereas the existing provisions (criminal conspiracy, or the recent provisions of the NER Act on justification of income) are not sufficiently enforced. Above all, they prefer to stress the need to adopt more adequate criminal procedural provisions tailored to the new targets.

Some such reinforced procedural means have gradually been introduced in recent years, originally as temporary or exceptional measures to fight drug trafficking or terrorism. There is presently a tendency to apply them to other organised crime-related offences.²⁷

The ‘Everyday Security’ Act, for instance, debated by the French Parliament following the 11 September attacks, introduced new clauses aimed at fighting terrorism but which may be applied to organised crime.²⁸ For example, the existing

²⁶ ‘Our criminal law conforms to the requirements of the Convention, since offences punishable by 3 years in prison (the next lower threshold) are not included among the serious offences, whereas there are no offences punishable by a 4-year sentence and those punished by a 5-year prison sentence (the next higher threshold) are already dealt with in Article 450-1 of the Criminal Code’ (Philip, 2002).

²⁷ Provisions making membership of an organisation or leadership thereof a criminal offence already exist for terrorism and drug trafficking. See Articles 421-3-1 and 224-34 of the Criminal Code, criminalising criminal conspiracy in connection with a terrorist undertaking and leadership of a group importing and dealing in drugs.

²⁸ Loi 2001-1062 du 15 novembre 2001 relative à la sécurité quotidienne, and Ministry of Justice Ministerial Order CRIM 02.10.E8.25.04.02.

clauses pertaining to terrorism (authorising searches, including at night, during the preliminary investigation, and searches of vehicles) are extended to trafficking of drugs and firearms. These provisions, adopted for a limited period expiring on 31 December 2003, have been perpetuated and extended to other offences with the bill 'on the adjustment of the justice system to new trends in crime' which was debated in 2003-2004. The same Act also introduces a clause aimed at developing the patrimonial aspect of investigations. As of now, it applies to a series of serious offences (procuring, money laundering, drugs, receiving/handling of stolen goods) connected with organised crime. Thanks to this provision with its emphasis on an economic and fiscal approach to the income of presumed authors of such offences, the internal revenue agencies, supervised by the public prosecutor, may be charged with investigations (Art. L10B of the book of internal revenue procedures).²⁹

Over the last decade, reinforced procedural guidelines have gradually been enacted for a number of investigation instruments, including:

- police custody (extended definition of the conditions under which police custody may be lengthened from two to four days);³⁰
- provisions relative to witnesses (guarantee of anonymity and protection of witnesses and people who collaborate with the criminal justice system) stipulated in Articles 706-58 to 706-62 of the Code of Criminal Proceedings;³¹
- search procedures (Art. 76-1 and 706-24 of the Code of Criminal Proceedings);
- possibilities for undercover action, known as controlled delivery, introduced for drugs in 1991;³²

²⁹ Internal revenue workers are now able to undertake investigations of a fiscal nature susceptible of contributing to proof of certain offences (drug offences, procuring and receiving/handling of stolen goods), and especially any investigations pertaining to income (Art. L10B of the book of internal revenue procedures).

³⁰ Article 706-29 of the Code of Criminal Proceedings dealing with drug-related offences and criminal conspiracy aimed at preparing a drug-related offence.

³¹ Introduced by the 2001-1062 Act of 15 November 2001 and the 2002-1138 Act of 9 September 2002 for serious and moderately serious offences punishable by a prison term of at least three years.

³² Articles 706-32 of the Code of Criminal Proceedings and 67bis of the Customs Code, extending the same prerogatives to customs officials (Act 91-1264 of 19 December 1991 on the Reinforcement of the Fight against Drug Trafficking – Loi 91-1264 du 19 décembre 1991 relative au renforcement de la lutte contre le trafic de stupéfiants).

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- interception of communications;³³
- extension of the patrimonial aspect of investigations (Art. L10B of the book of internal revenue procedures).

The new (right-wing) government elected in the spring of 2002 immediately drafted a bill on fighting organised crime. This text ‘on the adjustment of the justice system to new trends in crime’ which was passed in February 2004, reorganises procedural provisions, which had accumulated piecemeal, and extends them to all offences coming under the heading of organised crime.³⁴ Consequently, the content of that concept is defined at the outset in Article 1, as including serious violent crime, drug trafficking, kidnapping and sequestration, procuring, trade in human beings and acts of terrorism, as well as criminal conspiracy aimed at committing any of those offences, and other offences aggravated by their perpetration by an organised gang.³⁵

A decade-long process of gradual adjustment comes to a close with this bill. The next remaining step is to reform the presently scattered and uncoordinated institutional arrangements for fighting organised crime.

4. A Piecemeal Control Scheme

The scheme for fighting organised criminal activities rests on a great many agencies which are entitled to participate in the fight against organised crime in various capacities. Whereas most are policing agencies, as is the case for other forms of criminality, the peculiar nature of the offences (the considerable international circulation of goods and individuals, the sizeable sums involved, the effects on the licit economy, foreign penetration and so forth) has led to the involvement of other institutions (customs and Ministry of Finance, intelligence services and the Ministry of Defence, economic and financial justice system agencies and so on).

This piecemeal control scheme is relatively uncoordinated. Coordination, under discussion since the mid-1990s, is a feature of the present debate.

³³ Loi 91-646 du 10 juillet 1991 (Art. 3).

³⁴ Loi 2004-204 du 9 mars 2004 portant adaptation de la justice aux évolutions de la criminalité.

³⁵ Assassination, torture and barbaric acts in an organised gang.

4.1. Policing

Many operational structures on which the system is based are quite old (the judicial police bureaux, for instance) while others are the fruit of attempts starting in the mid-1990s, to set up specific cells within the Ministry of the Interior (Quillé, 1999a, 1999b). The latter have not actually succeeded in creating spaces of their own for action, but rather have ended up being recuperated by the existing operational judicial police units or integrated in the more comprehensive fight against terrorism.

This trend reflects the determination of operatives to stick to committed acts and their distrust of approaches placing almost exclusive emphasis on organisations or groups, viewed by many as ‘nebulous aggregates with no clear-cut illicit acts’.

The policing scheme operating on a basis of trial-and-error is actually quite symptomatic of how vague the concept really is, as is frequently pointed out, and of how confusing the policy measures are – should policing concentrate essentially on criminal activities, on acts (and secondarily on their organised character) or should it primarily focus on organisations, groups and mafias, and then look for their illicit activities? In the first case the term used is ‘organised criminal’ activities, in the second it tends to be ‘criminal organisations’. As we have seen, legislation on the subject is particularly hesitant on terminology.

4.1.1. The Fight against Organised Criminal Activities

The fight against organised criminal activities involves traditional judicial policing work within specialised ‘central bureaux’ (*Offices centraux*). These are inter-ministerial services working with the Central Directorate of the Judicial Police (DCPJ) within the national police (DGPN) (Hagedorn and Bigo, 2002).³⁶

These bureaux themselves conduct investigations or assist other departments in complex investigations and may be commissioned to centralise information. Several of them, some with a long history, are in charge of fighting certain serious forms of criminality having links with organised crime. A dozen central bureaux have been created in France over the last half-century, according to needs. They cover various forms of organised, lucrative or violent crime – coinage offences (OCRFM, created in 1929), drugs (OCRTIS, created in 1953), trade in human beings (OCRTEH, created in 1958), gangs (OCRB, created in 1973), works of

³⁶ The active policing services within the national police are composed of several specialised departments: the directorates of public security (DCSP), intelligence (DCRG), territorial surveillance (DST), border police (DCPAF) and the judicial police (DCPJ) which heads up the *Offices* and has 4,200 people on its payroll. The latter, created at the turn of the century, was in fact set up (as the ‘tiger brigade’) to fight one of the first forms of criminality by organised, travelling gangs.

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art (OCBC, created in 1975, whose name was changed in 1996) and trafficking in firearms (OCRTEAMS, created in 1982).

Some new bureaux have been created since the early 1990s to deal with new forms of serious criminality – money laundering (OCRGDF, created in 1990 but whose founding decree does not mention organised crime), illegal immigration (OCRIEST, created in 1996), communications and technology-related criminality, cyber-criminality (OCLCTIC, created in 2000) and recently, missing persons (OCCDIP). With the exception of the OCRIEST on trafficking in human beings, which comes under the border police (DCPAF), these new bureaux all come under the Central Directorate of the Judicial Police (DCPJ), in charge of fighting the various forms of criminality.

4.1.2. The Fight against ‘the Activity of Criminal Organisations’

In the mid-1990s, when criminal organisations became a major topic of public debate, two specific agencies were developed within the policing apparatus. One, the *Unité de coordination et de recherche anti-mafia* (UCRAM, the Anti-Mafia Coordination and Investigations Unit) responded to political mobilisation on the issue and focused on criminal organisations, while the other, the *Section centrale d’investigations sur le crime organisé* (SCICO, Central Investigations Section on Organised Crime) with its intelligence unit the CRACO (*Centrale du renseignement et de l’analyse sur le crime organisé*, or Central Office for Intelligence and Analysis of Organised Crime) pursues conventional judicial policing work applied to serious forms of offending.

The Anti-Mafia Coordination and Investigations Unit (UCRAM)

Following concerns about the potential penetration of southern France by the Italian mafia, a flexible agency, the UCRAM, was set up in late 1992, originally to coordinate the fight against this mafia. Its sphere of action was later extended to other groups, including criminal organisations from eastern Europe and Asia, and north-European motorcycle gangs.

The objective of this unit, which has no direct operational goals, is to analyse the situation, to exchange information and centralise intelligence on criminal groups gathered by the various ministerial services. These include the DGSE – the French intelligence agency – and the Gendarmerie Nationale (Ministry of Defence), Customs and Internal Revenue (Ministry of Finance) and the executive bodies of all active police units: DCPJ, DST, DCPAF, DCRG, Paris Police headquarters and so on (Ministry of the Interior). Ministry of Justice services are not included but may be invited to participate.

Being directly subordinate to the head offices of the National Police, this unit has actually functioned primarily as a structure for exchanging information and coordinating work among policing services, and has never succeeded in becoming

an inter-ministerial coordinating unit. Furthermore, it was set up along the lines of the UCLAT (a unit created shortly before it, to deal with terrorism) and is dependent on it structurally and for staffing – the head of the UCLAT is also in charge of the UCRAM. Owing to this subsidiarity with respect to the UCLAT, and to the pre-eminence of the terrorism issue since 11 September, the two agencies have tended to merge, while the specificity of the UCRAM – organised crime – has faded into the background. According to its many critics, this ill-positioned and poorly conceived agency is doomed to disappear.

The Central Investigations Section on Organised Crime (SCICO)

Two years later, in 1995, when politicians were again galvanised to action, a more operations-oriented agency, the SCICO was set up within the DCPJ Subdivision on Criminal Affairs.³⁷ Its assignment was twofold – the centralisation of intelligence potentially useful in investigations and the establishment of policy, and of new instruments for fighting organised crime. For this purpose, the CRACO, or Central Office for Intelligence and Analysis of Organised Crime, was adjoined to the SCICO for the analysis of information, in conjunction with the operations services and the management of a database (the FBS, or Specialised Brigade File) on serious crime and mafia-related outfits. This was initially the most operational unit, charged with detecting elements of interdependence between the various forms of criminality, unlike the investigatory nature of the specialised bureaux.

After several years of functioning, the need for a change became evident. Two possibilities were visualised in 1999 – the SCICO/CRACO might be transformed into a truly operational agency specialising in organised crime – a transverse bureau for organised crime, so to speak – or its role as an operational intelligence department might be retained, while it would be attached to the bureau specialising in gangs (the OCRB). The latter solution was finally adopted in 1999, both because of the risk of conflicts with the various bureaux, each specialising in a given type of criminal activity, and also, in all probability, because the lack of a separate charge of membership of a criminal organisation would deprive it of a legitimate space in which to operate. Now merged with the OCRB, this unit has gradually become obsolete. However, many observers feel that there is a real need for an agency of this type, capable of piecing together intelligence uncovered by the specialised bureaux.

These two agencies were created in very different contexts. The first was highly political and the second more operational and working inside the police services. Although both agencies were involved with the centralisation and exchange of

³⁷ Especially after representative Yann Piat was murdered by a crime syndicate in southern France in 1994.

information, they had slightly different working methods and approaches – concerned with criminal groups (the mafia, at the outset) in one case, and with serious offences in the other. Nevertheless, they had rather similar fates – in practice, an end was put to the existing scheme for fighting organised crime. The UCRAM no longer exists having been dissolved in the fight against terrorism, but the CRACO, an offshoot of the judicial police, ended up being diluted in one of its operational departments, the bureau in charge of gangs.

While the creation of a real coordinating unit could not be achieved, the nature of policing work underwent considerable changes, tending to concentrate on pro-active methods. For many French police officers this represented a complete change in working methods. Whereas in the past they searched for proof related to acts that had been committed, they now also gather intelligence on groups, collect information aimed at establishing proof, analyse and look for offences that may be committed by the groups investigated.³⁸ Thus, new policing prerogatives have been introduced in the name of the fight against drug trafficking and against terrorism (see the ‘Everyday Security’ Act³⁹) and a bill to extend them to cases of organised crime is in the making. Emphasis on information, central to this kind of work modelled on policing methods used abroad and influenced by Europol, implies the extension of existing criminal justice procedural means⁴⁰ such as undercover operations (authorised since 1991 for drug offences),⁴¹ phone taps, anonymous testimony and the protection of witnesses (procedures which are already being used for procuring networks⁴²), as well as longer periods of police custody.

However, the issue of whether the police or the justice system should be in charge of an eventual coordinating agency, and whether it should report to the Prime Minister or the Ministry of the Interior, has not been solved.

³⁸ For critical analysis of these methods, see Bigo (2000) and Jobard (2000).

³⁹ The ‘Everyday Security’ Act 2001-1062 of 15 November 2001 (Loi 2001-1062 relative à la sécurité quotidienne).

⁴⁰ The bill under discussion would extend these means, introduced for terrorism (temporarily for a two-year period) in the 15 November 2001 ‘Everyday Security’ Act, to organised crime.

⁴¹ Articles 706-32 of the Code of Criminal Proceedings and 67*bis* of the Customs Code, which gives customs officials the same prerogatives. See Lévy and Monjardet (1995).

⁴² Articles 706-58 to 706-62 of the Code of Criminal Proceedings.

4.2. Other Policy Measures

4.2.1. Customs

Surveillance of international traffic is part of the duties of the Customs Department. This service impacts upon organised crime through the dimension of international financial movements. The major illicit dealings in goods and individuals across national borders usually take the same paths as international trade. This makes the Customs Department an important actor in the fight against transnational organised crime.⁴³ This mobilisation has been heightened by the signing of the UN Convention against Transnational Organised Crime (TOC).

The French Customs Department is a very ancient institution with a wide range of assignments (over 400) touching on internal revenue, the economy, health, and so on. Recent trends have led to its increasing participation in security matters, and more particularly in the repression of international trafficking, making it a policing agency for circulations of all sorts (Domingo, 2002; Kletzlen, 2002).

The fight against organised crime has been taken over by an agency specialised in combating major fraudulent traffic, the DNRED (*Direction nationale du renseignement et des enquêtes*, or Intelligence and Investigations Department), which collects, centralises and analyses information, and implements investigations.⁴⁴ The customs department has possessed an investigations department since the early 1930s, but it was not until the late 1980s, when it was faced with increasingly complex frauds, that it set up a second department in charge of intelligence.

The DRD (*Direction du renseignement et de la documentation*, or Department of Intelligence and Documentation), is in charge of gathering and analysing information by collecting and centralising intelligence and orienting the action of customs units involved in risk analysis. It has two subdivisions in charge of analysis relative to organised crime such as money laundering, drugs, counterfeiting and large-scale trafficking. It also handles cooperation and exchanges of information with the customs departments of other states over extensive networks (in accordance with the Naples Convention). The DED (*Direction des enquêtes*, or Department of Investigations) is active in the fight against serious fraudulent undertakings, particularly with respect to European Union agricultural policy, weaponry, financial movements and money laundering, drugs, tobacco and so on – all of which areas are supervised by specialised operational groups.

⁴³ World Customs Organisation (2001). *Customs and Transnational Organised Crime*. WCO, EC0085E1.

⁴⁴ Including drugs, weapons, cigarettes, trade in human beings, stolen vehicles, nuclear substances and nuclear waste products, protected animals and species, human organs, illicit immigration, works of art, money laundering, commercial fraud, and so on.

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After ten years of negotiation and in the face of fierce opposition from the Ministry of the Interior, the use of Customs Department expertise in judicial investigations was finally sanctioned by the creation in 1999 of a judicial policing unit within the department.⁴⁵ This small unit (less than 60 officers) with a relatively limited assignment will certainly grow in the future, both in number and in scope given the field covered by customs (which includes money laundering, major fraud and counterfeiting, among other things) and the recent appointment of judicial customs officers.

4.2.2. Gendarmerie

In 1997 an inter-ministry Liaison Unit on Itinerant Offending (CILDI, or *Cellule interministérielle de liaison sur la délinquance itinérante*) was established within the general directorate of the Gendarmerie. In effect, it deals with the problems related to the Roma population. It produces analyses and coordinates investigations, with the help of the Gendarmerie units present in rural and suburban areas throughout the country.

4.2.3. Specific Set-Ups

Money Laundering

In 1990 a department called TRACFIN (*Traitement du renseignement et action contre les circuits financiers clandestins*, or Analysis of Intelligence and Action against Clandestine Financial Circuits) was set up within the Ministry of Economy, Finance and Industry to combat money laundering by receiving the reports of suspicion filed by financial institutions in conformity with the anti-money laundering Act.⁴⁶ These reports, initially confined to sums apparently produced by drug trafficking, were extended to the activities of criminal organisations in 1993.⁴⁷

Aside from this specific scheme aimed at combating money laundering, some administrative agencies in charge of specific forms of economic and financial crime may handle affairs related to organised crime.

⁴⁵ Loi 99-515 du 23 juin 1999 renforçant l'efficacité de la procédure pénale.

⁴⁶ Loi 90-614 du 12 juillet 1990 relative à la participation des organismes financiers à la lutte contre le blanchiment des capitaux provenant du trafic de stupéfiants.

⁴⁷ Articles 72 and 73, Loi 93-122 du 29 janvier 1993 relative à la prévention de la corruption et à la transparence de la vie économique et des procédures publiques, *Journal Officiel*, 30 January 1993.

Corruption

The SCPC (*Service central de prévention de la corruption*, or Central Department for Preventing Corruption) is an inter-ministry agency that was created in 1993 and attached to the Ministry of Justice by the same Act that extended the scope of activities of TRACFIN.⁴⁸ It is predominantly composed of police officers and customs officials. Its job is to centralise and analyse information and to act in an advisory capacity for the administrative and judicial authorities in instances of corruption.⁴⁹ It uses pro-active methods for analysing the risk of corruption.

Illicit Employment

The DILTI (*Délégation interministérielle à la lutte contre le travail illégal*, or Inter-Ministry Delegation for Combating Illicit Employment), composed of personnel from the various administrations involved, is in charge of coordinating action aimed at fighting concealed employment and smuggling of migrant labour.⁵⁰ This enables it to participate in the scheme for fighting organised crime.

4.3. Judicial Implication: Looking for New Modes of Action

Over the last decade, the justice system has developed new modes of action. These are aimed at improving specialisation in economic and financial criminality through the creation of ‘economic and financial cells’ capable of dealing with the economic and financial dimension of organised crime, especially where money laundering is concerned. They also aim to reinforce inter-agency cooperation, the purpose being to eliminate what is considered an overly individualistic approach through the empirical creation of coordinating cells.

4.3.1. Economic and Financial ‘Cells’

Since economic and financial crime has come into the public eye, the need to devote more specialised and more efficient means to fighting this type of offence – a trend that began in the mid-1970s – led to the creation, within the courts, of seven economic and financial ‘cells’ since 1999. The participants are judges (both

⁴⁸ Loi 93-122 du 29 janvier 1993 relative à la prévention de la corruption et à la transparence de la vie économique et des procédures publiques, Journal Officiel, 30 January 1993.

⁴⁹ As well as for related offences: bribery, misappropriation of public funds, illegal holdings (Art. 432-10 and 433-1 of the Criminal Code).

⁵⁰ The Ministry of the Interior, Customs, the Gendarmerie, Internal Revenue and Labour Departments.

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from the public prosecutor's offices and examining judges) specialised in economic and financial criminality.⁵¹

This specialisation is obtained by the creation of interdisciplinary teams with specialised assistants (civil servants or other competent people with experience in financial matters) at their disposal. For the time being, these are mostly civil servants in the financial sphere (customs or internal revenue) and personnel from the Bank of France. These specialised assistants cannot perform procedural acts such as questioning, carrying out searches and confiscation, but they may be present when these acts are taking place. They have none of the powers assigned by the Code of Criminal Proceedings to judges from the bench or state prosecutors, or to judicial police officers.⁵²

In practice, the sphere of action of this new structure is still vague, and, except where money laundering is concerned, its participation in fighting organised crime is only indirect, when economic and financial activities or the action of professionals or of legal economic entities are involved. In Paris, for instance, alongside the cell, there is a section of the public prosecutor's office in charge of fighting non-financial organised crime (formerly the narcotics section) which deals with local cases involving friends and relations charged with receiving/handling of stolen goods.

In fact organised crime, in the usual sense of the term, is only secondarily within the scope of these cells, even if such criminality is taken in its widest sense, that of 'organisations that pervade the various structures of civil society, and indeed society as a whole'.⁵³ To strengthen this implication, the bill 'on the adjustment of the justice system to new trends in crime' presently (June 2003) under discussion calls for the transformation of these seven cells into extended inter-regional cells with competency in organised crime matters (Art. 7).

4.3.2. Cells for Combating Organised Crime

In their search for new instruments, public prosecutor's offices faced with the problem of organised crime tend to prefer the coordination cells, which represent new forms of action.⁵⁴ This second approach, more directly focused on organised

⁵¹ The substance of which is defined in Article 704 of the Code of Criminal Proceedings. See Guidicelli-Delage et al. (2002); Zanoto (2000); and the seminar organised in 1999 by the *Mission de recherche Justice (La délinquance économique et financière comme criminalité organisée)*.

⁵² Act 98-546 of 2 July 1998.

⁵³ *Action Plan to Combat Organised Crime*, adopted by the Council of the European Union on 28 April 1997 (*Journal Officiel* C 251, 15 August 1997).

⁵⁴ See the *Rapport au Garde des Sceaux sur la politique pénale en 2000* (DACG, 2001).

crime, has developed pragmatically out of the coordination between various departments, without any restructuring of the existing agencies. It is the outcome of the problems reported by the public prosecutor's offices – insufficient means of investigation for examining judges, slowness of international cooperation in repression and lack of specialisation within the judicial policing departments.

These conclusions, which pointed to over-specialisation of the various departments and inadequate or insufficiently coherent forms of coordination, suggested the need for new instruments in response to what was viewed as an increasing complexity of networks and activities. Gradually, new types of action were introduced, resulting in the centralisation of procedures and the implementation of specific instruments to reinforce inter-agency cooperation and the coordination of investigations.

Cells for combating organised crime and money laundering are presently being set up in a number of jurisdictions. They are headed by public prosecutors and the policing agencies and the departments of the Ministry of Economy, Finance and Industry (internal revenue, customs and the fraud squad) work hand in hand within them.

This policy also reflects the determination of the judicial branch to regain control of these affairs, as well as the desire to avoid having investigation services cut off from the Ministry of Justice, which is in charge of criminal justice policy orientation.

Action pursuant to this new criminal justice policy orientation was first taken in 2001, in the fight against prostitution networks and the trade in human beings.⁵⁵

Lastly, in 1995 the Chancellery set up a central bureau for fighting organised crime, terrorism and money laundering, in charge of orienting criminal policy with respect to organised crime.

5. Conspicuous Presence on the International Scene

Apparently, external factors (the European Union and the Council of Europe) did not play a decisive role in the implementation of these specific institutional arrangements, which reflect particular domestic and essentially political contexts (i.e. parliamentary concern). As already pointed out, these set-ups existed prior to the major European texts on the subject (the 28 April 1997 Action Plan to Combat Organised Crime or the 21 December 1998 Joint Action) (Hagedorn and Bigo, 2002).

The specific, exceptional means included in the code of criminal procedure, introduced gradually for fighting drug trafficking and then for terrorism, and now tending to be extended to organised crime in general, correspond to international

⁵⁵ Ministerial Order of 18 December 2001 (Crim 2001.20/G1, Ministry of Justice).

standards and often represent the transposition of recommendations adopted in international quarters, primarily by the European Union. They partake of that sort of mutual imitation in which the great nations are engaged in their combat against that 'new enemy', organised crime.

France is generally eager to claim an active role on this international scene. International comparisons are often cited as references in domestic public debate, serving as incentive and inciting to imitation. Depending on the needs of the moment, the arguments developed may brandish the need for France, supposedly backwards in this respect, to adopt international standards, or again, the image of France as a vanguard country goading its partners forward.

Three examples will illustrate this tendency. They pertain to the Convention against Transnational Organised Crime, the European criminal justice policy and the action of French parliamentary representatives.

5.1. France and the Palermo Convention

France claims to have played a crucial role in the negotiations presiding over the Convention against Transnational Organised Crime, on the basis of its participation in the Naples Conference of Ministers (in November 1994), its support of the project proposed by the Polish Government in 1996 and its action during its Presidency of the European Union (especially by avoiding any confusion between terrorism and organised crime).⁵⁶ Alongside almost 150 other countries, France signed the Convention and the two additional protocols on 12 December 2000, but it is one of only two European Union countries – the other being Spain – to have ratified it (in the summer of 2002).⁵⁷ This makes it a forerunner, a stance it takes rather complacently.

5.2. France and European Criminal Justice Policy

French observers are also fond of pointing out the active role played by France on the European scene, particularly during its Presidency of the Union, and particularly, too, with respect to the development of a European criminal justice policy. France was particularly active on the project to create a European public prosecutor's office, and is proud of having acted on this long ago (in 1982 it recommended the

⁵⁶ Debate on the ratification of the Palermo Convention (Senate, 21 February 2002).

⁵⁷ The convention came into force in September 2003. As of summer 2004, seven countries were parties to the convention – Denmark, Finland, the Netherlands, Portugal and Sweden have ratified.

creation of a European criminal court competent for serious forms of transnational crime).

According to these observers, French action has been decisive, from Tampere (with the first European Council exclusively devoted to 'justice and home affairs' in October 1999) to Laeken (in December 2001), in several fields, primarily in the principle of the reciprocal recognition of penal rulings (adopted under the French Presidency on 30 November 2000).⁵⁸

Next came other phases in the constitution of a European criminal justice policy, such as the harmonisation of legislation on money laundering (Council Decision Establishing a Framework Programme on 26 June 2001), the European Arrest Warrant (adopted on 21 December 2001 as a result of the 11 September attacks) which eliminates the need for dual criminalisation, particularly for participation in a criminal organisation. It covers all offences coming under the competence of Europol, an agency created by Eurojust for dealing with organised crime in particular (JHA Council meetings of 6 and 7/12/2001) or again, the Convention on Mutual Assistance for Criminal Justice Matters (October 2001) (Fontanaud, 2002a, 2002b).

5.3. European-Level Action by Members of the French Parliament

France's 'pilot' role also takes the form of action by members of its Parliament. For instance, in the wake of the Geneva Appeal (1 October 1996) launched by European judges and given its lack of repercussions, some French representatives decided to create an information task force on the obstacles to fighting economic and financial crime and money laundering in Europe (known as the Montebourg task force). This group visited several European countries, on which it wrote critical reports and closed its work with a Conference of Parliaments of the European Union, held at the French National Assembly in Paris on 8 February 2002.⁵⁹ This meeting adopted several recommendations it considered essential for 'combating organised criminal networks', such as the reversal of the burden of proof as to the origin of funds.⁶⁰ These recommendations were formulated in a *Paris Declaration*, described as a

⁵⁸ Despite its primarily British inspiration.

⁵⁹ Liechtenstein (*A Paradise for Businesses*), Monaco (*A Most Obliging Place*), Switzerland (*A Sham Combat*), the City of London and dependencies of the Crown (*Sanctuaries for Dirty Money*), Luxembourg (*A Banking Paradise*) (see Montebourg, 2000a, 2000b, 2001a, 2001b, 2002a, 2002b).

⁶⁰ To respect the reservations expressed by Germany and Austria as to conformity with the European Charter of Fundamental Rights (Art. 6 and 9), Recommendation No. 39 calls for sharing of the burden of proof rather than its reversal.

‘response of the national representative bodies of the European Union countries to the judges who signed the Geneva Appeal’.

This conference represented the culmination of France’s decade-long and conspicuous intervention on these issues, whereas a new enemy – terrorism – is now the galvanising phenomenon for international action.⁶¹

6. Temporary Assessment of an Unfinished Debate

Finally, French policy over the last decade has taken the offensive on money laundering, has been most dubious as to the relevancy of the notion of criminal organisation and was extremely cautious about concepts referring to organised crime, viewed as generating an overly comprehensive approach. It has opted for repressive techniques reinforcing policing prerogatives.

6.1. An Assertive, but Paradoxical, Policy on Money Laundering

France, like other countries, introduced new schemes for combating money laundering in the early 1990s. They were the product of intense international mobilisation, in which the emblematic, consensual figure of organised crime played the role of catalyst. These schemes, originally adopted to boost the fight against drug trafficking, were supposed to protect the ‘healthy’ economy against the intrusion of movements of dirty money, initially derived from drug trafficking, and subsequently from organised crime. They are based on ‘anti-intrusion’ measures taken with the help of professionals, and the control of illicit financial movements by the institutions in charge of finance.⁶² Bankers, promoted, so to speak, to the role of ‘sentinels’ on the outposts of the legal economy, were asked to participate in the fight against criminal practices by illicit actors. This looked very much like a *cordon sanitaire*.

The effect of these repeatedly modified schemes, paradoxically, was to highlight the criminal – or at the least, deviant – practices of legitimate actors.

⁶¹ Provisions for criminalising membership of or leadership of an organisation already exist for terrorism and drug trafficking (see Art. 421-3-1 and 224-34 of the Criminal Code, which criminalise criminal conspiracy connected with a terrorist undertaking and the heading of a group importing and trafficking in drugs).

⁶² The 90-614 Act of 12 July 1990 (Loi 90-614 du 12 juillet 1990 relative à la participation des organismes financiers à la lutte contre le blanchiment des capitaux provenant du trafic de stupéfiants); later to become Article 562-1 and following articles of the Monetary and Financial Code.

This increased visibility raises the question of the relations between the various forms of illicit economic practices, and of the unclear limits between the practices of legitimate and socially marginal economic actors, as illustrated by the activities in offshore territories, where deviant practices proliferate.

In reaction to what they viewed as the failure of the set-up (few organised crime actors were charged) and its counterproductive outcome (charges were made against many people from the business world), the police and the financial world developed an alliance to focus available means on organised crime once again, leaving it to other instruments to combat mistakes, negligences and other lapses. This position was presented in a report written for the Ministry of the Interior (Garabiol and Gravet, 2000).⁶³ It is predicated on differentialist thinking, which views organised crime as attacking the basic values and interests of our society, whereas economic and financial crimes, simply involving lack of respect for rules, are located within the boundaries of those shared values on which our society rests. While we do not claim that the two are identical, we contend that exclusive focusing of resources on organised crime would neutralise the latter offences and make them invisible, at the very time when recent economic and financial scandals had exposed how serious and intertwined they are.

6.2. A New Criminal Offence – New Means, New Resources

The French are very reluctant to criminalise membership of a criminal organisation, although concern of appearing to lag behind international standards may eventually lead policy-makers to recommend it at another legislative debate. The operational agencies still do not take much interest in this criminalisation aimed at the structure of groups, whereas little use is made of the existing offences which suffice to designate actions committed by a group.

These agencies also remain skeptical about the concept of organised crime, and prefer to replace what is judged an overly comprehensive approach by specific action on one crime or another, depending on needs at the time. The recent action taken against the prostitution and sexual trade networks combining cooperation between various agencies, the fiscal and patrimonial approach and new procedural means, is cited as an example.⁶⁴

On the other hand, they welcome the prospect of a change in policing methods, tending toward increased pro-activity implying reinforced procedural means

⁶³ The idea was to create an offence called serious laundering when it is done for the benefit of a criminal organisation. The authors therefore suggest that thought be given to making membership of a criminal organisation an offence.

⁶⁴ With the use of internal revenue and customs officials in criminal investigations, in particular.

and extended policing prerogatives, as evidenced at the various hearings of the parliamentary task forces. Gradually, then, the penal procedural schemes adopted piecemeal over the last decade or so to fight drug trafficking, money laundering, procuring and terrorism are fitting together and gaining permanency. These restructured techniques (pro-active policing and new investigational means, inter-agency cooperation, specialised judicial action, and so on) have gained in stability for the sake of fighting organised crime.

The bill brought before Parliament in the spring of 2003 will undoubtedly provide an opportunity to formalise this orientation. It may also provide an opportunity to involve the justice system in the institutional arrangement in a more concrete way than was previously the case, by turning the economic and financial cells into an inter-regional jurisdiction specialised in economic and financial crime and organised crime, as well as by creating an inter-ministerial agency coordinating intelligence and analysis, with the participation and perhaps even under the leadership of the justice system.

In the final analysis, investigation agencies were able to make timely use of the extensive public debate over fighting organised crime to obtain additional powers and means, as has been the case in some other countries (Levi, 1998; Woodiwiss, 2001).

Do the proclaimed targets – the organised networks trafficking in drugs, vehicles, human beings and so forth – necessitate these new investigative means which gradually amputate citizens of their civil liberties? The debate has not been any more enlightening in France than in neighbouring countries, and convincing proof remains to be advanced.

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Organised Crime Control Policies in Spain: A 'Disorganised' Criminal Policy for 'Organised' Crime

José Luis De la Cuesta

1. Introduction

As Alejandra Gómez-Céspedes and Per Stangeland establish in Part II, the official debate on organised crime in Spain is completely dominated by the debate on terrorism, one of Spain's two most serious problems, according to the surveys of the Spanish Centre for Sociological Research. Terrorism is frequently the object of different kinds of government initiatives aimed at reducing the (already slight) political support for ETA in the Basque Country and increasing the efficacy of police and judicial bodies, thus assuring victims' protection. These measures have also produced many legal results such as: anti-terrorism bills and acts, penal reforms, legislation on victim assistance and compensation. Institutional changes have been also brought about to improve the fight against terrorism.

The aim of this paper is not to review terrorism policies, but to study those directed against organised crime. Criminologically, terrorism is more complex than simply organised crime with a political purpose. There are indeed many links and overlaps between terrorism and organised crime (Bassiouni and Vetere, 1998: xl; Castillo et al., 1993: 493), but these two phenomena (Bassiouni, 1990: 5-9; García Rivas, 1998: 23) merit differing approaches even if exceptional legal measures introduced against terrorism are very often extended to lucrative organised crime.

The first section of this paper reconstructs the emergence of specific organised crime policies in Spain. The second section analyses the new legal instruments introduced in the field of substantive criminal law, criminal procedure and international police and judicial cooperation to enhance the repression of organised crime. The relevant institutional changes are reviewed in the third section. Some conclusions with a forecast of future trends follow.

2. The Emergence of Organised Crime Policies in Spain

The importance and extent of international organised crime, clearly different to traditional normal crime (Iglesias Río, 2001: 1445) is frequently tackled by way of a specific criminal policy, usually of 'emergence' (Iglesias Río, 1999: 124). Such is the case in Spain, where, according to B. Garzón (1997: 48), the generalised

development of organised crime is ‘relatively recent’ (1988-1989) and, although we can find some first legal references to it in 1983 – in the field of legal reform on drug trafficking (completely reformulated in 1988 and with an additional provision on money laundering related to it: Article 543*bis*(f)) – judicial and police interventions only intensified after 1988. However, due to the prevalence of the fight against ETA, action against organised crime has mainly consisted of specific (one-off) interventions, principally focused upon illegal trafficking of drugs and money laundering connected to it (Núñez Paz, 2002: 157-8) and mostly provoked by international pressure, without a public debate and lacking a systematic approach.

Certainly, anti-organised crime operations have been frequently included as a priority in declarations made by the Ministry of the Interior.¹ However, it is only recently that organised crime appears really as an independent topic in the Ministry of Interior’s official reports and plans; and regrettably official information is aimed much more at showing quantitative data, rather than at explaining the priorities, aims and objectives of official policies of crime prevention or reduction.² Very little information on this topic could be found, indeed, until recently, in the government periodical declarations and reports, and according to the opinion of the police officers working specifically on organised crime, even the priority given to it inside the police organisation could not be considered high or very high (Mapelli Caffarena et al., 2001: 27).

The absence, until recently, of organised crime as an independent topic in the findings of official reports may also be the reason for the traditional inexistence of a positive legal definition of organised crime in Spanish domestic law. Belonging to a criminal organisation is foreseen by the Criminal Code as an aggravating circumstance in some crimes, but no definition at all of what it is, is provided. It is then the task of jurisprudence to establish the concept of ‘criminal organisation’, in particular in connection with drug trafficking, where since 1983 being the head of an organisation – even if only partially or occasionally devoted to this trafficking or transitorily constituted – has been considered an aggravating circumstance by the Spanish Criminal Code (Art. 369(6)(g)).³

¹ See, for instance, in 1996 <<http://www.mir.es/oris/docus/balan96/textos/b96-p10.htm>>.

² In 2001 the general director of the Spanish National Police, Mr. Cotino, announced a pilot plan to combat organised crime, based on the Police 2000 Plan. Cortes Generales, *Diario de Sesiones del Congreso de los Diputados. Comisiones*, VII Legislatura, A.2001, No. 153, 4390-3.

³ Three different concepts have been jurisprudentially developed in this way (Gallego Soler, 1999: 184): 1) organisation as an important and hierarchical structure around an established and well known decision centre, regardless of individual members, that can be interchangeable; 2) organisation as co-perpetratorship; 3) organisation as

Outside the Criminal Code, membership of a criminal organisation (with an internal discipline) is also considered by penitentiary legislation in order to classify inmates in the closed regime (Art. 102(4)(c) of the Penitentiary Penal Regulation). But here again no definition is provided.

It is only in the field of criminal law that a criminal definition can be found. Article 282*bis*(4) of the Spanish Criminal Code (after the reform introduced by Organic Act 5/1999 on the undercover agent) establishes that organised crime is the association of three or more people in order to commit, permanently or in a repeated manner, one or several of the following penal infractions specifically mentioned by the law: kidnapping, prostitution, property crimes and crimes against the social-economic order, crimes against historical treasures and heritage, crimes against workers rights, different forms of trafficking (drugs, protected animals and plants, nuclear materials, weapons), money counterfeiting and terrorism (critically, Delgado Martín, 2001: 39, 68).

As Enrique Anarte Borrillo (1999: 31) points out, there are three elements in this concept:

- a *structural* one: association of persons
- a *finalistic* element: to commit one or several crimes
- a *temporal* one: permanently or, at least, not occasionally.

These three elements must be connected in addition to a *numerus clausus* list of offences. Nevertheless, Article 282*bis*(4) definition cannot be considered as the Spanish criminal law concept of organised crime. Act 5/1999's aim was only to define the cases in which an undercover agent can intervene (Sánchez García de Paz, 2001: 665) and not to fix a general legal definition of criminal organisations within Spanish law.

A very interesting source to describe the main features of particular anti-crime policies is frequently scientific research. Usually, research conducted directly by official bodies (at least when conducted by the Ministry of Interior) is not published in Spain (or, if published, with very restricted circulation). The same applies very often to the scarce research officially sponsored. As for university research on organised crime, it is not really devoted to a general evaluation of organised crime policies, but mainly focuses on particular crimes (drug offences, human trafficking, money laundering, etc.) and legal issues. Empirical research is scarce. The research

synonymous of a certain structure with distribution of functions among a plurality of persons and around a criminal plan. The identification of the heads of the organisation is not necessary if their existence is more or less known (direction progressively dominant in the jurisprudence).

work of the Andalusian Institute of Criminology's sections of Malaga and Seville (Mapelli Caffarena et al., 2001) are really exceptions to this general trend.⁴

3. The New Legal Instruments

Legal reform is frequently the most apparent product of a criminal policy on organised crime. In fact, as happens with terrorism, governmental agencies that fight against organised crime require the adoption of exceptional and emergency means, the application of which is only possible through legal reform. At the same time, although legal reform by itself produces no real result in the prevention and reduction of organised crime, in our modern system of social communication it functions as one of the best ways of reassuring public opinion. Reform requirements are especially demanded in the penal field.

Furthermore, the criminal justice system is often submitted to intense pressure to 'change focus' (Van den Wyngaert, 1999: 138): the aim of penal intervention should not only be the prosecution and punishment of offenders, but also the dismantling of the criminal organisations and the control of the proceeds of crime and the profits accumulated by criminal activities (De la Cuesta Arzamendi, 2001a, 85).

Spanish organised crime policy is mostly reflected at a domestic level by several legal reforms, adopted without a global or systematic perspective of criminal policy. The main aim of these reforms has often been to provide a reply to the pressure of international or European instances and to help prosecuting authorities, avoiding the difficulties that traditional penal law and process law mechanisms apparently pose when preventing and repressing organised crime activities in an efficient way.

3.1. Substantive Criminal Law

Reforms in substantive criminal law have been specifically directed at introducing new tools to ensure the criminal responsibility of the heads of criminal organisations, who do not usually directly perpetrate the crimes they plan and/or order.

The *societas delinquere non potest* dogma is seen in many systems as an important barrier to the prosecution of the person really responsible for certain crimes, so the introduction of real possibilities of penal intervention against corporations is required as well.

⁴ Falcone Project 2001/FAL/168 entitled: 'Illicit Practices in the Construction Industry: Vulnerability to Organised Crime and Corrupting Agents in Urban Planning and the Building Industry', concluded in April 2003. See the report of Gómez-Céspedes and Stangeland in Part II.

In the Special Part of the Criminal Code, priority is given to incriminating participation in organised criminal groups, and to the establishment of new crimes (as well as new kinds of trafficking). The criminalising of money laundering is also a priority issue and this is directly aimed at the proceeds and profits of criminal activity, which must materialise in any profit-making activity.

An increase in sanctions and the concession of legal rewards to those who dissociate from criminal groups and collaborate with the prosecuting authorities are also viewed as fundamental instruments for the legal treatment of organised crime.

3.1.1. Developments in the Special Part

Consistent with the absence of a comprehensive approach, the Spanish legislator's penal intervention in relation to organised crime has found its most important development in the Special Part of the Criminal Code. By clearly criminalising 'any social contact with organised crime' (Anarte Borrillo, 1999: 52), traditional crimes have been reformed and new incriminations have been introduced.

Participating in a criminal organisation – the penal sanction of which was required in an European Union Joint Action of 21 December 1998 – is criminalised in Spain by the Criminal Code. Criminal organisations in Spain are considered illicit associations, and are punished not only if fully established, but also in the preparatory modalities of provocation, conspiracy and proposition (Art. 519). The following are considered as illicit organisations in Spain (Art. 515):

- those whose object is to commit a crime or that promote its committing after being established;
- armed gangs, terrorist organisations and groups:
- those that even though they have a licit objective, employ violent means or personality alteration or control to achieve said objective;
- organisations that promote or instigate discrimination, hate or violence against people, groups or associations because of their ideology, religion or beliefs, or because they come from an ethnic or racial group or nation, or for their gender, sexual orientation, family situation, illness or handicap;
- those that promote illicit trafficking of people.

It is only really the last category that has been recently added (Organic Act 4/2000, on the rights and freedoms of foreigners in Spain and their social integration). The other modalities were already envisaged in the former Criminal Code and, with a slightly different wording (except in the case of discrimination, where there are greater differences between the two Codes) were reproduced by the new Criminal Code in 1995.

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As we know, the Criminal Code does not define actual illicit associations that can be identified with a non-sporadic human group (Quintero Olivares, 1999: 183). Jurisprudence usually adds certain elements to this: plurality of persons, permanence, division of work, existence of a leader, multiple criminal aims and, sometimes, use of weapons (Bueno Arús, 1999: 80). However, if there is to be a difference between preparatory acts (and especially, conspiracy⁵) and participation and integration or collaboration with illegal associations, the concept of organisation should require an organised power structure (or a network) of a certain importance, with a criminal programme and division of work, devoted to obtaining power and/or profits (De la Cuesta Arzamendi, 2001a: 114).

As for punishment, a difference is made between armed gangs and terrorist organisations or groups, and the founders, directors, presidents, active members and collaborators of other illicit associations, who are punished with 2-4 years imprisonment, a fine and legal incapacity – if they are presidents, directors or founders of the organisation – and 1-3 years imprisonment and a fine if active members or collaborators of an organisation (Art. 517-518).

Belonging to a criminal organisation was already considered as an aggravating circumstance for drug trafficking in 1983 (Art. 344 of the Criminal Code; Art. 369.6, 370, 371.2 new Criminal Code 1995) and progressively extended to other offences:

- prostitution and corruption of minors (Art. 187, 189)⁶;
- money laundering (Art. 302);
- tax fraud and fraud of the social security administration (Art. 305, 307);
- illegal trafficking of immigrants (Art. 318*bis*(5)).

Different authors have questioned the mere existence of a specific crime of membership or collaboration with illegal organisations, mainly because of the risk of a certain ‘hypertrophy of the penal reply’ (Quintero Olivares, 1999: 181) and due to the distance from the juridical protected interest (Sánchez García de Paz, 2001: 678). Furthermore, in practice the application of these provisions tends to be quite difficult, because of the need to differentiate between the fact of belonging to a group and the mere informal adhesion or support of it, and because of the problems of proof. The 16th International Congress on Penal Law, acknowledging the need for autonomous provisions for participation in a criminal organisation, insisted on

⁵ Jurisprudence has sometimes followed a reductionist perspective on illicit association identifying it with simple conspiracy (Choclán Montalvo, 2001: 256).

⁶ It is very difficult to understand why illegal trafficking of persons with the aim of sexual exploitation is not covered.

the need to fully respect the principles of strict legality, real social harm (or danger), blame and proportionality (*Revue Internationale de Droit Pénal*, 70, 1999: 900).

Organised crime includes all kinds of criminal offences, but only some of them are normally qualified as 'typical' organised crime offences (Bueno Arús, 1999: 71; Van den Wyngaert, 1999: 247): corruption, fraud, and, mainly, illicit trafficking, smuggling and money laundering (Ottenhof, 1997: 51).

Within illicit trafficking, drug trafficking has always received special attention internationally and this is evident from the fact that alongside the Single Convention on Narcotic Drugs (1961) and the Convention of Psychotropic Substances (1971), the new Vienna Convention on Drug Trafficking was adopted by the United Nations in Vienna in 1988.

Trafficking of persons is also very important and has been the object of various Conventions like the Slavery Convention of 1923, the Convention on Forced Labour (1930), the 1950 Convention for the Suppression of Traffic of Persons and the Prostitution of Others, and the 1972 Convention on the Protection of World Cultural and Natural Heritage. The recent United Nations Convention on Transnational Organised Crime, adopted in Palermo (2000), is completed by three protocols: on the trafficking of immigrants, on the manufacturing and illicit trafficking of weapons, and on the prevention, repression and punishment of the trafficking of persons, in particular women and children.

Finally, intervention against money laundering is considered a fundamental weapon in the fight against organised crime (Van de Wyngaert, 1999: 158), in particular if combined with confiscation. The Council of Europe 1990 Convention and European Economic Community Directives 91/308 and 2001/97 are important instruments in this field.

Very much influenced by what is happening internationally, Spanish criminal policy has worked in recent years on these typical organised crime offences, and reflected this by including several reforms in its Criminal Code provisions (both the previous ones and those of the new Criminal Code of 1995) and the contents of the Smuggling Act (a new one was approved in 1995) to meet the requirements established at international and European level.

Corruption has also been the target of different reforms aimed at improving the penal treatment of corruption against European Union protected interests and in public administration (Ferré Olivé, 2002a, 2002c), and to implement the 1997 OECD Convention on International Commercial Transactions (Fabián Caparrós, 2002: 103). However, corruption in the private sector does not yet deserve any special attention by the Criminal Code (De la Cuesta Arzamendi and Blanco Cordero, 2002: 259).

3.1.2. Conspiracy

Placed between the Special Part and General Part of the Criminal Code, conspiracy as an independent crime is frequently adopted by many legislations in order to broaden the possibilities of intervention against organised crime. In the United States (Koenig, 1998: 311) (an example followed by an increasing number of countries) conspiracy does not require overt behaviour in application, and punishment is independent and not covered by the main crime (Blakesley, 1998: 88).

No special legal tools have been introduced in Spain to broaden the field of conspiracy related to organised crime. Conspiracy has been traditionally considered in Spain as a preparatory act. According to Article 17.3 of the Criminal Code (1995) conspiracy is only punished in the case of those crimes specifically laid down by the law.⁷ Conspiracy requires: 1) a union of wills, 2) that is reflected in a complete, viable and finished plan of action, 3) oriented towards the commission of the same act, and 4) accompanied by a firm, intentional decision of execution.

3.1.3. General Part

In the General Part of the Criminal Code, international concern focuses on the introduction of new mechanisms to fight against this 'elusive phenomenon' (Weigend, 1997: 523) and to assure the criminal responsibility of perpetrators of those who lead the criminal organisation, even if they do not directly accomplish the particular crime. No special legal reforms have taken place in Spanish criminal law on perpetratorship and criminal participation.

According to Article 28 of the Spanish Criminal Code, perpetrators are those who commit the offence by themselves (direct perpetrator), together with others (co-perpetrator) or using another person as an instrument (*indirect perpetrator*).

Accomplices are regulated by Article 29 as those who contribute to the execution of the crime via previous or simultaneous acts that facilitate it, without being at the same time a *condition sine qua non* for the commission of the crime. Accomplices receive in Spanish criminal law a lower punishment than perpetrators.

Instigators and cooperators also participate in the crime or offence. Although they are not perpetrators in a strict sense, Article 28 gives them the same penal treatment as perpetrators. In this way the heads of organisations could receive in Spain the same punishment as the main perpetrators.

Nevertheless, the nature of participation is secondary and depends upon proof of commission by a perpetrator of an unjustified criminal act. Strict principles of legality require very precise and exact definitions of the punishable act. As a consequence, the legal definition of a perpetrator tends to be traditionally restrictive

⁷ Attempted instigation is also only punishable in Spanish criminal law if it constitutes proposition or provocation.

and this makes it sometimes very difficult to prosecute the heads of ‘amorphous groups where responsibilities are blurred and where those who physically carry out the offence may lack full criminal responsibility, whereas those who plan and organise the criminal enterprise stay aloof from day-to-day operation’ (Weigend, 1997: 526).

In order to avoid these difficulties, new legislation in many countries has adopted a system of ‘unitary perpetratorship’, thus allowing all those who have contributed to the crime to be punished as main perpetrators, even though they may have only contributed marginally (Weigend, 1997: 526). Spanish criminal law maintains a strict concept of perpetratorship, but considers the specific crimes of the typical offences involved in organised crime (for instance drug trafficking, Article 369 ff; money laundering, Article 301). A clear trend can be observed towards extensive descriptions that lead all those who give a causal contribution (even an intellectual or moral one) to the crime to be considered as a perpetrator (De Figueiredo Dias, 1999: 100).

At the same time, Spanish literature also debates the extension of indirect perpetratorship, perfectly applicable if the executor was not criminally responsible (Ferré Olivé, 1999: 95), and proposed by Claus Roxin (1998: 61) as the best way to deal with real perpetratorship in relation to those crimes committed through an ‘organised power apparatus’, characterised by an intensive hierarchy and by the irrelevance of the identity of direct perpetrators, who are very easily substituted if they fail to execute orders. Indirect perpetratorship can be a way to prosecute as perpetrators the heads of organisations with a strong internal structure⁸ that function outside the law (Muñoz Conde, 2000: 104),⁹ but many difficulties can arise when trying to apply the concept of indirect perpetratorship inside organisations that are not so strictly structured or whose features are not yet known or very difficult to prove. In order to avoid these difficulties, Francisco Muñoz Conde (2001: 510) proposes punishing the heads of organised crime as co-perpetrators, because their task is to plan inside an organisation with a division of roles, where the crimes are decided at a certain level and executed at another. According to his opinion, this way is opened in Spanish criminal law through Article 28 of the new Criminal Code.¹⁰

⁸ ‘Formal power apparatus’ (Ambos, 1999: 158).

⁹ This theoretical construction is, however, not necessary to punish a head of an organisation as the main perpetrator if he was already involved in the ‘intellectual part’ of the offence (Joshi Jubert, 1995: 678).

¹⁰ See, however, José Luis Díez Ripollés (1996: 225).

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3.1.4. The Introduction of New Sanctions

Increasing and introducing new sanctions is usually the easiest way, in the short-term, of convincing public opinion that efficient criminal policy decisions are being adopted to face a new criminal problem.

During the last 20 years different penal reforms have provided occasion to increase punishment in the field of the typical offences involved in organised crime. This is clearly the case in the different types of trafficking crimes, and especially the trafficking of hard drugs; penalties were already increased in 1988, due to international pressure, and were raised again with the new Criminal Code (eliminating at the same time the reduction of sentences with labour, almost automatically applied during the last 15 years of the old Criminal Code).

	<i>Imprisonment according to the Old PC*</i>	<i>Imprisonment according to the 1995 PC</i>
'Hard drugs' trafficking	2 yrs 4 m – 8 yrs	3–9 yrs
Aggravated	8 yrs – 14 yrs 8m	9 yrs – 13 yrs 6 m
Second level aggravation	14 yrs 8 m – 23 yrs 4m	13 yrs 6 m – 20 yrs 3 m
Soft drugs trafficking	4 m – 4yrs 2 m	1–3 yrs
Aggravated	4 yrs 2 m – 8 yrs	3 yrs – 4 yrs 6 m
Second level aggravation	8 yrs – 14 yrs 8 m	4 yrs 6 m – 6 yrs 9 m
Precursors	6 m – 6 yrs	3–6 yrs
Aggravated	4 yrs 2 m – 6 yrs	4 y 6 m – 6 yrs
Second level aggravation	6–12 yrs	6–9 yrs
Disqualification:		
Absolute	6–12 yrs	10–20 yrs
Special	6–12 yrs	3–10 yrs

* In practice, with a nearly automatic reduction of 1/3.

The same applies to money laundering (Blanco Cordero, 2002; Ferré Olivé, 2002c: 13), first inserted in the Criminal Code in relation to drug offences and later extended to all kinds of proceeds from serious crimes.¹¹

¹¹ Serious crimes are those punished with a serious penalty, for instance more than three years imprisonment (Art. 13 and 33).

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	<i>Old Criminal Code*</i>	<i>1995 new Criminal Code</i>
Money laundering	6 m – 6 yrs	3 yrs 3 m – 6 yrs
Aggravated	4 yrs 2 m – 6 yrs	4 yrs 7 m – 6 yrs
Heads, administrators ...	6–12 yrs	6–9 yrs
Negligence	4–6 m	6 m – 2 yrs

* In practice, with a nearly automatic reduction of 1/3.

Organised crime inmates regularly have certain specificities applied to their penitentiary treatment (Mapelli Caffarena, 1996: 53).

According to rule 3 of Article 102.5 of the Penitentiary Regulation (1996), belonging to a criminal organisation (except if dissociation takes place) serves indeed as a basis to send the inmate to a closed establishment or to a special department. These facilities are reserved for those classified in the first degree of penitentiary treatment, characterised by the respect of principles of security, order and discipline, and with an important restriction of common activities and the intervention of communications.

Furthermore, inmates with links to international crime and those accused or convicted of drug offences and other related behaviour (money laundering) committed by national or international organised groups, are listed in special files (FIES-5 CE, special characteristics, and FIES-2 NA, narco-traffickers, respectively) and are specifically monitored. The lack of legal support for these files is strongly denounced (Fernández Arévalo, 1994: 329; Téllez Aguilera, 1998: 119) and the consequences of being so classified are very harsh. Those inmates included in the FIES files suffer, in fact, a penitentiary regime much more restrictive than the one generally established by the Penitentiary Act (1979) and the Penitentiary Regulation (1996).

However, in the field of sanctions the requirement is not simply to be harsh or firm. Organised crime policy is increasingly required to give an efficient answer to the need to deprive offenders of all kind of profits and fruits connected to their criminal activities. The application of mechanisms of apprehension and freezing of the tools, products and proceeds of crime (mainly confiscation and forfeiture) becomes thus a priority in organised crime policy, and virtually the best way of getting behind the ‘front men’ to effectively reach the interests of the heads of the criminal organisation (Weigend, 1997: 537). In order to anticipate and to facilitate this intervention new regulations have been adopted internationally, once again following the example of the United States (Vervaele, 1999: 291), to allow confiscation and forfeiture before conviction, to facilitate evidence-gathering (for instance by the means of inverting the burden of proof) and to extend them to all

kinds of personal belongings, even if they have already been transmitted to third persons. These proposals have received strong criticism (Vervaele, 1998: 67) and there is international academic concern about the real nature of the punishment of confiscation, the need to prove the illicit origin of goods and assets, the rejection of universal confiscation and respect for the principle of proportionality.¹²

Spanish legislation on confiscation (*comiso*) has also been reformed in order to reflect, to a certain extent, international developments in this field. The 1995 new Criminal Code removes confiscation from the list of punishments and inserts it among the ‘accessory consequences’ (Art. 127), a new category of sanctions whose nature and condition is still very much discussed in scientific circles (De la Cuesta Arzamendi, 2001b: 976). Confiscation is foreseen for intentional offences and can be extended not only to the tools and the products of the offence, but also to the profits and assets, even if they have been transformed and transmitted.¹³ Only third parties, not responsible for the offence (and unaware of their illicit origin) who have acquired items in a legal way are protected against confiscation.¹⁴

Confiscation connected to drug offences is covered by its own particular regulation, specially directed at guaranteeing the most comprehensive capture of the substances and equipment, materials, vehicles, airplanes and any good, product, effect or instrument of the offence and their products and profits, even if already transformed (Art. 374).¹⁵ The results of this kind of confiscation are adjudicated by the state and can be used by the police in their activities against illegal trafficking. In 1995 a special fund was created with these proceeds to finance the following initiatives: drug-dependence prevention programmes, assistance, social and labour market integration of drug addicts; improvements to the prevention, investigation, prosecution and repression of drug offences; and international cooperation activities.

Another field where organised crime policy is encouraged to intervene is in the implementation of adequate answers to face the increasing ‘intercommunication between criminal organisations and companies’ (Zúñiga Rodríguez, 1999: 60). Although academic discussion remains open (De la Cuesta Arzamendi, 2001c: 65), Spanish criminal law maintains the traditional principle *societas delinquere non*

¹² See in this regard, the Resolution of Section I of the XVI International Congress of Penal Law (Budapest, 1999), *Revue Internationale de Droit Penal/International Penal Law Review*, 70/3-4: 897.

¹³ According to the Supreme Court, also to the profits derived from previous activities of those prosecuted (Choclán Montalvo, 2001: 259).

¹⁴ Confiscated items are sold and their products are applied to cover the reparation of victims and all civil responsibilities of the convicted.

¹⁵ Articles 5-10 of the Organic Act 12/1995 on smuggling also include a special regulation of confiscation.

potest. Nevertheless, the 1995 new Criminal Code has taken advantage of the new category of sanctions – ‘accessory consequences’ – to include the possibility of adopting, in certain cases, decisions against corporations involved in criminal activities, in order to prevent their continuity and effects: closing the enterprise or establishments, dissolving the society, association or foundation, suspending its activities, prohibiting the performance of certain activities or business or ordering the intervention of the enterprise in order to guarantee the rights of workers or creditors.

A third way has been thus opened to allow interventions by the penal judge against legal entities. And even if the nature of the new accessory consequences is unclear and the limited regulations of the Code do not fix the conditions that must be fulfilled in order to apply them, by virtue of this, Spanish criminal law can impose on corporations very similar sanctions to those considered real punishments in other legal systems.

The offer of legal concessions to organised crime members who dissociate and collaborate with the authorities is another substantive instrument with relevant effects in the prevention and criminal prosecution of organised crime activities (Zaragoza Aguado, 2000: 88). Here again the apparent efficacy of these measures does not necessarily fit in with their compatibility with the constitutional and fundamental requirements and principles of a due criminal process (Muñoz Conde, 1996: 143), but the procedure has received the support of the European Union Council Resolution of 20 December 1996 (Musco, 1998: 35).

Desistance and spontaneous repentance have been always recognised by Spanish criminal law as ways of exemption from responsibility (desistance in attempt) or mitigation (spontaneous repentance). Consistent with this tradition would be the admission of dissociation as a method of desistance in connection with the offence of belonging to a criminal organisation.

Nevertheless, many systems go much further and admit a *de facto* impunity for any charge in favour of those members (frequently, the heads and the leaders) who dissociate and collaborate with the authorities, even during the prosecution.¹⁶

Article 57*bis*(b) of the former Criminal Code reserved this kind of concession for terrorism. The 1995 new Criminal Code limits the possibilities offered by former Article 57*bis*(b), but includes concessions to drug traffickers.¹⁷ The

¹⁶ See the critics of the Resolutions of Sections I and III of the XVI International Congress of Penal Law (1999), and the need to respect the principles of legality, judicial control and proportionality, as well as avoiding anonymity of ‘*pentiti*’ and convictions only based on their confession, *Revue Internationale de Droit Pénal/International Review of Penal Law* 70/3-4: 897, 904.

¹⁷ Article 427 (corruption) includes equally an exemption of punishment for private persons that denounce the corrupt offer (already accepted by them) during the next 10 days (Quintanar Díez, 1996).

penalties envisaged can be substantially reduced if dissociation is accompanied by presentation to the authorities, confession and active collaboration in order to prevent the production of the offence or to obtain decisive evidence to identify or to capture other responsible persons, or to prevent the intervention or development of those gangs, organisations, associations or groups he belonged to or with which he collaborated.¹⁸

3.2. Criminal Procedure

In the search for maximum efficacy in the prosecution of organised crime, many new intervention methods have been introduced at a domestic level thanks to international influence. Frequently, these present a serious risk of a police-driven penal process (Albrecht, 2001: 103), and their compatibility with the rule of law principles is often very questionable. These include such things as: inversions of the burden of proof, presumptions of guilt, new techniques of proactive investigation, anonymous witnesses, etc. Expansion of jurisdiction by means of the extraterritoriality principle and improvements in police and judicial cooperation in this field are also promoted in this way (Pradel, 1998: 681; Van den Wyngaert, 1999: 164, 178, 192).

Similarly to other countries, several reforms have progressively¹⁹ brought about institutional changes in Spain and introduced specific new instruments of a different nature and scope (Delgado Martín, 2001; Esparza Leibar and Saiz Garitaonandia, 2001: 248; Zaragoza Aguado, 1999: 61).²⁰

In order to ensure better protection for those who collaborate with judicial authorities, the Organic Act 19/1994 established a system of protection of witnesses and experts (García Pérez, 2001: 269; Moreno Catena, 1999: 135), recognising the clear influence of international and comparative law and remembering that this is a system admitted by the European Court of Human Rights (Preamble). The special protection assured by the law for those persons whose life or properties (or those of their relatives) are in serious danger is decided by the investigation judge and may consist of police protection, the hiding of identity data (also in the

¹⁸ For instance, a prison sentence, initially foreseen from 8 to 12 years, would be reduced to 4-8 years, or to 2-4 years.

¹⁹ Gradually, and not really in a systematic way (Esparza Leibar and Saiz Garitaonandia, 2001: 246).

²⁰ By virtue of the Organic Act 11/1999, double incrimination will no longer be a condition of the extraterritorial application of Spanish jurisdiction based on the principle of personality, if by means of an international instrument or a decision of an international organisation of which Spain is a party, it becomes unnecessary (Blanco Cordero and Sánchez García de Paz, 1999: 39).

proceedings) and the prevention of visual identification (Art. 2). These measures can be maintained after the trial and if it is considered necessary a new identity can be facilitated (Art. 4.1).

Some provisions try to make witness protection compatible with the principles of due process and fundamental rights. According to the Constitutional Court and the Supreme Court, the Spanish system does not allow anonymous testimonies. Thus, contradiction is always possible, and if a party in the proceedings demands it, the judge must give the name of the protected person (Art. 4) whose testimony or report, in order to constitute evidence, must be ratified during the hearing (Art. 4.5) (Granados Pérez, 2001: 99).

Confidantes and undercover agents can also benefit from the witness and experts protection system. However, undercover agents used as a form of police infiltration (Gascón Inchausti, 2001) have recently been given new legal treatment by the Organic Act 5/1999, which modified Spanish criminal procedural law with regard to the investigation of illegal drug trafficking, and introduced different legal measures to combat organised crime (Gutiérrez-Alviz Conradi, 2001: 29).

Jurisprudence already makes a clear difference (as is broadly admitted by Pradel, 1998: 686) between provocation of a crime and police provocation and infiltration, considering the latter not illegal if not directed at originating a new crime (this would be a source of a policeman's criminal responsibility), but to facilitate the collection of evidence of an offence already previously constituted (Muñoz Sánchez, 1995: 111; Pérez Arroyo, 2000: 1765; Ruiz Antón, 1994: 333).²¹

However, the new Article 282*bis*, introduced in 1999 and heavily criticised in literature (Anarte, 1999: 53; Delgado Martín, 2000; Queralt Jiménez, 1999: 125; Rodríguez Fernández, 1999: 91), regulates the procedure to authorise the intervention of undercover agents in connection with organised crime (Sequeros Sazatornil, 2000: 765) and allows the investigating judge (or the prosecutor) to accept the false identity of agents, who can acquire and transport objects, effects and instruments of the offence without incurring criminal responsibility by the fact of deferring their confiscation, as long as the proportionality principle is respected. Authors discuss if, in order to constitute evidence, the statements of undercover agents (who can intervene under false identity without problems during the investigation phase) can be fully ratified in the hearings without discovering the agent's true identity (Giménez García, 1994: 729; Zaragoza Aguado, 1999: 64).

Similar to the undercover agent's intervention, controlled circulation or delivery is also an important measure, promoted by international bodies, used to deal with organised crime (mainly the trafficking of drugs). Following Article 73 of the Schengen Convention and Articles 3.1 and 11 of the United Nations Convention

²¹ See Constitutional Court Decision 121/1983 (Delgado García, 1996: 69; García Valdés, 1993).

on narcotic drugs (1988), the Spanish Code of Criminal Procedure was reformed in 1992, inserting a special provision that was broadly considered the first legitimisation of police provocation.²² Article 263*bis* (Rey Huidobro, 1995: 185) presented several disfunctions (Granados Pérez, 2001: 77) and was subject to a very restrictive judicial interpretation (Montero Aroca, 2000: 23) and has been recently reformed by Organic Act 5/1999.

The aim of the new reform is to facilitate the application of controlled delivery not only in the case of drug trafficking, but also for other manifestations of organised crime, in order to discover or to identify participants. It can be ordered by the investigating judge, by the prosecutor or by the judicial police chiefs, but it is always controlled by a judicial authority.

3.3. Administrative Measures

Among the administrative steps specially taken in Spain to prevent organised crime, exceptions to the general rule of bank and data protection have been introduced concerning those files opened to investigate terrorism and serious forms of organised crime (Organic Act 15/1999).²³

In addition, measures in connection with money laundering merit a special mention. Having ratified the most important international conventions, and in order to incorporate into Spanish law the contents of the above-mentioned Directive 91/308/CEE, Act 19/1993 established different measures for the prevention of money laundering: fundamentally, the creation of technical bodies (the commission to prevent money laundering and monetary infractions and the executive service for the prevention of money laundering); and the introduction of a system of official communication of certain transactions and operations (Choclán Montalvo, 2000: 16).

Act 19/1993 was followed by Royal Decree 925/1995 and other regulations implementing or developing it. By means of these norms, money-changing establishments, investment corporations and special public officials whose intervention is formally required to transmit properties or values are subjected to special administrative sanctions, and eventually to criminal responsibility, in cases of serious breaches relating to money laundering regulations (Blanco Cordero, 1999: 75).²⁴

²² See, however, Guinarte Cabada (1995: 29).

²³ See for instance, Act 25/1995, facilitating transparency between the different administrations and prosecutors.

²⁴ A new draft on measures to control economic transactions with foreign countries and to prevent money laundering was published in December 2002. See *Boletín Oficial de las Cortes Generales. Congreso de los Diputados. VII Legislatura*, 127-1, 20 December 2002.

3.4. International Police and Judicial Cooperation

Spain forms part of most of the conventions on mutual assistance and extradition, particularly at European level.²⁵ What is more, because of concern about terrorism, it has played a very important role inside the European Union in preparing the latest measures for police and judicial cooperation.

Also, organised crime appears as a central matter for cooperation in most of the bilateral treaties of friendship and cooperation signed by Spain during the last decades: juridical cooperation provisions usually include a reference to bilateral and multilateral cooperation and coordination against terrorism, drug-trafficking, organised delinquency (including the trafficking of children and women and illegal immigration).²⁶

Furthermore, Spain has bilateral conventions with different countries in the 'fight against organised crime': in this case the following crimes are considered to be 'organised crime': international terrorist acts; illegal trafficking of weapons, money, documents, drugs, national and cultural treasures and human beings; money laundering; smuggling; economic crimes; illegal immigration and other organised international offences.²⁷ Also special agreements on the rapid delivery of those accused of or convicted for organised crime activities have been signed with some European countries²⁸ and on drug trafficking with many Latin-American countries.²⁹

²⁵ For instance, European Convention on mutual assistance in criminal matters (1959); European Convention on extradition (1957, 1975, and Protocols; 1995 and 1996); Schengen Agreement (1985); Schengen Convention (1990); European Convention on the transfer of proceedings in criminal matters (1972) and European Convention on the transfer of condemned persons to their country of origin (1983); European Union Convention on mutual assistance in criminal matters (2000); European Union Joint Actions on liaison magistrates (1996/4/22) and the European Judicial Network (1998/6/29); Eurojust (2000); European Convention on Europol (1995) and Protocol (1997). See *Estudios Jurídicos, Ministerio Fiscal*, 2001, vol. II: 479-827; FGE (2001: 1032); Santos Alonso (2001: 33).

²⁶ See, for instance, Article 10 of the General Treaty of Friendship and Cooperation with the Philippines, concluded in Manila (30 June 2000).

²⁷ See, for instance, China (2000), Poland (2000), Slovakia (1999) and Bulgaria (1998).

²⁸ For instance, with Italy (28 November 2000) or the United Kingdom (21 May 2001); and on drug trafficking with Malta (28 May 1998).

²⁹ Dominican Republic (2000); Costa Rica (1999); Ecuador (1999); Guatemala (1999); Honduras (1999); Argentina (1998); Cuba (1998); Mexico (1998); Panama (1998); Peru (1998); Uruguay (1998); Bolivia (1997); Chile (1996); Venezuela (1996).

4. Institutional Changes

In Spain as elsewhere, legal reforms are often accompanied by institutional changes. Thus, the relevance and difficulties of the problem are enhanced (new and specialised institutions are needed).

The judicial system in Spain is a unitary one, established by the state. Judicial competence on organised crime is located in the *Audiencia Nacional* (Art. 65 Organic Act of the Judicial Power 1985) (Jiménez Villarejo, 2001: 355). This is a specialised Court in Madrid with jurisdiction over all Spanish territory on certain matters: such as terrorism and organised crime.

Two special prosecution offices have been created in connection with organised crime (Choclán Montalvo, 2001: 226; Jiménez Villarejo, 2001: 337):

- in 1988, the Special Prosecution Office to prevent and repress illicit drug trafficking (Act 5/1988);
- in 1995, the Special Prosecution Office to repress economic offences connected to corruption (Act 10/1995).

The special prosecutor for drug trafficking has the competence to investigate all kind of commercial and financial operations and patrimonies of persons suspected to be directly or indirectly related to illicit drug trafficking. There is no similar task definition concerning the special prosecutor against corruption (Esparza Leibar and Saiz Garitaonandia, 2001: 262, n. 23).

Spanish police structure is more complicated than its judicial one. There are two state police forces: *Policía Nacional* – a civil police in urban areas – and *Guardia Civil* – a police force subject to military discipline and present in rural areas. In addition, since Spain is politically divided into Autonomous Communities (by regions and nationalities), these communities – if their own statute of autonomy foresees it – can have their own police forces. The Basque police (*Ertzaintza*) therefore is competent for all police tasks in the Basque Country (except for supracommunity matters). Catalunya's *Mossos d'Esquadra* collaborates with the national police forces in the prevention and investigation of criminal offences.

Inside the *Policía Nacional* structure, the Judicial Police General Bureau is competent to investigate supraterritorial offences, and especially those related to drugs and organised crime; in the late 1990s a special unit (*Unidad de Droga y Crimen Organizado*, UDYCO)³⁰ was organised to investigate and prosecute criminal activities at national or transnational level connected to drug trafficking,

³⁰ <<https://www.policia.es/policiahoy/reportaje3.htm>>.

organised crime, economic crimes and money laundering.³¹ This unit is also the one that coordinates the intervention of the different territorial unities (Royal Decree 1449/2000 and Order 10 September 2001) and the special sub-units at provincial and local level. According to the research developed by the Seville Section of the Andalusian Institute of Criminology (Mapelli Caffarena et al., 2001: 19), 41.79 per cent of the central UDYCO's officers think that medium priority is given to the fight against organised crime in the Policía Nacional; 25.37 per cent see it as being given high priority and 13.43 per cent perceive it to be very highly prioritised (Mapelli Caffarena et al., 2001: 26).³² In the General Bureau for Foreigners and Documentation, the unit against migration networks and falsification of documents (UCRIF) is the unit which fights against trafficking of persons and illegal immigration (Art. 8.2).

Inside the Guardia Civil, where in 2002 a plan was announced to fight organised crime (PACCO), whose full implementation is foreseen for 2003³³, the Information and Judicial Police Chief has: an Operation Central Unit to investigate and prosecute organised delinquency; anti-drug and organised crime teams (EDOA)³⁴ and teams to fight clandestine immigration (ELIC).³⁵ The members of this force operating at the borders have the task of organising and leading interventions to prevent and prosecute smuggling, drug-trafficking and other illegal trafficking activities (Royal Decree 1449/2000 and Order 29 October 2001).

According to Mapelli Caffarena et al. (2001: 31), collaboration between the Policía Nacional and Guardia Civil in connection with organised crime is perceived as low (29.85 per cent) or very low (28.35 per cent) Only 4.47 per cent of the officers of the central UDYCO think that this collaboration is high. The collaboration between the UDYCO and the regional police forces (in the Basque Country and Catalunya) is also perceived as very scarce. The main reason for this very limited collaboration is the absence of institutional mechanisms of coordination and information exchange, as well as the inadequate legal distribution of competencies.

³¹ The Judicial Police General Station also relies on a special Unit on Specialised and Violent Crime (UDEV) (Art. 6.3, Order 10 September 2001), competent to investigate national and transnational criminal activities related to cultural treasures, new technologies, crimes against minors and families, and crimes against life and integrity and sexual freedom. This Unit's activities often overlap with those of the UDYCO, although the Central Unit on Criminal Intelligence should serve as a means of coordination.

³² Just over 44 per cent of Andalusian police officers think however that it receives a high priority (for just over 8 per cent, a very high priority).

³³ <<http://www.siacorp.com/maseuropae003.htm>>.

³⁴ General Order No. 9, 6 April 1997.

³⁵ General Order No. 18, 11 November 2002.

Furthermore, there are also some central regulatory agencies:³⁶

- the Customs Survey Service, created in 1956 and restructured by Decree 319/1982, in charge of investigating and prosecuting smuggling offences (Act 12/1995);
- the Commission to Prevent Money Laundering and Monetary Infractions, established by Act 19/1993; and
- the government's National Delegation established for the National Plan on Drugs; this is the body legally designated to coordinate the intervention of the different state police forces against drug trafficking and money laundering, and coordinates forms of European Union cooperation developed in this field (Art. 8, Royal Decree 1449/2000).³⁷

5. Future Trends and Conclusions

Organised crime policy in Spain is more the result of specific interventions than a comprehensive way of systematically approaching this complex phenomenon. Since social debate is completely absorbed by the terrorism issue, no special debate on organised crime policy can be found in the media.

Nevertheless, various legal reforms have been implemented, partly because of certain corruption scandals but mainly due to pressure from international organisations. New legal provisions have been adopted without important debate and, sometimes, literally copied from the principal international conventions and agreements. They contain contradictions (FGE, 1999: 230; Jiménez Villarejo, 2001: 352) and are widely criticised not only in academic circles (because of their difficult compatibility with the main constitutional principles and individual freedoms), but also by police officers themselves, who demand more developed regulations and resources (Mapelli Caffarena et al., 2001: 52).

Certainly, prevention and punishment through criminal law is the dominant approach of organised crime policy. Nevertheless, there are also administrative tools in certain fields, particularly in connection to money laundering.

Furthermore, institutional reforms have been implemented, reserving for the Audiencia Nacional the jurisdictional competence and creating special public

³⁶ Very recently, after having detected some chatrooms devoted to drug trafficking, the Spanish government has also announced a project to establish an organised crime observatory for the Internet, <<http://delitosinformaticos.com/noticias/101766096127069.shtml>>.

³⁷ On the National Plan on Drugs for the period 2000-2008, see Royal Decree 1911/1999.

prosecutor offices and special police units. However, collaboration among the different instances (even between the two national police forces: the Policia Nacional and the Guardia Civil) is very problematic.

Although different instruments have greatly improved its regulation, international cooperation is still too bureaucratic and more coordinating efforts are deemed absolutely essential.

The year 2003 started with the announcement of four new penal reforms.

In order to increase penal pressure in the fight against terrorism, Organic Act Draft number 129,³⁸ projects a reform of the Criminal Code, the Penitentiary Act and the Code of Criminal Procedure to ensure the complete and effective execution of sentences, which in the case of serious terrorism and recidivism will be increased to 40 years imprisonment.³⁹ As for the penitentiary classification of terrorists and organised crime members, most convicts imprisoned for terrorism and organised crime offences will be excluded from the application of open prison measures, penitentiary classification and parole. Only if they dissociate and collaborate with the authorities will the general regime once again be applicable to them.

Organic Act Draft number 130 to reform the Code of Criminal Procedure⁴⁰ broadens the application of provisional prison sentences. The preliminary draft on concrete measures against insecurity, domestic violence and the social integration of foreigners projects the reform of illegal trafficking of immigrants and foresees specific aggravating circumstances for those who collaborate with organisations or associations even transitorily dedicated to these activities.

Last, but not least, a preliminary draft reform of the Criminal Code extends the possibilities of confiscation as well as of the accessory consequences, and introduces new reforms on money laundering and drug trafficking.

All these initiatives are again one-off interventions that merely represent a new step in the Spanish 'emergency-policy' on organised crime. They do not really involve any change. The approach and main features continue to be the same.

³⁸ *Boletín Oficial de las Cortes Generales. Congreso de los Diputados, VII Legislatura, A, 14 February 2003.* Another Draft (No. 127) is also pending in Parliament on foreign economic transactions and to modify Act 19/1993 on money laundering prevention (*Boletín Oficial de las Cortes Generales. Congreso de los Diputados, VII Legislatura, A, 20 December 2002*).

³⁹ The maximum Spanish prison sentence is now 20 years, and exceptionally, 25 or 30 years (Art. 76 Criminal Code).

⁴⁰ *Boletín Oficial de las Cortes Generales. Congreso de los Diputados, VII Legislatura, A, 28 February 2003.*

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The Making of the United Kingdom's Organised Crime Control Policies

Michael Levi

1. Introduction: The Developing Concept of Organised Crime

The aim of this chapter is to review the development of responses to 'organised crime' in the United Kingdom. In no country does this construct come 'fully formed': rather views about and even the attachment of such a label to the supply of illegal drugs, immigration and fraud are part of a social and cognitive process, partly in interaction with other countries – principally the United States and then the European Union – which I will explore. The chapter will examine the gradual growth of centralised policing – always an issue in a country with hostility towards the French Revolution and an attachment to devolved, local policing (at least rhetorically) – and the methods that law enforcement agencies (which include Customs and Excise) adopt.

'Organised crime' as a term presents great conceptual boundary problems: it has the political advantage but the analytical disadvantage to possess the characteristic of a psychiatrist's Rorschach blot, into which everyone can read their own image. The political advantage it brings is that every politician in the late modern era likes to be doing (and to be seen to be doing) something significant about serious crime problems, and transnational organised crime visibly fits this category even though – victim and witness intimidation apart – it may not show up in fear of crime or victimisation surveys.

Yet what is the nature of this problem, in the United Kingdom and in many other parts of Europe? Almost every country seeking the power to do something about social nuisances – from motorcycle gangs in Canada and Scandinavia to Balkan and Chinese people smugglers – wants the definition of organised crime to include those nuisances. Thus we find the United Nations Convention on Transnational Organised Crime 2000 interpretative notes stating that 'the term "structured group" is to be used in a broad sense so as to include both groups with hierarchical or other elaborate structure and non-hierarchical groups where the roles of the members of the group need not be formally defined.' It is clearly not difficult to become a structured group, and so if one teams up with two others to get drugs from abroad for a while, to smuggle alcohol or tobacco into the United Kingdom, or to open up an account with a bank in France or Spain (sometimes described in the popular press as the Costa del Crime), this is a sufficient legal basis to meet the United

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Nations criteria for a transnational organised crime group. The illustration above was not the sort of social threat that the drafters of this or equivalent European Union measures were aiming at (and certainly not how those powers were justified to the media and to the public), but my analysis illustrates how, in the desire not to let any targets evade the definition, there is a 'net-widening' effect that can extend to offenders far from the image or the reality of the Mafia. This is nicely encapsulated by the somewhat pragmatic definition of an organised criminal by the National Criminal Intelligence Service:

An organised criminal works with others for a profit motive to commit an offence which impacts on the United Kingdom, and for which a person aged 21 or over on first conviction could expect to be imprisoned for three years or more (<<http://www.ncis.gov.uk/about.asp>>).

'Organised crime' used to be a phenomenon that was central only to American and Italian crime discourses about 'the Mafia' but – stimulated by the growth of the international drugs and people migration trades¹ and by the freeing up of borders since the collapse of the Soviet Union – its use was extended to Britain and other parts of Europe and beyond in the course of the 1990s, exemplified by the European Union Joint Action of 1997, the European Council Tampere Summit 1999, and the United Nations Convention 2000, dealt with elsewhere in this book. There is a tendency among sociologists of social control to focus upon the contemporary use of the term and to relate 'the growth of organised crime' cynically to the end of the Cold War and the bureaucratic need of Western intelligence services to find a new *raison d'être* (Woodiwiss, 2003; Sheptycki, 2003). However, the term 'organised crime' arose in Britain long before the great internationalisation of the crime problem in the late 1980s and the collapse of the Soviet Union: it was common currency in the mid and late 1960s, when the Kray and Richardson gangs attained a certain power in London and parts of other major cities in the United Kingdom (Pearson, 2002; Borrell and Cashinella, 1975), usually depicted as 'gangland' activity (and brilliantly embodied in the film *The Long Good Friday*). Indeed, among British *True Crime* books in print today, excluding Jack the Ripper, the Kray brothers still comprise the single largest category of published criminal histories, with books by most of their close intimates as well as in the names of the brothers themselves. For example, well-subscribed popular tours exist to show the public houses where

¹ Analytically, both of these trades are artefacts of criminalisation in the sense that if no artificial constraints were placed on demand, there would be no need for illegal businesses (Naylor, 2002 – for a more general discussion of organised crime see Levi, 2002a). However, though true, a similar argument could be made about property rights generally so it is not as profound a point as is often claimed.

‘Jack the Hat’ MacVitie and George Cornell were murdered, and ‘Mad Frankie’ Fraser remains a highly paid raconteur on the cabaret circuit as well as a successful author.

During the 1960s, there was no ‘organised crime policy’ of the kind we might see today in the United Kingdom. The Home Office had a large array of different responsibilities from the fire service to the Crown Dependencies of the Channel Islands and Isle of Man, and its divisions separated criminal policy from police policy. The mid-1960s saw increasing concern to stop Americans like the late actor George Raft from ‘invading’ the British gambling scene on behalf of presumed United States Mafia contacts, but also about the unregulated use of ‘fruit machines’ by mainly local racketeers who would require small shopkeepers and hoteliers to install them on their premises and give them a large percentage of their takings. (In Northern Ireland, this was a lucrative source of income for Catholic and Protestant paramilitaries.) The Gaming Act 1968 included a requirement that persons wishing to run casinos seek consent from the Gaming Board and to demonstrate that they were ‘capable and diligent’ before applying to local Justices who would require them to show that they were ‘fit and proper’ (like those selling financial services products): this combined central and local requirement reduced the risk of corruption and other pressure on local justices, in the name of greater consistency. However, gaming apart, rather than aiming to reduce the amount of a particular activity (such as trafficking in women), the policing and implicit policy objective was to prevent particular *individuals* or groups from becoming ‘untouchable’ and a threat to the hegemony of the police and state. Anti-criminal measures were aimed more commonly at British indigenous criminals than at foreign groups, and though Maltese involvement in vice rackets was seen as a problem, this was not seen primarily as an *immigration* policy issue in the way that, say, contemporary Balkan or Russian organised criminality would be viewed. Although the Richardsons did have international interests (for example, perlite mining in South Africa), they and the Krays – like the Glasgow razor gangs and the Brighton racecourse gangs that preceded them (see Graham Greene’s *Brighton Rock*) – were seen mostly as a substantial local problem facing particular cities. These concerns were not restricted to London. Other areas had significant local or regional criminals who wished to control and possibly expand ‘their’ territory, for example in relation to the supply of fruit machines in pubs and clubs: this is nicely encapsulated in the film *Get Carter*.

The only sense in which this generated an organised crime policy was in the background to the Gaming Act 1968 and the Misuse of Drugs Act 1971. However, interviews indicate interaction between the government and the Metropolitan Police in the campaign against police corruption launched in 1972 by Commissioner Sir Robert Mark against the ‘firm within a firm’ which the ‘Met’ CID had become, which had facilitated the legal impunity of London gangsters. Thus corruption – not only in London but also in then British colonies such as Hong Kong – was

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understood to be a risk arising from specialised detective squads (rather than the criminalisation of vice and drugs *per se*), but the social fabric was felt to be more in danger from widespread drugs *consumption* than from the organisation of supply. In this sense, public and official concern was aimed (whether rationally or not) more at the consequences of particular crimes for social welfare than at some generic threat posed by combinations of offenders. (Though as reactions to ‘hooligans’ also showed, people did and do see such combinations as more threatening than individuals acting alone: this may be seen as the basis for the very broad English common law of conspiracy.)

Although there was periodic concern about police corruption in London (and failed attempts to bring provincial officers in to investigate it), actual *policy* was low key until the mid-1980s when, animated by concerns about drugs and the failure to confiscate millions of pounds which had to be returned to convicted LSD traffickers when it could not be linked to the specific offences of conviction, the Home Office drugs policy-makers began to develop what became the Drug Trafficking Offences Act 1986. Many aspects of this legislation were substantive criminal law, but there were two key innovations that merit mention here. First, the Act introduced the reversal of the burden of proof *post-conviction* to require offenders to satisfy the court that they had earned any assets linked to them by means other than drugs trafficking if they were to keep the assets; and secondly, a suspicious transaction reporting regime was introduced in which banks and building societies were required to report any suspicions of drugs trafficking by their customers to the police. This was the subject of much discussion with the banks in advance, to enlist their support. My interviews and documentation suggest that the banks found it difficult publicly to resist the encroachment of the state into ‘customer confidentiality’, but that this was not seen as any kind of attack on global money laundering. Indeed, there is no evidence that even the Crown Dependencies – the Channel Islands and the Isle of Man – were considered important to this legislation. The anti-laundering regime was developed in a different form in the delayed Criminal Justice Act 1988 and the Prevention of Terrorism (Temporary Provisions) Act 1989, with merely permission to report without risk of lawsuits suspicions that funds emanated from fraud, robbery and other serious crimes, while it became an offence to fail to report funds that one *ought to have suspected* were proceeds of terrorism, though no prosecutions ever arose. These inconsistencies merely supported the point made by senior judge Lord Denning in the House of Lords debates on the 1986 Act that it was nonsensical to legislate only for drugs, since bankers could not be expected to know what was the provenance of the funds. This illustrates that criminal policy in general and organised crime policy in particular can be whatever the political market will bear in any given circumstances: a point later reinforced by the events after 11 September 2001. Involvement in negotiating the United Nations Vienna Convention of 1988 altered the appreciation of the problems, but British (and especially United States) delegations to the emerging Financial Action Task Force

in 1989 remained focused primarily on drugs issues, rather than having a broader construct of organised crime at which to aim.

Monolithic functionalist accounts of the utility of ‘organised crime’ myths to states seeking increased powers are oversimplified. In the particular case of the United Kingdom, there were (and remain still) countervailing *official* forces in Great Britain (excluding Northern Ireland) against the development of the view that ‘organised crime’ is a large problem. One of these factors was the absence of a national police force in the United Kingdom: the fractured nature of local policing – 43 police chiefs in England and Wales, eight in Scotland and one in Northern Ireland – created a set of police fiefdoms whose chiefs stood to lose autonomy, funding, and prestige from any centralised national policing unit, and this made the police more sceptical than they might otherwise have been of any claims about organised crime. In cultural terms, the primacy of the view that the police ought to reflect and respond to local sentiments and priorities was a key cultural value that had to be dealt with sensitively, sometimes by ensuring that national policing targets were populist in character: despite recent assertions that organised crime affects everyone in the United Kingdom (National Criminal Intelligence Service, 2003), organised crime found difficulty in fitting into this model, whereas drugs offences and street crime fitted it better. Thus abstract and temptingly universal notions such as explaining the growth of the ‘organised crime issue’ by ‘police interest’ in constructing an organised crime problem, true or imaginary, have to be mediated by an understanding of the structure and organisation of the police² as well as by the variable bureaucratic and political drive from national and international politicians, law enforcement and intelligence agencies. The outcomes of the ‘struggles’ (if struggles there be) between these different bodies may vary over time and place (see Levi, 2003 for an account of this in relation to anti-money laundering policies).

2. The Historical Development of the Organisation of Policing for Organised Crime

There are two ways of looking at the organisation of policing and policy. One is to appreciate that most organisations change slowly and that bureaucratic routines and cultures tend to dominate in determining how issues will be viewed and dealt with. The second is to view crime and other social problems at a more abstract level and to ask how current and past bureaucratic practices have addressed the ‘key problems’ identified by the strategic intelligence analysis. In the second mode,

² Parallels may be drawn with developments in Belgium, Germany and the Netherlands.

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to help us analyse the threat and the problems that rational policing confronts, we should consider the tasks that need to be performed to commit serious crimes over a long period:

1. Obtain finance for crime;
2. Find people willing to commit crimes (though this may not always be necessary if one has an inside position and/or specialist skills that enables one to commit major crimes alone, in which case one does not fall within the legal category of 'organised crime' but one might still be a fraudster and/or a threat);³
3. Obtain equipment and transportation necessary to commit the crimes;
4. Convert products of crime into money or other usable assets (unless they are already cash);
5. Find people and places willing to store crime proceeds (and perhaps transmit and conceal their origin);
6. Neutralise law enforcement by technical skill of crime commission, by corruption, and/or by legal arbitrage i.e. using legal obstacles to enforcement operations, admissibility of evidence and prosecutions which vary between states.

We will return to these elements later. Now let us examine how the British state developed its responses to what it saw as the problems it confronted, bearing in mind that Scotland has a different criminal and procedural law and criminal justice system, while Northern Ireland has some different (often tougher) criminal and procedural laws, including trial without jury for terrorism-related offences.

Sometimes (and retrospectively) labelled New Public Management (NPM) to present the reforms as coherent and systematic policy-based initiatives, there were a number of implicit underlying components and themes in the Thatcher-promoted reforms of the public services during the 1980s and 1990s. Hood (1991: 4-5) identified seven main 'doctrinal components' to NPM (see Table 1).

Though not subject to the same market pressures as other public services, the police did not escape the reform process undergone by other public sector organisations, and underwent a number of inquiries and guidance from outside agencies during the 1980s and 1990s.

³ Some cybercriminals and hackers fall within this set of 'lone actors' though they are often treated as major social threats by cyberpolice.

Table 1. Seven main doctrinal components to NPM.

	<i>Components Type</i>	<i>Purpose</i>	<i>Consequence</i>
1	Hands-on professional management	Active, visible, management responsibility	Accountability and assignment
2	Explicit standards/measures	Targets; indicators of success, quantifiable	Evidence of efficiency
3	Emphasis on output controls	Resource allocations and rewards linked to measured performance	Emphasis on results, not procedures
4	Disaggregation of units	Breaking monolithic corporatist units around products, decentralised on-line budgets, arms-length dealing	Competition, lower costs and better standards
5	Greater competition	Designed to reduce costs and improve standards	
6	Stress on private-sector style management practices	Less public service ethics – flexibility in hiring and rewards	Need for proven private sector tools
7	Stress on greater discipline and economy	Cut direct costs; raise labour controls	Check resource expansion and do more with less

At an operational national level, in response to successive crime threats, a common British police response was to set up specialist squads, initially focused around types of crime (e.g. drugs squads, fraud squads, vice squads) (see Morgan et al., 1996): the joint Metropolitan and City Police Company Fraud Department was set up in 1946 to deal with deception risks for newly demobbed military personnel, though fraud has only been seen as ‘organised crime’ when gangsters do it or it becomes embedded in routines such as smuggling licit commodities to evade tax. In 1964, as a result of concern about the frequency with which criminals were committing crime across police force borders and the fact that local officers were ill-equipped to deal effectively with them, nine Regional Crime Squads were established with detectives seconded for up to five years from police forces within each region. They

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were each commanded by a detective chief superintendent selected by and accountable to a committee of the constituent forces chief constables and funded through a collaboration agreement between the constituent forces under the supervision of a regional Police Authority. Their aim was proactive targeting of cross-police force offenders. In 1993, the Regional Crime Squads were amalgamated into six regions covering England and Wales. They included 44 locations throughout the country principally in covert premises, close to main arterial roads. The regions were broadly compatibly equipped and trained and work to similar policy and procedures. Due to their nature, their priorities tended to reflect a regional rather than a national agenda.

Nevertheless, from the perspective of action against organised crime (in the National Criminal Intelligence Service sense discussed in section 1 supra, the key point is that the devolution of financial resources (i.e. power) from police chief constables to divisional police heads (normally superintendents) in the early 1990s created pressures away from central squads at force level, and this – combined with performance indicators based around reducing crimes such as burglary, car crime and robbery that preoccupied populist local and national politicians – made it increasingly difficult to find resources to produce intelligence on and investigate intensively any crimes that crossed even police divisional, let alone police force or national boundaries (Doig and Levi, 2001). Unless there was a thematic inspection by Her Majesty's Inspectorate of Constabulary within the Home Office, or unless performance indicators were created directly relevant to the organised crime issues, there was no obvious way in which resource could be obtained to conduct any long-term investigation: local police were simply too busy and too driven by target attainment pressures to spare the resource, especially if it involved marginal expenditure on travel from very restricted budgets.

3. The Current Policy Framework for Organised Crime in England and Wales

The early 1990s saw a raft of changes in the response to organised crime, symbolised by the formation of (a) the Organised and International Crime Division of the Home Office, (b) the National Criminal Intelligence Service (formed from the National Drugs Intelligence Unit), and (c) changes in the number of Regional Crime Squads. The reasons for these coincidences are not obvious, but they appear to be the result of growing European Union activities (TREVI and the first money-laundering directive), and a change in strategic direction at the Home Office.

The concept of 'cross-border' may be understood differently by those who have national police forces and/or that are concerned with crimes across national boundaries. The Association of Chief Police Officers, stimulated by the Home Office, commissioned a report (ACPO, 1996) which noted that 43 per cent of

central squad work (drugs, fraud, vehicle, etc.) was across the borders between forces: of that figure 36.5 per cent and 30 per cent of fraud work was undertaken internationally and nationally respectively. It concluded that militating against such work, however, were the issues of management reluctance to commit resources to out-of-force investigations; knowledge about who to contact in another force; incompatible equipment; and a lack of relevant intelligence.

From the mid-1990s, to generate greater flexibility and to reflect the 'new model' of 'serious and organised crime', the remaining staff in specialist drugs and fraud squads have been replaced by generic 'serious crime' or 'major crime' units, some of them (e.g. West Midlands, Metropolitan) subsuming fraud and public sector corruption, others not. Although the development of multi-crime type 'serious/major crime units' looks like it takes into account the complexity of criminal activities of crime networks, in practice such squads are dependent on where they can get human and technical intelligence from, and these may more likely come from the drugs than from the fraud arena. If the same criminal personnel are active in both types of crime, this may not matter (except in crime statistics) but if they are not, then this advantages some groups – particularly specialist fraudsters and corporations that cause damage by pollution and health and safety offences – against others.

The principal law enforcement and other agencies and departments – including, increasingly, the intelligence agencies – come together in the Organised Crime Strategy Group (OCSG), under the chairmanship of the Home Office, in order to agree the response to the threats set out in the United Kingdom Threat Assessment quoted earlier. In institutional bureaucratic terms, this is difficult because some of the agencies, in particular Her Majesty's Customs and Excise (HMCE) but also the Inland Revenue, the Department of Work and Pensions and the intelligence agencies, report to different government departments, and may have different objectives. However the post-11 September 2001 perception of crisis has created the basis for greater commonality of purpose and enabled legislation (in particular the Anti-Terrorism, Crime and Security Act 2001 and the Proceeds of Crime Act 2002) to reduce data protection barriers. The burden of extra work also created the need for a specific International Division within the Home Office, dealing primarily with the European Union and mutual legal assistance issues.

The core theme underlying the OCSG is 'partnership working' both within and between agencies, and this has led to the creation of inter-agency strategies for tackling the various 'sectors' of serious and organised crime (the collective phrase which enables the troublesome 'organised' definition to be side-stepped). New multi-agency groups have been formed to tackle Class A drugs such as cocaine and heroin (the Concerted Inter-agency Drugs Action group, known as CIDA), organised immigration crime (the Reflex group), and criminal finances and profits (the Concerted Inter-agency Criminal Financial Assets group, known as CICFA). In addition, existing, mostly police groups focusing on other 'sectors' such as firearms have been or will be expanded to include other agencies such as HMCE. In each

instance, one agency has been nominated to take the lead, with others committed to making specific contributions, worked out according to a consensus view on the threat and priority actions to deal with it, though this consensus can be difficult to achieve and put into practice.

3.1. Regulatory, Disruption and Non-Criminal Justice Approaches

Law enforcement agencies and the criminal courts are not the only agencies that control the risk and threat of organised crime. One important aspect of this is the use of powers in the financial and tax areas, where in essence the focus of the attack is upon the financial assets of organised criminals rather than on criminal prosecution as such. Tax evasion was the only charge feasible against Al Capone, but the use of tax prosecutions against ‘organised criminals’ and, for that matter, against wealthy individuals and corporations suspected of dishonestly evading large sums from the proceeds of otherwise legal activities, varies in Europe. Thus, in the Irish Republic (Criminal Assets Bureau Act 1996) and the United Kingdom (Proceeds of Crime Act 2002), as well as in the United States, *civil* law means and standards of proof are used to ‘recover’ for the state the assets deemed to be derived from crime, *irrespective of whether or not anyone is ever convicted or even prosecuted for those crimes*. The aim here is to undermine both the motivation of criminals to become ‘top organisers’ and their resources to be able to do so. This can be reinforced by extended powers to confiscate large cash sums inland that do not have a legitimate explanation, as contained in the Proceeds of Crime Act 2002. A second, rather different, aspect is the use of the regulatory powers of local authorities, environmental and licensing agencies and the like, to disrupt the ‘businesses’ of organised criminals by making it more difficult for them to obtain necessary licenses, find suitable premises, and so on. Hitherto, this has been used against disruptive individuals under Anti-Social Behaviour Orders, but it has not been used officially to prevent organised crime, except where there is an individual or corporate licensing function which can be deployed to this end.

3.2. Criminal Intelligence: The NCIS Contribution to the Inter-Agency Strategies

The National Criminal Intelligence Service (NCIS) was created in 1992, out of its predecessor the National Drugs Intelligence Unit, a primarily Metropolitan Police-oriented body. NCIS was never intended to have an operational arm, and interviews suggest that one reason for this was to avoid the argument, which surfaced years later when the National Crime Squad was created, that the aim was to centralise policing and ‘create a British FBI’. (A criticism that is particularly and unintentionally ironic, given the multiplicity of United States federal, state and

local policing bodies.) However there was and remains a view that the collection of intelligence and strategies that inform it should remain uncontaminated by enforcement routines, not least because the latter tend to dominate the former. NCIS is committed to contribute under each of the strategies changes over time as priorities change. However, in general terms, though police force perceptions of it are often not positive, NCIS provides a range of intelligence products and services:⁴

- *Strategic and tactical assessments*, such as the United Kingdom Threat Assessment, examine overall major threats, informing strategic thinking and priorities for action, and identify progress against objectives.
- *Problem profiles* describe and assess specific aspects of a threat, normally from a geographical (international, national, regional or local) or thematic (for example the trade in a particular illicit commodity, an aspect of serious and organised criminal *modus operandi*, or the significance of a nationality or ethnicity) basis. They set out what is known, where the gaps in intelligence are, and what actions are required. They are normally intended to lead to the creation of target profiles.
- *Target profiles* capture what is known about the key individuals and groups behind the various threats. They form the basis of national and regional ‘Action Plans’ and target operations.
- *Operational intelligence* falls into one of three basic categories: intelligence that has been acquired on top-level criminals in response to tasking from a partner agency; intelligence that has been acquired to contribute to a target profile; and ‘new’ intelligence that points to the significance of previously unknown or overlooked serious and organised criminals and criminal activities.

Coordination services include target ‘flagging’ by partners (recording an operational interest in an individual or group to avoid damaging crossovers, and to benefit from any intelligence held or acquired by another agency such as the Inland Revenue and Department of Work and Pensions); covert human intelligence source registration (the correct term for informants, also used to avoid crossovers, and so that those in search of specific intelligence might be able to exploit the access provided by existing sources); searches of NCIS national intelligence databases; specialist advice (for example on kidnapping); access to the foreign law enforcement agencies; and access to the intelligence agencies.

⁴ See <<http://www.ncis.co.uk/serviceplan>> for greater detail, including measures of performance against specific objectives.

3.3. NCIS Objectives and Targets

In delivering its various intelligence products and services, NCIS aims to meet the objectives and performance targets set for it by the Home Secretary and the Service Authority, which has broader representation. These objectives and targets take full account of and make explicit reference to the inter-agency strategies. They all require NCIS to provide (difficult to evaluate) ‘high quality assessments and actionable intelligence’ in the following two areas set by the government, plus three objectives set by the Service Authority:

Objective 1 (i): where appropriate in partnership with other law enforcement agencies, in support of the Government’s inter-agency strategy for reducing the supply of Class A controlled drugs in the United Kingdom;

Objective 1 (ii): where appropriate in partnership with other law enforcement agencies, in support of the Government’s inter-agency strategy for combating organised immigration crime (people smuggling and human trafficking) affecting the United Kingdom.

Objective 2 (i): in support of disruption of criminal enterprises, in order to increase disruption of criminal enterprises engaged in money laundering and related financial fraud within or affecting the United Kingdom, and maximising mutual support and cooperation with law enforcement agencies, at local and national levels.

Objective 2 (ii): in order to increase disruption of criminal enterprises engaged in other criminal activity including firearms related crime within or affecting the United Kingdom, and maximising mutual support and cooperation with law enforcement agencies, at local and national levels.

Objective 3: In collaboration with partners to identify and implement opportunities for improved inter-agency working.

Objective 4: To provide specialist coordination and support services to aid effective law enforcement operations.

Objective 5: To develop the professional skills and expertise of NCIS staff within a career structure in order to enhance the long term performance of the organisation

3.4. Operational Policing and Organised Crime

As we have seen, the boundaries of what is or is not ‘organised crime’ are flexible, but intelligence apart, operational policing is conducted at a national level mainly

by the National Crime Squad and HMCE Investigations Division, under specific objectives set by government since NPM models developed in the early 1990s.

3.4.1. Her Majesty's Customs and Excise

The main function of HMCE is to collect taxes, but they also have a more general role labelled officially as 'protection of society', which sits with some tension with the revenue-maximising role. As well as being responsible for collecting and administering customs and excise duties and value added tax (VAT), HMCE is also responsible for preventing the evasion of revenue laws, and for enforcing a range of prohibitions and restrictions on the importation of certain classes of goods.

As long ago as 1850, the Excise Department used a 'detective force' based at Tower Hill to suppress the illicit distillation of spirits. In 1909, following the merger of the two departments of HMCE, the detective force became the Special Service Staff, with nine officers and in 1921 it was renamed the Special Inquiry Staff, with 21 officers dealing with illicit distillation, illicit entertainment, duty frauds and large smuggling cases involving tobacco and alcohol. In 1946 the force had grown to 50 officers, and following a reorganisation within HMCE, they became known as the Investigation Branch. Between 1946 and 1972 the Investigation Branch grew to deal with excise fraud, purchase tax fraud, and, for the first time, drug smuggling. Regional offices were established in six cities in England and Scotland. By 1973, following another reorganisation ahead of the introduction of VAT and membership of the EEC, the Investigation Branch was formed into a new Investigation Division of 147 staff. In addition, however, investigation units were formed in each of the (tax) Collections, dealing with the less serious criminal cases. By 1995, staff levels had risen in the Investigation Division to 1,100 and in the Collection Investigation Units to 500, which merged into the National Investigation Service (NIS) in 1996. As at the end of 1999, the NIS had approximately 1,800 officers and operated from 14 offices in the United Kingdom. This exponential growth within the Investigation branch of HMCE affected the supervision and culture.

In August 1999, following managerial changes and prosecution failures, a new Commissioner of HMCE was created to head fraud and intelligence, including the NIS and the National Intelligence Division (NID), and was intended to bring closer oversight at Board level of the NIS, and to improve the relationship between the investigation and intelligence functions. It was also the start of a process to bring a broader approach to fraud. In April 2000 there was a major restructuring of the Board, of the associated corporate machinery and of all the senior management commands. Within the new 'law enforcement business' three functional commands were created – investigation, intelligence and detection. These embraced all law enforcement activity, whether previously operated centrally or regionally. In 2002, in the aftermath of a critical independent review, it was agreed that subject to the convention that Treasury Ministers do not intervene in individual HMCE department

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investigations and prosecutions, the Commissioners will be responsible for, and accountable to Parliament through Treasury Ministers for:

- Anything done in the course of an investigation.
- Enforcement policy.
- Prosecution policy, i.e. the seriousness with which offences should in general be treated, following consultation with the Attorney General.
- Wider issues of departmental policy.

HMCE focus on Class A drugs importation and on various types of fraud, especially excise fraud (alcohol and tobacco), VAT fraud, and oil fraud. In 2003, the government invested £209 million in Customs' efforts to combat tobacco smuggling, funding 950 extra officers: not all of these were to be front line – 310 NIS, 95 NID, 30 in the Solicitors Office, and the remainder in key locations both at the ports and airports and inland. During the last decade, HMCE have been involved in several serious failed prosecutions, leading to successive critical reviews, the most recent of which was conducted in 2003 by Mr. Justice Butterfield⁵ and was expected to lead to the loss of the power to prosecute departmentally: in future, cases were to be passed onto the Crown Prosecution Service. However, a whistleblower's allegations of systemic refusal to divulge evidence of a participating informant's involvement even to Mr. Justice Butterfield led in 2004 to further loss of confidence in HMCE's capacity for internal reform, making it more difficult to resist the agglomeration of organised crime investigation bodies that had been subjected to resistance hitherto.

3.4.2. The National Crime Squad

Although plans were already in motion in government, the impetus for the National Crime Squad came from a July 1995 report by the United Kingdom Parliament's Home Affairs Select Committee on the threat of organised crime and its impact on the United Kingdom, which stated that a more nationally coordinated structure was needed to replace the Regional Crime Squads. A broad alliance of government and the Association of Chief Police Officers supported this proposal and the Police Act 1997 gave effect to the National Crime Squad, which was formed in April 1998. It was tasked with combating serious and organised crime within, or affecting, England and Wales. The organisation is under the day-to-day direction and control of the Director General who is accountable to the National Crime Squad Service Authority, some of whose members overlap with the NCIS Authority. The 2002-2003 staff total of 1,944 includes the core strength of 1,333 seconded police officers and 432

⁵ <http://www.hm-treasury.gov.uk/media/5ADCB/butterfield_intro_.pdf>.

support staff plus the staff who make up the National Hi-Tech Crime Unit, Project Reflex (on organised immigration crime) and other areas of activity that receive direct funding. The National Crime Squad has three Operational Command Units, Northern, Eastern and Western, covering the whole of England and Wales. Each Operational Command Unit has several branch offices where operational teams are based.

On 1 April 2002, following the Criminal Justice and Police Act 2001, the National Crime Squad became a Non-Departmental Public Body (NDPB), defined as ‘a body which has a role in the process of national government, but is not a Government department or part of one, and which accordingly operates to a greater or lesser extent at arm’s length from Ministers’. Three separate bodies are responsible for its accountability, management and supervision:

1. The Home Secretary is responsible under the Police Act 1997 to promote the efficiency and effectiveness of the National Crime Squad. The Criminal Justice and Police Act 2001 gave him power to appoint the Director General and to provide grant-in-aid to the Service Authority for each financial year, and to determine objectives for the National Crime Squad.
2. The Service Authority sets objectives complementary to those set by the Home Secretary and agrees performance targets in consultation with the Director General. The new Service Authority comprises eleven members, eight of whom, known as core members, are also members of the Service Authority for the NCIS. The draft Service Plan together with the Service Authority’s Budget Statement is submitted to the Home Secretary each year.
3. The Director General is responsible for the day to day running of the Squad and for all operational matters. As the Accounting Officer, he is personally responsible for the integrity of National Crime Squad expenditure.

The mission of the National Crime Squad is ‘to combat national and international serious and organised crime’, supported by the following strategic aims to be delivered with ‘honest, integrity, transparency and fairness’:

- ‘To bring to justice or disrupt those responsible for serious and organised crime
- To work in partnership with and provide support to police forces and other law enforcement agencies in the prevention and detection of serious and organised crime.
- To drive forward a culture of diversity which values our staff and the communities we serve’

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The crime-related objectives of the National Crime Squad⁶ are:

1. To dismantle or disrupt criminal enterprises engaged in serious and organised crime within or affecting England and Wales, where appropriate in partnership with other law enforcement agencies and authorities, by targeting those engaged in:
 - Class A drug trafficking (in support of the government's interagency strategy for reducing the supply of Class A drugs in the United Kingdom).
 - Organised immigration crime (in support of the Government's interagency strategy for combating organised immigration crime (people smuggling and human trafficking) affecting the United Kingdom).
2. To dismantle or disrupt criminal enterprises engaged in other forms of serious and organised crime within or affecting England and Wales, according to agreed priorities and maximising mutual support and cooperation with law enforcement agencies at local, national and international levels.

⁶ A National Crime Squad press release in June 2002 stated that over the past four years the Squad has fine-tuned its ability to tackle the top tier of criminality. Success in dismantling organised crime networks – whether trading in Class A drugs, human trafficking or hi-tech criminality – result from a highly focused, professional approach and joint working with partner agencies to fight serious and organised crime.

The underlying theme has been that of continuing to target a higher and more sophisticated level of criminality than had been possible under the previous Regional Crime Squad system. In its first public report on the work of the Squad, HM Inspectorate of Constabulary found the organisation to be efficient and effective with clear development plans. During the first four years (1 April 1998 to 31 March 2002) of operations the National Crime Squad has achieved results including:

- Arrests – 3,697 suspects arrested. Of those, 163 were the alleged kingpins of organised crime believed to be at the heart of major criminal conspiracies.
- Disruption of criminal organisations – 1,062 criminal organisations, including 821 drug trafficking gangs, have been disrupted or dismantled.
- Drugs – Drugs with a total potential street value of £695 million (including £443 million of cocaine, heroin and ecstasy), weighing over 85,000 kilos, were seized.
- Assets confiscation – Over £104 million of illegally gained assets, in respect of convicted criminals, have been traced and identified to the courts for confiscation.
- Operations – Almost 1,300 operations, over 70 per cent drug related, have been undertaken solely by the Squad and an increasing number have been carried out jointly with HMCE, police forces and other agencies.
- Support to forces – More than 242,000 hours of officers' time has been given to police forces on 700 other operations

3. To proactively seek to identify and implement opportunities for improved interagency working including providing an appropriate level of specialist support to forces and other agencies.

They therefore have a more traditional criminal law enforcement role, though preventative work is introduced via disruption and dismantling of criminal enterprises, i.e. incapacitation. The National Crime Squad *can* take on fraud cases, but in practice it does so only when these are related to counterfeiting and forgery and/or are committed by people identified as serious offenders at Level 3: this could be characterised as dealing with frauds only when committed by ‘the usual suspects’ or persons connected with them.

In 2004, it was announced that the institutional divisions described in this historical review are to change, with the formation after 2006 of a Serious Organised Crime Agency that will merge the NCIS, National Crime Squad, and the non-tax intelligence and investigative arms of HMCE and the Immigration Service. This development, stated as recently as 2001 in my interviews with leading agency figures as being politically inconceivable to them, reflects growing awareness by politicians and administrators that these historic demarcations are untenable in the light of flexible multi-crime offending patterns by at least some serious criminals. In this sense, the rhetoric of ‘organised crime’ and the logic of barriers experienced in the course of multi-agency investigations have undermined long-cherished bureaucratic empires. Whether the unified agency, with its merged intelligence and operational functions, will actually function in a radically different way remains to be seen. Furthermore, the cultural and practical barriers to integration of police and customs officers, as well as the new ‘boundary problem’ with Serious Organised Crime Agency in relation to the VAT frauds by ‘organised criminals’ that will be investigated by Her Majesty’s Revenue and Customs – the newly merged Inland Revenue and Customs tax body – will require substantial attention before and after formal integration. The difficulties of devising and applying appropriate formal performance indicators remain constant.

4. The Control of Organised Crime in the European Union and its Relationship to the United Kingdom

The nation state can facilitate or inhibit certain aspects of serious crime for gain. Many products and services supplied by ‘organised criminals’ come from outside the United Kingdom (or, for that matter, the European Union) and are largely outside the direct control of Western states, though foreign policy and police/military training and ‘technical assistance’ can encourage or even force ‘source states’ to do something about the problems that they cause for others (Nadelmann, 1993; Grayson, 2003; Ronderos, 2003). Organised crime has been less significant to

foreign policy in the United Kingdom than it has been in the United States, but the more that these commodities are seen as a social problem in the United Kingdom and elsewhere, and the greater the police resources devoted to dealing with the international dimensions of cases, the greater the processing strains on international cooperation in policing and mutual legal assistance. Yet traditionally, though approval and funding have to be granted to station an expanding number of drugs liaison officers overseas, the Home Office, as the site of United Kingdom criminal policy, has been very much focused domestically: readers may compare with other European countries in this volume, where it is common to have criminal policy divided between Ministries of the Interior and Justice. At an operational level, fax and e-mail may have facilitated certain crimes, but they have also facilitated mutual legal assistance, provided that the official bodies have fax and computers and also use them! Though routing requests for mutual legal assistance via the Central Authority (the Home Office, in the case of England and Wales) may slow things down – especially if that body is under-resourced in numbers and/or skills – the electronic maps of the European Judicial Network enable us to know immediately who is the legally competent judge to deal with an issue in every part of Europe. Of course, whether in the United Kingdom or in any other countries, police and judges may be busy with other cases or may not see ‘foreigners’ as a priority or may not speak any foreign languages, but modern communications methods undoubtedly facilitate law enforcement and judicial interaction too.

In general terms, although national law (including European Union framework decisions that have direct effect on national law) determines what police, prosecutors and (in Continental Europe) investigating judges can do *directly*, the nation state is not a helpful unit of analysis for understanding the problems posed by organised crime or fraud and the role of policing in combating them. This is so even though most individuals involved in drug dealing, extortion, credit card fraud, armed robberies, sex work, and so on may not do any international business as part of their daily routines, and even though most policing and judicial investigation is within the borders of the state or police division. This cross-border dimension is what makes both organised crime and fraud different from most other crimes,⁷ and it also creates underappreciated difficulties for the boundary between Levels 2 and 3 of the National Intelligence Model developed in the United Kingdom in the late 1990s that is aimed at guiding responsibility for policing tasks,⁸ since some

⁷ I am excluding crimes against humanity and similar ‘international crimes’.

⁸ Level 1 covers local issues, including the whole range of categories and levels of crime, notably volume crime such as burglary and personal robbery; Level 2 covers cross border issues, where crime issues cross jurisdictional borders and where intelligence needs to be shared across borders to address them; and Level 3 covers serious and organised crime operating on a national or international scale.

fraudsters (and internet criminals, including pornography sellers) do routinely operate across national borders without having physically to transport themselves or the funds/property they are stealing.

As Justice and Home Affairs has become a key component of European Union 'third pillar' activities (involving the Council of the European Union as well as the European Commission), and organised crime has ascended in importance as a political issue for the European Union and the G-8 most powerful industrialised countries, it is no longer possible to see 'serious crime' policy in purely national terms. Part of the 1998 Joint Action was a commitment to criminalise membership of criminal organisations – influenced by the Italian legislation but harder to apply in less regimented settings – and tough action against criminal offshore finance centres.

There are two dimensions of shifts in approach to the control of organised crime. The first relates to traditional criminal justice approaches, including:

1. Substantive legislation, relating especially to money-laundering and proceeds of crime legislation (see for the United Kingdom, Levi and Osofsky, 1995; PIU, 2000; Proceeds of Crime Act 2002; and, for a critical account, Alldridge, 2003), though money laundering remains a first pillar area;
2. Procedural laws involving mutual legal assistance (including the establishment of Eurojust, whose detached national prosecutors and investigative judges seek to facilitate urgent cases, and the European arrest warrant and asset freezing orders); and
3. Investigative resources, including the formation of specialist organisations and police units such as the National Hi-Tech Crime Unit and even some mixed private-public funded ones such as the Dedicated Cheque and Plastic Crime Unit (established April 2002 for an experimental period of two years and now continuing wholly funded by the financial services industry).

There has been ongoing reform of anti-laundering and crime proceeds legislation around the world (Gilmore, 2004; Stessens, 2000), and greater policing (including customs and excise) involvement in financial investigation, still mainly in the drugs field but increasingly in excise tax fraud and, post-11 September 2001, terrorism (Levi and Gilmore, 2003; Gilmore, 2004). Laundering is the cleansing of funds so that they can be used in a way indistinguishable from legitimate money. What most people appear to mean by money laundering is the hiding of funds in accounts somewhere outside of the *current* surveillance capabilities of enforcement agencies and/or professional intermediaries such as accountants, bankers and lawyers who may have a legal duty to sensitise themselves to laundering typologies and to report their suspicions (in United Kingdom legislation) or 'unusual' transactions (as in Dutch legislation) or all cash and electronic transactions over a certain amount (as in United States legislation) to the authorities. If and when those official surveil-

lance capabilities increase – as they did steadily during the 1990s, accelerating after the millennium and especially after the spectacular attacks on New York and Washington on 11 September 2001 – funds that were just hidden become vulnerable to enforcement intervention and perhaps confiscation (Levi, 2002a). Those ‘organised criminals’ who make themselves popular with local car dealers, restaurateurs and lovers by spending their money as they go along have no such problems (though they may be hit subsequently by proceeds of crime confiscation orders that they will never repay).

There has developed an Egmont Group of Financial Investigation Units (FIUs) world-wide, whose aim (not always realised in practice) is to facilitate inter-FIU enquiries across borders. Despite some inhibiting effect from the European Court of Human Rights and Data Protection/Information Commissioners in some Member States, the exchange of intelligence internationally and the depth of proactive surveillance – with the United Kingdom at the permissive extreme and Germany, because of its federal structure and different Lander-based data protection laws, at the other – have transformed the potential for intelligence-led policing (and disruption) of organised crime activity across borders. However, apart from questions of demand for illegal goods and services, two factors acting as a brake upon this Panopticon are (i) limited resources and (ii) the problem of filtering intelligence upwards to enable a more strategic assessment of crime threats and trends, whether in national police systems or in the more localised systems of the United Kingdom, irrespective of the existence of a NCIS.

5. The Prevention of Organised Crime

The other major plank of emerging activity is measures to *prevent* organised crime, in accordance with the sort of intervention strategy that makes sense for a government like that of the United Kingdom that is oriented towards justifying policy in terms of *crime reduction*. The unpopularity of bankers and of drugs traffickers has enabled the state to regulate for the interests of the state rather than the banks themselves certain areas of financial services activity that otherwise might have been very difficult, and in this sense, the demonology of ‘organised crime’ has been very ‘useful’. Likewise, in attempts to cut down on ‘people trafficking’, despite human rights appeals to the European Court which have led to relaxation of the policy, lorry drivers have been fined heavily for carrying illegal migrants across the English Channel, even when there was no evidence that the drivers knew that they had climbed on board through soft sided canvas: this led large firms to introduce new technology for checking (by carbon dioxide levels) whether their trucks were stowaway-free. There has also been a focus on ‘taking out’ drugs manufacturers and distributors in countries of origin, rather than waiting till they were close to the shores of the United Kingdom or other European countries. Problematic issues

related to informers (or, in the language of the Regulation of Investigatory Powers Act, 'Covert Human Intelligence Sources') have also become more prominent, and undisclosed participating informants have been key to the collapse of several drugs trafficking and excise fraud cases, particularly (but not exclusively) those prosecuted by HMCE as noted earlier.

There is no absolute demarcation between the above and criminal justice interventions. It depends upon what the focus is: if it is one preventing a particular individual from offending, repressive measures are preventative. If the focus is on the level of criminality generally (e.g. the availability of drugs, the amount of fraud or robbery), repressive measures can be preventative but this is much harder to establish. Controls on money laundering and asset confiscation/recovery, for instance, are intended to increase the probability of identification/conviction of organised criminals, to deprive them of the fruits of crime *and* to prevent their future harm by administrative and financial incapacitation. But there are other ways in which situational opportunity and designing out crime concepts are utilised to deal with crimes that are 'organised'.

The report of Levi et al. (1991) and high-level political interventions in its aftermath led to a recognition by the industry of the trade-off being offered and the consequential 'industry strategy' led in turn to a police response which reflected their concern that cheque and credit card fraud was cause and consequence of other criminal offences and that 'partnership policing' offered a realistic way forward. In turn, the Association of Chief Police Officers response was an acceptance of the industry efforts and the introduction of a number of their own proposals: a consistent and coordinated approach to cheque and credit card fraud, central reference points in each force, and the possibility of establishing dedicated squads. However, the police response in practice was patchy and business dissatisfaction with this led in April 2002 to the establishment of the Dedicated Cheque and Plastic Fraud Unit with joint Home Office/APACS funding for an initial two year period.⁹

5.1. Regulating the Money Trail

In addition to any special investigative measures such as 'sting' operations – which raise human rights issues in some European countries – and confidence-building measures to increase reporting of extortion demands, a major component of the regulatory efforts to prevent and detect organised crime relates to money laundering. This term evokes images of sophisticated multi-national financial operations that transform proceeds of drugs trafficking into clean money. This has involved requir-

⁹ Following research evaluation which showed this to be cost-effective. The Unit has continued, wholly funded by the financial services industry.

ing financial institutions and professionals who traditionally saw their obligations to the confidentiality of their customers as their sole obligations to develop more inquisitive attitudes to them and to report suspicions to the authorities. In this global risk management process, 'modern' areas of law enforcement have sought to combine targeting the suspected *person* (Maguire, 2000) with targeting (or seeking to target) activities that might give rise to organised crime opportunities, such as international financial transfers, and/or the conversion of large sums into foreign currencies. They have also tried to create an 'audit trail' for proceeds of crime by requiring all financial institutions to identify their customers. (Though this does not prevent gangsters and fraudsters from employing 'front men' to lend their names to accounts.)

The logic of controlling the crime proceeds money trail is that profit motivates crime, and because drugs and vice sales – certainly at street level – are (or are believed to be) in cash, the 'organisers' have to find some way of converting these funds into financial resources that appear to have legitimate origins. If they are prevented from doing so, their incentives to become major criminals are diminished, so this reduces the pay-off for the criminally ambitious and indeed enhances their risks from the state. These preventative effects can be reinforced by (i) requirements on financial and other 'risk-prone' institutions to report large cash and/or 'suspicious' transactions to specialised police or administrative financial intelligence units; and (ii) proceeds of crime confiscation or forfeiture laws that are intended to incapacitate both individuals and criminal organisations from accumulating substantial criminal capital and the socio-economic power that accrues from this. The United Kingdom was one of the first countries to develop an anti-money laundering regime, though initially it was aimed more at the retail drugs market.

5.2. Private Sector Involvement

Some of the private sector involvement has been discussed above, as it has been compelled by legal requirements placed on private sector institutions to play their part in crime opportunity reduction. Except for the sense that the world's economic system and their economic welfare is harmed by terrorist finance, few of these measures would be undertaken to enhance profitability, but there are other areas in which private sector has invested in measures against organised crime because these threaten its core interests. Thus, the telecommunications industry, the payment card industry, the record and film industry, and the clothing industry have paid for small groups of investigators to carry out undercover operations and disrupt factories and key crime networks attacking their core interests. Much of this work is transnational because factories in Bulgaria, China, Malaysia, Romania, Russia, Taiwan and Turkey may be manufacturing millions of (often reasonable quality) CDs and DVDs or fake Levis that cut into their profits and branding, even if many of the poorer purchasers would not have been able to buy the goods at full price. Moreover, counterfeit credit cards lead to hundreds of millions of Euros in real

losses to banks and merchants. Visa, MasterCard and American Express also try to ensure that corrupt merchants are not allowed to open new accounts, at least within the same country. The reason why these measures are taken against *organised* crime rather than simply 'crime' is that well-organised operations (whether networks or hierarchical gangs) can generate huge losses very quickly. In a world of competitive profit-seeking, some individual companies will do more than the collective industry bodies, especially if they have advanced software. (For a detailed review of these issues, see Levi and Pithouse, forthcoming.)

5.3. White-Collar and Organised Crime: A Contrast

It is interesting to contrast the media demonisation of 'gangland Britain' with the much lower profile of 'white-collar crime': a term used more by criminologists (Croall, 2001; Nelken 2002; Levi and Pithouse, forthcoming) than by police and politicians, especially in Britain. It is used by academics and the media to describe anything from the policing of (a) credit card frauds, (b) large corporate frauds like the collapse of the Maxwell companies (and their pension funds) in the early 1990s, of Enron at the end of 2001 and of Parmalat at the end of 2003 to (c) more rarely by the media, the regulation of employers' legal duties to ensure the workplace health and safety of their employees. There is a grey area of overlap between policies to control organised crime and policies that *might* regulate one sub-set of white-collar crime – fraud – which itself encompasses a range of activities and social statuses from elite insider dealing (i.e. obtaining an illegal profit from privileged information about price-sensitive corporate affairs) to payment card and benefit frauds committed by both the poor unemployed and sophisticated organised crime groups. Though seldom as dramatic as drive-by shootings between drug dealing gangs in major cities, in 2000-2001 in the United Kingdom, employees suffered 215 deaths at work (up 53 from the previous year), while the self-employed suffered 80 deaths (up 22 from the previous year) (HSC, 2002): far more than any deaths from organised criminals as commonly understood. We should also not forget the differences in discourse from policing organised crime embodied in non-police policing of serious risks to life, e.g. the mission statement of the Health and Safety Commission is 'to ensure that risks to people's health and safety from work activities are properly controlled', predominantly by regular contacts and occasional improvement and prohibition notices, and only very rarely by prosecutions, mostly under the 'strict liability' provisions of the Health and Safety at Work Act 1974.¹⁰ Except

¹⁰ Contrast with normal American approaches to violent crime the fact that of some 200,000 workplace deaths since the creation of the United States federal Occupational Safety and Health Administration in 1972, OSHA has referred just 151 cases to the Justice Department. Federal prosecutors declined to act on more than half of those referrals;

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intermittently (Levi, 1981, 1999), most types of fraud are never viewed as part of the 'organised crime' problem. Indeed, one might suggest that at least in the United Kingdom and North America, organised criminals are people who – whatever they do, including purchasing apparently legitimate businesses with proceeds of crime – are deemed to be socially dangerous, whereas white-collar criminals are people who – with some highly stigmatised exceptions such as some investment fraudsters¹¹ – are viewed as being essentially amenable to restorative justice methods. *Some* drugs traffickers and other NCIS and National Crime Squad/HMCE targets may also be amenable to restorative justice, but a policy decision has been taken not to allow them to integrate, both on moral grounds and on the assumption of future dangerousness. It is as well to remember that when civil servants and politicians construct a category such as 'organised crime', this serves as a *gestalt* both for what they view as harmful and – if they are aware of the analytical problem at all – of what they would *not* like to see dealt with in this way.

11 people have been sentenced to prison (*New York Times*, 10 January 2003). For more extended discussion of workplace violence in the context of ordinary violent crime, see Levi (2002a). The separate report on enforcement and prosecutions states (<<http://www.hse.gov.uk/action/content/off01-02.pdf>>):

4.10 It is HSE policy to investigate all work-related deaths which are reported to us unless there are good reasons for not doing so, in which case those reasons will be recorded. In the last three years the average fine in cases following a death has been between about £20,000 and £30,000. Last years average was £32,700, about two thirds higher than the averages for the previous couple of years.

Later, discussing relations to the mainstream prosecution system, the report notes:

5.16 During 2001/2002, the police referred 43 cases of work-related death to the CPS, in sectors where HSE is the health and safety enforcing authority, to consider possible manslaughter charges. The CPS have so far started prosecutions for manslaughter in 5 of these cases. Since April 1992, a total of 224 possible manslaughter cases have been referred to the CPS. The CPS have brought prosecutions for manslaughter in 55 cases, 11 of which have resulted in convictions.

Only eight directors have been disqualified for conduct in relation to health and safety offences since the Company Directors Disqualification Act 1986 All individual and corporate offenders prosecuted are logged on a publicly available database <<http://www.hse-databases.co.uk/prosecutions/case>>.

¹¹ The point at which financial services firms accused of 'mis-selling' by what is now the Financial Services Authority become defined as 'fraudsters' is intriguing, but it may be that this is the most sensible way of getting them to compensate clients so long as they have the capacity to do so: see Levi and Pithouse (2003).

5.4. Effectiveness of Organised Crime Prevention

The impact of anti-organised crime measures on *outcomes* in the United Kingdom and elsewhere remains insufficiently analysed, since there are little reliable data on the 'before' or 'after' (a) levels or (b) organisation of drugs and people trafficking, European Union fraud, and so on (Levi and Maguire, 2004; Black et al., 2001; Reuter and Kleiman, 1986). For example, the law enforcement agencies in European Union and Council of Europe member countries are required to return annual counts of the number of organised crime groups, but quite apart from quality monitoring issues, it is not obvious whether a reduction in the number is a good thing (less harm has been caused or there is a lesser threat to society) or is a bad thing (it is an indicator of monopoly or oligopoly rather than of looser networking, and therefore a *greater* threat to society). Some approximations for illicit use can be made from self-report studies or from sophisticated techniques for estimating prevalence, but these do not explain or enable inferences to be made about how offending is *organised*. Very few financial institutions even in offshore finance centres will now accept strangers or even established clients bringing in briefcases full of cash – € 500 notes offer the biggest amount of currency-per-square metre – without some plausible legitimate explanation, so there is a commonsense effect on ease of cash laundering. (Though there is a corresponding negative effect on the ease and cost of overseas workers sending money back to their impoverished third world families.) However, there is no evidence that fewer drugs or trafficked women and children have become available as a result of the sorts of measures discussed above (which is not to say there has been no effect). In the private sector sphere, industry and public sector fraud data suggest some impact from data matching and from the coordination of data at an industry-wide level (Levi and Handley, 1998; Levi and Pithouse, forthcoming), but other forms of fraud data are too poor to permit easy inferences. Irrespective of whether or not 'organised crime' will truly threaten the state – and it is important to think about how one would recognise that condition if one came to it – one can and should try to anticipate shifts in serious crime activities (Williams and Godson, 2002).

One may also try to develop strategies to reduce market opportunities for 'hot products' (Clarke, 1999) and disruption mechanisms for criminal markets by breaking up the prerequisites of serious crime for gain into their constituent parts (Ekblom, 2000).¹² Sutton et al. (2001) suggest that in both Commercial Fence Supplies and Commercial Sales Markets, investigative and preventive efforts should focus on thieves and purchasers of stolen goods – because here there are no 'innocent' consumers. Attention should be paid to business people who buy stolen

¹² See Hicks, 1998, for an attempt to examine links between local communities, police and organised crime prevention.

goods, so that the ‘crime facilitators’ and the thieves who supply them will need to invest more effort and face greater risks if they want to convert stolen property into cash. This might involve identifying through systematic analysis which shops and businesses thieves visit in order to sell stolen goods; requiring traders to obtain proof of identity from and to keep records of anyone who sells them second-hand goods (and checking covertly whether or not they do so); and using administrative measures as well as criminal prosecutions to control misconduct. The police might use mobile close-circuit television cameras and surveillance teams to gather evidence by observing the homes of known or suspected residential fences; and might seek to close down bars and other places used for trading in stolen goods as well as drugs. In police terms, those forms of fraud not prioritised on the basis that they are committed by ‘organised criminals’ tend to be neglected somewhat. One can only speculate what illegal practices investigators might discover if they bugged every boardroom and BMW, but this will not happen for cultural reasons as well as Human Rights Act ones, notwithstanding European Commission anti-cartel raids and the strengthening of United Kingdom powers in the Enterprise Act 2002 (see Levi, 1995).

6. Concluding Remarks

Despite exhortations to shift practices towards crime reduction in the United Kingdom, it is not always obvious how much policing has changed (see Stelfox, 2003, who also emphasises the policy and practice gap between modest-level local criminals and major target criminals): there has been little general police support for radical shifts in staff to financial investigation from equally prized policy and media-supported areas of crime and disorder. But for example, the strong recent focus on trafficking in women (Aronowitz, 2001; Kelly and Regan, 2000; Richard, 2000; Vocks and Nijboer, 2000) has led to policy pressures for better coordination between immigration and policing to encourage exploited sex workers to complain and give evidence rather than simply deporting them. Whether the policing panopticon will ever extend to encompass all types of fraud, however, is extremely unlikely, for despite the growth in public concern about their direct and indirect (via pension funds, and so on) investments in the stock markets and about identity theft and other crime risks associated with the cyber-world, the iconography of fear of crime is more difficult to develop and sustain for ‘white-collar’ than for ‘organised’ crime.

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Denmark on the Road to Organised Crime

Karin Cornils and Vagn Greve

1. Introduction

As Denmark is not represented in the first two parts of the project, this article on organised crime policies will try to cover a few aspects from those other parts at the same time. It begins with a discussion of the definition of organised crime and the use of that term (section 2), including details of different manifestations of organised delinquency, in particular the special phenomenon of so-called biker crime. The focus on biker crime is due to the fact that Danish police and politicians consider the biker groups to be the core of organised crime in Denmark. The following sections are devoted to short overviews of recent criminological and other research on organised crime (section 3) and of the organised crime policies developed in the last 20 years (section 4). A more detailed description of legal instruments (section 5) is subdivided into measures of substantive law, of procedural law, and specific measures against bikers and hashish clubs. Finally we deal with special investigative bodies (section 6) and the role of Denmark within the ambit of international judicial cooperation in the field of combating organised crime (section 7).

2. Organised Crime Today

2.1. Approaches to the Definition of Organised Crime

The term 'organised crime' is not legally defined in Denmark. The term is avoided in criminal law jurisprudence, and even criminologists are somewhat squeamish about its use. However, the expression is frequently encountered in legal policy discussions and in particular in the mass media. It is occasionally used as an official term (Justitsministeriet, 1995a; Rigspolitehfen, 1994-2001) and has as a result found its way into a few legal regulations.

In terms of the characteristic attributes of organised crime, the Danish position is clearly influenced by the specifications of the European Union. Thus police departments and administrative authorities have adapted their language usage to follow the European Union's vacillating definitions of the term (Cornils and

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Greve, 2001). Today the European Union has adopted a definition following that formulated in the Joint Action of 21 December 1998 (98/733/JHA) Article 1:

Within the meaning of this joint action, a criminal organisation shall mean a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities.

The offences referred to in the first subparagraph include those mentioned in Article 2 of the Europol Convention and in the Annex thereto and carrying a sentence at least equivalent to that provided for in the first subparagraph. (Council of the European Union, 1998)

This is to be regarded as the current meaning – the meaning with which the term ‘organised crime’ was recently introduced into Danish law, as, for example, in Article 125 (a) of the Criminal Code:

Any person who [...] under aggravating circumstances is guilty of smuggling of human beings [...] is liable to imprisonment for any term not exceeding eight years. Considered as aggravating circumstances are especially cases [...] where the violations are of a more systematic or organised nature.

In the political debate of the last few years, however, the European Union criteria have not received serious consideration. The term ‘organised crime’ has been used to refer to a number of different forms of crime with little more in common than the fact that they have all played a central role in mass media reports. Examples that can be cited here are drug trafficking, terrorism, subsidy fraud (in particular against the European Union), trafficking in human beings (in particular involving foreign prostitutes), illegal smuggling of asylum-seekers, sexual abuse of children (in particular in connection with the spectacular events in Belgium), and in connection with gang war between motorcycle clubs (so-called biker crime; see *infra* 2.3).

Most often the term ‘organised crime’ is used by politicians in such contexts with the intention of promoting stronger cooperation and harmonisation of laws within the European Union and by law enforcement authorities in order to underline their demands for an expanded authority to intervene.

2.2. Manifestations of Organised Crime in Denmark

The term organised crime does not appear in general Danish crime statistics. However, the National Commissioner of Police (Rigspolitechefen) publishes an

annual *Status Report on Organised Crime in Denmark (Situationsrapport om organiseret kriminalitet i Danmark)*. The terminology used in this report is based on an older European Union definition (Rigspolitechefen, 2001: 25):

At least six of the characteristics referred to must be present for an offence or a criminal group to be classified in terms of organised crime. Of these six characteristics, nos. 1, 3, 5, and 11 are essential under all circumstances:

1. cooperation between more than two persons;
2. each having prearranged functions;
3. for a long or previously unspecified time;
4. subject to the application of some form of discipline or monitoring;
5. suspicion of the commission of serious offences;
6. activity on an international level;
7. use of violent behaviour or other means serving to intimidate;
8. utilisation of commercial or business structures;
9. involvement in money laundering;
10. exercise of influence at a political level over the media, public administration, judicial authorities or economics;
11. motivated by profit or power.

The police *Status Reports* for the years 2000 and 2001 lead to the following conclusions:

Both Danish and foreign organisations are active in the area of drug trafficking. Groups of Albanian origin increasingly dominate importation of heroin and cocaine. Amphetamines and other synthetic drugs are primarily smuggled to Denmark from the Netherlands and Belgium. Illegal importation and sale of hashish are conducted by internationally organised networks with various bases of operation in Europe, mainly in Spain and the Netherlands.¹ In recent years the Danish police have observed a considerable increase in the number of so-called hashish clubs,

¹ Seizures for the year 2000 totalled 32 kg of heroin, 36 kg of cocaine, 57 kg of amphetamines and 2,914 kg of hashish (Rigspolitechefen, 2000: 18-23). In 2001 the totals were 25 kg of heroin, 26 kg of cocaine, 161 kg of amphetamines and 1,763 kg of hashish (Rigspolitechefen, 2001: 11-14).

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i.e. residences or other premises that are visited regularly by significant numbers of persons for the purpose of smoking hashish. It is assumed that the hashish clubs are used also to distribute drugs (see also 5.3.4, *infra*).

Investment fraud, subsidy fraud and tax fraud as well as counterfeiting of money and documents occur in some instances in organised form.² Theft and dealing in stolen motor vehicles and certain brand name articles for the purpose of smuggling to eastern Europe are pursued in organised form (Rigspolitichefen, 2000: 26-30; 2001: 16-18).

After larger groups of youths and young adults, primarily from immigrant circles, drew attention to themselves in recent years by committing hit-and-run theft, the members of such street gangs are now becoming increasingly involved in violent crime, extortion of protection monies, bank robbery, as well as sex, drugs and weapons offences. The structural development of the street gangs and their relationship to the so-called biker gangs is therefore receiving increased scrutiny from the police (Rigspolitichefen, 2000: 13-14; 2001: 9).

Smuggling human beings into Denmark takes place primarily via overland routes through Germany. Here well-organised groups from the former Yugoslavia and Russia are often involved (Rigspolitichefen, 2000: 30-1; 2001: 18). Since 2000, the police have been paying closer attention to the escalation of trafficking in human beings, especially trafficking in women for the purpose of exploitation through prostitution. Some of these women are from the Baltic states, in particular Latvia, and some are from Asia, especially Thailand (Rigspolitichefen, 2000: 31; 2001: 18).

The organised production of child pornography materials is presumed to take place in eastern Europe and Asia. In the past, instances of criminal proceedings initiated in Denmark due to possession and distribution of child pornography have been few and far between. The exchange of materials takes place typically through international paedophile networks that are very difficult for outsiders to access (Rigspolitichefen, 2000: 31-2; 2001: 18-19).

On the whole, the scope of organised crime in Denmark is thought to be relatively small in comparison with other countries, even in comparison with other members of the European Union. According to police information there are no indications of organised money laundering or of attempts by criminal organisations to exert influence on public administrative or judicial authorities or in political circles (Rigspolitichefen, 2000: 3, 5, 38; 2001: 4, 20-1, 24). It should be mentioned in this context that the organisation Transparency International, which conducts annual worldwide comparative studies on bribery and related offences, has listed

² In the year 2000, organised fraud at the expense of the European Union budget was proven in nine cases (Rigspolitichefen, 2000: 27).

Denmark in its indices for 2001 and 2002 in second position after Finland on the list of countries least compromised by corruption.³

To a certain extent Denmark is used as a transit nation for organised crime, for example, for the smuggling of drugs or human beings to Sweden or Norway. However the police has not as yet found any proof that internationally known criminal organisations have ‘set down roots’ within the country (Rigspolitechefen, 2000: 3, 6, 38; 2001: 3, 24). The police do however explicitly attribute a ‘mafia-like’ character to offences committed by so-called biker gangs in Denmark (Justitsministeriet, 1995d: 1).

2.3. Biker Crime

The groups referred to as biker gangs are motorcycle clubs whose members took part in violent crimes and crimes against property as far back as in the early 1970s. Some of these clubs later joined the worldwide association Hell’s Angels, while others joined another internationally organised group, the Bandidos. Comparable groupings also appeared in other Nordic countries and enjoyed rapid growth. In mid-2002 the number of members (including ‘prospects’) of the Danish Hell’s Angels and Bandidos groups was estimated to be about 300.⁴

A rivalry exists between the two major associations, which in the mid-1990s escalated to include mutual murderous assaults involving heavy weaponry, such as hand-grenades, anti-tank rockets and car bombs. After such attacks in Denmark and neighbouring Nordic countries had claimed a total of eleven fatalities and injured 96, including innocent bystanders, the two Danish biker leaders announced publicly on 25 September 1997, that they had ended their conflict.⁵ Since then there have been no further violent clashes. However, the relationship between the two groups remains tense.

Today the police regard the situation in Denmark as relatively stable, while at the same time emphasising the fact that both groups presumably have ready access to larger arms caches (Rigspolitechefen, 2002). The police also assume that, as in the past, the rival motorcycle clubs are in competition for control of the drug market as well as for domination in other areas of crime, such as prostitution and extortion of protection money (Rigspolitechefen, 2000: 23, 29, 33). Large numbers

³ *Erhvervsbladet*, 29 June 2001; *Politiken*, 29 August 2002.

⁴ A total of about 800 sympathisers is estimated to be in the so-called support groups associated with the two clubs, according to information from the chief constable Jens Henrik Højbjerg in the daily newspaper *Politiken* of 2 July 2002.

⁵ There were five intentional homicides and 40 attempted intentional homicides in Denmark alone.

of individual club members have repeatedly committed related criminal offences, although it must be admitted that controlled and centrally directed organisation of such activities as an essential purpose of the association has not as yet been proven (see *infra*, 5.3.1).⁶ Nevertheless, law enforcement authorities refer to biker crime as organised crime, with reference to the European Union criteria (Rigspolitehfen, 1999: 3; 2001: 7-8). Biker crime has been the decisive motivation behind some of the criminal law activities, both substantive and procedural, discussed below. The police would like to utilise the strategies developed in dealing with motorcycle clubs to 'combat all [other] forms of organised and other unconventional forms of crime' (Rigspolitehfen, 1997: 7, 34; 2000: 36).

3. Recent Research on Organised Crime Policies

To date only a very limited amount of research on organised crime and its prevention has been published in Denmark. Although the topic enjoys considerable attention in the mass media, it is only rarely addressed in academic literature. Here it can also clearly be seen that Danish criminological scholarship draws a distinct difference between organised crime on the one hand and economic crime, corporate crime and white collar crime on the other, even though the latter forms of criminality sometimes fulfil the criteria for organised crime cited above.⁷

One of the few information sources is the 1995 Ministry of Justice publication *Action Plan on Organised Crime and Biker Crime* (Justitsministeriet, 1995), including four appended studies conducted by the police. These studies address organised crime as an international phenomenon (Appendix 1), international measures for fighting organised crime (Appendix 2), organised crime and biker crime in Denmark (Appendix 3), and police measures and their potential improvement (Appendix 4). These studies do not have the character of academic research but rather summarise experiences, observations and demands made by the police.

Furthermore the annual National Commissioner of Police's *Status Report on Organised Crime in Denmark* to the European Union (*Situationsrapport*; Rigs-

⁶ According to information from the prison authorities, in October 2002 approximately 150 persons were incarcerated who were presumed to have some connection to the Hell's Angels or Bandidos.

⁷ When for example the restaurant industry association itself refers to one in seven sales in commercial restaurant sector as 'unreported' (HORESTA, 2002), then it can be assumed that a portion of this economic crime can be attributed to 'organised criminality', although this has not been documented. Detailed information on research into economic crime can be found in the official reform commission expert report, *Betænkning* No. 1416/2002, together with an extensive bibliography.

politichefen, 1994-2001) should be mentioned here. This report provides a summary overview of various groups of offenders and forms of offence as well as documenting the national and international police measures taken against organised crime in the reporting year.

Official crime statistics do not provide separate data concerning organised offences. The special investigative police register for organised gang crimes is not generally accessible and has as yet not served as the foundation for any academic research.

The studies conducted by the criminologist Joi Bay stand out from the few relevant academic publications. He views the definition of organised crime developed by the European Union, which the Danish police also follow, as too comprehensive. By including numerous forms of group and gang crime as well as economic and environmental crime, the definition in his opinion distorts the focus on specific characteristics and problems of actual organised crime (Bay, 1998a: 55). In spite of a certain overlap with economic crime, Greve also feels it advisable to differentiate between the concept of economic crime and that of organised crime, at least as far as the Danish situation is concerned (Greve, 1989: 14). Wilhjem emphasises the fact that gang crime, from the point of view of the threat to the community and the need for legal countermeasures, may not be equated with organised crime without further qualification (Wilhjem, 1996; Rasmussen, 1996; Bay, 1992: 17).

Bay's research is primarily concerned with motorcycle clubs. He characterises these clubs as a subculture in which criminal activities occur but where the motorcycle cult itself is the actual focus (Bay, 1992: 17; 1994: 139). He posits that the previous term 'criminal biker gangs' was replaced by the catchword 'organised biker crime' at the beginning of the 1990s as a result of targeted press campaigns initiated by the police that were consciously designed to dramatise the concept in the public eye. He also indicates that the term 'rocker', used consistently by both the police and the mass media, is generally viewed as a degrading epithet by the members of the motorcycle clubs themselves (Bay, 1994: 139).

Further criticism from a criminological point of view is aimed at the fact that the annual police reports issued to the European Union, which form the essential source of information for the general public, contain only summary information. Since these reports are based on data that are not accessible to the public, control of their substantive integrity, it is claimed, is impossible. It is thus suggested that such reports could at best be useful for internal police use but that they should not serve as the basis for an objective public discussion (Bay 1998a: 55).

Reports on the fight against organised crime in Denmark have been prepared by Cornils and Kohls (1993) and Cornils and Greve (2001). These reports address developments in substantial criminal law as well as in the area of investigative activities and evidence law.

4. Introductory Overview of the Organised Crime Policies Developed in the Last Twenty Years

For a long time, organised crime as a domestic phenomenon was unknown in Denmark. During the 1980s the police noticed an increasing degree of criminal structure in the ‘biker problem’, which had until then been considered a youth subculture, and began referring to the two major motorcycle clubs as ‘criminal biker gangs’. Starting at the beginning of the 1990s, with massive support on the part of the Danish press, the term ‘organised biker crime’ was introduced (for more on this development, see Bay, 1998b: 175). At the recommendation of the Ministry of Justice, the Danish Parliament (Folketinget) approved the establishment of a *Special Investigative Register on Organised Gang and Biker Crime* in 1992 (Justitsministeriet, 1992).

Thereafter, citing the increase in ‘organised crime’, the police demanded expanded powers of intervention, while prisons requested reinforced personnel resources and customs authorities demanded increased security precautions. As a result in 1995 a Ministry of Justice working group prepared the *Action Plan on Organised Crime and Biker Crime* (Justitsministeriet, 1995a) that included an analysis of the situation as well as concrete proposals for legal measures towards fighting organised (biker) crime.

The first preventive step taken in reaction to the clashes that had just broken out between the Hell’s Angels and Bandidos was a law passed in Autumn 1996 allowing the police to forbid a member or associate of these groups to be present on particular premises (the so-called Biker Law; for more see *infra*, 5.3.2).

In order to reinforce the investigative powers of the police regarding criminal groups, Danish procedural law was amended in 1997. Among these amendments were expansions in the availability of investigatory measures in areas normally protected by the right to inviolable communication (e.g. monitoring of letters and telephone communications, acoustic surveillance) as well as in the area of house searches (for more, see *infra*, 5.2.1-5.2.2). These changes are oriented to the Ministry of Justice action plan, which is repeatedly and expressly referred to in the legislative materials (Folketingstidende, 1996-1997, Tillæg A: 2481, 2483, 2486, 2488, 2496). Again with reference to the action plan (Folketingstidende, 1996-1997, Tillæg A: 2500, 2505), the same law extended the possibilities for confiscation of profits, toughened regulations covering possession of weapons and explosive materials and included a series of legal measures dealing with witness protection (for more see *infra*, 5.1.1-3).

The legislative measures of recent years are no longer concentrated primarily on bikers, but are more aimed at international manifestations of organised crime. They were in part the result of international conventions to which Denmark had pledged compliance. Thus in 1998 an aggravated offence of illegally bringing foreigners into the country – namely the smuggling of human beings – was added

to the criminal code, and in 2000 the penalty for the manufacture and distribution of child-pornography was drastically increased. In 2002 the new criminal offence of trafficking in human beings and a number of criminal and procedural regulations were introduced in connection with fighting terrorism (for more see *infra*, 5.1.4-5.1.7).

5. Legal Instruments in the Fight against Organised Crime

5.1. Measures of Substantive Law

5.1.1. Extended Forfeiture, Preventive Confiscation

In light of legal developments in other European countries and in accordance with the *Action Plan on Organised Crime and Biker Crime* (Justitsministeriet, 1995a; see *supra*, 3), the Danish legislature added a new regulation (Art. 76 (a)) to the Criminal Code, effective 1 July 1997 (Act No. 411 of 10 June 1997), which expanded and simplified confiscation under certain prerequisites: If someone is found guilty of a serious offence, he continues to be subject to a prison sentence and to the confiscation of profits demonstrably gained through commission of the offence. In addition, under this new rule all of the offender's remaining assets as well as those of his spouse or partner are also subject to confiscation. The only exceptions here are those assets which the person in question can prove he or she has acquired legally or with legally acquired means.

Reference is made in the legislative materials to the Ministry of Justice's *Action Plan* (Folketingstidende, 1996-1997, Tillæg A: 2500). The *Action Plan* called for the introduction of a shift in the burden of proof for cases of serious drug-related offences and crimes against property and emphasised in this context that extended possibilities for confiscation are necessary, particularly in the area of organised crime where money laundering techniques are typically applied to cover up the source of illegal profits (Justitsministeriet, 1995a: 17).

Extended forfeiture is to be applied to assets valued at DKK 50,000 or more (approximately € 7,000), such as securities, bank balances or cash as well as residential property, luxury automobiles or yachts which the guilty party cannot credibly show to have acquired through legal means (Folketingstidende, 1996-1997, Tillæg A: 2503). A corresponding amount in cash may also be confiscated in lieu of certain assets.

The new regulation has been seriously criticised from an academic point of view (Greve, 1997: 306; 1998: 2; 2002: 218; Träskman, 1998: 363), primarily with regard to the shift in the burden of proof and concerning access to the assets of the spouse or partner.

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As a part of the international steps taken against financing terrorism, and according to the stipulations of United Nations Security Council Resolution 1373 of 28 September 2001, the Danish legislature has in the meantime again expanded regulations on confiscation (Act No. 378 of 6 June 2002). Accordingly, the previous regulation covering the preventative seizure and confiscation of objects that could be used for criminal ends (Art. 77 (a) Criminal Code) has now been extended to apply to money as well. This also means that financial resources can be frozen for preventative reasons when it is feared that they are to be used in the promotion of criminal offences (Madsen, 2002: 358-358).

5.1.2. Possession of Weapons

In 1997 following the impetus of the Ministry of Justice *Action Plan* (see supra, 3) and in the light of experience gained from the biker war in which rival motorcycle groups attacked each other at times using anti-tank rockets, machine-guns and hand-grenades, the provisions of firearms legislation were toughened (Act No. 350 of 23 May 1997; Act No. 411 of 10 June 1997) and an offence for illegal trafficking with especially dangerous weapons was introduced into the Criminal Code (Art. 192 (a) para. 1) (Act No. 411 of 10 June 1997).

This law makes it punishable to import, manufacture, possess, carry on one's person, use or pass on any weapon or explosive material that can cause considerable damage. A renewed change in 2002 (Act No. 378 of 6 June 2002) increased the prescribed maximum penalty from four to six years.

This regulation is in particular intended to cover automatic firearms and other war material suitable for completely or partially destroying a building or for killing several people at once. The rule being based on criminal law clearly indicates that even the possession of this type of weapon is regarded as a serious criminal act. The background is formed by several cases in which the police encountered members of motorcycle groups with weapons similar to those used in the reciprocal attacks. Since there was no proof of intent to act on the part of those in question, it was only possible to punish them for violations of firearms laws, not for attempt (Folketingstidende, 1996-1997, Tillæg A: 2511).

5.1.3 Offences against Witnesses

The Criminal Code contains an offence (Art. 123) to counteract the special danger of a witness in criminal proceedings being threatened or violently attacked due to his or her impending testimony or any testimony already offered. The penalty is imprisonment for up to six years, with fines prescribed in cases involving extenuating circumstances.

Originally only the witness and the immediate family members were covered by the protective regulation. In 1997 the application area was extended to cover other persons with a relationship to the witness (Act No. 411 of 10 June 1997).

The modification was made due to a demand in the Ministry of Justice *Action Plan* emphasising that experience shows that the danger posed by the exertion of mental or physical influence is usually not limited to the immediate family circle of the witness, but can also include other relationships such as the witness's employer or colleagues (Justitsministeriet, 1995a: 10).

The number of charges filed due to intimidation of witnesses grew steadily from 381 in 1993 to 594 in 1997 (Justitsministeriet, 1998: 18). By 2001, the number had reached 668.

5.1.4. Child Pornography

In light of the rapid increase in the distribution of child pornography on the internet and due to a Joint Action of the European Union aimed at fighting child pornography, the penalty for manufacture, sale and distribution of child pornography materials (Art. 230, 235 Criminal Code) was raised in 2000 from a maximum of six months to two years imprisonment.⁸ Payment to view child pornographic materials was declared comparable to possession of child pornography materials, itself punishable since 1994 (Act No. 441 of 31 May 2000).

5.1.5. Money Laundering

Danish law does not recognise a special criminal offence of money laundering. Illegal dealings with proceeds gained through a criminal offence are traditionally punished as a form of receiving stolen goods. Originally liability was limited to cases in which the predicate offence was an offence committed for enrichment. A special regulation was later added for the receiving of profits gained from drug crimes. Finally the two regulations were combined in 2001 to form a general offence of receiving illegal goods (Act No. 465 of 7 June 2001) that punishes illegal trafficking with any criminal profit, regardless of the type of predicate offence (Art. 290 Criminal Code).

In addition to a diverse range of control activities, the Money Laundering Act of 1993 (Act No. 348 of 9 June 1993, '*hvidvasklov*') contains a reporting requirement for banks, credit institutions and other financial companies in cases where suspicion of money laundering activities arises in connection with a given transaction. With respect to fighting terrorism, this law was changed in 2002 (Act No. 422 of 6 June 2002) to require a report in case of suspicion of financial support of terrorist activities (Madsen, 2002: 359-362).

⁸ Joint Action of 24 February 1997 to Combat Trafficking in Human Beings and Sexual Exploitation of Children (97/154/JHA, L 63, *Official Journal*, 4 March 1997).

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5.1.6. Membership of a Criminal Organisation and Terrorism

In 1998 the Council of the European Union adopted a Joint Action aimed at making participation in a criminal organisation a criminal offence under the law of each Member State.⁹ In an official statement, the Danish Ministry of Justice expressed the opinion that the general criminal law regulation covering participation in an offence (Art. 23 Criminal Code) already adequately fulfilled the objective of the Joint Action and that for this reason a further change of the law would not be necessary (Greve, 1999: 173).

In the context of the worldwide initiatives against terrorism, and before enactment of the corresponding European Union Framework Decision, new regulations for fighting terrorism effective 1 July 2002 were introduced into Danish criminal law, including the offence of participation in a terrorist organisation and promotion of its activities (Art. 114 (a), 114 (b) Criminal Code) (Act No. 378 of 6 June 2002).¹⁰

5.1.7. Trafficking in Human Beings

In advance of another Framework Decision of the Council of the European Union, the Danish legislature in 2002 made trafficking in human beings for the purpose of exploitation through prostitution, forced labour, circumstances resembling slavery or for the purpose of removing bodily organs punishable by law (Art. 262 (a) Criminal Code).¹¹ The maximum prescribed penalty is eight years' imprisonment. The penalty also applies to those who, as parent or legal guardian of a minor victim, accept money in return for consenting to such exploitation (Act No. 380 of 6 June 2002).

5.1.8. Smuggling Human Beings

At the same time the maximum penalty for smuggling human beings was raised from four to eight years (Art. 125 (a) Criminal Code), and the statutory regulation was amended to recognise the organised commission of the offence as an aggravating circumstance (Act No. 380 of 6 June 2002). This change took place in the context

⁹ Joint Action of 21 December 1998 on Making it a Criminal Offence to Participate in a Criminal Organisation (98/733/JHA, L 351, *Official Journal*, 29 Dec. 1998).

¹⁰ Council Framework Decision of 13 June 2002 on Combating Terrorism (2002/475/JHA, L 164, *Official Journal*, 22 June 2002).

¹¹ Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings (2002/629/JHA, L 203, *Official Journal*, 1 Aug. 2002).

of a proposal from the European Union Commission to escalate the fight against both smuggling and trafficking in human beings.¹²

5.2. Measures of Procedural Law

*5.2.1. Intervention in the Right to Inviolable Communication*¹³

Acoustic (telephone or room) surveillance is permissible according to Article 781 para. 1 Administration of Justice Act when:

1. there are particular reasons to assume that information is being communicated via telephone or other communication media to or from a suspect;
2. it can be assumed that the intervention will be of decisive importance for the investigation; and
3. the investigation concerns an act punishable by six years or more of imprisonment or an act of intentionally committed offence against state security or concerns one of a number of specifically listed offences.¹⁴

A further prerequisite for acoustic surveillance of private premises is that the offence being investigated has resulted or can result in danger to person or life of individuals or to significant societal values (Art. 781 para. 5 Administration of Justice Act).

In 1997 several additional offences, specifically aggravated theft, smuggling human beings, aggravated assault and intentional endangerment of others, were added to the catalogue of offences listed in the regulation (Act No. 411 of 10 June 1997) with the express objective of expanding police powers of intervention in connection with organised crime. The offences of aggravated assault and intentional endangerment of others have however in the meantime been removed from the list following the increase in their maximum penalties to six and eight years respectively

¹² Proposal for a Comprehensive Plan to Combat Illegal Immigration and Trafficking of Human Beings in the European Union (2002/C 142/02, C 142/33, *Official Journal*, 14 June 2002).

¹³ A thorough treatment on the topic can be found in the report by Cornils and Greve (2001: 37-50).

¹⁴ Assisting escape of prisoners (Art. 124 para. 2 Criminal Code), obstruction of prosecution or punishment/destruction of evidence (Art. 125), evasion of military service (Art. 127 para. 1), interfering with communication or infrastructure facilities (Art. 193 para. 1), child pornography (Art. 235), violation of inviolability of communication, data or trade secrets (Art. 263), repeated harassment (Art. 265), issuing threats (Art. 266), extortion (Art. 281), aggravated theft (Art. 286 para. 1), aggravated tax or customs fraud (Art. 289), smuggling human beings (Art. 59 para. 5 Aliens Act).

(Act No. 380 of 6 June 2002). As a result of the severity of the penalties, these offences are among those for which suspicion would already constitute grounds for possible acoustic surveillance measures according to the general regulation set forth in Article 781 para. 1 no. 3 Administration of Justice Act.

The inclusion of smuggling human beings was intended to simplify the investigation of organised human-smuggling rings. The Ministry of Justice cited the national problem of the increasing number of asylum seekers who pay to enter Denmark with the help of third parties, as well as the obligation of Danish law enforcement authorities to strengthen their activities against the organised smuggling of human beings as part of a concerted international effort (Folketingstidende, 1996-1997, Tillæg B: 991).

Otherwise the legislative change of 1997 is based on a demand expressed in the *Action Plan on Organised Crime and Biker Crime* of 1995 (see supra, 3), where intervention into the right to inviolable communication is emphasised as an important and often decisive tool in the fight against organised crime, since organised crime depends on arrangements and cooperation among several persons and is characterised by high communication requirements, especially in the planning stages (Justitsministeriet, 1995a: 13, 1995e: 4). The Ministry of Justice adopted the proposal and itself emphasised the need to expand the application area of these special investigative measures in order to be able to react to new manifestations of organised crime. With the criminal offences of aggravated assault and intentional endangerment of others, it is possible to cover, in particular, violent offences typical of biker gangs. Hit-and-run crime, *inter alia*, may be covered by the offence of aggravated theft (Folketingstidende, 1996-1997, Tillæg A: 2483).

In 1999, in addition to acoustic surveillance, optical surveillance was also regulated by law as a special investigative measure (Act No. 229 of 21 April 1999) for which the same prerequisites and the same offence catalogue applies as for measures of acoustic surveillance (Art. 791 (a) Administration of Justice Act).¹⁵

This joint catalogue was then expanded in 2000 to include two additional offences: disruption of communication or infrastructure facilities and child pornography (Act No. 441 of 31 May 2000). Trafficking in human beings, criminalised in 2002, (Act No. 380 of 6 June 2002) did not need to be added to the list, since, due to its prescribed maximum penalty of eight years imprisonment, it is already among those offences for which acoustic or optical surveillance measures are legitimate.

As a part of measures taken to fight terrorism, in 2002 intervention in the right to inviolable communication was expanded to include a substantive inspection of private computer programmes and data media (Art. 791 (b) Administration of Justice

¹⁵ On the different prerequisites for permitting surveillance measures outside of private premises, see Cornils and Greve (2001: 46-50).

Act). These forms of investigation may be considered in cases involving suspected offences against state security, offences constituting a danger to public safety (including aggravated drug or weapons offences) and intentional homicide (Act No. 378 of 6 June 2002).

5.2.2. Search

Procedural provisions regulating searches were comprehensively revised in 1997 (Act No. 411 of 10 June 1997). The changes made at that time were based primarily on an expert opinion prepared by the Standing Committees on Criminal Procedural Law (Strafferetsplejeudvalget) in 1989 (Betænkning No. 1159/1989) as well as in part on the *Action Plan on Organised Crime and Biker Crime* (Justitsministeriet, 1995a–e). The *Action Plan* was particularly influential in the development of the newly introduced legal basis for so-called secret searches (*hemmelig ransagning*), i.e. searches that may take place without the – previously mandatory – contemporaneous notification of the person affected or the involvement of witnesses (Art. 799 Administration of Justice Act).

In special cases of drug offences and serious violent crime, the police had already engaged in this type of secret search with the approval of the courts. However, this practice had been increasingly called into question by the Higher Regional Courts in recent years due to the lack of a legal foundation.¹⁶ This led, for example, to the anomalous situation in which a request by narcotics agents to engage in secret inspection of the contents of a ship cargo container was rejected on the basis of the rules governing searches but was approved when the request was couched by police in terms of an intervention in the inviolability of the mail – a claim justified by equating the shipping container with a mailed package (Folketingstidende, 1996-1997, Tillæg A: 2487).

In order to clarify the law in this respect and to satisfy the needs of practitioners, the Standing Committee on Criminal Procedural Law recommended, by a majority of five votes to two that secret searches be legally regulated by prerequisites comparable to those applicable to acoustic surveillance. The minority expressed an opposing opinion according to which such measures, in light of their particular intrusiveness, should only be allowed in cases of intentional offences against the security of the state (Betænkning No. 1159/1989: 100).

While the Danish Bar and Law Society (*Advokatrådet*) expressed considerable doubt even regarding the minority opinion, the Ministry of Justice accepted the majority position in its *Action Plan on Organised Crime and Biker Crime* of 1995 and later in its draft legislation. In justifying this course of action, the Ministry

¹⁶ See, for example, the decision of the High Court East of 31 May 1996, UfR 1996 A: 1124.

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emphasised that, specifically in the investigation of organised groups of offenders, circumstances may require searches without the knowledge of the person affected and without the involvement of witnesses (Handlingsplan, 1995: 14, Bilag 4: 6). Also, revealing the investigative measure would mean in many cases endangering the success of the measure from the very start. Furthermore, the Ministry claimed that it was difficult to understand why the courts should be allowed to order the secret deployment of listening devices in a private residence for the purpose of acoustic surveillance, but not to order the secret searching of a such a residence (Folketingstidende, 1996-1997, Tillæg A: 2488).

In accordance with the proposal, Parliament decided to introduce a regulation (Art. 799 Administration of Justice Act) under which secret searches would be allowed when:

1. the intrusive intervention in this form is of decisive significance for the investigation, and
2. an intentionally committed offence against state security, a serious drug offence or an intentional homicide offence is suspected.

In addition to these new regulations, an additional remarkable characteristic of the legislative change of 1997 is that if residences, enclosed spaces, deeds, papers and similar objects, or the content of locked objects are searched without prior court approval due to exigent circumstances, it is necessary to obtain subsequent approval from the court only when the affected party so requests (Art. 796 para. 3 Administration of Justice Act). The police are of course required to inform the affected party of this possibility in order to ensure his legal protection. The authority to order a search of non-enclosed spaces and objects at the suspect's premises other than those cited above is left entirely up to the police (Art. 796 para. 1 Administration of Justice Act).

A further legislative change in 2002 expanded the catalogue of offences suspicion of which constitutes grounds for allowing secret searches. Newly added offences include ship and airplane hijacking as well as serious weapons offences (Act No. 378 of 6 June 2002).

5.3. Other Measures

5.3.1. Prohibition Based on Constitutional Law

Although the Hell's Angels and Bandidos had in the meantime ceased their violent confrontations, the Director of Public Prosecution (Rigsadvokaten) continued to investigate whether the prerequisites were fulfilled for the forced dissolution of the groups as associations in violation of the constitution until the end of April 1998. In his extensive final report, which was however only published in abridged form, he

came to the conclusion that acts of violence or incitement to violence could not be demonstrated to be a general or prevailing element of the official activities of either of the motorcycle clubs and that he would therefore refrain from introducing dissolution proceedings under Article 78 para. 2 of the Danish Constitution (Rigsadvokaten, 1998).

This decision was greeted with broad approval in legal circles (Høyer, 1998) after strong objections to the possible dissolution of the motorcycle groups were raised by many parties, including a number of high-ranking police officials. Primarily the point was made that prohibition would drive the so-called bikers underground, where it would be even more difficult to control them (Bay, 1997; Wilhelm, 1997; Grund, 1998). On the other hand the constitutional interpretation reflected in the Director of Public Prosecution's report has been the subject of criticism (Toftgaard Nielsen, 1999).

5.3.2. The 'Biker Law'

While attempts to mandate the dissolution of both the Hell's Angels and Bandidos motorcycle groups failed, a simultaneous legislative initiative, the so-called 'Biker Law' (Act No. 907 of 15 October 1996, '*rockerloven*'), which arose in the context of the gang war of the time, was passed very quickly. This law allows the police to issue an exclusion order forbidding a person to enter or to be present on a particular premises when

1. the premises serve as a meeting place for a group to which the person in question belongs or with which the person is associated; and
2. the presence of the person in question on the premises and the other circumstances are to be regarded as constituting a risk of attack by which persons who live or are located within the vicinity of the premises could be endangered.

After only a week of consultation Parliament adopted the corresponding draft submitted by the Minister of Justice.

The exclusion order can be temporary or can remain in effect until further notice, but it must be rescinded at a point in time no later than when the danger of attack ceases to exist. The person in question has only a limited opportunity to challenge the prohibition legally – this opportunity is limited, to all intents and purposes, to the submission of a complaint to the Ministry of Justice.¹⁷ The

¹⁷ This fact had already been specifically criticised by the parliamentary committee on legal affairs in its statement on the bill (Folketingstidende, 1996-1997, Tillæg B: 254). In the subsequent revision of the law in 1998, a parliamentary minority demanded that access to the courts be simplified. On this point, see *infra*.

penalty for the intentional violation of such an order is imprisonment for up to two years.

The law's area of application was intended from the beginning to be limited to members and associates of the motorcycle groups who were at the time fighting with one another (thus the popular designation 'Biker Law') and was primarily intended to apply to their own clubhouses (so-called '*bikerforts*') (Folketings-tidende, 1996-1997, Tillæg A: 999, 1004). These premises were the targets of reciprocal bomb attacks, which subjected residents of adjacent properties to considerable danger.

Based on the Biker Law, a total of 654 exclusion orders were issued against 220 persons, applying to a total of 26 premises. The result was that the motorcycle groups were forced to abandon their accustomed meeting places, which were primarily located in densely populated urban areas. Several of the affected buildings are in the meantime being used for other purposes by new owners or tenants.

After the groups Hell's Angels and Bandidos ceased their mutual hostilities in September 1997, there was no longer a need for exclusion orders as provided for by the Biker Law. After a six-month waiting period, in a bulletin of 30 March 1998, the Ministry of Justice demanded that the police and prosecution authorities check in each individual case whether or not the legal prerequisites for intervention were fulfilled (Justitsministeriet, 1998). Shortly thereafter all exclusion orders were rescinded.¹⁸

In retrospect the police expressed the opinion that the Biker Law had played an essential role in achieving a truce between the warring groups. The law reduced fear and insecurity on the part of the public in the vicinity of biker clubhouses and also made it easier for police to monitor the clubhouses. Furthermore the law helped to weaken the internal structures of the biker groups and had a preventative effect on their presence at public events. At the same time however it was noted that there was still a danger that the motorcycle groups would set up new meeting places in densely populated areas and might again put neighbouring areas in danger. In the opinion of the police, the Biker Law represented an effective and absolutely essential means of crime prevention.

Politicians also remained skeptical about whether or not the truce agreement would remain in effect. In light of the fact that the resumption of violent activities could not be ruled out, following renewed consultation in Parliament, the law, which was originally of a limited duration, was confirmed and declared to be permanent (Act No. 406 of 26 June 1998).

In August 2001, four years after the peace agreement between the Hell's Angels and Bandidos, public discussion began as to whether or not the Biker Law should

¹⁸ *Politiken*, 23 April 1998.

prevent groups of bikers from entering a particular street in the amusement district of the city of Aalborg. While the police rejected such a move based on the opinion that the law should only be applied in particularly serious situations, the Ministry of Justice stated that the law could very well also be used today, as long as ‘the bikers constitute a danger to the safety of ordinary people’.¹⁹

5.3.3. *Plan of Operations 2002*

In September 2002 the National Commissioner of Police published a plan for increased actions against the biker milieu, the *Plan of Operations (Indsatsplan) 2002* (Rigspolitichefen, 2002). The plan states that the police intend to expand and intensify previous measures in future operations. Among other things, these include:

- increased attention paid to so-called hidden biker crime (for example, drug offences, smuggling and trafficking in women);
- an increase in the number and scope of police inspection and control operations;
- encouraging the public to report criminal activities connected with biker groups;
- taking greater advantage of the possibilities for collaboration amongst various government authorities (e.g. in cases of fraud in connection with social services or taxes);
- a broad scope of community activities, in particular at the local level, to make access to the biker milieu more difficult and to encourage people to distance themselves from the biker milieu;
- concealment by the municipalities of the identities of those of their employees who handle social services or tax fraud committed by bikers.²⁰

The media characterised the *Plan of Operations* as subjecting bikers to surveillance and pressure around the clock.²¹ In some cases references were made to an ‘open season on bikers’ (*klapjagt på rockere*).²² One defence counsel with numerous biker clients described the planned police measures as ‘biker pogroms’, comparing them with methods employed by the Nazis in Germany during the

¹⁹ *Politiken*, 14 August 2001.

²⁰ *Information*, 28 October, 2002.

²¹ *MetroXpress*, 26 September 2002.

²² *Politiken*, 26 September 2002.

Third Reich (Hjørne, 2002). These comments evoked the outraged reply from a well-known judge that bikers certainly should not be regarded as victims (Viltoft, 2002).

5.3.4. Hashish Club Act

The latest status reports from the National Commissioner of Police on organised crime (Rigspolitichefen, 2000: 19; 2001: 3, 12) identify a significant increase in the number of so-called hashish clubs. A hashish club is a residence or other premises regularly visited by numerous persons for the purpose of smoking hashish. Although Danish criminal law does not criminalise the consumption of narcotics, possession and distribution thereof are indeed criminalised. The police assume that the hashish clubs are also used as points of distribution for drugs. Most searches only turn up small amounts of hashish – however it is assumed that the main inventories are maintained at other locations. Furthermore, in reaction to such raids, many clubs have equipped their entrances with video cameras.

In order to create an instrument effective against hashish clubs, the legislature passed a law – the Hashish Club Act (Act No. 471 of 7 June 2001, ‘*hashklubloven*’) – according to which the police may also issue exclusion orders in this context. Under the provisions of this law the police, after a previous warning, can prohibit the person having domiciliary rights in a certain premises from receiving visitors there and can prohibit visitors from being present there if:

activities taking place in these premises systematically include punishable offences and are capable of creating discomfort and a feeling of insecurity among residents in the vicinity.

Such an exclusion order is valid for three months and can be extended for a period of no more than three months at a time. Violations are punishable by fine and in cases of repeated violation, the penalty may be increased to a prison term of up to four months. Conviction constitutes grounds for cancellation of the rental relationship with regard to the premises in question.

The Hashish Club Act is intended to cover activities whose scope is substantial, if not necessarily on a commercial basis, and that take place with sufficient frequency and regularity so as to appear to constitute an essential purpose of the use of the premises – above and beyond possible residential use. An exclusion order could not be issued solely on the basis of the fact that a small circle of mutually acquainted persons repeatedly meets at a particular place to smoke hashish or because hashish has been distributed at that place on a single occasion or is occasionally distributed there.

The law took effect in June 2001. Since then, 52 of the 88 known hashish clubs in Copenhagen have been closed. The police have issued warnings in 19 cases and

in 10 cases have issued exclusion orders against persons with domiciliary rights and visitors of the residences in question. The remaining closures were on a 'voluntary' basis.²³ Several of those affected have taken legal steps against the exclusion orders, as yet without success, while others have been punished – a person with domiciliary rights was fined DKK 25,000 (approximately € 3,500) due to repeated violations of an exclusion order, and visitors who have violated an exclusion order have been fined DKK 2,500 (€ 350) per visit.²⁴

6. Institutional Changes – Special Investigative Bodies

In support of police investigative activities in cases of drug and gang crime, the National Commissioner of Police maintains a central office (*Nationalt Efterforskningscenter*) that finds, collects and evaluates both national and international reports, advisories, statistics and information for provision to local police authorities (Rigspolitichefen, 1998: 37).

In connection with the Central Criminal Register, the National Commissioner of Police also maintains a special investigative register on organised (biker) gang crime (*Rigspolitichefens Særlige Efterforskningsregister Vedrørende Organiseret Bandekriminalitet – 'rockere'*). As early as the 1980s the police had already begun to store data in an internal working register on members of biker groups who had come to their attention as a result of drug-related offences. The creation of the investigative register on organised gang crime in 1992 extended these data collection measures to all areas of criminal activity.

During the violent clashes between the Hell's Angels and Bandidos in 1996, a special unit, the Biker Task Force, was founded under the leadership of the National Commissioner of Police to support and coordinate local police investigative activities in cases of aggravated violent crime committed by bikers. In the year 2000 this unit was replaced by a steering group whose working area covers the entire scope of transnational and organised crime. The new steering group (*Styregruppen vedrørende efterforskningsstøtcentrene samt grænseoverskridende, organiseret kriminalitet*), also under the leadership of the National Commissioner of Police, is expected to take the knowledge gained by the Biker Task Force and apply it in a broader range of situations (Rigspolitichefen, 2000: 36).

²³ Copenhagen Police Notat, Advokatur N, of 28 October 2002. For more on the Hashish Club Act, see also Jacobsen (2002) and Cornils and Greve (2003).

²⁴ *Urban*, 12 December 2002.

7. International Police and Judicial Cooperation

In 1962 Denmark ratified the Council of Europe's Convention on Extradition, in 1996 the Convention on Simplified Extradition Procedure between the Member States of the European Union, and in 1997 the European Union Extradition Convention.

The ratification of the Europol Convention took place in 1997 despite considerable domestic policy reservations (Cornils and Verch, 2001: 17).

After an Additional Protocol to the Amsterdam Treaty was agreed upon, covering among other things Denmark's special position with regard to the Schengen Agreement, Denmark joined into practical Schengen cooperation on 25 March 2001.²⁵

In accordance with the resolutions of the Council of the European Union on fighting organised crime, Denmark participates in the execution of joint information and action programmes. Specifically, since 1994 the National Commissioner of Police has provided the Council with an annual *Status Report (Situationsrapport; Rigspolitichefen, 2000-2001)* on suspected groups of offenders and on the special circumstances surrounding the domestic criminal offences committed by these groups. Although in formal terms Denmark has a special status within the European Union, this fact has not impaired close practical cooperation.

Denmark is active in combating money laundering as a member of the Financial Action Task Force on Money Laundering (FATF), an organ created by the G7 nations in 1989, as well as in a special commission of the European Union Commission for extended measures for tracing profits.

With regard to biker crime, in 1997 the highest-level police authorities of the Nordic countries formulated a joint plan for the coordination of future action. In 1996-1997 the Member States of the European Union carried out Operation Monitor, an investigation of the various biker groups and their criminal activities. In addition, Denmark functioned as the host of the 1997 annual meeting of the ICPO Interpol commission 'Project Rockers' and in the same year had the chairmanship of the first conference of an intercontinental steering group for concerted police activities against criminal motorcycle gangs (Rigspolitichefen, 1997: 35).

Since 1984 there has been close cooperation among police and customs authorities in the Nordic countries regarding drug-related crimes (*PTN-samarbejde*). The experience gained here is to be used in joint efforts against other forms of criminality as well. In this context special attention is also paid to circumstances

²⁵ Additional Protocol No. 5 of 2 October 1997, covering the special position of Denmark with regard to visa, asylum and immigration regulations, freedom of personal movement, cooperation under the Schengen agreement and defence policies, was added to the Treaty of Amsterdam. See also Protocol No. 5 of the Treaty of Nice.

in the Baltic Sea region (Justitsministeriet, 1995, Appendix 2: 5). Denmark is the chair (until the end of 2004) of the Task Force on Organised Crime in the Baltic Sea Region, created specifically for this purpose. Working within this framework it has been possible to establish systematic cooperation with other Baltic Sea states, such as in the fight against Baltic and Polish gang crime as well as in the interest of more effective investigation of trafficking in women (Rigspolitichefen, 2000: 37; 2001: 23).

In addition to Nordic cooperation and activities in connection with Interpol and Europol, the Danish police maintain intense bilateral contacts with foreign law enforcement authorities, especially in the Baltic countries and in Germany. The National Commissioner of Police is also working towards an expanded exchange of information with countries in central and eastern Europe.

8. Concluding Remarks

In Denmark the scope of organised crime in the narrow sense has up to now been very limited. However this has not kept the nation from passing laws and strengthening the ability of the police to fight organised crime to a degree comparable to other European states.

The special focus on biker groups will probably continue. Many bikers are very active criminals, with half the group being imprisoned – no other segment of the population has a higher incarceration rate. Naturally, the police will continue to keep watch over them and to investigate their activities. This will be the case although the groups are small and their impact on society is rather limited. After all, they are not only enemies, but they are also useful enemies.

By referring to the biker problem and underlining that they commit serious and spectacular crimes, the police has succeeded in obtaining a number of broad powers which would otherwise have been refused. Politicians are also aware of the mass media interest in organised crime, in Denmark often synonymous with biker crime. This vehicle for legal amendments is still very strong, and it will probably often be used in the future.

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Organised Crime Policies in the Czech Republic: A Hard Road from Under-Estimation to the European Standard

Miroslav Scheinost

1. Introduction

It is only since the mid-1990s that we can talk about a consistent organised crime policy in the Czech Republic. After the fall of the communist regime, organised crime was not perceived as a real danger by the responsible state authorities, and even after the first signs of organised criminal activity it was rather under-estimated. Initially it was a few professionals with a policing background who drew attention to the potential attractiveness of Czech territory for the penetration of organised crime and to the first manifestations of organised crime activities. The start of research into organised crime and the publication of the first studies contributed to raising awareness of this danger. Also the press played a role publishing articles on the phenomenon (often under sensational headlines and sometimes presenting unreliable information) and had a significant impact on public opinion. Also there was significant international influence – the policy of the international community against organised crime gradually became better known, and it was eventually necessary for the Czech Republic to fulfil the obligations resulting from the international documents they signed. As a result, in the late 1990s and early 2000s several *ad hoc* measures were adopted and both the legal and institutional frameworks were significantly changed to fight organised crime.

This contribution reviews the changes introduced and as far as possible assesses their effectiveness. The next section reconstructs the development of organised crime policies in the Czech Republic, followed by an analysis of the new legal instruments. Section four focuses on the institutional framework, and section five lists and discusses the relevance of the treaties and bilateral agreements in the field of international police and judicial cooperation the Czech Republic is party to in the field of international organised crime policy. The final section tentatively assesses the effectiveness of the repressive measures introduced so far and emphasises the need to broaden the range of instruments to effectively control organised crime.

2. The Development of Organised Crime Policies

The crucial point for Czech state authorities to take the phenomenon of organised crime seriously was probably the World Ministerial Conference on Organised Transnational Crime held in Naples in 1994 and the resulting adopted documents (Naples Political Declaration and Global Action Plan against Organised Transnational Crime). This was distinct proof of the great importance placed on this problem by the international community and it became evident that it was no longer possible to ignore it (Scheinost, 1996: 4-5; Sturma, 1995). This conference may also be seen as one of the important points that began a serious public debate on the phenomenon of organised crime, and the move towards the possible organised crime policies needed to challenge it. This debate was influenced by the mass media and by an alarmed public opinion, but nevertheless took place mostly at the professional level, as mentioned in the contribution by Miroslav Nožina in Part II on organised crime in the Czech Republic.

International organisations and international instruments (apart from the above-mentioned conference in Naples) only began to influence the process of policy-making in a significant and concrete way since the mid-1990s. Above all, these instruments included the Pre-Accession Pact on Organised Crime between the Member States of the European Union and the Applicant Countries of Central and Eastern Europe and Cyprus, based on the European Union Action Plan to Combat Organised Crime from 1997 and signed by the Czech Republic in 1998; and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed by the Czech Republic in 1995. The Czech Republic also entered the Council of Europe project OCTOPUS (since 1996) and in 1997 began to participate in the work of PC-CO (the Council of Europe Committee of experts on criminal law and criminological aspects of organised crime). The obligations resulting from adopted international documents and international collaboration had to be taken into account in the policy-making process and subsequently in the respective legislation and state administration.

The growing importance placed on the problem of organised crime by the state authorities was expressed in 1996 when the necessity to combat organised crime was incorporated into the governmental programme declaration. The Czech government proclaimed in this declaration that a strategy against organised crime would be adopted and regularly evaluated, and more effective provisions to investigate and prosecute organised crime activities, such as provisions against drug trafficking and money laundering, would be prepared (Czech Government Programme Declaration 1996).

The first governmental approach in the fight against organised crime was adopted in 1996 and updated in 1997 and 2000. It included a broad list of legislative and administrative measures and also repeatedly mentioned criminological research. The last update of the approach stresses that the state policy against organised crime

must be comprehensive and well coordinated because the fight against organised crime and its prevention not only depends upon law enforcement authorities, but on many institutions of public administration (The Updated Approach to the Fight against Organised Crime, 2000). Therefore the Security Council of the Czech Republic, which is the top level body responsible for the security policy of the Czech Republic, was recommended to fulfil a coordinating role in all areas of organised crime policy. It was stated that the complex analysis of recent trends in organised crime must be used as a starting point for any measures to be proposed. As a result working groups were established under the Ministry of the Interior in order to analyse the development of organised crime, and to focus on different aspects of the fight against organised crime.

The updated approach also takes into account the evaluation of the Czech situation undertaken within the OCTOPUS II project, the obligations included in the Pre-Accession Pact and the provisions drafted in the United Nations Convention against Transnational Organised Crime. The approach was harmonised with the respective chapter of the National Programme for the Preparation of the Czech Republic for the European Union Membership. It was emphasised that it is necessary to draft the appropriate legislative and organisational provisions for more effective confiscation of the proceeds of crime, as one of key measures against organised crime. The updated approach also focuses on some recent urgent problems and urges the adoption of: measures preventing the misuse of entrepreneurial activities, whose aim is to legalise and cover the activities of organised crime in the Czech Republic; measures focusing on the problem of illegal employment of foreigners; measures against legalisation of stolen cars, for better protection of cultural heritage and for a more effective fight against organised criminal activities connected with information technology.

Generally speaking, organised crime policy initially (in the mid-1990s) focused primarily on the adoption of necessary provisions in penal and police law, and on better control of the penetration of organised crime groups from abroad. Some special task units were established in police forces, and the Ministry of the Interior made investments in order to improve equipment and training for the police, taking advantage of international cooperation and assistance (e.g. seminars for the Czech police specialists organised by the FBI). Recently there has been a considerable effort to establish a more comprehensive policy, and besides improving repressive tools there is the involvement of other instruments and institutions of state administration. It is clear that the repressive means and tools of penal policy alone cannot be sufficient to control or even suppress organised crime.

Of course discussion among professionals (politicians, legislators, lawyers, policemen, judges and so on) has been going on about the relation between the exigency of the high effectiveness of measures proposed or adopted in order to prevent, detect, investigate and prosecute organised crime, and the guaranteed protection of basic human rights and freedoms including the protection of privacy.

These issues are also being considered from the point of view of the Czech (and continental) law tradition. This discussion increased in relation to the situation after 11 September 2001 when extraordinary and emergency powers of the state and of law enforcement authorities were widely discussed, and not only in the Czech Republic. It seems that there are apparent differences in Czech public opinion, the general public seems to be more willing to accept the extension of state and police powers due to the interest of public safety, but the professionals (with the exception of police officers and special services officers) and the majority of the mass-media commentators are still rather conservative and careful about keeping the limits of state power in the area of human rights and privacy.

3. The New Legal Instruments

In the first half of the 1990s the Czech Criminal Code was amended several times as a reaction to the threat of organised crime. First, the penal sanctions for crimes committed by organised groups were made more severe and certain new definitions of crimes were implemented (e.g. illegal crossing of the state border so that not only illegal migrants themselves, but organisers and helpers can be prosecuted, as well as illegal production and possession of nuclear materials, procuring, trafficking in children and participation in committing crimes).

Basic changes in the Criminal Code, the Code of Criminal Procedure and in the Police Law in relation to organised crime were adopted in 1995 by Law No. 152/1995. The Criminal Code was amended by certain new provisions, i.e. the crime of participation in a criminal conspiracy; effectual repentance; the impunity of an undercover agent; the possibility of imposing a prison sentence on perpetrators of crimes committed for the benefit of a criminal conspiracy; and particularly the definition of so-called criminal conspiracy. This was defined as an association of several persons with an internal organisational structure, with a division of functions and distribution of activities, which is aimed at the attainment of profit by means of systematic commission of intentional criminal activity. The provision of the crime of participation in a criminal conspiracy enables the prosecution of anyone who establishes a criminal conspiracy or takes part in its activity or supports such a criminal conspiracy. The provision on effectual repentance says that whoever commits the crime of participation in a criminal conspiracy and reports this conspiracy to the Office of the State Prosecutor or to police authorities is not liable for prosecution if this report is made at the time when the danger that arises from the activity of such a conspiracy could yet be averted. The undercover agent (who can only be a police officer) is not liable for prosecution for participation in the criminal conspiracy if he or she does it in order to detect the criminal activity committed in the interest of the criminal conspiracy.

The Code of Criminal Procedure was also amended in order to improve the protection of persons taking part in penal proceedings against organised crime (the possibility of concealing the identity of witnesses – i.e. anonymous witnesses – but without a special witness protection programme) and to facilitate the criminal prosecution of organised crime. This included, in particular, the possibility for the temporary postponement of criminal prosecution with the consent of the state prosecutor if it is needed for the effective investigation of criminal activity committed for the benefit of criminal conspiracy or of particularly serious crime; the substitution of consignments (containing narcotic substances, poisons, radioactive materials, counterfeit money, firearms, explosives, and so on) that can be made by the police with consent of the judge; the possibility of law enforcement authorities (state prosecutors and judges) to ask for data within the given criminal procedure that are normally subject to the banking secrecy or tax proceedings; the preliminary seizure of property or its forfeiture or confiscation in dealing with requests of foreign courts and authorities for legal assistance. The interception of telecommunications was introduced into the Code of Criminal Procedure in 1990. In 1995 it was only partly amended and it is applicable within the criminal procedure providing that very serious crime is prosecuted.

The new Police Act No. 283, adopted in 1991, mentioned the interception of communication as a special investigation tool. The amendment of this Act, adopted by Law No. 152/1995, extended the scope of tools to the possibility to use an undercover agent (for the detection of corruption, serious economic criminal activity and crimes committed for the benefit of criminal conspiracy – this agent must be a police officer and may be used only with a consent of the respective judge) and a feigned transfer of objects (meaning the feigned purchase, sale or other transfer of an object possession of which generally requires a special permit or is inadmissible).

In 1995 the Czech Government signed the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and subsequently Special Act No. 61/1996 on certain measures against legalisation of the proceeds of crime was adopted. In relation to this Act, two provisions should be mentioned: the crime of concealing the origin of an object under the Criminal Code (namely the assistance in concealing the origin of objects acquired by the criminal activity) and the possibility of blocking bank account funds under the Code of Criminal Procedure if evidence shows that the financial means of a bank account are intended for the commission of crime, or were used for its commission, or constitute the profit from criminal activity.

These changes made in 1995 established a sufficient basis for the detection, investigation and prosecution of organised crime to be comparable with the legislation standards of the majority of other European countries. A discussion took place on the possibility of adopting a special ‘anti-organised crime law’ (as in some other countries, such as the United States and Italy) but it was decided that the necessary

adjustment of legislation should be carried out by partial amendment of existing legal norms (the Criminal Code, Code of Criminal Procedure, Police Act, and so on) (Musil, 1997: 114).

Nevertheless, the implementation of the above-mentioned legal instruments in police and judicial practice led to some practical problems. It was found that the definition of so-called criminal conspiracy is too complicated and that it is very difficult to prove all the necessary constituent elements given by the law in order to prosecute the criminal organisation as criminal conspiracy. As a result, the number of successfully investigated and prosecuted cases of criminal conspiracy has not been very high so far, and the majority of cases bearing the features of organised crime have been prosecuted as organised groups. The Czech Criminal Code was also criticised for not including a special provision on so-called money laundering – the existing provision of assistance in concealing the origin of objects acquired by the criminal activity is not sufficient. The regulation relating to the possibility of confiscating the proceeds of crime was also criticised as insufficient but it must be said that judicial practice should also be criticised in this regard, because it does not make reasonable use of the existing legal possibilities to confiscate the property of perpetrators. A discussion on the possibility of using part of confiscated property of organised criminals for the benefit of police and justice bodies in order to improve their equipment continues, but without any result as of yet.

Regarding the Code of Criminal Procedure and the Police Act, it was proposed to tighten up the conditions for the use of undercover agents and the scope of their conferred powers. Practitioners also criticised the definition of impunity for undercover agents as giving insufficient space for their necessary activities in the criminal milieu and the protection of such agents after the end of their missions as being less than satisfactory. The provision that undercover agents must be Czech police officers makes their use in the groups of foreign (especially non-European) origin very problematic. What was particularly criticised was the limited possibility of using information gained by police operative tools (mostly by the interception of communications) as evidence in the criminal proceedings. The institution of the anonymous witness, which enables evidence to be given using changed identity, was also shown to be insufficient (it was not so difficult for accused persons to recognise the true identity of a witness by the testimony, and the subsequent protection of the security of the witness was not solved in an adequate way).

It became evident that these deficiencies and gaps in the legislation limit its efficiency and therefore certain provisions were again introduced or amended in 2002. The first act adopted was the Special Act on Witness Protection No. 137/2001 to establish the principle of witness protection. It includes not only the protection of the witnesses themselves but also the protection of other persons endangered due to their role in the criminal proceedings (authorised experts, interpreters, defendants who take part in the criminal proceedings) and those close to them. Protection may include the provisions for personal security, removal, facilitation

of integration into a new social milieu or change of identity. These provisions are effected by the police or by the Prison Service.

The amendment to the Code of Criminal Procedure incorporated certain provisions into the Act to facilitate the use of information gained by the police operative tools as evidence in criminal proceedings under specified conditions. The amendment of the Criminal Code incorporated a specific offence of money laundering into the Act, i.e. the offence of activity aimed at concealing the origin of any item or profit gained by the criminal activity or to make its identification difficult or impossible in order to make it appear as though this item or profit were acquired in keeping with the law. The definition of so-called criminal conspiracy was partly modified and now states that it is an association of several persons with an internal organisational structure, a division of functions and a distribution of activities, which is aimed at the systematic commission of intentional criminal activity – namely the attainment of profit was omitted from the definition.

The process of adaptation of the respective Czech legislation is clearly unfinished by these last amendments and their effectiveness is still being discussed. But the discussion is and will always be determined by the crucial question – the balance between the extraordinary powers and tools that are necessary for effectively combating organised crime on the one hand, and the limits of lawful state protection of human liberties and of privacy, and also the guaranteed democratic control over these extraordinary tools on the other hand.

4. The Institutional Framework

The basis of present criminal law in the Czech Republic was established in 1961 when the new Criminal Code No. 140/1961 was adopted. During its existence it has of course been amended many times, and although various distortions of criminal law introduced by the communist system were substantially suppressed or removed, it has been necessary to initiate a completely new codification of Czech Republic criminal law. This new codification is currently under way.

Criminal law in the Czech Republic is for the most part codified in this Act. Provisions for substantive legal protection are also found in some other special norms, such as the Act on Serving a Prison Sentence No. 169/1999 and the Probation and Mediation Service Act No. 257/2000. There is also further legislation connected with the Criminal Code in which sanctions are defined for actions that are less serious than criminal offences. These actions are usually defined as misdemeanours or administrative offences and are heard in administrative proceedings by various state executive or control authorities. They are not subject to punishment as set out in the Criminal Code.

In 1961 a new Code of Criminal Procedure was also adopted (No. 141/1961). By the end of 2001 it had been amended more than 30 times, either partially or

fundamentally, but it is still applicable in the Czech Republic. For instance a 1967 amendment introduced two forms of preliminary proceedings – fact-finding and investigatory. In 1990 the rights of the accused and the defence counsel were extended, for the first time the interception of phone calls was legally regulated and the use of evidence obtained through illegal coercion expressly prohibited. In the following year, the decision-making process on major infringements of human rights during preliminary proceedings (taking into custody and so on) was transferred from the prosecution to the court. In 2001 Act No. 265/2001 was adopted and came into effect on 1 January 2002 and substantially amended and supplemented the Code of Criminal Procedure.

The amendments govern, for example, the function of the probation officer, newly regulate the terms of custody, particularly concerning the limitation of its duration and introduce the institute of controlled consignment. Preliminary proceedings also experienced fundamental changes. The autonomous police investigators office has been abolished, and a new Criminal Police and Investigation Department concentrates the detection and investigation of crimes into a single body and is now in charge of investigation. Intelligence means and devices (feigned transfer, surveillance of persons and objects, use of undercover agents) were included in the Code of Criminal Procedure and the results of their use are admissible as evidence in criminal proceedings. Also new time limits were established for completing investigations. The amendment strengthened the position of the state prosecutor in criminal proceedings and transferred the focus of substantiation to the phase of proceedings before a court.

4.1. Judiciary

New legislation concerning the judiciary, in response to the fall of the communist regime, was established with Act No. 335/1991. It distinguished District, Regional and Supreme Courts of the Czech (and Slovak) Republics as well as military courts. This act was in force until March 2002 and was amended several times during its ten-year existence. Above all, it had to be adjusted because of the split of Czechoslovakia in 1993 into two separate states. Military courts were abolished and High Courts were introduced into the court system (between Regional and Supreme Courts) instead. Judges continue to be appointed by the President of the Republic.

On 1 April 2002 the Courts and Judges Act No. 6/2002 came into effect, fully replacing the previous Act No. 335/1991. The Czech court system is still composed of District, Regional and High Courts as well as the Supreme Court. Moreover, the judicial system was extended to include the Supreme Administrative Court, which of course has no jurisdiction over criminal cases. The Supreme and High Courts decide on criminal cases with panels of judges composed of a presiding judge and two judges. The Regional Court sits as a panel composed of a presiding

judge and two lay judges if it acts as a court of first instance, or sits as a panel of judges composed of a presiding judge and two judges if deciding on a remedy. The District Court sits as a panel of judges or as a single judge who conducts criminal proceedings concerning offences for which the law imposes prison sentences of no more than five years. The panel of judges of a District Court is composed of a presiding judge and two lay judges. Only a judge may sit as a presiding judge at all these courts. The President of the Czech Republic appoints judges for an indefinite period of time whereas lay judges are elected by local authorities for a four-year period.

At the constitutional level, the principles of the organisation and performance of the judiciary are set out in section 4 of the Constitution of the Czech Republic that, *inter alia*, defines the position of the Constitutional Court as the judicial body that protects enforcement of the Constitution outside the court system.

4.2. Police and State Prosecutor

A fundamental piece of police legislation is Act No. 283/1991 which regulates the organisation and activity of the police of the Czech Republic (amended more than 15 times). To date, the most recent important amendment was made in 2001 which, *inter alia*, in connection with the extensive changes to the criminal procedure concept, abolished the hitherto autonomous investigatory police offices and merged their work with that of the criminal police into a newly conceived Criminal Police and Investigation Department, as mentioned earlier. It also introduced into the regulations the possibility of the Czech police using personal data to prevent and detect crimes. This amendment also creates the necessary conditions for bilateral collaboration with Europol.

The police are under the jurisdiction of the Ministry of the Interior. They include the police on patrol, the Criminal Police and Investigation Department, the Traffic Police, the Aliens and Border Police and the Airport Service.

The Criminal Police and Investigation Department conducts detection and investigation of crimes. Within this department several special services have been included, which focus on organised crime and other serious forms of crime – the Financial Crime and State Protection Office, the Department for Detection of Corruption and Serious Economic Crime (established in 1991), the Department for Detection of Organised Crime (established in 1994 – in 2001, for instance, this department solved more than 100 offences that were under suspicion of having been committed by organised criminals) and the National Anti-Drug Headquarters (originally included within the Department for Detection of Organised Crime).

The State Prosecutor's Office Act No. 283/1993, as amended, governs the organisation and activity of public prosecution offices. It is conceived as a system of state offices designed to represent the state in protecting the public interest. The system of state prosecutor's offices comprises the Supreme State Prosecutor's

Office, the High State Prosecutor's Office and regional and district offices. The higher level offices supervise the activities of the lower level offices in their own districts. The Supreme State Prosecutor is responsible to the Minister of Justice, who supervises the activity of the Supreme State Prosecutor's Office. In order to enable the prosecution of serious and complicated forms of economic crime, special departments were established in 2000 at the level of Supreme and High State Prosecutor's Offices.

4.3. Prison Service

A fundamental legal regulation stipulating the organisation of prisons is the Prison Service and Judicial Guard Act No. 555/1992, as amended. This established the Prison Service of the Czech Republic which carries out custody and imprisonment and, to a defined extent, the protection of order and safety in the operation of judiciary and court administration. The Probation and Mediation Service was established by Act No. 257/2000 and provides probation and mediation services in cases subject to criminal proceedings.

The Prison Service is a department of the Ministry of Justice. It is responsible for the enforcement of custody and prison sentences. The sentence of imprisonment is served in prisons, which are divided in accordance with the method of external guarding and security into four basic types as follows – prisons with supervision; prisons with control; prisons with security; and prisons with stricter security. In addition to these basic types of prison, there are special prisons for juveniles.

4.4. Criminal Proceedings

According to the Czech criminal law currently in force, criminal liability arises from a criminal offence. The Criminal Code is derived from a single category of crimes classified as indictable offences and does not divide them into crimes, transgressions and so on. A criminal offence must bear the attributes of being a danger to society (the material aspect of a crime) and must be correlated with the characteristics of the relevant criminal matter (the formal aspect of a crime). An essential characteristic of a criminal offence is also that it is committed by a criminally liable person and that the offender is liable for punishment for the offence. The minimum age of criminal liability is defined as 15 years of age. The category of so-called juveniles is defined as persons between the ages of 15 and 18 and they become fully criminally liable at the age of 18.

Czech criminal law is based on the principle of individual liability. It does not recognise collective or corporate liability (liability of legal entities). Only an individual may be criminally liable for a criminal offence committed in the corporate sphere.

The initial stage of criminal proceedings is the preliminary proceedings. The police are responsible for conducting all necessary measures for revealing the circumstances indicating that a crime has been committed, and for identifying the offender. If ascertained and well-documented facts indicate that a crime has been committed and if it is sufficiently and justifiably concluded that a certain person has committed the offence, the police will immediately initiate prosecution of this person as an accused. The stage of prosecution up to the completion of preliminary proceedings is defined as the investigation. Czech criminal law does not recognise the concept of an investigating judge – the investigation is usually undertaken by the Criminal Police and Investigation Department of the Czech police. The Code of Criminal Procedure entitles the state prosecutor to supervise observance of the legality of the entire preliminary proceedings.

A person accused or suspected of an offence may only be arrested in cases stipulated in law. An arrested person must be informed of the reasons for the arrest immediately, and within 48 hours questioned and released or committed to a court. A judge must conduct a hearing of the arrested person within 24 hours of the committal and decide on custody or release. It is possible to decide on custody only if there are specific facts justifying this decision (if the accused will escape, hide to avoid prosecution, influence the witnesses, commit the offence again). The total length of custody during prosecution may not exceed either one, two, three or four years depending on the nature of the crime.

Upon completion of the investigation, the police submit a file and a recommendation for indictment to the state prosecutor with a list of proposed evidence (or recommend a different decision, to cease or conditionally cease prosecution, for instance). Depending on the nature of the crime they are obliged to complete the investigation within two, three or six months of the commencement of prosecution. The state prosecutor must be informed of these deadlines and is obliged in such instances to review the case once a month.

Criminal proceedings before a court are possible only on the basis of an indictment or a recommendation for punishment that is presented by the state prosecutor. He or she acts as a public prosecutor in proceedings before a court. The court may only try the offence which is stated in the charging document.

The trial is conducted by the presiding judge, who usually examines the evidence. The principal type of court decision in a trial is judgment of acquittal or conviction. Punishment for crimes may be imposed in one of the following forms – a sentence for imprisonment, community service, forfeiture of honorary titles and distinctions, prohibition to undertake activities, forfeiture of property, fines, forfeiture of an object or item, banishment or residence ban. The death penalty was abolished in 1990 and replaced by life imprisonment. Sentences of imprisonment between 15 and 25 years, and life imprisonment are defined as exceptional punishment. (Karabec et al., 2002: 71-101).

4.5. Detention

The police and judiciary system bears the greatest responsibility for combating organised crime. Local administration authorities have not been entrusted with a special role in the containment of organised crime (except for certain special matters, such as car registration, which is undertaken in collaboration with the police in order to facilitate the detection of stolen cars). No special authorities exist outside the police structure for detecting and investigating specific types of crime, including organised crime. Although there is the Security Intelligence Service, an autonomous body that may deal with some forms of organised crime but it does so only from the point of view of state security.

However, as far as the detection of crimes is concerned, the Code of Criminal Procedure stipulates an obligation for state authorities to immediately inform the state prosecutor office or the police of facts indicating that a crime has been committed. In addition, various specialised divisions operate within individual ministries focusing specifically on the detection of suspicious activity in conjunction with the sphere of interest of the ministry in question. This is, in relation to organised crime, the Financial Analysis Department of the Ministry of Finance which collects and analyses data on unusual financial transactions identified and reported by financial institutions (banks, savings banks, and so on) on the basis of the Act No. 61/1996 on Certain Measures against Legalisation of the Proceeds of Crime (in major banks, similar departments have been established that deal with suspicious operations and give information to the above mentioned department of the Ministry of Finance). It takes also further steps, based on such analyses, against the legalisation of the proceeds of crime in the financial sector, and if there is a suspicion that a crime has been committed it informs the police authorities. In 2001 a special working group was established as part of the police, comprising specialists from the Ministry of Finance and Tax Offices, whose aim is to detect the proceeds of serious crime. By the end of 2001 this group had analysed 16 such cases and proposed to seize the property of a total amount of about CZK 100 million (€ 3.1 million). In addition, this group (transformed in 2002 into the Department of Gains from Serious Criminal Activity) was charged with identifying the existing legal barriers impeding effective seizure and confiscation of the proceeds of crime, and with preparing potential proposals for further discussion and subsequently for legislation (National Programme of the Preparation of the Czech Republic for the European Union Membership, 2001).

Cooperation between the police and the Customs Administration of the Czech Republic plays also an important role in the fight against organised, especially drug-related, crime and the smuggling of various commodities. Under the Ministry of Labour and Social Affairs, a commission dealing with illegal employment of foreigners was established.

The working groups established under the Ministry of the Interior and composed of professionals from the police, state prosecutor's offices and other central bodies of state administration, analyse the development of different activities of organised crime (counterfeiting, trafficking in human beings, and so on) and discuss the possibility of improving the coordination of work. Reports on the activity of these working groups have been regularly presented to the Security Council of the Czech Republic.

In the 2001 state budget, CZK 86 million (€ 2.7 million) was earmarked for the fight against organised crime. In the 2002 budget this was reduced to CZK 27 million (€ 0.8 million) (National Programme of the Preparation of the Czech Republic for the European Union Membership, 2001).

5. International Police and Judicial Cooperation

As mentioned in the first section, international initiatives against organised crime have significantly influenced the process of organised crime policy-making in the Czech Republic since the Naples Conference in 1994. Among the most important international documents we can mention the Pre-Accession Pact on Organised Crime between the Member States of the European Union and the Applicant Countries, signed by the Czech Republic in 1998, and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed by the Czech Republic in 1995. A significant framework for international cooperation has been developed within the Council of Europe and the European Union projects OCTOPUS and, since 1996, OCTOPUS II.

In addition, the Czech Republic has developed international judicial cooperation on the basis of multilateral or bilateral international treaties applied as *lex specialis*. The Czech Republic has concluded a number of bilateral agreements, which relate to requests for legal assistance in cases of criminal prosecution for all criminal offences. In the event that no agreement has been concluded with a particular state concerning mutual assistance in criminal matters, a request can be granted on the basis of reciprocity. In regard to multilateral cooperation in criminal matters, the Czech Republic ratified the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters in 1992. Transfer of proceedings is put into effect on the basis of the rules set out in the European Convention on the Transfer of Proceedings in Criminal Matters, also ratified in 1992. Transfer is normally possible only to the countries that have acceded to this convention. This form of international cooperation has operated well and several cases of members of foreign or international criminal organisations arrested in the Czech Republic and transferred to other countries (e.g. Italy, Germany) for prosecution have been successfully solved. The agenda of the international judicial cooperation is usually dealt with by a special department of the Supreme State Prosecutor's Office.

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The Czech Republic does not extradite its nationals for criminal prosecution to foreign countries for any kind of criminal offence. This means that in the event of a Czech citizen committing a criminal offence in a foreign country, the Czech Republic takes over the criminal prosecution of its citizen and continues with this on its own territory.

Further development of international cooperation in combating organised crime has been determined by the preparation of the Czech Republic for entry into the European Union. A special chapter of the National Programme of the Preparation of the Czech Republic for the European Union Membership aims at the priorities of the fight against organised crime. These priorities include, *inter alia*, the provisions for more effective cooperation of executive and non-executive authorities, for confiscation of the proceeds of crime, and for complex witness protection. It was drafted to establish a workplace for centralised Internet data analysis, and centralised registration with regard to counterfeiting of euro banknotes. Within the Phare projects (e.g. twinning projects with the United Kingdom), about € 2 million were earmarked in 2001-2002 for strengthening the fight against organised crime. In addition, the Phare project funds have been used to improve the education of the police staff members dealing with organised crime, on anti-drug programmes and on activities addressing serious economic crime, money laundering and confiscation of the proceeds of crime. Not only police officers, but many state prosecutors were also involved in specialised seminars and courses on organised crime sponsored by the United Nations, European Union and the Council of Europe. These seminars facilitated the transfer of intelligence and harmonisation of the activities of law enforcement authorities in the European Union countries and the Czech Republic (National Programme of the Preparation of the Czech Republic for the European Union Membership, 2001).

Very serious effort has been made to launch concrete bilateral collaboration with Europol (incidentally, it should be stressed that the Czech Republic has been an Interpol member for years and Czech National Headquarters of Interpol regularly communicates with all respective foreign partners). The agreement on the collaboration in fighting serious transnational crime was signed in 2002 by the Minister of the Interior of the Czech Republic and director of European Police Office. On the basis of this agreement, it is possible to exchange information on concrete offences or investigative procedures. It is also possible to establish joint investigative teams. With regard to this agreement, the Europol group was established within the Czech police and charged with regular communication with Europol. This group will form the preparatory basis for the Czech national unit of Europol. Similarly, the Sirene group was established as a basis of the future national bureau for coordination of tasks of the Czech police necessary for the fulfilment of the Schengen Convention (The Updated Approach to the Fight against Organised Crime, 2000).

A very important step was made when the Czech Republic signed the United Nations Convention against Transnational Organised Crime in Palermo 2000. The

attendant protocols were signed in 2002. It is expected that the protocols will be ratified together with the Convention. With regard to this Convention, and also with regard to the legislative project *Corpus Iuris*, the question of criminal liability of legal entities has been discussed.

International instruments relating to organised crime without any doubt have substantially contributed to improve the legislation, as well as the institutional basis and the practice of the respective Czech authorities. It is expected that the United Nations Convention against Transnational Organised Crime will also influence respective Czech legislation in relation to some special provisions and institutional measures such as the criminal liability of legal entities and the definition of criminal conspiracy in the Criminal Code, when it comes into force.

Until now it has not been possible to evaluate the application of European Union documents, the Schengen Convention, Europol Convention, and so on, or similarly, the decisions and recommendations of the European Union institutions and bodies, because the Czech Republic has been a Candidate Country. But a substantial effort has been made to prepare their introduction and enforcement.

6. Final Comments: Assessing the Effectiveness of Organised Crime Measures

This outline of the organised crime policy of the Czech Republic shows that organised crime has become a serious problem since the beginning of the 1990s. There has been a systematic organised crime policy since the mid-1990s. This policy resulted in substantial changes mostly in criminal law, police law and partially in the legal norms regulating other fields of interest (e.g. money laundering). Some organisational measures were also adopted and specialised units within the police, state prosecutor's offices and financial institutions were established. The public discussion over this policy took place for the most part among professionals, supported by the public concern about organised crime whose picture was sometimes dramatically presented in mass media. The influence of international policy and international documents on the development of Czech organised crime policy may be considered to be very important.

The recent state of organised crime policy and its application in the Czech Republic has reached a level – especially with regard to the legislation – comparable with other European countries. Some improvements and organisational measures have been prepared with regard to European Union entry.

It is not so easy to evaluate the effectiveness of the adopted legislative and institutional measures. But speaking on the development of the systematic Czech organised crime policy we have to take into account that this development has not been taking place over decades, but only over a number of years. The formation of a comprehensive organised crime policy started in the mid-1990s 'on pastures

new'. It probably could – and should – have started earlier and we may discuss the reasons for the delay but, nevertheless, during a relatively short time period the basic legislation and institutional framework was set up corresponding to the common European standard.

The discussion on the effectiveness of respective legislation and institutions has been ongoing and critical voices have been heard mostly from the practitioners – mainly the police, but also state prosecutors. It is true that this effectiveness can hardly be evaluated by statistical data – the number of prosecuted and sentenced cases of 'criminal conspiracy' (which means criminal organisation) is very small, and they occurred only since the end of 1990s. Thus we are left to use the qualitative point of view. At this level we may state that the political will to fight organised crime was declared, the basic legislation was adopted, the specialised institutions were established, more severe sanctions and some extraordinary possibilities of investigation have been available – but the effectiveness of all this remains mostly in the hands of law enforcement authorities. It seems that the more distinct effectiveness is no longer depending upon new legal provisions or institutions, but more on the ability to use the existing tools.

Compared with the situation in the mid-1990s, we now have improved knowledge about the phenomenon of organised crime, its forms and manifestations, and on the character, structure and activities of criminal organisations operating in the Czech Republic. Existing provisions created the possibility to fight organised crime, and specialised institutions inside the Czech police and state prosecutor's offices proved they were capable of action. Based on this knowledge, tools and ability, relative success has been achieved in combating smuggling of drugs, illegal migrants, trafficking in stolen cars and objects of fine art, and so on. On the other side, the effort to disclose and prosecute huge criminal organisations, to trace and confiscate the assets of crime, to prove the 'real face' of illegal firms, to prevent criminal money from infiltrating the legal economy has had only limited effect.

In the near future, no fundamental changes of organised crime policy are expected. It is true that, up to now, the Czech organised crime policy has focused more on repressive measures against organised crime, especially on the adoption of necessary tools and measures in the criminal code and criminal proceedings, as well as on police work. What is now needed is to broaden the range of measures because criminal law and repression is only one way of fighting organised crime. Therefore, further measures of a more preventive and controlling character in the economic and administrative sphere (in company law, economic code, regulations for enterprising, for financial operations, financial and tax control, the possibility to analyse and compare different registers, etc.) would be useful. The last updated governmental approach stressed these matters – of course development in this direction is expected to be slow due to the complexity of the questions involved. Some changes are expected with regard to the measures against money laundering

– plans include broadening the range of institution obliged to report suspicious financial operations and limiting the amount of cash operations.

There are also several questions concerning criminal law that are being discussed now with the view to making the fight against organised crime more effective. Some of them will probably be solved as part of the re-codification of the Czech Criminal Code that has been prepared – first and foremost the above-mentioned question of criminal liability of legal entities (two possible solutions were presented: either criminal liability, which is criticised as contradictory to the tradition of the Czech penal law, or solving the delicts of legal entities by means of administrative law) and a new definition of criminal conspiracy (even the last modified version does not seem to be suitable for practice). The basis for the new definition in the Criminal Code will probably be the United Nations Convention against Transnational Organised Crime, and the European Union Joint Action on Making it a Criminal Offence to Participate in Criminal Organisation in the Member States of EU, adopted in 1998.

An important initiative has been developed by the Czech Ministry of the Interior who prepared a bill on so-called ‘crown witnesses’. This bill proposes that individuals willing to enable the detection and investigation of serious crimes committed by criminal organisations and groups and who will provide substantial information and evidence may be ‘rewarded’ by guaranteed benefits (even the suspension of criminal prosecution). However, this proposal seems to be too radical for the majority of legislators.

In summary, organised crime policy should focus more on the arena of non-criminal law where there are many possibilities for improving the recourse and especially the prevention of organised crime. Alongside this it is necessary to focus on the ability of law enforcement authorities and other state authorities to use the existing tools and possibilities more effectively. Any further changes in the criminal and police law will probably be very broadly and critically discussed from the point of view of the tradition of the Czech (and continental) penal law, and with respect to the limits of human rights and state power.

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The Development of Organised Crime Policies in Poland: From Socialist Regime to ‘Rechtsstaat’

Emil Pływaczewski and Wojciech Filipkowski

1. Introduction

This paper analyses organised crime policies in Poland. The next section reconstructs their emergence since the fall of the socialist regime in 1989. The following section describes the relevant associational offences and examines the main legislative *ad hoc* measures introduced to repress and prevent organised crime. The fourth section reviews the most relevant institutional changes. Some final comments follow.

2. The Development of Organised Crime Policies

According to public officials of the communist regime, no organised crime activities existed in Poland at that time. Government authorities tried to control every aspect of their citizens' lives, by employing large police forces and secret services, as well as many covert agents to infiltrate the criminal underworld. No private enterprises were allowed. The international movement of capital and people was rigorously restricted. This left no room in society for organised crime to develop 'properly'. Yet on the other hand, the authorities were not interested in analysing this phenomenon, since the socialist ideology denied that it could coexist with the communist political system and its superior system of law enforcement agencies (Hofmański and Pływaczewski, 2001: 668). Seen from the communist regime's perspective, high rates of criminality were typical of and exclusive to capitalist society and this claim was routinely spread by the regime propaganda. Party officials and practitioners imbued of socialist ideology considered the professional criminality that still existed in Poland a remnant of the capitalist system and expressed the firm conviction that it would soon disappear with the consolidation of the new political and social-economic system (Marek and Pływaczewski, 1988: 8).

In this context, some limited research was carried out on several important aspects of organised crime, such as crimes against property (robberies, larceny on a large scale, and so on), economic crimes and crimes related to 'settling scores' among criminal groups. However, no empirical research was conducted on a large scale. Some aspects – never the whole spectrum – of organised crime activities were covered. There was hardly any communication between government agencies

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and the academia. On the one hand, the lack of reliable and up-to-date analyses was a major obstacle in preparing adequate policies (Pływaczewski, 1992: 7). On the other hand, law enforcement agencies and state authorities restricted access to official data on crime rates and the structure of the criminality, as they feared that scientists might come to politically unacceptable conclusions (Marek and Pływaczewski, 1988: 1).

Everything changed after the fall of the communist regime in 1989. Organised crime and illegal market activities rapidly boomed, at the same time as the transition to democracy and market economy made their repression more difficult. The existence of a specific organised crime problem was initially denied; since the mid-1990s, however, considerable efforts have been made in order to control and prevent it (Pływaczewski, 2000c: 167-8).

Lacking means and experience in the fight against organised crime, the new government authorities at first focused on adjusting their approach to society to the principles of the new democratic political system. They thus went about amending laws to make them less severe and more liberal, placing a strong emphasis on meeting human rights standards and on strengthening the rights of the suspect and the accused. This was a reaction against the practices of the communist regime, in which the individual had no substantial task other than that to further the goals of the wider society. However, in expanding the rights of the accused, the legal status of the victim within the criminal procedure has been handicapped. This has subsequently resulted in the erosion of the public's sense of justice. In the early 1990s, too, the existing economic crime units were liquidated – as they were considered to be relicts of the previous regime – leaving the national economy vulnerable to those crimes.

At the same time, some politicians tried to gain support and votes, by resorting to demagogical themes and increasing the severity of the criminal code, as society demanded (Krajewski, 2001: 154). Despite the politicians' and bureaucrats' belief in the 'power' of provisions, the enactment of *ad hoc* laws and the aggravation of punishment for serious offences did not prove to be effective in controlling organised crime (see Pływaczewski, 1997: 122; Pływaczewski, 2000c: 168-9). This realisation was fostered by the completion of the so-called Milczanowski's report (named after the Minister of Internal Affairs at that time) on organised crime in 1995. The report, which was based on police data and was not made public, started to reveal the full magnitude of the organised crime problem in Poland.

After the circulation of the Milczanowski's report, politicians and government authorities began to realise that they had put too much emphasis on attaining high standards of human rights and establishing a proper framework to ensure the rights of suspects and accused persons. These standards rendered the fight against organised crime ineffective and left society feeling much less secure than it did during the communist era. As a result, a shift in crime – and specifically organised crime – policies took place. New initiatives were enacted, which were to a large

extent based on the experiences of western European countries and on the works of Polish scientists (Pływaczewski, 1995; 40; see the contribution by Pływaczewski in Part II of this volume).

Since the mid-1990s, a legal framework to fight organised crime has been established and far-reaching institutional changes have been introduced. However, as we will see in the following pages, it cannot be said that there has been a long-term strategy coordinating the reforms under way. Due to frequent cabinet changes, the legislative work has mostly been fragmented and uncoordinated and there has hardly been enough time to implement the enacted reforms. Each political party usually has its own policy against crime, including organised crime, which is often different from those of its opponents. The only trait unifying them is their short-sightedness: most political parties just have ideas 'for here and now' with no long-term policies, in their aim to achieve short-term political goals (Pływaczewski, 1997: 124).

3. Changes in the Legal System

3.1. Associational Offences

The Polish legal system has been aware of different types of associational offences since the enactment of the Criminal Code (CC) of 1932. Since then, the provisions have remained relatively stable. According to Article 166 of the Polish Criminal Code of 1932, it was a crime to be a member of an association whose main goal was to commit crime (a criminal association) and this offence was punishable by imprisonment for a term of between 6 months and 5 years. Moreover, the person responsible for the establishment or management of such an association could be sentenced to between 6 months and 10 years imprisonment. Another crime (with a more severe punishment attached) involved being a member of an armed illegal association (Art. 167, par. 1 CC 1932). It was punishable by imprisonment from 6 months to 10 years. Furthermore, the person who had established or managed such an association or had provided it with arms might have been imprisoned for a minimum of 5 to a maximum of 15 years.

The Criminal Code of 1969 retained most of the above-mentioned provisions, albeit in slightly different form; the penalties, however, were not as severe as those in the Code of 1932. The 1932 Code singled out another category of offenders which was very useful in the fight against organised criminal groups at that time. This category consisted of the professional and habitual criminal, as defined in Article 60, par. 2. The aforementioned offenders were treated very similarly to repeat offenders, which effectively meant that they were punished quite severely. However, in the Criminal Code of 1969, no such category of criminals existed. A result of the political changes in the country, this type of offender was simply inconsistent with the socialist ideology and thus was no longer recognised.

Interestingly, the Criminal Code of 1969 contained some provisions which have later on become typical of witness regulations. Under specific circumstances offenders could be released without punishment if they had stepped out of a criminal association and had provided law enforcement with information regarding the association's activities or turned in their companions.

The new Criminal Code of 1997 retains the above-mentioned offence of criminal association (Art. 258, par. 1 CC).¹ In the same article, however, it adds the new offence of 'organised criminal group', thus providing for the same penalty. However the law-makers did not define the meaning of 'organised criminal group' although they clearly spell out the differences between this and the offence of criminal association (Bryła, 2000: 24). This has resulted in it being left to the discretion of judges and legal experts to determine. It remains a very controversial issue.

We can assume that these terms describe increasingly complicated forms of organisation. 'Organised criminal group' is much more than simple complicity. To charge this offence, there must be at least some previous agreement concerning the commission of one or more offences, an organisational structure and a certain steadiness of the group in terms of its composition (Błachut, Gaberle and Krajewski, 1999: 300-2). The last two factors refer to the word 'organised' and have to be determined in each case. The 'criminal association' is of a higher level of organisation, has firmer foundations than an organised criminal group and it lasts longer or for an undefined period of time. Its structure is coherent with a strong leadership responsible for separate sections. There is a strict division of labour, specified methods of recruitment of new members and a code of conduct. To summarise, the same components are present in both the cases of 'organised criminal group' and 'criminal association'; however, the intensity of them differs.²

3.2. The Special Investigative Powers Granted by the New Codes and the State Police Act

Within the new penal legislation which came into force in September 1998 and which includes the Criminal Code, the Code of Criminal Procedure (CCP),³ and the Code on the Execution of Punishments, a number of new legal measures were introduced to increase the effectiveness of criminal law in counteracting organised crime. Previously enacted legal measures on some 'unconventional' methods of

¹ *Official Journal* of 1997, No. 88, item 553.

² There is a different definition of an organised criminal group used for the purpose of police work, and it was mentioned in the paper on organised crime patterns in Poland (see Pływaczewski in Part II of this volume).

³ *Official Journal* of 1997, No. 89, item 555.

gaining evidence, supplement these measures (Hofmański and Pływaczewski, 2001: 681-2; Pracki, 1996: 36). It has to be stressed that some of these new legal instruments are very controversial and there have been disputes among legal scholars, judges and public prosecutors regarding these measures as far as compliance with the Polish Constitution is concerned (Pracki, 1996: 46).

The Polish legal system allows different law enforcement agencies (State Police, Internal Security Agency, and so on) to use the following methods: searching and seizing correspondence and using other technical means in order to obtain information covertly and to secure evidence; purchasing, secretly obtaining or disposing of objects which have derived from the commission of crime, might be forfeited or of which the manufacturing, possession, transportation or trafficking is forbidden (including controlled purchase and delivery); keeping under supervision the movement, storing and trafficking of such objects; and giving and receiving a bribe.

The State Police Act of 1990, with its subsequent amendments, defines the grounds for the use of these instruments (Art. 19, 19a and 19b of the State Police Act).⁴ They may be used while conducting so-called 'operative activities' outside the criminal law procedure. Police perform such activities in order to prevent or detect the commission of serious crimes, e.g. economic crimes, crimes implying large losses for the State Treasury or third parties, or crimes which are enacted in international conventions incorporated into the Polish legal system.

The Act describes their use very accurately. Let us take for example the secret supervision over the movement, storage and trafficking of objects derived from the commission of crime. This supervision may be conducted in different ways e.g. observing the consignment of such objects, including the use of special surveillance equipment which allow the recording of video and sound; taking control of the consignment; unwrapping the parcel in order to identify the objects inside and to do some laboratory tests; taking away or replacing the contents; marking the parcel; or sending that package to its ultimate addressee.⁵

The Polish Code of Criminal Procedure allows violating the secrecy of correspondence which is safeguarded by Article 49 of the Polish Constitution (Dudka, 1999: 69; Kurzępa, 1999: 77; Marszał, 1995: 489; Wołosik, 1994: 53). This exception to the rule is possible in order to locate and collect evidence for the purpose of criminal proceedings.

⁴ *Official Journal* of 2002, No. 7, item 58.

⁵ Par. 2 of the Instruction of the Minister of Internal Affairs of 29 July 1997 on the police undercover supervision of movement, storing and trafficking of objects derived from the commission of crimes, *Journal of the Ministry of Internal Affairs*, 1997, No. 48, item 464.

The Polish Code of Criminal Procedure also sets the grounds for the interception of telecommunications (Art. 237, par. 1 CCP). This is allowed in order to obtain evidence in ongoing investigations involving serious crimes as well as to prevent their commission (Art. 237, par. 1 and 3 CCP).⁶ It can be ordered by the court at the request of the public prosecutor. In cases of emergency, the public prosecutor may give the order, although this needs to be approved within five days by the court. The order shall be limited to a maximum of three months; however, it can be extended for another three months (Art. 238, par. 1 CCP). The interception of telecommunications can be used towards a restricted group of people: the accused (or suspect), the victim or another person associated in any manner with the offender or with the crime (Art. 237, par. 4 CCP). Public and private telecommunication companies are obliged to install the necessary devices and software in order to intercept or monitor different types of communications made by their clients and provide the records to the competent government bodies (Art. 237, par. 5 CCP).

In addition to phone conversations, these provisions are applicable on other telecommunication instruments, such as facsimile, the internet (modem or LAN, e-mails), or mobile or wireless communication (SMS, MMS, or WAP) (Art. 241 CCP).

Article 218 of the Code of Criminal Procedure regulates the supervision and seizure of correspondence or parcels. In this regard, any public (Polish Post Office) or private institution offering such services, including customs offices, are obliged to hand over correspondence or parcels relevant to an ongoing investigation or court hearing upon order of the public prosecutor or court. In this case, there are no limits regarding persons, objects or time.

Western European and American practice in this regard demonstrates that some of the new instruments – and above all, ‘controlled purchase’ and ‘controlled delivery’ – are among the most effective means of repressing organised trafficking in weapons, nuclear materials and drugs. However, as these measures were introduced into the Polish legal system recently, one cannot expect meaningful results immediately. The current provisions fully meet the required standards in the area of counteracting organised crime, especially when compared with legislation in Western countries. Therefore at this stage, the problem is not so much in a lack of legal provisions as it is in changing the mentality of law enforcement officers and judges to let them fully exploit the new operative instruments provided by the law. Unfortunately, financial shortages are also a problem because they make it very difficult to conduct certain operations which can be very expensive.

⁶ These selected types of crimes are *inter alia*: murder, trafficking in human beings, kidnapping, extortion, robbery and serious robbery, illegal possession of arms, explosive or nuclear materials, counterfeiting money, drug trafficking, organised crime, using violence or intimidation in connection with criminal proceedings.

3.3. Incognito and Immunity Witnesses

In addition to the above provisions, law enforcement officers investigating organised crime cases can now resort to two other new instruments: the incognito witness (*świadek incognito*) and the immunity witness (*świadek koronny*).⁷ Both of these instruments have proven their effectiveness in foreign criminal proceedings, especially to investigate money laundering cases and to dismantle mafia associations (Buczowski and Wojtaszek, 2001: 101; Dannecker, 1995: 299; Pikulski, 1997: 160-1). Polish law-makers hope that these will be effective in their own country as well.

The instrument of incognito witness was added to the Code of Criminal Procedure by the Immunity Witness Act of 25 June 1997.⁸ According to Article 184, par. 1 of the Code of Criminal Procedure, the identity of a witness (in case of organised crime investigations, usually an undercover agent or a law enforcement officer) can be kept secret, whenever there is a real threat to his own or his immediate family members' life, health, freedom or property of substantial value (Hofmański, 1995: 395). The decision has to be taken by the judge during the trial or by the public prosecutor during the investigation before the trial. Regulations completing the Code of Criminal Procedure describe in detail how the witness has to be questioned, what kind of information he may reveal and to whom, the way this kind of witness is interrogated, the scope of information that may be revealed and to whom it may be disclosed during the criminal proceedings.⁹

The Immunity Witness Act of 1997 set a strict temporal limit for the use of undercover investigators and incognito witnesses: 1 September 2001. In 2001,

⁷ Other expressions used to describe these instruments in different legal systems are 'crown witness' or 'organised crime defector'.

⁸ *Official Journal*, 1997, No. 160, item 1083.

⁹ Rozporządzenie Ministra Sprawiedliwości z dnia 12 sierpnia 1998 r. w sprawie sposobu sporządzania, przechowywania i udostępniania protokołów zeznań zawierających wiadomości o świadku, którego dane osobowe podlegają zachowaniu w tajemnicy, a także dopuszczalnego sposobu powoływania się na takie zeznania w orzeczeniach i pismach procesowych [Decree of the Minister of Justice of 12 August 1998 on How to Prepare, Store and Make Accessible the Records of Witnesses' Secret Statements and How to Reveal Such Records in Sentences and Court Orders], *Official Journal*, 1998, No. 111, item 694; and Rozporządzenie Ministra Sprawiedliwości z 12 sierpnia 1998 r. w sprawie warunków technicznych przesłuchania świadka, którego dane osobowe podlegają zachowaniu w tajemnicy [Decree of the Minister of Justice of 12 August 1998 on the Technical Means and Conditions of the Interrogation of a Witness Whose Personal Data Must Remain Secret], *Official Journal*, 1998, No. 111, item 693.

however, the Polish Parliament authorised the resort to this instrument for five more years, up to 1 September 2006 (Hofmański and Pływaczewski, 2001: 689).¹⁰

The Immunity Witness Act of 1997 also introduced the instrument of immunity witness, the validity of which has also been subsequently extended to 1 September 2006. In the police legislation, immunity witnesses are organised crime defectors, who agree to cooperate with the public prosecutor's office, providing comprehensive testimony and incriminating other offenders. In exchange for their testimony they are guaranteed partial or total immunity from prosecution.

Offenders can be given the status of immunity witness when they help prevent or prosecute one of the following serious crimes (Art. 9 Immunity Witness Act):

- (1) Crimes committed by an organised criminal group or by a criminal association aiming to:
 - (a) Assassinating the President of Poland (Art. 134 CC);
 - (b) Committing a simple or aggravated homicide (Art. 148 CC);
 - (c) Provoking a public safety disaster (Art. 163 CC), intentionally creating the risk of such an event (Art. 164 CC) or causing any other serious harm to human life or public health (Art. 165 CC);
 - (d) Illegal manufacturing, processing, and trafficking in explosives and radioactive materials (Art. 171 CC);
 - (e) Disrupting the road, water and air traffic (Art. 173 CC);
 - (f) Trafficking in human beings as well as illegal adoption (Art. 253 CC), including trafficking for the purposes of prostitution into a foreign country (Art. 204 CC);
 - (g) Assaulting a public official with a weapon, a knife, or another dangerous object, or another means to incapacitate the victim (Art. 223 CC);
 - (h) Hostage-taking (Art. 252 CC), illegal manufacturing, possession, and trafficking in weapons (Art. 263 CC), aggravated robbery, robbery, and extortion (Art. 280-282 CC);
 - (i) Receiving stolen money, securities, foreign currency or property derived from organised crime activities as well as money laundering (Art. 299 CC);
 - (j) Counterfeiting money (Art. 310 CC);
- (2) Crimes against property causing substantial damage (Art. 115 CC);
- (3) Crimes against the State Treasury causing substantial damage to the State Treasury;
- (4) Manufacturing, processing, and distribution of controlled substances;

¹⁰ *Official Journal*, 2001, No. 5, item 40.

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- (5) Corruption and veniality of public officials (Art. 228-230, 230a, 231 and 250a CC);
- (6) Participation in an organised group or in an association whose purpose is to commit crimes, including armed groups or associations (Art. 258 CC).

Pursuant to Article 4 of the Immunity Witness Act, immunity cannot be granted to offenders who either attempted to commit or actually committed a murder, who participated in murder committed by others, who solicited another person to commit a crime with the goal of having this person prosecuted (the so-called 'provocateur'), or who organised or directed a criminal activity. Hence, the heads of organised crime groups and associations are excluded from the benefits of the statute. This was introduced to break the circle of silence and the solidarity of the criminal group. Its aim is to catch the bosses rather than the low-ranking members of organised crime.

Immunity can be granted to organised crime defectors only if the following conditions are met:

- (1) The witness hands over to the public prosecutor in charge of the proceedings any information which could possibly contribute to solving the crime and apprehending the remaining perpetrators, or which could contribute to preventing more crimes (the perpetrator should do this no later than the moment in which an indictment is filed against him/her in court);
- (2) The witness obliges himself or herself to make comprehensive and truthful testimony in the course of the criminal proceedings, regarding the remaining participants and the remaining circumstances surrounding the commission of the crime;
- (3) The witness obliges himself or herself to return the financial gain that he or she profited from the crime, and to eventually compensate partially or totally the damage inflicted (Art. 3 Immunity Witness Act); this obligation might be considered as the only 'punishment' that is imposed on the offender by the authorities.

After having secured permission from an appellate public prosecutor, the public prosecutor in charge of the proceedings files a request to have the offender interrogated under witness immunity by the competent court. It is up to the court to decide if this request can be met or not. There is thus a two-stage procedure to grant immunity to organised crime defectors (Waltoś, 1995: 434). Waiting for the court decision, the prosecutor initiates – and then suspends – a separate proceeding for the witness. The suspension lasts until a final verdict is handed down in the proceedings against the remaining perpetrators (Art. 7 Immunity Witness Act). The statute also establishes circumstances under which suspended proceedings

shall be re-activated. This may occur if it turns out that the witness has in fact lied, concealed the truth, or refused to provide testimony in court.

For prospective organised crime defectors, witness immunity is often a viable option only if law enforcement agencies are able to guarantee them their physical safety. This issue is particularly problematic in Poland, not just because such security measures are very expensive but also because witnesses usually hope to receive full protection covering all their family members and this kind of protection cannot in most cases be guaranteed. The Witness Immunity Act, in fact, states that protective measures must be extended to the witness's family members only if there is real danger to their life or health (Gruza, 1998: 81). If this is the case, such persons can qualify for personal protection measures and obtain assistance to change their residence or employment. These issues are dealt with in depth by an order of the Council of Ministers, issued on 30 December 1998 regarding the detailed conditions, extent, and ways of providing and withdrawing assistance to immunity witnesses and other persons (Morris, 1998).

The instrument of immunity witnesses has been variously criticised by legal scholars: among other things, for violating the principle of equality before the law, the rule of law and the principle of legality and having a negative impact on the public's sense of law, which could be a criminogenic factor (Grajewski, 1994; Owczarski, 1993; Waltoś, 1993). Nonetheless, it is a tool of considerable importance in the fight against organised crime, as defectors often provide a decisive contribution to solve complicated organised crime cases (Pływaczewski, 2000a).

The Immunity Witness Act has been partially amended by the bill approved in September 2001 that has extended the validity of its provisions for five additional years. According to the amended version of Article 13, the witness has the right to request to be questioned behind closed doors and the court is now obliged to accept that request, whereas it could previously deny its authorisation. This amendment has a great impact on both the witness's and his or her relatives' sense of security and the scope of cooperation among law enforcement agencies, as well as the conduct of the trial itself. The presence of the public at a trial may not only disturb its course but also put pressure on the witness under immunity, in particular if he or she feels intimidated by the presence of some members or emissaries of a former gang. The media presence and the eventual broadcast of the trial also hinder the police protection of the witness, especially when the latter's pictures are broadcasted on television. If witnesses are questioned behind closed doors, judges and jury members also feel safer, as they are more confident that they will not be victims of retaliation.

The witness's right to be interrogated behind closed doors does not imply a lack of trust in the court, but serves the purpose of preventing any unnecessary prolongation of the trial, decreasing the amount of stress on the witness as well as avoiding any debates on whether it is reasonable to rely on his or her statements as a source of proof.

Article 14, sec. 1 of the Immunity Witness Act, which stipulates the various modalities of witness protection, was also partially amended in 2001. In the new text, the catalogue of these modalities is left open. The first years of the act implementation, in fact, showed that it is sometimes necessary to adopt forms of aid or protection that were not originally foreseen, such as, for example, plastic surgery. To avoid similar shortcomings in the future, the catalogue of forms of protection and aid was thus left open in the new bill.

Likewise, the regulations relating to the financial aid has been amended. The 'old' Article 14, sec. 2 of the Immunity Witness Act clearly stated that financial aid was to be used merely to cover the witness's living expenses. Due to this provision, a jobless immunity witness was, for example, excluded from the social security and public health system. The amended text does not specify how financial aid for witnesses has to be spent and therefore allows for a more flexible management of financial resources (Slate, 1997).

The amendments to Article 14 of the Immunity Witness Act make it possible to issue identity documents containing false data for protected witnesses, thus preventing disclosure of their identity. This increases the witness's sense of security and facilitates his or her protection by the police.

Financial resources to cover expenses related to tasks performed by the police under the bill are planned for in the police budget. According to the estimates of the Ministry of Justice, PLN 3 million (about € 625,000) a year are spent to guarantee the safety of witnesses in prisons or in preventive custody. No data are available on other witness-related expenses.

Currently, there are around 120 people under the witness protection programme. This figure, however, includes both witnesses and their family members; the precise number of immunity witnesses is not known and publicly available. In a major case, the significance of their testimonies has already been judicially proved, as organised crime defectors helped bring down the largest and most powerful organised criminal group in Poland, the so-called 'Mafia Pruszkowska'. It is too early, however, to give a definitive judgment on immunity witnesses' judicial relevance, as most cases involving their testimonies are not yet concluded.

3.4. Seizure Orders

According to Article 293, par. 1 Code of Criminal Procedure, public prosecutors and courts may issue a temporary seizure order against the suspects of organised crime and money laundering offences. This is a very powerful legal measure against organised crime members, as it forbids criminals from using capital earned with illegal activities even at the early stages of an investigation. A temporary seizure order can be issued in cases when it is legally permissible to order fines jointly with imprisonment (e.g. Art. 309 CC), to forfeit the property (Art. 44, 45 and 299, par. 7 CC), or oblige an offender to reconstitute the money or property illegally obtained

(Art. 46 CC). It is also possible to issue a seizure order in cases when someone has committed a crime against property or has inflicted damages (Art. 291, par. 1 and 2 CCP). Although an order can be issued by the judge during the criminal trial, or by the public prosecutor during the investigation, the order may also be executed using civil law procedure. If it is necessary, an administrator is appointed in order to manage the seized properties or enterprises owned by the offender (Art. 292, par. 2 CCP) (Ziarnik-Kotania, 1998: 57).

Pursuant to the Regulations Concerning the Internal Organisation of Public Prosecutors' Offices, the public prosecutor has the duty to gather information about the property (including bank accounts) of the suspect right from the beginning of the investigation.¹¹ The value of the seized property is supposed to equal the value of the fine or compensation that may be eventually imposed on the accused by the court, if he is found guilty. The seizure lasts until the fine, forfeiture, or restitution of property is imposed on the convicted person or, anyhow, until the end of the trial if none of these measures are enforced (Art. 294, par. 1 CCP).

The establishment of the General Inspector for Financial Intelligence, Poland's financial intelligence unit (hereinafter FIU; on its creation see *infra*) has made the work of law enforcement agencies, public prosecutors and courts more efficient, as this body gathers and cross-checks data from financial institutions, public prosecutors' offices, secret services (which provide the names of people involved in organised crime or terrorist activities) and other government bodies. If the FIU discovers that one or several transactions are connected to money laundering activities, it may oblige the competent financial institution to hold up the transaction or freeze the account for a period of time no longer than 48 hours (Art. 18, sec. 1 Anti-Money Laundering Act). At the same time, the General Inspector for Financial Intelligence informs the competent public prosecutor of its suspicions. The public prosecutor has 48 hours to decide whether to confirm or deny the General Inspector's request and has three months to order the seizure of property (Art. 19, sec. 2 Anti-Money Laundering Act).

3.5. Forfeiture versus Confiscation

The most efficient strategy to counteract organised crime is to deprive criminals of the proceeds of crime so as to discourage current and prospective criminals from committing further offences. Profit is, in fact, one of the most important reasons for

¹¹ Rozporządzenie Ministra Sprawiedliwości z 11 kwietnia 1992 r. Regulamin wewnętrznego urzędowania powszechnych jednostek organizacyjnych prokuratury (Decree of the Minister of Justice of 11 April 1992, Regulations Concerning the Internal Organisation of Public Prosecutors' Offices), *Official Journal*, 1992, No. 38, item 168.

setting up organised criminal groups and binds existing criminal groups together. Crime group members obviously attempt to make it very difficult or impossible for police and judicial authorities to track their illicit gains or prove the illegitimate origin of their money and properties, by hiding these from law enforcement agencies and the internal revenue service. The recovery of the proceeds from crime is thus a crucial aspect of the organised crime policies (Jasiński, 1999: 14; Levi and Osofsky, 1995: 303).

Different measures have been proposed and enacted in some countries to deprive criminals of their illicit gains (Buczowski and Wojtaszek, 2001: 111-14; Dannecker, 1995: 300-2; Marek, 1996: 129; Pływaczewski, 1994: 32-41). Some of these measures are very controversial, e.g. the reversal of the burden of proof, confiscation using civil law procedure in which the convicted person has to present evidence that the property he or she possesses originates from a legitimate source. New measures are constantly battling to keep up with the changing world of criminal activities.

The confiscation penalty was long provided for by the Polish legal system, but it was abolished after the fall of the communist regime. Confiscation was listed as an additional penalty by the Polish Criminal Code of 1969 (Rzeplińska, 1997: 33; Sienkiewicz, 1999: 153; Spotowski, 1989: 101). Yet its imposition was mandatory in cases of serious crimes, such as ones committed against the political and economic system in Poland during the previous socialist regime, or against public property of substantial value (Art. 46, par. 1 CC of 1969). The court could also impose this sanction in addition to imprisonment in cases involving crimes committed in order to obtain financial advantages (Art. 46, par. 2 CC of 1969). Confiscation was usually imposed in situations when defendants were found guilty of serious crimes and their wealth had obviously come from illicit activities (Laskowska, 1996: 37). Its aim was to deprive them of illicit gains which were the purpose of their activities.¹²

In socialist times, confiscation was a very severe punishment and was often exploited to fight the political opponents of the regime. In fact, it dispossessed the convicted persons of everything they owned regardless of whether it was acquired legally or illegally. This is the reason behind its abolishment, which became effective on 28 March 1990.¹³ However, the idea of reintroducing this penalty into the Polish criminal law was raised during parliamentary work on the new Criminal Code, especially in connection with organised crime and money laundering (Buczowski

¹² The point was made in the rulings of the Polish Supreme Court: *Orzecznictwo Sądu Najwyższego Izby Karnej i Wojskowej* (usually referred to as OSN KW) 1973, No. 1, item 6 and OSN KW 1977, Nos. 7-8, item 76.

¹³ The abolition was disposed by Article 2, *Ustawy z dnia 23 lutego 1990 r. o zmianie Kodeksu karnego i niektórych innych ustaw* (Act of 23 February 1990 on Changes in the Criminal Code and Other Acts) – *Official Journal*, 1990, No. 14, item 84.

and Wojtaszek, 2001: 191-3; Jasiński, 1997: 20-21). However, confiscation was not included in the new Criminal Code's catalogue of penalties rather it was decided that forfeiture, which focuses on specific assets and not the whole property of the defendants, would be substituted for it.

The issues of confiscation and forfeiture of property were also discussed in the first report on Poland prepared by the European Committee on Crime Problems (1999), Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures in 1999. The experts of the Council of Europe commended the fact that Article 299, par. 7 of the Criminal Code allows forfeiting a wide range of direct and indirect proceeds of crime. Yet, this provision had never been in use. The report suggested that the Polish authorities should reintroduce confiscation into the legal system in addition to the forfeiture of a sum of money that is equivalent to the proceeds of the crime.

Several articles of the Polish Criminal Code regulate the optional or mandatory forfeiture of a large variety of objects and assets:

- (1) Objects directly derived from the commission of a crime, unless they are to be returned to the victim or the legitimate owner; this is a mandatory provision (Art. 44, par. 1 and 5 CC);
- (2) Movables which were used or were prepared to be used in commission of a crime, unless they are to be returned to the victim or the legitimate owner; this is usually an optional provision and is not applicable to immovables (Art. 42, par. 2 and 5 CC); in both these first cases, if it is not possible to order the forfeiture because the perpetrator intentionally hid or destroyed the objects, the court can impose an obligation on him to pay a sum of money that is equivalent to the value of objects and movables to be forfeited (Art. 44, par. 4 CC);
- (3) Objects of which manufacturing, possession, trafficking or transportation is forbidden (Art. 44, par. 6 CC);
- (4) Financial assets and movables that were obtained directly or indirectly from the commission of crime, unless they are to be returned to the victim or the legitimate owner and at the same time it is not possible to impose forfeiture under Article 44, par. 1 or 6 of the Criminal Code (Art. 45, par. 1 CC); this provision is mandatory (Stefański, 2001: 155).

All forfeited assets become property of the State Treasury. There are no asset forfeiture funds in Poland.

The provisions of Article 299, par. 7 of the Criminal Code are *lex specialis* compared to the ones presented above. They are specifically intended to counter money laundering activities. When an offender is found guilty of money laundering (Art. 299, par. 1 or 2 CC), the court imposes the mandatory forfeiture of the objects

directly or indirectly derived from the commission of this crime, even if they are not owned by the offender. The court orders the forfeiture of a sum of money equal to the estimated value of the above objects. The forfeiture is not applicable if the objects are to be returned to the victim or other legitimate subject.

In 2003, a significant and important change was introduced in Polish criminal law. Article 45, par. 2 and 3 of the Criminal Code foresees – for the first time in the history of Polish criminal law – the reverse burden of proof. First of all, if the court sentences an offender who has directly or indirectly gained substantial proceeds from a crime, the court assumes that all of his properties acquired between the commission of the crime and the sentence are proceeds of crime and can thus be forfeited. It is up to the offender to prove the contrary, meaning that these assets have derived from legitimate activities. If it seems likely that the offender has handed over the proceeds of crime to another (legal or natural) person, the court assumes that those assets are still in the possession of that offender and thus can also be forfeited. The concerned legal or natural person has to prove the contrary. The new norms should increase the effectiveness of Polish courts in the fight against organised crime and help deprive criminals of their ill-gotten gains.

The existing forfeiture provisions might become a very important and efficient instrument against organised crime activities, all the more so that their implementation has become easier with the establishment of the FIU. Polish law-makers as well as academia have to decide what would be the right thing to do in the near future: reintroduce confiscation into the legal system (alongside the existing forfeiture) restricted to organised or economic crime cases or make it possible to forfeit a wider range of offenders' assets? The question is still hotly debated. There are no doubts, however, that the existing provisions fulfill Poland's international obligations as far as countering money laundering is concerned (Banach, 1999: 28; Buczkowski and Wojtaszek, 2001: 193; Marek, 2000: 600; Raglewski, 1999: 54; Zygmunt, 2001: 24).

3.6. Anti-Corruption Measures

Both the already recognised and the expected dangers in the area of corruption indicate the need to introduce new, resolute, and systemic solutions in the area of state administration, to make sure that all institutions conduct a cohesive anti-corruption policy, with repressive measures constituting only one of the elements (Pływaczewski, 2002: 161). Measures at the disposal of the police are neither sufficient nor adequate to change this situation. Corruption (especially public corruption) greatly facilitates the functioning and avoidance of punishment by organised criminal groups.

Those needs are addressed by the provisions of the most recent government programme of improving the security of citizens called the Secure Poland Programme,

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dated 28 August 2002. It includes the following statements related to preventing and combating corruption:

- (1) The Minister and Ministry of Internal Affairs will present an anti-corruption strategy which will foster the cooperation of all state institutions in their fight against corruption, and which will create a negative image of the phenomenon of corruption in society by a stronger influence of the media and popularisation of the profession of a public official; and
- (2) The Minister and Ministry of the Internal Affairs and the Minister of Justice will present a proposal to increase punitive measures against public officials involved in corruption and illegal activities.

Independently of these proposals, it is necessary to stress the need to conduct further scientific studies of both organised crime and corruption. Their results may become a basis for real and desired modifications of the legal provisions for both, and the course of organisational/technical activities of the detection process. Moreover, the proposals based on empirical material are very hard to refute in the course of political events, especially in cases where the problems of security are used for some particular purposes. It seems that the creation of such a cohesive system of combating organised crime and corruption based on a scientific analysis of the phenomenon should be the main directive in the actions of state bodies.

4. The Institutional Changes

In addition to the introduction of new legal provisions and the amendment of existing ones, far-reaching institutional reforms were passed in the past ten years in Poland to make the fight against organised crime more effective. The following sub-sections will review the changes in the police, the public prosecutors' offices and the secret services and will reconstruct the creation of the General Inspector for Financial Intelligence, Poland's FIU. These changes were necessary to fight organised crime more competently and to adjust the structure of law enforcement agencies to this type of criminal activity. This kind of specialisation, in fact, makes the management of human resources and of equipment much more efficient. Unfortunately, however, this specialisation process has not yet touched the Polish criminal courts. As much as law enforcement officers focus on organised crime, the judges who try organised crime cases should have specific knowledge on this subject. They should be specifically trained and take part in workshops or conferences regarding not only the criminal or criminological aspects of this phenomenon, but also the economic and financial ones.

4.1. State Police

Since 1994 several task forces specialising in combating certain types of crimes (e.g. economic crimes or drug-related crimes) have been set up within the State Police structure (Kołecki, 1992: 29). It took five years to realise that the liquidation of economic crime units was a mistake. The Bureau for Combating Organised Crime within the Main Police Headquarters was established on 1 January 1994. At the beginning of its operation, this bureau had a centralised organisational structure equipped with the latest technological advances and employing the best police officers. The decision to set up the bureau was the most important as well as the most groundbreaking measure aimed at increasing the effectiveness of law enforcement in the field of organised crime control. After two years, the control over these task forces was decentralised and the local police chiefs of every province (Polish voivodships) took charge of them.

The Inspectorate of the State Police Chief has been likewise established, also effective since 1 January 1994. It has field offices throughout the country. This is a so-called 'police force within the police' or 'internal affairs' whose goal is to react to any indications of police corruption, police officers' off-duty contacts with the criminal world.

In February 1997, the second task force was set up. This was the Bureau for Combating Drug-Related Crimes. Its goal was to improve the efficiency of the fight against the illegal manufacturing and distribution of drugs.

In December 1998, both task forces (the Bureau for Combating Organised Crime and the Bureau for Combating Drug-Related Crimes) were merged within the Main Police Headquarters once again. There were several reasons for this decision. Both had to a large extent the same subject of work (organised criminal groups which were selling drugs and laundering their ill-gotten gains). Both task forces used the same special legal measures aimed to gain information and evidence such as controlled purchases and deliveries. There were cases where each of them had its secret agents in the same organised criminal group without the one force being aware of the other's agents. Finally, both forces conducted international operations and shared a common database (Laskowska, 1999: 10).¹⁴

Keeping all that in mind, the head of the State Police decided to set up the Central Investigative Bureau (CIB) in February 2000. It is a section of the Main Police Headquarters but has its field offices in each region. As this agency is independent on the local police offices, it is mobile and very effective. This new agency is composed of police officers from the former Bureau for Combating Organised

¹⁴ See the data presented by the Press Bureau of the Police Headquarters, published at <<http://www.kgp.gov.pl/matpol/cbs.htm>>.

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Crime and the Bureau for Combating Drug-Related Crimes. The CIB currently has around 2,000 police officers scattered over the country.

Three major fields of interest are focused on by the CIB. The first field concerns the very existence of organised crime and some offences that are instrumental to it (e.g. trafficking in arms and explosives, extortion and racketeering). The second involves drug-related crimes (manufacturing, smuggling and distribution of drugs). The third field of interest covers economic crimes such as money laundering, fraud, and corruption. The CIB is also responsible for the exchange of information and interaction with foreign law enforcement agencies, as well as with Interpol (Pływaczewski and Świerczewski, 1996: 7).

In July 1998, the Polish Prime Minister set up a Special Task Force for the Fight against Organised Crime. This group was placed within the structure of the Ministry of Internal Affairs. Its goals are, among other things, to undertake analyses and assessments, and formulate expert opinions and conclusions regarding the dangers posed by organised crime, to coordinate government agencies' efforts and to devise measures to counteract that threat.

4.2. Public Prosecutor Offices

Together with the police, the public prosecutors' offices are also responsible for the fight against organised crime at the early stages of the criminal proceedings. This task has had a strong impact on the organisational structure of the Public Prosecution Service throughout Poland.

The Minister of Justice is at the same time the Attorney General who heads prosecutors' offices all over the country. Consequently, the National Prosecutor's Office is located within the Ministry of Justice.

At the beginning of June 1994, the Department for Coordinating the Prosecution in Organised Crime Cases was set up within the Ministry of Justice. It had a very wide range of interest, as it had to deal with all criminal proceedings involving the most serious violent crimes, the manufacturing and illegal distribution of drugs, counterfeiting of money, bank fraud, the manipulation of the privatisation process, smuggling and customs fraud, and corruption of state officials.

In 1996, this unit was transformed into the Bureau against Organised Crime.¹⁵ A primary task of this body is to coordinate the measures taken by public prosecutors' offices and those taken by other government bodies in connection with organised crime cases. Through the use of data collected by police and lower public prosecutors' offices, the bureau additionally conducts or supervises such criminal

¹⁵ Par. 2, sec. 2, pt. 1c of the Statute of the Ministry of Justice, which was published as a decree of the Prime Minister in *Official Journal*, 2000, No. 12, item 138.

proceedings throughout the country. This unit is also in charge of working out patterns of criminal proceedings by singling out typical characteristics of the structure and composition of criminal groups and the mechanism of crime commission that are valid for all the proceedings belonging to a specific category. In short, the main duties of the Bureau against Organised Crime are as follows:

- (1) Collecting and analysing information and other evidence related to organised crime activities, as well as making forecasts on the trends of this phenomenon – how it is going to change and what Polish law enforcement agencies have to expect;
- (2) Coordinating the efforts of government bodies in the fight against organised crime;
- (3) Cooperating with appropriate law enforcement agencies and courts from abroad, international organisations and other institutions (including their liaisons officers and field offices) in order to prepare the strategies for counteracting organised crime (Krull, 2000a: 29; Krull, 2000b: 81);
- (4) Setting up and administrating the national computer database regarding organised crime information;
- (5) Creating 'best practice' guidelines for public prosecutors concerning the conduction of organised crime proceedings;
- (6) Exercising control over the inferior public prosecutors' offices and supervising the organised crime proceedings they conduct in cooperation with the General Public Prosecutor;
- (7) Coordinating the criminal proceedings managed by the appellate or district public prosecutors before the cases reach the court.¹⁶

This dissemination of tasks is reflected in the structure of the Bureau. There are three teams of public prosecutors working on internal coordination, international cooperation and analysis.

Within the the appellate public prosecutors' offices, Departments against Organised Crime can be established. They have been created in five major Polish cities so far – Gdańsk, Katowice, Lublin, Warsaw and Wrocław. The departments' duties are, among other things, to conduct their own investigations or supervising investigations carried out by other government bodies (law enforcement agencies

¹⁶ Par. 32 of the Regulations of the Ministry of Justice, which were are published as an instruction of the Minister of Justice in the *Journal of the Ministry of Justice*, 1998, No. 2, item 8.

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such as State Police or the Internal Security Agency), and present these cases in court,¹⁷ especially related to:

- The illegal manufacturing and trafficking of narcotic substances;
- Forgery and trafficking of national and foreign currencies;
- Smuggling of high value goods and home appliances;
- Illegal movement of funds including tax offences and money laundering;
- Selling stolen goods;
- Illegal trading of arms and nuclear materials,
- Terrorist activities; and
- Corruption of public officials.

Similar departments have been established at the level of district public prosecutors' offices, which are inferior to the appellate ones, initially in ten major Polish cities. These departments have proved to be specially effective where the relevant district public prosecutor's office had already conducted various investigations related to organised crime.

4.3. Internal Security Agency

The reorganisation of the Polish secret services took place in 2002. The Internal Security Agency and the Intelligence Agency have replaced the State Security Office and other units. It is especially the first agency that deals with, *inter alia*, organised crime offences.

According to Article 5, sec. 1 of the Internal Security Agency and Intelligence Agency Act of 2002, their main tasks are, *inter alia*, investigating and preventing such crimes as espionage, terrorist activities, economic and other serious crimes that pose a threat to national security, corruption of public officials, as well as illegal manufacturing, sale and possession of fire arms, ammunitions and explosives materials, and narcotic substances at an international level.

Some of the duties of the State Police (especially the CIB) and secret services thus overlap. This fact has made the cooperation between these law enforcement agencies more difficult. Although there are some regulations, such as concerning mutual assistance and the accomplishment of joint investigations, tensions and

¹⁷ This regulation has been in force since the enactment of a decree of the Minister of Justice of 17 July 2001 on the Internal Organisation of Public Prosecutors' Offices (see specifically par. 6, sec. 1 and par. 8, sec. 1 of the decree).

competition have characterised the relationship between the police and the secret services (Rau, 2002: 77).

It has to be stressed that the government authorities recognised the great threat to the country posed by the activities of organised criminal groups with international connections. They threaten the economic as well as democratic development of Poland. For this reason, the secret services are also called to counter organised crime, despite their main task being the protection of the country's independence and territorial integrity. Moreover, their special surveillance techniques and special operations (e.g. sting operations and undercover agents) are used in order to achieve this task.

4.4. Financial Intelligence Unit

An anti-money laundering regime is a pillar of any sound organised crime control policy. Preventing and counteracting the legalisation of ill-gotten gains is a very effective tool, which strikes organised criminal groups very hard. The establishment of the General Inspector for Financial Intelligence, Poland's FIU was an essential step towards creating a well-organised anti-money laundering regime.

The idea of setting up a FIU first emerged at a conference in April 1993 (Pływaczewski, 1993: 475). At that moment, this kind of agency would have represented a viable solution for many problems regarding the cooperation between the private and the public sector. On the one hand, private financial institutions looked for an independent and reliable focal point in government agencies, with which they could trustfully share their clients' confidential data and which could provide them with accurate and detailed information and training regarding new methods of money laundering. On the other hand, law enforcement agencies wanted to have access to data regarding financial transactions and to obtain the cooperation of financial institutions.

Government authorities started working towards the establishment of an FIU two years after the 1993 conference. A task group was set up with the aim to prepare the State Agency for the Financial Information Bill. The group encompassed the representatives of different state bodies, such as the Ministry of Justice, the Ministry of Finance and the General Inspector for Banking Supervision of the National Bank of Poland (Jasiński, 1998: 217-22; Wójcik, 2001: 419-22; Wyrzykowska, 2000: 83). In order to select the best solution, the group collected information about existing FIUs all over the world. The group came to the conclusion that the United States anti-money laundering regime was the most efficient and coherent, although the Australian Transaction Reports and Analysis Centre's computer system was the most productive. However, despite the task group's great amount of work, no agency was set up.

In 1999, a new bill was introduced to the Legislative Council of the Polish government. The bill's main aim was to counteract the introduction of criminal or

black money into the legitimate financial market and the national economy. As such, it is a very important measure not only to fight organised crime, but also tax evasion and other financial or economic crimes. This statute – usually called the Anti-Money Laundering Act – was published in the *Official Journal* on 22 December 2000.¹⁸ And after two weeks, the General Inspector for Financial Intelligence was set up. Pursuant to Article 3, sec. 2 of the Anti-Money Laundering Act the Prime Minister appoints and dismisses the General Inspector according to the motion brought by the head of the Ministry of Finance. The General Inspector is an under-secretary in the Ministry of Finance and performs his or her duties with the support of a special department within this ministry called the Department for Financial Information (Art. 3, sec. 4 Anti-Money Laundering Act).

The creation of the General Inspector for Financial Intelligence came too late to affect Poland's first assessment by the Council of Europe's Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures. In the committee's first report on Poland, which was published in February 2000, the non-existence of a FIU was the main reason for the country's negative evaluation.¹⁹

The Polish legal system has adopted the administrative model of the FIU, which is the most efficient anti-money laundering regime in the world (Jasiński, 2000: 41-58; Savona, 1999: 196). In such a model, the FIU – in Poland the General Inspector – acts as a middleman for both the private and the public sector. It receives financial intelligence from the relevant institutions as well as criminal intelligence from law enforcement agencies and analyses it.²⁰ If the unit concludes that money laundering activities are going on, it informs the public prosecutor and hands over the relevant data. The General Inspector is a government agency independent on the police, the public prosecutor's office and courts and is not empowered to start criminal investigations or prepare indictments.

The choice of the administrative model is strictly connected with the main goals of the Anti-Money Laundering Act. As stated above, this statute aims to recover funds deriving not only from criminal sources (such as organised crime), but also from hidden sources – meaning untaxed incomes, grey market economy, and so on.

¹⁸ *Official Journal*, 2000, No. 116, item 1216.

¹⁹ European Committee on Crime Problems, Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV), *First Evaluation Report on Poland. Summary*, PC-R-EY (99) 28 Summ.

²⁰ There is a catalogue of obliged institutions in Article 2, pt. 1 of the Anti-Money Laundering Act. It encompasses not only financial institutions like banks, brokerage houses, insurance companies, trust funds, credit unions, exchange houses, leasing and factoring companies, electronic money institutions but also gambling houses (casinos), the Polish Post Office, notaries, auction houses, antique shops, bullion dealers, commission shops, real estate agents and loan offices.

In the Act there are many provisions regulating the cooperation and the exchange of information between the General Inspector and the internal revenue service or tax collectors. It is clear that fighting organised crime is not the exclusive, nor even the most important goal of the Act. Another equally important goal is to fight economic crimes and tax evasion. It is the relevance of these other goals that has determined the position of the General Inspector for Financial Information within the Ministry of Finance. Since 2002, its duty is also to prevent and to fight the financing of terrorist groups.

The position of the Polish FIU within the Finance Ministry has been subject to criticism (Pływaczewski, 1998: 148-9; Sieńczyło-Chlabicz and Filipkowski, 2001: 156; Wyrzykowska, 2000: 84). Indeed, if its exclusive task were the recovery of organised crime proceeds, it would have probably been better to set up this unit outside any ministry or law enforcement agency as an independent central national government body. A new positioning of the FIU would obtain more confidence from private financial institutions that are obliged to counter money laundering schemes. The number of reported transactions would probably be higher, especially the suspicious ones. Right now, many financial institutions are of the opinion that financial intelligence is used for tax collection reasons only or to gain information about clients' bank accounts.

The General Inspector's tasks fall into two main groups: to analyse reported transactions and to prevent money laundering schemes (Art. 4, sec. 1 Anti-Money Laundering Act). There are some specific assignments such as:

- (1) Analysing the transactions reported to the General Inspector in order to detect money laundering schemes;
- (2) Initiating the hold-up transaction procedure or the account blocking procedure if the transaction or account is believed to be suspicious – i.e. connected with the offence of money laundering, as defined in Article 299 of the Criminal Code – and simultaneously, informing the appropriate public prosecutor's office about that transaction;
- (3) Providing obliged institutions with information about persons and organisations believed to be connected with terrorist activities;
- (4) Providing public prosecutors' offices with documents and other evidence regarding the fact that the crime of money laundering has been committed;
- (5) Organising other initiatives in the field of counteracting money laundering, such as training for the employees of relevant institutions concerning the obligations listed by the Anti-Money Laundering Act, preparing *ad hoc* guidelines for detecting suspicious transactions;

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- (6) supervising the enforcement of the Anti-Money Laundering Act among the institutions in question;
- (7) cooperating with foreign FIUs in the exchange of relevant data.

The functioning of the Polish FIU is at the early stage of development. However, there is a dramatic change in the way the money laundering phenomenon is perceived. The existence of the General Inspector has raised awareness of the issue among many institutions of the financial market other than banks. From the beginning of 2002 until 30 September 2002, for example, 441 reports about suspicious transactions were made to the General Inspector; 260 reports came from obligated institutions (half of them came from banks), 148 came from other government bodies (such as the Internal Revenue Service, Customs and local authorities), 29 from law enforcement agencies and 4 came from other (private sector) institutions and individuals.²¹ In the same period of time, the Polish FIU held up 18 transactions totalling PLN 22,670,000 (around € 4.7 million). The General Inspector has informed public prosecutors' offices of 94 cases of alleged money laundering activities since its establishment in 2001. Almost half of the inquiries conducted by the General Inspector are being sent to public prosecutors in order to launch criminal investigations regarding money laundering.

On 5 June 2002, the General Inspector for Financial Information became a member of the Egmont Group. This is an elite group of FIUs from all over the world. This declaration of accession demonstrates that the Polish unit meets certain international standards regarding the anti-money laundering regimes and is ready for international cooperation. This makes fighting organised crime and economic crimes even more efficient. Moreover, Poland has signed several bilateral agreements regulating the exchange of financial intelligence with its foreign counterparts.²² Poland also cooperates with many international organisations such as the Financial Action Task Force, the Council of Europe and the Baltic Sea Task Force on Organised Crime.

²¹ According to a press conference given by the General Inspector for Financial Information on 30 October 2002 in Warsaw. Press releases are available on the official web site of the Ministry of Finance: <<http://www.mf.gov.pl>>.

²² The Polish unit has signed bilateral agreements with its counterparts in Andorra, Australia, Belgium, Bulgaria, the Czech Republic, Estonia, Finland, Germany, Lithuania, Ireland, Israel, Italy, Latvia, Liechtenstein, Portugal, Romania, the Russian Federation, Slovakia, Slovenia, Spain, South Korea, Ukraine, the United Kingdom and the United States.

5. Final Comments

The fight against organised crime has a short history in Poland, appearing on the political and legal agenda for the first time in the early 1990s. Despite the numerous and far-reaching legal and institutional reforms that were passed since then, this fight has yet to become effective. The reasons for the current low effectiveness are numerous (Pływaczewski, 2000b; 103). On the one hand, there are inadequacies in the legal framework (concerning not merely criminal law but also tax, customs, currency, commercial and administrative law). On the other hand, the structure and cooperation among law enforcement and justice agencies need further development. The government agencies have to learn how to use new instruments more efficiently. They also must learn how not to interfere but how to cooperate with each other and with foreign counterparts.

Much has been formally achieved in terms of international cooperation, both at the legislative and institutional level. Poland has ratified several regional and international conventions, which have brought it closer to worldwide standards of cooperation (Pływaczewski, 2000b: 101-2). The international agreements ratified by Poland include among others: the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1998 (the so-called Vienna Convention) and the United Nations Convention against Transnational Organised Crime of 2000 (the so-called Palermo Convention, which was first proposed by Poland).

In addition, government agencies represent Poland in many international organisations which provide them with information, training and equipment. Bearing in mind the Polish accession to the European Union, international cooperation is set to be one of the most important issues in the near future. The opening of borders and the free movement of people, capital, and services may be considered opportunities for both the Polish and European economies. However, it may also be a challenge for law enforcement agencies and the justice system. The key issues are extradition, mutual legal assistance in criminal matters, exchange of financial and criminal intelligence, mutual recognition of the court rulings and joint investigations.

The authorities have a difficult task trying to bring together the security expectations of the public opinion, the effective fight against organised crime, and human rights standards. However, a new trend can be observed. The authorities noticed that there is a need to find a proper balance between securing the rights of the suspect or accused and combating serious crimes. At the beginning of the 1990s, they put too much pressure on human rights issues and this was inappropriate for the reality of social life in Poland. Changes appeared in the mid-1990s, with new measures being introduced in the Police Acts and the Criminal Code. Currently, there is a need to find proper solutions for efficient and accurate criminal proceedings. Bringing criminals to justice is a high priority.

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There is also a need for more efforts to be made in multiple directions (Rau, 2002: 357-61). In the legislative field, the authorities need to create a consistent legal system (not only within criminal, but also tax, financial, commercial and civil law) that reflects the contemporary situation and needs as far as the phenomenon of organised crime is concerned. More attention should be given by the law-makers to the results of criminological research, and there should be increased cooperation between the two in the projects conducted by government agencies. The knowledge deriving from foreign experiences is also very important, although it is not always applicable to Poland, of course.

As far as the structural and organisational aspect is concerned, more attention needs to be given by the authorities to the following issues. First, the coordination of efforts made by different law enforcement agencies and other government bodies should be enhanced. The issue of exchanging data (intelligence) is also of crucial importance and has been underestimated. Both of these issues have to be considered at the national and international level. Secondly, law enforcement agencies and courts have to be properly equipped. This is strictly connected to the key issue of financing the law enforcement and justice system in Poland. These agencies should have firm financial grounds regardless of which political party rules the country. They need a long-term budget, not dependant on the annual state budget.

The third aspect of counteracting organised crime is human resources. Some special principles of recruitment are necessary. Law enforcement agencies need people with proper educational backgrounds, university level education, and strong moral fibre. Only the best possible people should be employed. But that is not the end of the process. These people need further education strictly connected to their specialisation. They require motivation as well as financial rewards. At the same time law enforcement agencies must carry out regular or continual verification of employed officers.

Polish authorities have developed a legal and institutional framework to counteract organised crime, which is largely based on the experience of other countries as well as on the initiatives of legal scholars. Unfortunately, it is too early to discuss the practical effects of these new instruments or state bodies. Yet the main issue here is the assembling of these elements into a suitable and coherent legal system. The phenomenon of organised crime needs more study, just as the strategy requires further development.

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Organised Crime Policies in Switzerland: Opening the Way for a New Type of Criminal Legislation

Karl-Ludwig Kunz and Elias Hofstetter

1. Introduction

This chapter discusses the most prominent changes caused by the struggle against organised crime in the administration of criminal justice and in substantive and procedural law in Switzerland. To avoid overlapping with the other Swiss contribution as much as possible, the chapter by Claudio Besozzi on the organised crime problem itself in Part II, we will restrict ourselves to a more legal approach.

In the first section we will demonstrate how strongly the fight against organised crime has influenced the administration of (criminal) justice, especially as far as the centralisation of justice administration, information gathering and data processing, as well as the internationalisation of police and judicial investigations are concerned. The section also provides a short history of organised crime legislation by singling out the most important acts in this field. In the second section we try to focus on the specific character of organised crime policies in Switzerland and attempt to assess their effectiveness. The legal provisions against organised crime are dogmatically scrutinised in the third section. The various problems of implementation, interpretation and human rights issues are shown. We focus exclusively on Swiss law but the problems discussed are symptomatic of any serious organised crime legislation.

The third section as well reviews the most important para-legal codes and agreements. The fourth section analyses the initiatives of international police and judicial cooperation in which the Swiss Confederation participates. The recent multiplication of these initiatives in the field of organised crime control is seen as a consequence of the internationalisation of police and judicial investigations. Some concluding remarks with a forecast of future trends follow.

2. Institutional Changes

2.1. The Original Framework of the Criminal Justice System

The Swiss Confederation is a federation of originally independent state entities (cantons). The powers of the Confederation (federal administration) are enumer-

ated exhaustively by the (recently revised) Federal Constitution of 18 April 1999 (FC).

In the field of criminal justice administration, the Confederation originally only had the power to enact substantive criminal law (Swiss Criminal Code (SCC) of 21 December 1937¹), whereas the organisation and practice of courts were regulated by the cantons (Art. 123 FC, Art. 64*bis* former FC). Therefore, 29 procedural criminal codes (still) exist in Switzerland, one for each of the 26 cantons and three on the federal level (the Federal Criminal Procedure Act (FCP) of 15 June 1934;² the Federal Administrative Criminal Law Act [incl. the relevant procedure] of 22 March 1974³ for offences against federal administrative laws and lastly the Military Criminal Procedure Act of 23 March 1979⁴).⁵ Consequently, the authority to investigate and open judicial proceedings was in principle attached to the cantons (procedural sovereignty: Art. 123,3 FC, Art. 64*bis* former FC, and Art. 343 SCC).

Exceptionally, federal jurisdiction was given if the interests of the Swiss Confederation itself were affected (cf. the enumeration in Art. 340 SCC) or in the case of activities which are particularly perilous for national welfare or national public interest (e.g. Art. 40,1 War Equipment Act;⁶ Art. 36e,1 Nuclear Energy Act;⁷ Art. 98 Civil Aviation Act⁸) (Bänziger and Leimgruber, 2001: 26-7; Vest 1993: 642-3). Yet in practice, many of these federal proceedings have been delegated to cantonal authorities for investigation and judgment ('delegated jurisdiction', amended Art. 18,1 and 2 FCP; former Art. 18 FCP; former Art. 344 No. 1 SCC). As a result, the vast majority of proceedings were – and still are – administrated by the cantons.

¹ SR 311.0 (Schweizerisches Strafgesetzbuch). For federal acts see: <<http://www.admin.ch>> (click on Systematische Rechtssammlung) or directly <<http://www.admin.ch/ch/d/sr/sr.html>>.

² SR 312.0 (Bundesgesetz über die Bundesstrafrechtspflege).

³ SR 313.0 (Bundesgesetz über das Verwaltungsstrafrecht).

⁴ SR 322.1 (Militärstrafprozess).

⁵ Actually, one more procedural law exists: the Federal Act on Traffic Fines (SR 741.03) for minor offences against the Federal Traffic Code.

⁶ SR 514.51 (Bundesgesetz vom 13. Dezember 1996 über das Kriegsmaterial).

⁷ SR 732.0 (Bundesgesetz vom 23. Dezember 1959 über die friedliche Verwendung der Atomenergie).

⁸ SR 748.0 (Bundesgesetz vom 21. Dezember 1948 über die Luftfahrt).

2.2. The Succession of ‘Packages against Organised Crime’

In the last two decades, several legislative actions modified the traditional division into federal and cantonal jurisdiction. Many of these changes were justified by the legislator on the basis of an urgent need for more efficiency in the struggle against organised crime. In the governmental reports on the different bills it was basically proposed that legal federalism hindered trans-cantonal and transnational investigations and that (many of) the charged cantons lacked the financial and human resources, as well as the know-how, to combat organised crime (international money laundering affairs, international business crime, and so on) (in general about the relationship between federalism and the struggle against border-crossing crime: Piquérez, 1992).

The focus of the following remarks is on institutional changes. As reallocations in the federalist power division seem of particular interest within the Swiss federal context, special consideration is given to these. Other amendments are mentioned in passing only so as to provide the reader with a short outline of the history of organised crime legislation.

On 1 January 1983 the Federal Act on International Mutual Assistance in Criminal Matters took effect (hereinafter International Mutual Assistance Act, or IMACM).⁹ Earlier, only some separate aspects of international mutual assistance were regulated by federal law, apart of course from matters governed by international treaty. Cooperation in matters of minor assistance, i.e. support of foreign criminal proceedings by, for instance, seizure of documents, was rather left to cantonal law (Popp, 2001: 6). Obviously, this fragmentation could prove difficult for domestic and, most of all, foreign authorities. By enactment of the International Mutual Assistance Act the federal legislator intended to simplify international legal cooperation. In the end, the act should – *inter alia* – provide the prosecuting authorities with an efficient tool in an intensified struggle against transnational crime (Popp, 2001: 6-7). As far as the International Mutual Assistance Act is concerned the cantonal rules on mutual assistance in criminal matters are derogated (Art. 12 IMACM).¹⁰

On 1 August 1990 the offence of money laundering (Art. 305*bis* SCC) and the related offence of lacking diligence in financial transactions (Art. 305*ter* SCC) came into force (the so-called ‘first package against organised crime’¹¹). Because

⁹ SR 351.1 (Bundesgesetz über internationale Rechtshilfe in Strafsachen vom 20. März 1981).

¹⁰ The internal organisation of the execution of foreign requests is left to cantonal regulation (cf. Art. 19,3 and Art. 20 et seq. of the Bern Code of Criminal Procedure).

¹¹ BBl (*Federal Gazette, Bundesblatt*) 1989, II, 1061.

the substantive criminal law was already within the domain of the Confederation, no institutional change resulted from it.

The obligations and basics of domestic mutual assistance are stated in the Federal Constitution and the Swiss Criminal Code (Art. 352 et seq. SCC). Still, the cantons felt the need to bring *à jour* and simplify the inter-cantonal assistance practice. Therefore, on 5 November 1992 their governments signed the Concordat¹² on Inter-Cantonal Mutual Assistance and Cooperation in Criminal Matters¹³ (hereinafter ‘Conc.’). The intention was to increase efficiency in the combat against crime (Art. 1 Conc.).

In August 1994, the so-called ‘second package against organised crime’ implemented the offence of being a member of a criminal organisation (Art. 260ter SCC).¹⁴ Moreover, it introduced the legal right of financiers who were otherwise bound by professional secrecy (bankers, lawyers etc.) to notify the competent authorities in cases of suspicious financial transactions. Finally, it deeply modified the existing rules of confiscation (Art. 58-60 SCC).

The Federal Act regarding the Central Criminal Police Bureaus of the Confederation¹⁵ (hereinafter the Central Police Bureaus Act, or CPBA) took effect in March 1995. Article 1,1 of the Central Police Bureaus Act states that the Confederation establishes central authorities in order to combat organised and international crime. The act declares that these bureaus cooperate with domestic and foreign authorities (Art. 1,2). Still their tasks are mainly of an informative, coordinative (international and inter-cantonal investigations, liaison officers) and reporting nature (Art. 2 CPBA). In summary, one can say that at least some of the central police offices function chiefly as service centres.¹⁶ Their ‘clients’ are police and judicial authorities, yet the bureaus always had investigational powers as well (Art. 2 lit. f CPBA).

Two central offices with different subject matter jurisdiction are mentioned by name in the Central Police Bureaus Act: the Central Bureau against Organised Crime (Art. 7 et seq. CPBA¹⁷) and the Central Bureau against Illegal Narcotics Trafficking

¹² ‘Inter-cantonal treaty’ (Art. 48 FC).

¹³ SR 351.71 (Konkordat über die Rechtshilfe und die interkantonale Zusammenarbeit in Strafsachen).

¹⁴ BBl 1993, III, 277. Some authors call the directive of 18 December 1991 of the Federal Banking Commission the ‘second package’ and consequently the above-mentioned legislation the ‘third package’ (e.g. Schwob, 2000).

¹⁵ SR 360 (Bundesgesetz über kriminalpolizeiliche Zentralstellen des Bundes).

¹⁶ BBl 1994, I, 1149 with regard to the Central Bureau against Organised Crime.

¹⁷ Articles 7, 8 and 9 of the Central Police Bureaus Act were partly amended by the later ‘efficiency bill’ (considered *infra* in this chapter) (cf. Bänziger and Leimgruber, 2001: 124-8). This report considers only the currently effective version of the law.

(Art. 9 et seq. CPBA, and Art. 29 Federal Act on Narcotic Substances¹⁸). Further specialised central offices were established primarily because of new federal tasks under an international treaty or federal law (cf. Art. 6 CPBA). Most prominent is probably the Money Laundering Reporting Office Switzerland (MROS).¹⁹ Other central police authorities were, for example, the Central Bureau against Counterfeiting²⁰, the Central Bureau against White-Slave Traffic²¹, the Central Bureau against Obscene Publications²² and the Central Bureau against Illegal Trade in War Equipment²³ as well as the National Central Bureau INTERPOL.²⁴ However, since the 2000/1 reorganisation of the Federal Office of Police (within the Federal Department of Justice and Police²⁵) most of the formerly separate bureaus are operated by a single body, the Federal Criminal Police (cf. Bänziger and Leimgruber, 2001: 124-125).²⁶

The first (general provisions) and fourth chapter (handling of personal data) of the Central Police Bureaus Act are applicable in a general sense to all central

¹⁸ SR 812.121 (Bundesgesetz vom 3. Oktober 1951 über die Betäubungsmittel und die psychotropen Stoffe).

¹⁹ After the (European) Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990 (ETS 141, SR 0.311.53), and the Federal Anti-Money Laundering Act (see *infra*).

²⁰ After the International (Geneva) Convention of 20 April 1929 regarding the Repression of Counterfeiting (SR 0.311.51).

²¹ After the International Agreement of 18 May 1904 for the Suppression of the White-Slave Traffic (1 LNTS 83, SR 0.311.31).

²² After the (International) Agreement of 4 May 1910 for the Suppression of the Circulation of Obscene Publications (11 LNTS 438, SR 0.311.41).

²³ After Article 30 Federal War Equipment Act (Bundesgesetz vom 13. Dezember 1996 über das Kriegsmaterial, SR 514.51).

²⁴ In accordance with Articles 31-33 of the constitutional section of the Constitution and General Regulations of the International Criminal Police Organisation of 13 June 1956, and Article 35 *iter* of the Swiss Criminal Code.

²⁵ Articles 9,2 lit. d, and 10,2 Federal Ordinance on the Organisation of the Federal Department of Justice and Police (Organisationsverordnung vom 17. November 1999 für das Eidg. Justiz- und Polizeidepartement, SR 172.213.1) charges the Federal Office for Police Matters with the tasks of the different central bureaus.

²⁶ Verordnung vom 30. November 2001 über die Wahrnehmung kriminalpolizeilicher Aufgaben im Bundesamt für Polizei (SR 360.1), Article 1. The Central Bureau against Organised Crime had already been transferred to the former section (Crime Analysis) in 1998.

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offices (Art. 6,1 CPBA). The organisational details of some central bureaus are further regulated in separate federal ordinances.²⁷

Earlier, each bureau used to run its own electronic database in the field of investigated crimes (Natterer, 2001: 746, 771-4).²⁸ Today, the Federal Office of Police runs – with one exception (RIPOL) – a single electronic database.²⁹

As far as the powers of the Central Bureau against Organised Crime (today with the Federal Office of Police/Federal Criminal Police) are concerned, important regulations are laid down in the second section of the Central Police Bureaus Act. It charges the bureau with the task of identifying criminal organisations and combating their crimes (Art. 7,1 CPBA). Furthermore, the bureau is – since the introduction of the efficiency legislation – entrusted with the same task with regard to ‘sophisticated’ business crimes which fall under jurisdiction of the Federal General Attorney (see *infra*) (Art. 7,2 CPBA). Additionally, the bureau may be charged with evidence collection in the course of international legal assistance in criminal matters (Art. 7,3 CPBA).

In addition, the Central Police Bureaus Act orders all federal and cantonal prosecuting and investigative authorities to report information which points to the existence of a criminal organisation (Art. 260*ter* SCC) or business crime within federal jurisdiction (Art. 8,1). In turn, the bureau sends the cantons all relevant new information. In summary, the Central Police Bureaus Act promotes a valuable exchange of information. This exchange is considered as very significant for the implementation of the below-mentioned ‘efficiency bill’ (Bänziger and Leimgruber, 2001: 128). On a federal level the described development caused a considerable growth of personnel. The number of bureau/federal police officials rose from seven

²⁷ E.g. Verordnung vom 16. März 1998 über die Meldestelle für Geldwäscherei (SR 955.23), Verordnung vom 1. Dezember 1986 über das Nationale Zentralbüro INTERPOL Schweiz (SR 351.21).

²⁸ The conditions of data collection and exchange were specified in several federal ordinances, one for each central bureau database respectively (‘Verordnung vom 19. Juni 1995 über das automatisierte Fahndungssystem RIPOL (RIPOL-Verordnung)’ (SR 172.213.61); Verordnung vom 26. Juni 1996 über das Datenverarbeitungssystem zur Bekämpfung des illegalen Drogenhandels (DOSIS-Verordnung) (AS [Federal Register] 1996, 2287; AS 1998, 72; AS 1998, 2337 Anhang 3 Ziff. 1); Verordnung vom 19. November 1997 über das Datenverarbeitungssystem zur Bekämpfung des organisierten Verbrechens (ISOK-Verordnung) (AS 1998, 43; AS 1998, 2337 Anh. 3 Ziff. 2).

²⁹ Verordnung vom 30. November 2001 über das Informationssystem der Bundeskriminalpolizei (JANUS-Verordnung), SR 360.2. This amended version substituted the same-named Ordinance of 17 May 2000 (AS 2000, 1369) which in turn substituted the several previous ordinances on the separate databases (Art. 29 Ordinance of 17 May 2000).

in 1988 to more than 100 at the end of 1999.³⁰ Later on even more personnel were hired (see *infra* ‘efficiency bill’).

The amendments to the International Mutual Assistance Act which took effect in February 1997 simplified the mutual assistance procedure.³¹ The rationale was to reduce the length of the individual assistance proceedings by limiting the appeal possibilities.³² Since then only the final decision on the request is appealable. Moreover, the circle of possible appellants was reduced to persons personally and directly affected (e.g. only the bank customer, not the bank itself, can appeal the lifting of banking secrecy with regard to a particular account). Finally, under specific conditions the amended act authorises the Swiss authorities to provide information to foreign criminal authorities ‘*sua sponte*’ (Art. 67a IMACM, cf. Wyss 1997: 41 et seq.). However, this authorisation seems to be used only occasionally.³³

On 1 April 1998, the ‘third package of measures against organised crime’, namely the Federal Anti-Money Laundering Act (AMLA), followed (see 4.1.2.a, *infra*).³⁴ Institutionally this statute led to the establishment of several new authorities. First of all the statute promotes the principle of self-control. All financial intermediaries need either to adhere to a supervisory self-control organisation or to be licensed and supervised directly by the Money Laundering Control Authority (Art. 2 and Art. 13 AMLA).³⁵ The self-control bodies are themselves supervised by the public Money Laundering Control Authority (Art. 24 et seq. AMLA). Thus, not only several self-control organisations were created, but a public Money Laundering Control Authority (MLCA) was established within the Federal Finance Administration.³⁶ Additionally, a Money Laundering Reporting Office Switzerland (MROS) was

³⁰ Cf. <<http://www.ejpd.admin.ch/d/dossiers/isi/polizei.htm>> (visited in October 2002).

³¹ Federal Act of 4 October 1996, No. I. (BBl 1995, III, 1 et seq.).

³² See the bill’s commentary in BBl 1995, III, 1 ff.

³³ Personal statement of the Attorney General of the Canton of Geneva, B. Bertossa, in his lecture on ‘*Entraide et Blanchiment*’ of 18 November 2002 before the Jurist Association of Bern.

³⁴ SR 955.0 (Bundesgesetz vom 10. Oktober 1997 zur Bekämpfung der Geldwäscherei im Finanzsektor).

³⁵ Apart from the financial intermediaries which were already supervised by a special supervisory body (e.g. banks and insurance companies). With regard to these institutions the special supervisory body operates as money laundering control authority (Art. 12 AMLA).

³⁶ E.g. <http://www.swisslawyers.com/ge/05_SRO/SRO> (Self Regulation Organisation of the Swiss Bar Association for attorneys acting as financial intermediaries). Of an estimated 5,000 attorneys, about 1,400 – working as financial intermediaries – joined this SRO (Lutz, 2002: 13, n. 37).

established within the Federal Office of Police (Art. 23,1 AMLA). Contrary to the other anti-money laundering institutions it is charged with a repressive task. It examines notifications by the other institutions about suspicious transactions (Art. 23,2 AMLA). If its verifications substantiate the original money laundering suspicions the MROS reports to the competent prosecuting authority (Art. 23,4 AMLA). Thus, the MROS with its expertise functions as some sort of filter between the Money Laundering Control Authority and the self-control bodies on one side, and the criminal justice system (in the narrow sense) on the other side.

The Federal Act regarding Measures to Safeguard Internal Security (ISA) became effective in July 1998.³⁷ The statute aims to safeguard democracy, the rule of law and the fundamental liberties of the Constitution (Art. 1 ISA). It focuses on the prevention of terrorism, espionage, violent extremism, illegal trade in arms or radioactive substances as well as the illegal transfer of technology (Art. 2 ISA). The Federal Assembly (united Chambers of Parliament) rejected the proposal of the Federal Council (government) to entrust the internal intelligence services with the task of combating organised crime. The assembly was not only troubled by the thought of overlapping investigations, but doubted that organised crime should be fought with the methods of the domestic intelligence agencies at all (Natterer, 2001: 750). At least the state protection authorities are obliged to report to the competent prosecuting authorities if they gain knowledge on organised crime activities while carrying out their internal intelligence tasks (Art. 2,3 ISA).

In March 2000 the Swiss people consented to the so-called 'reform of justice' programme. It established a new federal competence in the area of criminal procedure and will lead to a unified code of criminal procedure.³⁸ One amongst several motives for the planned unification of criminal procedure law was the idea of an increase in the fight against organised crime (Begleitbericht VE StPO: 3-6). It is envisaged that the already drafted code will become effective within the next few years. Moreover, the reform programme foresees the creation of a Federal Criminal Court of First Instance. Once established, it will, *inter alia*, judge the offences which fall under the new federal jurisdiction according to the efficiency legislation (see *infra*).³⁹

Meanwhile, in May 2000 the amended corruption law entered into force (see 4.1.1.c). It concerned substantive law only, no reorganisation of the criminal justice system was necessary.

³⁷ SR 120 (Bundesgesetz vom 21. März 1997 über Massnahmen zur Wahrung der inneren Sicherheit).

³⁸ Rev. Article 123 FC, not yet in force.

³⁹ Article 29 lit. a Federal Criminal Tribunal Bill (Bundesgesetz vom 4. Oktober 2002 über das Bundesstrafgericht).

Lastly, the federal ‘efficiency bill’ took effect on 1 January 2002.⁴⁰ It established additional federal jurisdiction in the field of international business crime and organised crime. Once more the intention behind this centralisation was to advance a more efficient and coordinated struggle against transnational, complex delinquency. Also it was suggested again by the Federal Council that the lack of cantonal resources, difficulties of inter-cantonal coordination and the high mobility of delinquents slowed down the proceedings too frequently.⁴¹

The amended Criminal Code now states that the offences of membership of a criminal organisation (Art. 260*ter* SCC), money laundering (Art. 305*bis* SCC), lack of due diligence in connection with financial transactions (Art. 305*ter* SCC), bribery/corruption (Art. 322*ter* – *septies* SCC) as well as all crimes carried out by a criminal organisation, fall under mandatory federal jurisdiction *if* the punishable acts are performed (a) for a substantial part abroad, or (b) in several cantons with no obvious focus in one of the cantons concerned (Art. 340*bis*,1 SCC).⁴² The condition for performance of a crime by a criminal organisation is not interpreted as requiring a previous court decision or a previous Art. 260*ter* investigation with positive results.

The amended Criminal Code authorises the Office of the Federal General Attorney to open an enquiry even in cases of offences against private assets (Art. 137 et seq. SCC) or in cases of document counterfeiting (Art. 251 et seq. SCC), *if* the conditions of subparagraph one (offences abroad or in several cantons) are realised and if, *additionally*, no cantonal authority is prosecuting or if the cantonal prosecution demands a transfer of the investigation to the Federal Attorney General (Art. 340*bis*,2 SCC).

Until the establishment of a Federal Criminal Court of First Instance most federal cases will be transferred after the investigation stage to cantonal courts for judgment (Art. 18*bis*,1 FCP; Bänziger and Leimgruber, 2001: 90-2). The presently competent criminal section within the Federal Supreme Court is staffed with judges from other sections. Accordingly, these judges are not able to handle more than a few cases annually.

To accomplish the new tasks the federal criminal authorities want to raise the number of their officials from 125 (in 2000) to 550 in the year 2004. It was estimated that the reorganisation will cost CHF 80 million in the year 2004 (Bänziger and

⁴⁰ BBl 1998, II, 1529 et seq. (Botschaft des Bundesrates über die Änderung des Schweizerischen Strafgesetzbuches, der Bundesstrafrechtspflege und des Verwaltungsstrafgesetzes [Massnahmen zur Verbesserung der Effizienz und der Rechtsstaatlichkeit in der Strafverfolgung] vom 20. Januar 1998).

⁴¹ BBl 1998, II, 1531 et seq.

⁴² In the sense of Article 9,1 of the Swiss Criminal Code.

Leimgruber, 2001: 46, quoting the concept study of the Federal Attorney General). The 'efficiency bill' thus clearly effects the most considerable institutional change in the struggle against organised crime to date.

All in all, the struggle against organised crime influenced the federalist criminal justice system heavily. To sum up, the system was modified in three respects. First, the fight against organised crime caused a centralisation on a federal level or at least (ongoing) unification of cantonal law and practice. Yet, the idea of an increase in efficiency by centralisation was, in the eyes of critics, too often regarded as a miracle cure and too hastily implemented, lacking, at least in an earlier phase, a convincing overall concept for the struggle against organised crime (Schweizer, 1997: 39 et seq.). Because of the constitutional limitation of the budget deficit, among other reasons, it is not even certain today that the originally planned extension of federal criminal authorities can be fully financed. Furthermore, some aspects of centralisation are constitutionally problematic. Secondly, information collection and data processing were modernised and rationalised (installation and regulation of electronic databases). Hand in hand with these developments went the internationalisation of police and judicial work (e.g. rationalised international mutual assistance) (Roulet, 1997: 196-9). Finally it may be added that the speedy enactment of new provisions at least mirrors the seriousness attributed to the organised crime problem by the Swiss legislator.⁴³

3. Character and Effectiveness of Organised Crime Policies

Considered jointly, the so-called 'packages of measures against organised crime' reflect the most important elements of the official policy against organised crime. Considered individually they reflect where weaknesses in the legal system with regard to organised crime were diagnosed previously.

It may be fair to say that the government has, all in all, adhered to its original strategy until now. It reflects the fact that Switzerland is a major financial market and not particularly exposed to street crime by criminal organisations (cf. Besozzi's article on organised crime in Switzerland in Part II). Thus, Switzerland is obviously most threatened by money laundering risks – the second level of organised crime activity. Hence, the financial crimes of criminal organisations demand particular attention within the Swiss context. As criminal assets have always thought to be the Achilles' heel of criminal organisations, Swiss policy-makers have always

⁴³ For a statistical evaluation of the legislative initiatives, the reader is referred to the statistics in the contribution of Claudio Besozzi on organised crime in Switzerland in Part II.

considered a recommendable strategy to give major attention to the prevention of money laundering and the confiscation of illegal assets.

Another matter is whether the implemented policies were effective or indeed needed at all. Most money laundering cases decided by courts were not at all typical for the phenomenon but concerned mostly small-scale affairs (cf. the examples under 4.1.1.a, *infra*). The criminal organisation offence also was praised as a corner stone in the overall strategy against organised crime. Yet, from August 1994 when the offence became effective, until the end of November 2001 only seven convictions have resulted from it (for more statistical details cf. Besozzi's article in Part II of this publication).⁴⁴ Rather a disappointing yield for a supposedly crucial section. It comes as no surprise that critics argue that organised crime was at least partly a theme in vogue, besides being a serious issue also good for a lot of self-serving publications and demonstrations of expertise (Estermann, 2002; Oberholzer, 2002). Eventually the topic was replaced by the struggle against corruption, which in turn was replaced after 11 September 2001 by the terrorism theme (Oberholzer, 2002).

4. The New Legal Instruments

4.1. Substantive Law

*4.1.1. Swiss Criminal Code*⁴⁵

a) The first package of measures against organised crime

The so-called 'first package' of the money laundering legislation consisted of two parts – the money laundering offence (Art. 305*bis* SCC) and lack of due diligence in connection with financial transactions (Art. 305*ter* SCC). It had two objectives.

First, by preventing the accumulation of working capital and its conversion into legal capital the financial power of criminal organisations should be cut down. At the same time, financial transactions of dubious character should be controlled in order to follow the paper trail back to the source. Addressees of the first objective are members of criminal organisations whose job is to secure the 'business' (working) capital. Addressees of the second objective are those who cover assets of criminal origin so as to prevent confiscations. Yet, the simultaneous pursuit of two objectives (Pieth, 1995: 231) requires the establishment of priorities.

⁴⁴ Information of the Federal Office of Statistics, after Zanolini (2002: 22).

⁴⁵ The considerations under 4.1.1.a and 4.1.1.b are mainly after a modified translation of Kunz (1996).

The bill has resolved this conflict of objectives by explicitly naming the second objective only. Thereby, it tacitly considered that the pursuit of the second objective will also serve to achieve the first objective. Accordingly, the money laundering offences are phrased as crimes against the administration of justice (obstruction of justice). Anyone who does transactions with money of illegal provenance is punishable, which makes confiscation seem impossible (Art. 305*bis* SCC). Furthermore, every professional custodian who neglects to identify the beneficial owner of the assets is punishable (Art. 305*ter*,1 SCC). Thus, in the act itself there is no visible connection between money laundering and criminal organisations. Moreover, the criminalised acts go beyond the criminological notion of money laundering. Simple acts such as hiding, burying or burning proceeds of crime are also punishable. These acts lack the (criminological) requirement of covering illegal money using the financial market, i.e. investment and reinvestment of the gain (BGE/Swiss Federal Supreme Court decision 119 IV 60, 63; Stratenwerth, 2000: Art. 55, No. 31).

Therefore, some money 'transactions' (hiding etc.) are punishable even if they have nothing in common with the criminological definition of money laundering or have nothing to do with organised crime at all. The way the money laundering offence is phrased is, in consequence, not adequate to the objective the legislator had in mind. Because of the usual difficulties in money laundering investigations, atypical cases such as hiding, burning of money, etc. were mostly tried in courts, at least until now (see e.g. BGE 119 IV 60).

The lack of focus in the money laundering provisions on illegal capital requires a restriction on the kind of capital which should be covered by it (i.e. Art. 315*bis* SCC). Only capital from criminal provenance is covered by the money laundering provisions.⁴⁶ As far as money is concerned, the criminal origin of money which is transferred from abroad can rarely be proven (Stratenwerth, 2000: Art. 55, No. 27). The same is true for profits which result from multiple legal and illegal activities. Yet, criminal organisations often engage in both legal and illegal activities. From this angle, the money laundering provisions are in practice not suitable for the confiscation of the business capital of criminal organisations.

Furthermore, Article 315*bis* of the Swiss Criminal Code leaves open what specific acts are regarded as possibly complicating the confiscation, the discovery and the inquiry of origin of assets. Therefore, it is unclear if even standard situations are covered by it – such as a banker accepting money of possibly criminal origin. It is true that such an acceptance would strengthen the financial power of a criminal organisation. However, the placement of formerly non-invested illegal money (no paper trail) in a bank account would make a confiscation easier. This is also suggested in the governmental report on the draft bill.⁴⁷ In fact, it must be

⁴⁶ In the sense of Article 9,1 of the Swiss Criminal Code.

⁴⁷ BBl 1989, II, 1061 et seq., especially 1083.

concluded that a banker is punishable when he refuses illegal money and the bearer therefore leaves it in a less accessible place (Stratenwerth, 1992: 108). This result can only be averted by resorting to the excuse of conflict of duties (Arzt, 1993: 1193) which is highly contested in detail.

The banker's uncertainty as to whether or not to continue the business relation left a golden opportunity for the notification of the competent authorities. Earlier this was not a solution because the notification was a punishable breach of banking secrecy (Art. 47 Federal Act on Banks and Savings Banks⁴⁸) and a punishable violation of professional secrecy with regard to other custodians (Art. 321 SCC). The legal justification for such a violation of banking/professional confidentiality was finally adopted with Article 305^{ter},2 of the Swiss Criminal Code (and later the Anti-Money Laundering Act). This sub-section was inserted into the Criminal Code by the second package against organised crime.

b) The second package of measures against organised crime

The second package consisted of the 'criminal organisation' offence (Art. 260^{ter} SCC), confiscation (Art. 58-60 SCC) and right of notification of financiers (Art. 305^{ter} SCC).

The 'criminal organisation' offence (Art. 260^{ter} SCC) makes it punishable to be part ('member') of a criminal organisation or to support such an organisation. No further action or particular criminal activity is needed to make oneself liable to prosecution. Contrary to German law (Art. 129, 129a German Criminal Code), the Swiss legislator attempted to name the characteristics of a criminal organisation in a pheno-typical way. Typically one will see an organisation built for an indefinite time, which commits specific crimes in a planned manner. Considering the usual difficulties of proof, the minimal number of members is only three persons. Thus, even members of one cell can be convicted. Secrecy of structure and secrecy of participants are typical criminological characteristics that were inserted into the phrasing of Article 260^{ter} of the Swiss Criminal Code. Normally this would be a superfluous requirement (Arzt, 1993: 1189 et seq.), yet criminal organisations that do not keep their structure secret are excluded. The result that in the end only secrecy differentiates a criminal organisation from a normal gang (Pieth, 1995: 235) has to be tolerated.

The criminal action consists of internal participation ('insider') or of external support ('outsider') of the organisation. The outside support needs – contrary to the accessory before the fact (Art. 25 SCC) – no link to a particular crime. It is already enough to support the criminal aims of the organisation in general. In consequence even victims (e.g. persons who pay protection money) could be liable to prosecution.

⁴⁸ SR 952.0 (Bundesgesetz vom 8. November 1934 über die Banken und Sparkassen).

According to the intention of the legislator, a financier who intentionally assists in transferring the working capital of a criminal organisation is also punishable as a supporter, notwithstanding the actual provenance of the money.⁴⁹ Thus, a weak point of the money laundering offence was mended. Under Article 260ter of the Swiss Criminal Code – contrary to the money laundering offence (Art. 305bis,1 SCC) – the illegal or legal origin of the money is not decisive.

Confiscation usually requires proof that the proceeds were derived from a specific crime (Art. 59 No. 1,1 SCC). As far as criminal organisations are concerned this proof is barely possible. The Swiss forfeiture rules establish no reduced level of proof as it exists in the German Criminal Code (§ 73d,1). Instead Swiss law draws a daring link between confiscation and criminal organisations. Under its rules all assets which are at the disposal of a criminal organisation are to be confiscated (Art. 59 No. 3 para. 1 SCC). No proof and, moreover, no suspicion of a specific crime or link with a particular crime is – in contrast to the money laundering offence – necessary. Only the fact that the assets are at the disposal of a criminal organisation is relevant. This change of reference point is revolutionary for a criminal law tradition which is in general based on a retrospective view and, accordingly, usually concentrates on past actions.

Unlike the money laundering regulations, the defence strategy under this confiscation rule is explicitly aimed at the accumulation of ‘business’ capital by criminal organisations (Pieth, 1995: 238). Even assets which were legally gained are therefore affected by Article 59 of the Swiss Criminal Code. This article introduces a formerly unknown type of sanction consisting only in confiscation. Compared to the money laundering provision, the confiscation rules are more far-reaching. Thus, no longer the money laundering offence but confiscation was considered as the most important weapon in the struggle against organised crime (Pieth, 1995: 238).

‘At the disposal of a criminal organisation’ is not a legal but a factual criterion. Such a factual criterion was necessary to include front companies and figure-head relations. The defining and evidence problems have to be accepted as unavoidable. On the other hand, it is difficult to bear that other people’s assets are seizable as long as these assets are in fact at the (legal or illegal) disposal of a criminal organisation. The governmental report wrongly indicated that assets are only at the disposal of a criminal organisation if the latter is the beneficial owner (Pieth, 1995: 238).⁵⁰ However, the control of assets is determined only by the fact that the criminal organisation can at all times dispose of the assets according to its

⁴⁹ BBI 1993, III, 277 et seq., especially 301.

⁵⁰ BBI 1993, III, 318.

wishes.⁵¹ Because of this, for instance the remaining assets of a restaurant proprietor who paid protection money could be confiscated (Arzt, 1993: 1192, fn. 30).

The forfeiture of money of an individual who took part in or supported a criminal organisation is envisaged by Article 59 No. 3 para. 1 of the Swiss Criminal Code. Furthermore, the prerequisites of a confiscation are substantially lowered because of the reversed burden of proof. The law assumes that a criminal organisation can dispose of the assets of members or supporters (Art. 59 No. 3 para. 2). When introduced, this legal presumption was unique in Europe (Pieth, 1995: 237). Thereby, individuals who are punishable under Article 260ter of the Swiss Criminal Code are threatened with losing their financial security and are burdened with a lifelong obligation to reveal their assets. The same applies for individuals who contributed to a criminal organisation by paying protection money. Assets of persons who contributed to criminal organisations can be confiscated regardless of whether they paid voluntarily or were forced to do so. One might say that, in the end, the victims of the vampire are put on an equal footing with the vampire itself.

Remarkably the individual does not only have to prove that his assets are of legal origin, but has to prove as well that his assets are in fact not (or no longer) at the disposal of 'his' former criminal organisation. Yet how can the legal presumption of Article 59 No. 3 para. 2 ever be invalidated by a (former) member or supporter of such an organisation? In practice such proof is nearly impossible. An individual who was convicted of being a supporter or even a member of a criminal organisation remains without rights regarding their assets for the rest of their life (cf. Arzt, 1993: 1192; different view Schmid, 1998: Article 59 Nos. 190 and 200-7). It is obvious that the constitutionality of this presumption is questionable. Fundamental principles like proportionality, right of ownership and presumption of honesty are affected. Only a restrictive interpretation of the presumption helps in solving this difficulty.

Before 1998, when the notification *obligation* of the Anti-Money Laundering Act became effective, the right of notification for the financier under the Criminal Code (Art. 305ter,2) served as golden bridge between banking/professional secrecy and money laundering regulations. However, this trick proved to be only a partial success. Even remote suspicions, based on few indications, are sufficient for a notification (Cassani, 1994: 70 et seq.).⁵² On the other hand it could be qualified as an indication of money laundering intent if no notification is made despite grounds for money laundering suspicions (Stratenwerth, 2000: Art. 55, No. 59). Furthermore, it remains unclear if the right of notification justifies only the breach

⁵¹ BBI 1993, III, 318.

⁵² BBI 1993, III, 236.

of professional secrecy or also the acceptance (or refusal) of dirty money which is in itself punishable (Stratenwerth, 1992: 115).

c) New provisions against corruption (Art. 322*ter* – 322*octies* SCC)

In May 2000 the amended corruption law entered into force. It resulted from a few publicised corruption cases and a fear of rising corruption in times of globalisation, and constantly tougher business competition. This fear was in retrospect not supported by the available statistical data (Jositsch, 2000: 1243-4). The legally protected good remained the same as before the amendment: it is the trust of the general public and the state in the faithful discharge of office by its public servants. Even though the drafting work started earlier (1995), a later objective of the amendment was the implementation of the 1997 (OECD) Convention on Combating Bribery of Foreign Public Officials in International Transactions guidelines.⁵³

Previously, only bribery of a Swiss civil or military servant, be it active (offering a bribe, Art. 322*ter* [revised] SCC) or passive (accepting a bribe, Art. 322*quater* [revised] SCC), always with regard to a more or less concrete future service or decision (*do ut des*) was criminal. The revision now widened the reach of corruption law in two perspectives.

First, in addition to bribery, the mere act of offering undue advantages to domestic officials without expecting any service in return other than the discharge of their office ('fostering of a favourable atmosphere') was criminalised (Art. 322*quinqies* SCC). Consequently, acceptance of an undue advantage by a Swiss public servant 'only' within a fostering of atmosphere context was penalised also (Art. 322*sexies* SCC). Undue advantages in the sense of this rule are offered and accepted with regard to the general discharge of the offence, i.e. no actual exchange of services or concrete hope for future exchanges is needed. Such a concretisation would constitute a 'normal' bribery anyway. Fearing that the limits of criminalisation were stretched too far in everyday life, the legislator explicitly stated that the offer and acceptance of socially common advantages are allowed (Art. 322*octies* SCC). An example of such a customary advantage is the 'Christmas money gift' for the postman (Jositsch, 2000: 1249). It is submitted that judicial interpretation of the 'fostering offences' would anyway have resulted in the same limitation even without a written justification rule. On the other hand, all possible clarification in such a sensible area seems recommendable (Jositsch, 2000: 1250).

Secondly, in accordance with the mentioned 1997 OECD Convention, bribery of a foreign public servant was criminalised (Art. 322*septies* SCC). As Swiss criminal law recognises the territoriality principle (Art. 3 SCC) and the nationality principle (Art. 6 SCC: active personality principle), Switzerland has jurisdiction with regard

⁵³ Cf. <<http://www.oecd.org>> (go to 'Theme: corruption').

to the bribery of a foreign public servant if either the bribery of the foreign official was committed in Switzerland or the offender is a Swiss national. In accordance with the 1997 OECD Convention the prosecution of the foreign bribed official is left to the concerned foreign state.

Yet, with regard to this new offence the definition of the legally protected good, i.e. the rationale of this offence, was disputed. Critics argued that the faith of a foreign nation in their own public servants could not possibly be of concern to Swiss law. According to this opinion only the protection of the international economic order and the free market could serve as the rationale of the new offence. Others argued that the criminalisation of the bribery of a foreign official was an act of international solidarity under the 1997 OECD Convention. In turn the Swiss public could expect protection of its faith in its own public administration by numerous foreign criminal laws. In the end this mutuality should also lead to an enhanced protection of the Swiss public from domestic corrupt officials (cf. Jositsch, 2000: 1245; critical regarding the amendment: Arzt, 2001).

4.1.2. Administrative Law and Paralegal Instruments

a) Federal Anti-Money Laundering Act (AMLA)⁵⁴

Regarding its legal character this Act, the ‘third package of measures against organised crime’, is an administrative law statute.⁵⁵ As such it has a preventive task and aims to prevent the infiltration of the public economy by dirty capital. In its own words the Act governs, firstly, the struggle against actual money laundering in the sense of Article 305*bis* of the Swiss Criminal Code. Secondly, it calls for due diligence in connection with financial transactions as a preventive measure against money laundering (Art. 1 AMLA).

The Anti-Money Laundering Act affects financial intermediaries such as (savings) banks, investment funds, insurance companies, stock-brokers, casinos and other persons who professionally accept, deposit, or help transferring or investing other people’s assets (Art. 2 AMLA).⁵⁶ As far as the required due diligence is concerned the financial intermediary has to identify the contracting party by a probative document (Art. 3 AMLA). Moreover, the financial intermediary needs to insist on a written statement on the material ownership of the assets if he doubts that

⁵⁴ Cf. 1.2.

⁵⁵ After the federal report, the statute amounts to a police law which sets general standards (BBl 1996, 1115).

⁵⁶ Cf. Verordnung der Kontrollstelle für die Bekämpfung der Geldwäscherei vom 20. August 2002 über die berufsmässige Ausübung der Finanzintermediation im Nicht-bankensektor (SR 955.20).

the contracting party is the beneficial owner, if the contracting party is a fictitious company or, finally, if a cash transaction of substantial volume is executed.⁵⁷ In case of collective accounts the contractual partner is required to submit a list of all beneficiaries of the account (Art. 4 AMLA). The identifying procedure has to be repeated if doubts regarding the identity of the contractual partner or beneficial owner arise during the business relationship (Art. 5 AMLA). A special inquiry duty for the financial intermediary arises in cases of extraordinary transactions or business relationships or when grounds for the suspicion that the assets result from a crime or belong to a criminal organisation exist (Art. 6 AMLA). The financial intermediary has to keep records on all transactions for at least ten years (Art. 7 AMLA). Finally, the financial intermediaries are obliged to take all internal measures necessary to prevent money laundering, have to provide adequate instruction for their staff and need to take care of appropriate internal controls (Art. 8 AMLA).

The financial intermediary is obliged to report to the Money Laundering Reporting Office if he knows or has reasonable grounds to suspect that the assets concerned are linked to money laundering activities, are the proceeds of a crime or belong to a criminal organisation. Thereby, the notification right under the Criminal Code (supra 1.1.2) was overlaid by a notification duty under administrative law. Exempt from the reporting obligation are attorneys-at-law and notary publics, insofar as their concrete services are covered by professional secrecy (Art. 9 AMLA). This condition means that they need to fulfil their specific professional task in the case at hand in order to be exempt from the notification duty.

Obviously asset management *per se* is not part of the traditional role of an attorney or notary public but rather an auxiliary function. Consequently it is not protected by professional secrecy. On the other hand, 'administration' of client's assets or information thereof as a by-product of another representation (e.g. defence in a criminal case) is covered by the attorney-client privilege (for more detail cf. Lutz and Reber, 1998). Assets which are connected to a notification have to be blocked immediately by the financial intermediary. The assets remain frozen until the money laundering authority issues an order, but the assets only remain blocked for five days after the notification at the most (Art. 10 AMLA). No criminal (breach of professional secrecy) or civil liability (breach of contract) arises from the notification or the blocking of assets if the financial intermediary acted with appropriate diligence (Art. 11).

The above-mentioned obligations of financial intermediaries are – apart from the ordinary criminal justice authorities – enforced by several newly created preventive and repressive authorities (cf. 1.2.).

⁵⁷ From CHF 25,000 on after the 1977/98 Due Diligence Agreement of the Swiss Bankers Association.

b) Swiss Banks' Due Diligence Agreement and Federal Banking Commission directive/ordinance against money laundering

Since 1977 a so-called 'Swiss Banks' Code of Conduct with regard to the exercise of due diligence' between the Swiss Bankers Association and signatory banks exists ('Due Diligence Agreement').⁵⁸ It was last amended in 1998 and requires the banks to identify their contractual partner and the beneficial owner of the managed assets. Breaches of the agreement are punished by a contract penalty up to CHF 10 million (Art. 11 Due Diligence Agreement). The latest updating and strengthening revision (6th ed.) took effect on 1 July 2003. In 1987 the Federal Banking Commission (FBC) declared that the Agreement stipulated the minimum standard of impeccable business conduct as required by the Banks and Savings Banks Act (Wiegand and Wichtermann, 2000: 33).

Furthermore, the FBC in 1991 issued a directive against money laundering which was last amended in 1998.⁵⁹ Contrary to the Banks' Due Diligence Agreement this directive is binding not only for banks but all financial institutions supervised by the Federal Banking Commission (investment funds, stock market brokers). The directive is based on a general rule in the Banks and Savings Banks Act which requires the bank to guarantee impeccable business conduct and adequate organisation (Art. 3,2 lit. c and a, originally only meant to protect the creditors) and on similar provisions in the Federal Act on Stock Markets and Securities Trade⁶⁰ and the Federal Act on Investment Funds.⁶¹ The directive refers explicitly to all standard-setting international regulations in the domain of money laundering prevention. In summary, it obliges the financial institutions to investigate the background of the transaction if there is any sign of illegality or immorality.

Under the fundamental principle of 'unity of the legal order' the directive and the Due Diligence Agreement are of obvious importance for the interpretation of criminal law. The governmental report on the 'first package' even referred to the Due Diligence Agreement as an accurate definition of due diligence also required by criminal law.⁶² The Federal Supreme Court, however, decided that the Agreement is only an aid to the interpretation of the law. Accordingly, living up to the standards of the Code does not by itself guarantee correct behaviour under the

⁵⁸ <<http://www.swissbanking.org/home/allgemein.htm>>.

⁵⁹ Richtlinien zur Bekämpfung und Verhinderung der Geldwäscherei (EBK-RS 98/1), <<http://www.ebk.admin.ch/e/regulier/index.htm>>.

⁶⁰ SR 954.1 (Bundesgesetz vom 24. März 1995 über die Börsen und den Effektenhandel), Article 10,2 lit. a and d.

⁶¹ SR 951.31, Article 9,4 and 9,5.

⁶² BBl 1989, III, 1090.

money laundering offences legislation (BGE 125 IV 139, 145; critical: Wiegand and Wichtermann, 2000). Thus, it is now unclear what exact standard of due diligence the law requires – at least the court decision itself contains no helpful guidelines in this respect. The situation is rather confusing and regrettable with regard to the *nullum crimen sine lege stricta* maxim (Lutz, 2002).

Still, the fact remains that the regulation under the Criminal Code runs almost dry in practice, at least in the banking sector, because of the closely-woven and rigidly enforced FBC directive and the Banks' Due Diligence Agreement (Kunz 1996: 34-5).

Recently, the Federal Banking Commission issued an ordinance which concretises the due diligence requirements of the Anti-Money Laundering Act for the institutions supervised by the FBC (cf. Art. 16 AMLA). It updated and intensified the measures against money laundering and became effective on 1 July 2003.⁶³

Last but not least, some major and thus internationally acting Swiss banks form part of the 'Wolfsberg Group of Banks' which adhere to the 'Wolfsberg AML principles', a set of global anti-money laundering guidelines for international private banks (October 2000, 1st revision May 2002).⁶⁴

4.2. Procedural Law

First of all it has to be noted that Swiss law does not follow a dual system in procedural law with regard to our topic. Criminal proceedings follow the same procedural laws whether judging ordinary offences or offences with an organised crime background.⁶⁵

4.2.1. Crown Witnesses

The procedural institution of 'crown witness' is unknown to current Swiss *criminal* law. The law only permits a reduction in penalty for a member of a criminal organisation who seriously tries to prevent further criminal activities of his (former) organisation (Art. 260ter No. 2; 'pseudo crown witness', Forster, 1998: 13, 25-6). Yet, the institution of 'crown witness' was taken into consideration

⁶³ Verordnung der Eidg. Bankenkommission zur Verhinderung der Geldwäscherei vom 18. Dezember 2002 (not yet published in the SR).

⁶⁴ <<http://www.wolfsberg-principles.com>>. For the Federal Act respecting Central Criminal Police Bureaus, Federal Act respecting Measures to Safeguard the Inner Security (ISA), see the relevant remarks under 1.2.

⁶⁵ For the Efficiency Bill and New Federal Jurisdictions and the Draft Code of Criminal Procedure, see 2.2.

when drafting the Draft Code of Criminal Procedure. Eventually, it was submitted that the institution violates several principles of the criminal process under the civil law tradition, namely, that the accused cannot be witness in his own affair, that it is contrary to the constitutional equality principle (advantages for one accused over the others), and that the credibility of the crown witness had to be seriously doubted. With no urgent need, the implementation of a crown witness regulation was thus rejected. However, cooperation and confession trigger the summary trial proceeding under the Draft Code of Criminal Procedure (Begleitbericht VE StPO: 29 f.).

4.2.2. Protection of (Ordinary) Witnesses and Undercover Agents

In legal literature a rising need for witness protection measures is expected (Natterer, 2001: 795). Until the Draft Code of Criminal Procedure and the Federal Bill on Undercover Investigations take effect, the subject matter remains governed by cantonal law.⁶⁶ The Bern Criminal Procedure Code for instance first regulates the protection of undercover agents during the trial (Art. 124). Such agents are allowed to give their personal details only to the judges, without it being noted in the files. The police command has to certify in writing that the undercover operation was formally authorised. In addition, undercover agents can be hidden from view and/or their voice can be altered.

The last paragraph of Article 124 adds that similar measures are possible with other menaced witnesses if their life or their corporal integrity or the life or bodily integrity of someone close is threatened. Furthermore, police protection outside the courtroom is available if necessary (Natterer, 2001: 796). Thus, in practice individual solutions already seem regularly feasible today (Heine, 1992: 75; critical regarding the current legal regulation of undercover operations: Gnägi, 1991). Yet, there are no witness relocation programmes. It is commonly held that the small territory of Switzerland and, in addition, the four distinct language regions make a successful relocation unfeasible.

As a modern piece of legislation, the Draft Code of Criminal Procedure provides for appropriate protective measures (Art. 160 et seq.).

4.2.3. Undercover Investigations

The new Federal Statute on Undercover Investigations was approved by Parliament in June 2003 and will enter into force in January 2005. The use of undercover agents will be limited to specified, graver offences. Not surprisingly the relevant enumeration in Article 4 lists – among other offences – all relevant organised

⁶⁶ Bundesgesetz über die verdeckte Ermittlung (BBl 1998, 4317 et seq.); entered into force 1 January 2003.

crime offences. Respecting the general principle of proportionality, other means of investigation have to be inadequate. The assignment of an undercover agent needs to be approved by a judge (Art. 7, Art. 17). In court proceedings the identity of the undercover agent can be kept secret with regard to the parties and the public (different protective measures as altering of voice, separation of witness, and so on, see Art. 23). However, the court has to be informed about the true identity. The parties are allowed to question the (anonymous) witness. Of course, especially the defense will often struggle with the problem how to conduct a serious and close examination of an anonymous witness. However, in a Civil Law trial this disadvantage may be somewhat compensated by the rather active role of the judges (e.g. examination of witnesses, summon of further witnesses and experts) who know the true identity of the undercover agent. As under present cantonal law (*infra*) the undercover officer is not allowed to instigate offences. They are merely allowed to take part in or 'to support' already 'intended' offences (Art. 10). Until the bill takes effect undercover investigations continue to be governed by the applicable cantonal or federal procedural code. However, only a minority of the cantons have the necessary legal instruments to run undercover operations at all (Begleitbericht VE StPO: 190).

The Bern Code of Criminal Procedure, for instance, allows undercover operations if the gravity or particular nature of the committed or planned crime or offence justifies it and if other investigational tools are insufficient. Police officers or other reliable persons are eligible as undercover agents. The operation has to be authorised by the police chief and needs, additionally, the approval of the competent examining magistrate within 24 hours. The operation can last for twelve months at the longest (Art. 124 Bern Code of Criminal Procedure). The undercover agents are not permitted to act as suborners ('agent provocateur', Art 125 Bern Code of Criminal Procedure).

Regarding cantons without statutory regulation, some of them run undercover operations anyway. It remains disputed and unclear if such practice is legal or not (Hauser and Schweri, 2002: 358-9; critical Gnägi, 1991). A clear statutory regulation is doubtless preferable.

Last but not least, the Federal Act on Narcotic Substances⁶⁷ allows federal and cantonal police officers to buy narcotics for investigational purposes anonymously or under false identity (Art. 23,2).

⁶⁷ Cf. section 1.2.

5. The Swiss Confederation and International Cooperation

The conditions and standards of international police and judicial cooperation are, first and foremost, set by bi- and multilateral treaties. With regard to the relationship between international and national levels, such treaties in principle prevail over domestic law (Art. 5,4, and future Art. 190 FC [not yet in force]). As Switzerland follows the monist tradition, no implementing acts are necessary insofar as the considered treaty qualifies as ‘self-executing’.⁶⁸

Switzerland signed numerous bi- or multilateral treaties on mutual assistance,⁶⁹ the most important being the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959⁷⁰ (together with supplementary treaties with Germany,⁷¹ Austria⁷² and France,⁷³ allowing direct contact between judicial authorities), the European Convention on Extradition of 13 December 1957,⁷⁴ the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime of 8 November 1990.⁷⁵ In December 2000 Switzerland signed the United Nations Convention against Transnational Organised Crime and both its supplementary protocols. The Convention was submitted to the usual consultation process with interested organisations and persons from December 2003 to end of March 2004. The reactions mostly positive, it is hoped that the Convention can, after parliamentary deliberation, be ratified in the first half of 2005. Swiss law is not only largely compatible with the convention but demonstrates a higher standard on some points (DFA/FDF, 2001: 20).

Regarding mutual assistance in criminal matters beyond Europe, treaties with e.g. the United States,⁷⁶ Canada,⁷⁷ Australia⁷⁸ and many more countries were ratified.

⁶⁸ Rules which are precise and clear enough to be applied directly by the national courts and which, additionally, confer rights and obligations to the individual *vis-à-vis* the public authorities (BGE 124 III 90).

⁶⁹ Cf. SR 0.31 (suppression of particular crimes and offences), SR 0.35 (mutual assistance and extradition).

⁷⁰ ETS 030; SR 0.351.1.

⁷¹ SR 0.351.913.61 (13 November 1969).

⁷² SR 0.351.916.32 (13 June 1972).

⁷³ SR. 0.351.934.92 (28 October 1996).

⁷⁴ ETS 024; SR 0.353.1.

⁷⁵ ETS 141; SR 0.311.53.

⁷⁶ SR 0.351.933.6 (25 May 1973).

⁷⁷ SR 0.351.923.2 (7 October 1993).

⁷⁸ SR 0.351.915.8 (25 November 1991).

The Swiss-United States treaty particularly aims at facilitating the transatlantic fight against organised crime (Art. 6-8, cf. Markees, 1978: 121 et seq.). Because the treaty was ratified before the enactment of the International Mutual Assistance Act, it was put into practice by a particular federal statute (Hofstetter, 2004: 83).⁷⁹ Given that no international treaty exists, worldwide assistance is allowed and governed by the International Mutual Assistance Act (cf. 3. infra).

On the level of international organisations, Switzerland is a member of Interpol and a founding member of the OECD affiliated Financial Action Task Force (FATF) as well as member of further standard-setting bodies like the OECD itself and the Basle Committee on Bank Supervision of the Bank for International Settlements.

Extradition law, also governed by the International Mutual Assistance Act but otherwise a subject matter in its own right, is disregarded in the following survey.

5.1. International Police Cooperation

As Switzerland is not an European Union Member State it is not (yet) a signatory of the first (1985) and second (1990) 'Schengen treaties' which govern European Union-wide police cooperation (cf. 6.).⁸⁰ Moreover, Switzerland is not a member of Europol although in April 2002 the Swiss Federal Council approved a cooperation agreement with Europol. It governs mutual information exchange in cases of organised crime with regard to certain types of offence, such as international terrorism, narcotics trafficking, child pornography and trafficking in human beings. As well, information can be exchanged in cases of money laundering connected to the above-mentioned crimes. Lastly, the cooperation agreement endorses the deployment of liaison officers.⁸¹

As mentioned above, Switzerland is a member of the International Police Organisation (Interpol) in Lyon. The Interpol Constitution allows direct cooperation between national police authorities (Art. 4,1 ICPO-Interpol Constitution). The cooperation aims at preventing and repressing ordinary crimes. The definition of permitted acts and means of cooperation is left to the domestic legislator. Clearly, Interpol cooperation means, first and foremost, the exchange of information between

⁷⁹ SR 351.93 (Bundesgesetz zum Staatsvertrag mit den Vereinigten Staaten von Amerika über gegenseitige Rechtshilfe in Strafsachen).

⁸⁰ Likewise, Switzerland is not a signatory of the Dublin Convention regarding a common visa and asylum policy.

⁸¹ Press statement of the federal administration of 10 April 2002. Besides the later consent of the Swiss Parliament, the agreement in December 2002 still awaits the approval of the Council of the European Union.

domestic and foreign authorities (Popp, 2001: 73; cf. Art. 2 and 3 Federal Ordinance on the Swiss National Central Interpol Bureau (CBO)⁸²). The Swiss National Central Interpol Bureau acts as liaison between the domestic authority and the General Secretariat of Interpol (Art. 351*ter* SCC, Art. 2,1 lit. a CBO). By way of exception, domestic law sanctions direct contact between Swiss and foreign police in urgent cases, minor affairs, traffic offences and cooperation contacts within the immediate border area (Art. 35,2 Federal Ordinance on International Mutual Assistance in Criminal Matters).⁸³

Beyond the context of Interpol and other treaties the most senior cantonal and federal police officers are empowered to request and provide international assistance, except in extradition matters (Art. 75a and 63 IMACM). Yet, among other things, coercive measures are not allowed under such auxiliary police assistance (Art. 75a,2 IMACM).⁸⁴ The Swiss Criminal Code refers to the standards of the International Mutual Assistance Act as far as Interpol information exchange is concerned (Art. 351*quinquies*). Still, critics argue that this referral is of rather declaratory value, because exchange of information between the national police authorities is not submitted to judicial appeal (Popp, 2001: 74; cf. Bundesamt für Justiz, 1998: 4). Moreover, a major part of the investigational tasks in the field of organised crime shifted from judicial to police authorities. Both these elements cause, ultimately, a weakening of the legality principle in international police assistance matters (Popp, 2001: 75).

5.2. International Judicial Cooperation

Given the absence of a treaty the International Mutual Assistance Act itself permits the assistance and defines the required conditions in international judicial cooperation (Art. 1,1). It lists the statutory conditions in order for mutual assistance to be granted (Hofstetter, 2004: 84-5).⁸⁵ Regarding transnational organised crime the requirements of dual criminality and of reciprocity are of special interest.

In fact, one of the reasons for the enactment of the criminal organisation offence (Art. 260*ter* SCC) was the dual criminality condition which has to be present for

⁸² SR 351.21 (Verordnung über das nationale Zentralbüro INTERPOL Schweiz).

⁸³ SR 351.11 (Verordnung vom 24. Februar 1982 über internationale Rechtshilfe in Strafsachen).

⁸⁴ Allowed are e.g. observation, transfer of voluntarily provided bank information and police interrogation (Bundesamt für Justiz, 1998: 4).

⁸⁵ Substantiated suspicion (i.e. no 'fishing expeditions'), dual criminality in case of coercive measures, principle of speciality, reciprocity, proportionality between requested measures and investigated crime, *ne bis in idem*.

coercive measures (seizure, searches etc.) within the execution of foreign requests (e.g. Art. 64 IMACM).⁸⁶ Thus, before Article 260ter became effective such measures with regard to offences of the 'criminal organisation' type were impossible as such an offence was unknown to Swiss law. Mutual assistance was only granted if connected offences (murder, bribery etc.) were also investigated. Indeed, one of the actual functions of the otherwise rather less successful Article 260ter of the Swiss Criminal Code is to enable enhanced mutual assistance in international organised crime investigations. Still, one essential element of Article 260ter of the Swiss Criminal Code is structural secrecy (cf. 5.1.1.b). If such secrecy is not a required element of the foreign offence, correspondence to Article 260ter of the Swiss Criminal Code is irrelevant. Nonetheless, assistance is granted if in the case at hand the elements of the more restrictively phrased offence, in our example Article 260ter of the Swiss Criminal Code, are present. Beyond this aspect no problems regarding mutual assistance particular to the criminal organisation offence exist (Roulet, 1997: 171 et seq.).

Previously (5.1.1), the 'side effect' of the criminal organisation offence as a link to the special confiscation rule was discussed. It follows from the considerations above that the enhancement of mutual assistance is – together with the institutional changes in the investigational area (see 2.2) – another major effect of Article 260ter of the Swiss Criminal Code. Bearing in mind the low inland conviction rate (see 4) this enhancement is in the end a more important function than Article 260ter convictions themselves.

Interestingly, before the money laundering offence came into force, the same problem of lacking dual criminality existed with regard to money laundering. The unsatisfactory situation was one additional reason for the criminalisation of money laundering. International pressure for a speedy enactment of the respective offences was especially exercised by the United States (*leges americanae*, Trechsel, 1997: 7). As the Swiss-United States treaty of all treaties waives, among other requirements,⁸⁷ the dual criminality condition in the case of organised crime (Art. 7), the demand was, however, at least partly motivated by the struggle against money laundering in general.

As far as the reciprocity condition is concerned the law foresees a waiver in cases of predominant public interests in the prosecution of the suspected offence (Art. 8,2 IMACM; e.g. BGE 110 Ib 173 ff., 176 E. 3a: major fraud). Crimes connected to organised or serious business crime fall within this exception (BGE 115 Ib 517 ff., 525 E. 4b; criticising such interpretation Popp, 2001: 294).

⁸⁶ BBl 1993 III, 296.

⁸⁷ In cases of organised crime the treaty furthermore waives the principle of speciality (Art. 5 No. 2 lit. c) and allows, under certain conditions, assistance even by tax evasion (cf. Art. 6 RVUS).

6. Future Trends and Conclusions

The most prominent future changes have already been mentioned above. Within the context of the bilateral negotiations between Switzerland and the European Union ('Bilaterale II'),⁸⁸ the Swiss government was interested in adhering to the Schengen and Dublin treaties in order to become part of the European police and migration space (Heine, 2002b). The European Union, in reciprocity, demanded Swiss accommodation most of all in the area of tax evasion (bank accounts, reporting system) and in the intensified fight against customs fraud. As far as the issue of the reporting of foreign capitals for (foreign) taxation matters is concerned, an agreement between the European Union and Switzerland was reached in the summer of 2003. It essentially safeguards Swiss banking secrecy in the taxation process by way of a withholding of tax for the benefit of the state of the foreign investor.

In May 2004 Switzerland and the European Union finally agreed on the Swiss adherence to the Schengen/Dublin accord.⁸⁹ Before, as in the taxation area, questions of international legal assistance regarding the evasion of direct as well as indirect taxes and Swiss banking secrecy had to be solved.⁹⁰ Currently, final consultations are being held between the parties in order to solve some 'technical' matters. However, in accordance with the Swiss Constitution, the eight sectoral agreements between the European Union and Switzerland must be submitted to the facultative referendum which means that 50,000 voters or eight cantons can demand a vote on the adherence. One of the major parties, the Swiss Popular Party (Schweizerische Volkspartei) announced their intention to launch the necessary collection of signatures against the Schengen/Dublin agreement. As the opponents will no doubt

⁸⁸ The first bilateral sectoral agreements date from 1999 and are the result of the 1992 Swiss voters rejection of the European Economic Area accord.

⁸⁹ Within the Bilateral II negotiations, the Schengen accord and the Dublin accord were treated as a single accord. The ninth dossier on formation, vocational training and youth leads only to a declaration of intent.

⁹⁰ One of the major problems was that Swiss law qualifies evasion of direct taxes (unlike tax fraud) not as a criminal offence but rather as an administrative/tax law matter (Swiss tax law follows the system of the automatic withholding tax regarding interests). Therefore, dual criminality, one of the prerequisites for coercive measures like lifting banking secrecy, lacks from the Swiss point of view in cases of evasion of direct taxes. Should the prerequisite of dual criminality with regard to direct taxes be dropped under the *acquis communautaire* sometime in the future, Switzerland is, under the agreement with the European Union, now allowed to invoke an unlimited exception and still take part in the Schengen accord. As far as the struggle against fraud (*inter alia* evasion of indirect taxes like value added tax or custom duties) is concerned, Switzerland agreed to extend its legal cooperation (including coercive measures in case of serious cases of indirect tax evasion).

easily collect a mere 50,000 signatures, it looks like at least the Schengen/Dublin accord will be submitted to popular vote.

On a national level, the unified Code of Criminal Procedure will take effect within the next few years. Further topics are, first, the criminal responsibility of corporations, which is envisaged by the drafted new general part of the Criminal Code and, secondly, the punishability of private bribery (i.e. not regarding public servants, cf. Heine, 2002a, and the survey in Kunz, Capus and Keller, 2000).

Bearing in mind the experiences with often hastily organised crime legislation, and considering the results of the National Research Program 40, some people are pushing for a break for some reflection on the most urgent social problems awaiting public consideration. Truly, it stands to reason that on a domestic level the 'construction work' in the field of organised crime is already underway or done for the moment. What is needed, however, is a continuing evaluation of the implemented legal measures with regard to the changing forms and activities of organised crime (Kunz, 2002: 173). Yet, as far as the focus of the legislator is concerned, other problems of social behaviour and criminal justice administration have come (terrorism) or should come (domestic violence) to the fore (Kunz, 2002: 171 et seq.).

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Organised Crime Control in Albania: The Long and Difficult Path to Meet International Standards and Develop Effective Policies

Vasilika Hysi

1. The Development of Organised Crime Control Policies

Although Albania has faced a rapid development of organised crime since the fall of the communist regime in 1991, it long had no comprehensive strategy in place aimed at combating this phenomenon. Even now Albania does not have a general strategy on crime prevention, with the exception of the prevention of trafficking in human beings and drug trafficking and abuse.

Currently, the effectiveness of organised crime policies in Albania is highly and controversially debated. Several participants are involved in this debate including media representatives, legal practitioners, university professors, politicians and civil society representatives. As well, organised crime policies have become the subject of discussion in the parliamentary commissions and in the plenary sessions of the Albanian Parliament. The judgments vary widely. On the one side there are those who are sceptical of the effectiveness of the current fight against organised crime and trafficking in human beings, and on the other side there are those who think that considerable improvements in the right direction have already been made.

Critical assessments of Albanian organised crime control policies can also be heard from international institutions, foreign government agencies (with a presence in Albania) and civil society organisations, in particular non-governmental organisations (NGOs) concerned with human rights and women's rights. In general these organisations are not satisfied with the efforts made by the Albanian government in combating organised crime. Criticism of the Albanian government has come, in particular, from the Commission of the European Union, the Council of Europe, the United States Department of State and the international police missions based in the country. In their March 2004 report, for example, the two rapporteurs of the Parliamentary Assembly of the Council of Europe, Jerzy Smorawinski and Soeren Soendergaard, note the following:

The inability of the Albanian police, prosecutors and judges to successfully find, arrest, prosecute and convict serious offenders, and in particular members of organised crime syndicates, fundamentally undermines democracy and the rule of law in the country. Impunity and freedom of operation for

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organised crime, which benefits from weak governance and the judiciary's failure to operate efficiently, is a threat not only to public order but to the economic prospects and the political stability of the country (Council of Europe, 2004: 2; see also European Commission, 2003 and 2004 and United States Department of State, 2004).

However, it is important to highlight that the latest international assessments of the Albanian organised crime control policies are more positive than they were in the past years. For example, the United States Department of State's 2002 *Trafficking in Persons Report*, listing each country according to the efforts made in combating trafficking and assisting victims, ranked Albania among the second tier group.¹ Although this means that Albania does not fully comply with the minimum standards to eliminate trafficking, the United States government acknowledged that its Albanian counterpart had made some meaningful efforts. This ranking is also an improvement over the previous year in which Albania was ranked in the third tier group with countries not complying with standards and not making any efforts to do so. The movement to the second tier group is thus a result of the initiatives taken by the Albanian government in combating organised crime. The cooperation with bodies working on this issue in other countries has also recorded positive developments.

Cooperation between bodies working within Albania has also substantially improved in recent times. In particular, there is an increased and improved cooperation between law enforcement organs, experts from the university and civil society. The civil society has been quite involved in this area contributing to the formulation of a strategy for combating organised crime and to enforcement. A considerable number of initiatives for new draft laws on victims' protection and the establishment of programmes and counselling centres for victims of human trafficking have been directly promoted by the Albanian civil society.

Positive inputs for the design and implementation of programmes for the prevention of organised crime have also come from the many international organisations and foreign police assistance missions operating in the country. Among the first ones, one can mention the United Nations Development Program (UNDP), the Organisation for Security and Cooperation in Europe (OSCE), the International

¹ The countries are ranked as follows: Tier 1 – Countries whose governments fully comply with the Act's minimum standards. Tier 2 – Countries whose governments do not fully comply with the Act's minimum standards but are making significant efforts to bring themselves into compliance with those standards. Tier 3 – Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so. The United States now withholds assistance/development funds from countries ranked in this last group. See United States Department of State (2002).

Organisation for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR) and the Council of Europe (CoE). The foreign police assistance missions include the Multi-National Advisory Police Element (MAPE), the International Criminal Investigative Training Assistance Program (ICITAP), the Police Assistance Mission of the European Community to Albania (PAMECA) and the Italian Interforze Police Mission (IIPM).

Analysing the developments of organised crime policy in Albania, it becomes evident that this policy has undergone continual changes, mainly as a result of increasing organised crime activities and the rapidly growing sophistication of the criminal groups. These changes have affected the legal framework, the organisation and function of the law enforcement agencies, and the programmes on international cooperation of Albanian institutions with their foreign counterparts.

Organised crime policies have been oriented by the recommendations and regulations laid down in the international conventions and guidelines in the field of criminal law, which are either already ratified by Albania or are in the ratification process. Indeed, as we will see later on, a considerable number of international conventions and additional protocols on combating organised crime have become part of Albania's national legislation. However, a persistent problem is that the legislation recently passed is not properly and consistently implemented. As the two rapporteurs of the Council of Europe note, 'the government should make serious efforts to improve the implementation of key legislation. Piling up laws which are not properly implemented is counterproductive. The ultimate test of governmental action is not what it puts on paper but what it achieves in practice' (Council of Europe, 2004: 2).

A major problem is constituted by the fact that, despite the enactment of several reform laws, the performance of the law enforcement and judicial system is still quite poor. As a 2004 working paper of the European Commission puts it, 'the professional capacities of judges, prosecutors, judicial police and administrative staff remain limited, and infrastructures and equipment are inadequate' (European Commission, 2004: 5). Moreover, according to both the European Commission and the Council of Europe and as reflected in surveys carried out by the Southeast European Legal Development Initiative (SELDI), all sectors of the law enforcement and judicial system are significantly plagued by corruption (*ibid.*). In the fight against corruption – the European Commission again notes – 'the problem in Albania is not so much the absence of strategies and legislation, but rather deficiencies in its implementation and enforcement' (*ibid.*: 7). The same, as we will see with some more detail later on, can be said about organised crime.

This paper is organised as follows: the second section reviews the legal instruments that are today available to control and prevent organised crime and try to assess – on the basis of the data available – their effectiveness. The third section focuses on institutional reforms, primarily the reform of the law enforcement apparatus and

the justice system. The fourth is devoted to public awareness education in the fight against organised crime. Some concluding remarks follow.

2. Legal Instruments in the Fight against Organised Crime

2.1. Penal Law Reform

The current Albanian Criminal Code (CC) was approved in 1995 after legal and institutional reform undertaken by the Albanian government. Since then it has undergone continual amendments in an effort to try to address the emerging features of organised crime. Due to lack of experience in this field, the Albanian legislation on organised crime has changed often and there have been cases where it has not responded adequately to the crime situation. However, the penal legislation in general does not contain any real vacuum regarding organised crime.

The legislative reform has entailed the criminalisation of some new forms of crime, the introduction of new concepts such as organised crime, criminal organisation, financing illegal activities and human trafficking to name a few, and the improvement of the criminal provisions already in place. Specific attention, in particular, has been paid to the definition of activities in relation to organising and financing criminal organisations. The latest amendments were carried out in February 2004. The majority of the amendments had to do with the special part of the Criminal Code, but a few changes also concerned the general part.

The continuous development of transnational organised crime and, particularly, the increased interaction of the Albanian underworld with foreign criminals both in the country and abroad have led to an increase of the application of the Albanian Criminal Code in cases of criminal offences committed by foreign citizens (Act No. 8733, 24 January 2001). Currently, Albanian law penalises foreign citizens who are involved in the exploitation of prostitution and the illegal trafficking in human beings, arms, psychotropic substances, narcotics, nuclear substances and art objects out of the territory of the Republic of Albania (Art. 7 CC).

The Criminal Code (Art. 28) defines in detail the meaning of an armed gang and criminal organisation, as well as the mitigating punishment provided to members of such groups who defect and cooperate with the competent authorities to uncover their activity and provide information about other crime group members. In addition, amendments made in 2001 increased the amount of the fines that can be imposed on persons convicted of committing an offence to a maximum of between 2 million to 5 million Albanian lek (about € 16,100 to € 40,300) (Art. 34 CC).

At the same time adjustments were made to the general part of the Criminal Code, considerable amendments were also made to the special part of the Criminal Code involving offences such as drug trafficking, trafficking in human beings, child

trafficking and the exploiting of prostitution. The Criminal Code also penalises money laundering (Art. 287/a CC), and anticipates criminal punishment for trafficking of artistic and cultural products and trafficking of stolen motor vehicles, in addition to the offences already mentioned.² The following takes a further look into some of the changes recently made.

Drug Offences

The Criminal Code, which was elaborated during the communist regime and became effective in 1977, did not anticipate drug offences anywhere in the text. In 1992 it was amended to include Article 132 outlining drug offences as ‘preparing, importing, keeping, and selling of drugs and narcotic substances without permission’ (Act No. 7553, 30 January 1992). At this time the provision did not indicate the manufacturing of drugs as a criminal offence. But in 1993 the definition was changed (Act No. 7769, 16 November 1993) and broadened to include manufacturing, offering for sale, importing, preparing, keeping and selling of seeds or drugs as a punishable offence (Art. 134 CC, Sec. 2).

In 1995, the new Criminal Code of the Republic of Albania entered in force (Act No. 7895, 27 October 1995). Included are measures that aim to prevent and strongly deter all drug-related crimes such as the cultivation of plants for the production of narcotic drugs or psychotropic substances, as well as organising, managing and financing these activities (Art. 284 CC, Sec.1-2). Although the 1995 Criminal Code represented a significant improvement *vis-à-vis* the previous one, an initial, important oversight was that the new law did not distinguish between ‘trafficking’ and other ‘drug offences’.

In 1996, an amendment introduced two significant changes: it set the highest level of punishment for drug crimes when committed by a criminal organisation and it established a specific offence for whoever in an official capacity facilitates the perpetration of drug offences (Act No. 8175, 23 December 1996). In March 1998 drug trafficking became a separate offence and was included in the following provision ‘organisation, direction, production, fabrication and trafficking of narcotics [...]’ (Act No. 8279, 15 January 1998). Also at this time changes were made to improve the investigation of organised crime (Act No. 8279, 15 January 1998). The changes allow more favourable conditions for those members of criminal organisations who cooperate with police and judicial authorities and provide information and evidence (Art. 284/a CC).

The increase in illegal drug trafficking on one hand, and the ratification of international conventions in the area of organised crime on the other, imposed new amendments on the Criminal Code in early 2001 (Act No. 8733, 24 January 2001).

² For more information on the Albanian legislation, see Elezi (1997: 105-230).

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One of the most important changes was that trafficking of narcotics is dealt with in a separate legal provision (Art. 283/a CC). Another change resulting from the 2001 amendments is that the law provides harsher sentences for the commission of criminal offences in collusion or for repeat offences.

The number of offenders punished for drug trafficking (the majority of them are at the same time drug users) has increased rapidly in Albania since the mid-1990s. There has also been some success in the fight against cannabis cultivation and trafficking with the occurrence of several large-scale seizures and crop destructions. However, according to the European Commission, the repression of heroin and cocaine trafficking has recorded only limited progress. Seizures have increased (for example, 114 kg of heroin was seized in 2003 against 72 kg in 2002), but the amounts do not reflect the actual quantities passing through the country to the European Union. In its 2004 *Stabilisation and Association Report* on Albania, the European Commission also notes that 'those attempting to tackle narcotics trafficking face several limitations', which are due to several factors including limited training, insufficient equipment, poor police management, corruption and the ruthlessness of the trafficking gangs, and thus urges Albania to imperatively enhance its efforts in this area (European Commission, 2004: 33).

Trafficking of Women and Children for Sexual Exploitation

The Criminal Code has been completely reformed in regard to the trafficking of women and children for sexual exploitation, but the most substantial changes were introduced only very recently. Initial amendments were made in 1992 and added a new provision on kidnapping of persons (Art. 94/a CC). The second step was taken with the approval of the new Criminal Code in 1995. Initially this code included punishment for individuals involved in prostitution and for parents abandoning their children, but there were no provisions for kidnappers, traffickers, and facilitators.

The rapid expansion and growing visibility of human trafficking demanded immediate changes of the law, which were finally passed with Act No. 8175 of 23 December 1996. These changes criminalise activities such as recruiting, inducing, coercing a person to exercise prostitution, providing assistance to traffickers, exercising prostitution for purposes of material gain (Art. 114 CC). The Act No. 8175 also anticipates as a separate crime the exploitation of children for purposes of prostitution (Art. 114/a CC), the exploitation of prostitution committed by criminal organisations (Art. 114/b CC), the intermediation in prostitution services (Art. 115 CC), when the mediation involves minors, relatives or custodial relations or when the victim is forced to exercise prostitution abroad. It imposes severe punishment for all these offences. In addition, the law anticipates that, whenever premises are allowed to be used for purposes of prostitution, they can be seized (Art. 116 CC). Taking into the account the disappearance of children, in 1997 a new article

(Art. 89/a CC) was added to the Criminal Code to include the trade of organs for transplant, as well as all activity related to the exchange of body organs (Act No. 8204, 10 April 1997).

The increasing number of cases of exploitation of children for sexual purposes, and the selling of girls and children by their relatives obliged the legislator to introduce an amendment in 1998 (Art. 114/a CC) which considers it to be a crime under designated circumstances the exploitation of minors by closely related persons or custodial relations who make use of deception or take advantage of the physical or mental incapability of the person or force a person into prostitution out of the territory of the Republic of Albania.³ In addition, a new article (Art. 114 CC, Sec. 6) anticipates the exploitation of prostitution by criminal organisations as crime in aggravated circumstances.⁴

With the same act, the trafficking of women and children for sexual exploitation was defined for the first time as a separate criminal offence. The new law considers an aggravating circumstance of the above offence to be the exploitation of prostitution by persons working in collusion, by repeat offenders or by persons holding state or public functions (Art. 114/a CC, Sec. 6). The amendments to the Criminal Code establish a legal basis for bringing charges against individuals involved in the trafficking in human beings, but the judicial data reveal that only a few persons involved in trafficking have been punished appropriately by the Albanian courts. In the first nine months of 2002, for example, 213 cases were opened against traffickers, but only 37 went to trial, while 176 were ultimately dismissed for insufficient evidence or procedural errors. Moreover, all convictions resulted in the imposition of the minimum penalties foreseen by the Criminal Code (*ibid.*).

To discourage this shameful trade, further amendments were passed in February 2004, with Act No. 9188. This act increased the penalties anticipated for trafficking in human beings and several facilitating activities, such as the falsification of documents. On the basis of these amendments, courts can now impose at the same time long imprisonment times and heavy fines up to 10 million lek (€ 80,500).

Child Pornography

Under the Albanian Criminal Code it is a criminal offence to ‘manufacture, distribute, advertise, import, sell and publish pornographic materials in the minor’s environment [...]’. Offenders can be punished with fines or two years’ imprisonment (Art.117 CC).

³ This amendment was introduced by Act No. 8279, 15 January 1998 (On Some Amendments of Act No. 7895 of 27 January 1995).

⁴ This amendment was introduced by Act No. 8733, 24 January 2001 (On Some Amendments of the Act No. 7895 of 27 January 1995).

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Smuggling of Human Beings

The Criminal Code considers the smuggling of human beings as a separate criminal offence and, in case of conviction, punishment can range from 5 to 15 years' imprisonment and a fine from 2 to 5 million lek (about € 16,100 to € 40,300). There is evidence that in the majority of cases smuggling operations are carried out by well-managed criminal groups who recruit victims for the journey and often use violence to subdue them. In cases where border and customs police have detained smugglers using speedboats for transportation from Albania to Italy it has often emerged that the victims were maltreated and abused, both physically and psychologically. The smugglers in order to avoid capture have even thrown victims overboard into the open waters.⁵

Amendments have been made to the criminal law to reflect the seriousness of this crime. A punishment of not less than 15 years imprisonment and as high as life imprisonment and a fine from 6 to 8 million lek (i.e. € 48,300 to € 64,400) can be given to smugglers convicted of causing the death of a victim of smuggling (Art. 110/a CC added with the Act No. 8733 of 24 January 2001 and Act No. 9188 of February 2004).

As the smugglers become more proficient in their business, the same cannot be said about the investigation and prosecution of them. Although measures exist in the Criminal Code to address smuggling, the actual number of cases brought to trial is very low. In the cases that have gone forward, the courts have imposed light sentences. This is also the situation in drug trafficking cases. Thanks to the legislation passed by the Albanian Parliament and the action taken by the government, the years 2004-2004 have recorded a significant reduction in smuggling and trafficking in human beings across the Adriatic/Ionian Seas. However, the Ionian Sea accident of January 2004 where over 20 people died while illegally trying to reach Italy demonstrates that the problem has far from disappeared. The episode was all the more worrying because it showed the involvement of police officers in smuggling activities.

In its 2004 *Stabilisation and Association Report* on Albania, the European Commission thus urges the Albanian government to take more determined steps if it wants to address the issue of human smuggling and trafficking adequately. Despite some efforts by the authorities in deploying special forces and upgrading radar systems, the progress in other areas including special investigation means, the interception of telecommunications, and the use of information system has been limited (European Commission, 2004: 34). Likewise, despite recent improvement the control of the country borders remains poor, particularly in the Tirana International Airport and the ports of Durres and Vlora (ibid: 30).

⁵ For more information see Hysi's contribution in Part II.

Arms Trafficking

The production and unlawful possession of military arms and munitions is considered a criminal offence under the Criminal Code. This problem became widespread particularly after the looting of armament warehouses; some arsenals were completely taken over by unauthorised individuals during the anarchy and chaos that followed the collapse of the pyramid schemes in 1997.⁶ As a result of this, legislative steps were taken in order to collect arms from people volunteering to turn them in, in exchange for immunity from prosecution. After two to three years it became obvious that arms were being trafficked to other countries and in January 2001 new legislation was put in place that made arms trafficking a criminal offence (Act No. 8733, 24 January 2001). This act specified that arms trafficking is a criminal offence in cases when the amount of arms trafficked is a considerable one, in cases of collusion or repeat offences and made it punishable with 10 to 20 years' imprisonment (Art. 278/a CC).

Money Laundering

Up until 2001, the Criminal Code did not have any provisions that referred to money laundering. This changed in January of that year when an article was added that criminalises involvement in financial and economic activities with the purpose of laundering money resulting from criminal activities (Art. 287/a CC). Offenders can be punished with five to ten years' imprisonment. According to the European Commission, despite some amendments passed in 2003, the anti-money laundering legislation is still inadequate. The amendments encompass the 40 recommendations against money laundering and the 8 recommendations against terrorist financing publishing by the Financial Action Task Force on Money Laundering. More transactions are now reportable to the appropriate authorities, and non-banking institutions such as travel agents and casinos have been included in the reporting requirements.

For the Commission, the main problem is that the legislation is not properly implemented and that enforcement remains limited. The bodies responsible for dealing with the problems, i.e. the Financial Intelligence Unit (FIU) of the Ministry of Finance, the prosecutor's offices and the Police Economic Crime Unit (ECU) lack the sufficient human, technical and professional capacities to ensure enforcement. The cooperation and coordination between these bodies also needs to be significantly improved. The poor implementation of the law is clearly shown by the statistics of the Ministry of Justice: in 2002 there were no convictions for money laundering-related crimes. In 2003, there were only four relevant convictions (European Commission, 2004: 32).

⁶ For a comprehensive background discussion, see Hysi's contribution in Part II.

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Goods Smuggling

The Criminal Code has several criminal offences related to smuggling. However, the penalties anticipated are relatively mild. In cases of smuggling in which the consumption tax/excise duty has not been paid, punishment is a fine or imprisonment up to seven years (Art. 172 CC). The punishment for customs officials or other employees found guilty of collaborating with smugglers is imprisonment from three to ten years (Art. 175 CC).

Cyber-crime

Information technology criminal offences are not well known in Albania, at least according to the statistics provided by the Albanian police and judicial bodies. It is a newly introduced offence, and, in fact, the Criminal Code was amended in 2001 to include a special provision that punishes the interception of computer transmissions (Art. 192/b CC).

Corruption

The Criminal Code has provisions to punish actions committed by persons holding public office or civil servants in the field of corruption. This can entail using their position to create an illegal advantage or gain unrighteous benefits for third parties participating in state bids or tenders, as well as demands for and receipt of remuneration to which he or she is not entitled (Art. 259-260 CC).⁷ However, neither these criminal law provisions, which are anyhow poorly implemented, nor the enactment of Anti-Corruption Plans nor the adoption of a law on ethics in the public administration in September 2003 have succeeded in reducing the scope of corruption in the country. This, as mentioned earlier, is still very extensive and encompasses all branches of the law enforcement and judicial apparatuses (European Commission, 2004: 3-5, 33; Council of Europe, 2004: 8-10).

Witness and Victim Protection

Witnesses and crime victims were not afforded protection under Albanian legislation until the beginning of the year 2004. As most of the cases brought to court ended or risked ending with a not-guilty verdict because of the lack of testimonies from victims and/or witnesses, Albanian and foreign experts worked together for a year

⁷ The Criminal Code prohibits the receipt of remuneration, gifts or other benefits by a person holding state office during their service, but there is no clear indication what differentiates accepting a gift from accepting a bribe.

on a draft law, and in March 2004 the bill, named On the Protection of Witnesses and Collaborators of Justice was approved (Act No. 9205, 15 March 2004).

The new law establishes procedures for protecting witnesses and collaborators with justice (i.e. defectors of organised crime groups who have decided to provide information about their accomplices to prosecutors and courts). It also creates two new bodies – the Directorate for the Protection of Witnesses and Collaborators of Justice and the Commission for the Evaluation of Special Measures for the Protection of Witnesses and Collaborators of Justice – in charge of these tasks, defining their competencies and organisation. The act of March 2004 also authorises various measures, such as the change of identity and residence, to guarantee the safety of the witnesses at the same time as it sets binding rules that witnesses have to respect, if they want to remain under the state witness protection programme. In addition to this act, a bill providing adequate compensation to victims is currently being discussed by the Albanian Parliament.

Before this legislative change, the Albanian Criminal Code merely provided that, if a victim is threatened not to report a criminal offence or to withdraw a claim, the offender is punishable by fine or up to two years of imprisonment (Art. 311 CC). And if a victim who reported an offence, a witness, or any other party in a trial is murdered, the convicted will face punishment of no less than 20 years or life imprisonment (Art. 79 CC).

2.2 Penal Procedural Law

In 1995 the new Code of Criminal Procedure (CCP) of the Republic of Albania was approved and since then has undergone significant changes, as a result of the need to improve efforts to combat crime in general, and organised crime in particular. The following discussion looks at legislation that specifically aims to combat organised crime.

Interception of Telecommunications

The law permits the interception of conversations, phone calls and other forms of telecommunication when it serves the investigation of intentional crimes that are punishable with no less than seven years of imprisonment and contraventions of insult and threats by phone call (Art. 221 CCP, changed by Act No. 9187, 12 February 2004).

The law states that only a court may authorise the interception. In urgent cases, however, the prosecutor may order the interception, but he or she must inform the court immediately and, in any case, no later than 24 hours (CCP Art. 222). The Code of Criminal Procedure also defines the right of the defence lawyers and the attorneys of the parties to listen to the recordings.

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In addition, the Act No. 9187 of 12 February 2004 allows for the taking of photographs or video of suspects and for undercover surveillance, but always pursuant to the requirements defined by the Code of Criminal Procedure. The law stipulates that evidence will be accepted when there are enough facts to prove the case and when there is no infringement of the freedom of the will of the person.

Controlled Delivery and Purchase of Drugs

In March 2001 Act No. 8750 For the Prevention and Repression of Trafficking in Narcotic or Psychotropic Substances was passed, which allows officers and agents of the judicial police or persons authorised by the latter to carry out a simulated purchase of narcotics or psychotropic substances withholding the information that he or she is a police officer or a person related to the police. These persons are able to legally use false identification documents with permission of the prosecutor.

In March 2002, the Albanian Parliament passed the Act No. 8874 On Control of the Chemicals Used for the Illegal Manufacturing of the Narcotics and the Psychotropic Substances. As the title of the bill explains, this act aims to control the trade of chemicals used for the production of illegal drugs. The law empowers the Ministry of Health to provide licenses for importing and exporting these substances and for controlling their trade. The Central Department for Drug Control, which is closely affiliated to the Ministry of Public Order, is responsible for investigating serious violations of the Ministry of Health rules that are considered to be penal offences.

The Extension of the Time Period of the Duration of the Pre-Trial Detention

The pre-trial detention time limits have been extended in cases investigating severe crimes and organised crime (Art. 263 CCP, amended by Act No. 8570, 20 January 2000 and Act No. 8831, 13 June 2002). Despite the opposition of some party representatives, in June 2002 the Albanian Parliament approved the possibility to extend the period of pre-trial detention up to two years when the criminal action involved is punishable for a minimum of ten years imprisonment.⁸ In certain specific cases, the pre-trial detention period can be as long as three years. This extended period gives the prosecutors in Albania time to cooperate with counterparts in other countries if necessary, for example when Albanian crime groups are operating outside of the country, and the Albanian prosecutors may need time to gather evidence.

⁸ This amendment was opposed by some members of the opposition, who gave the argument that this extension does not aim at realistically combating crime, but is an excuse for the procrastination of court proceedings.

Jurisdictional Relations with Foreign Authorities

The Code of Criminal Procedure has special provisions for jurisdictional relationships with foreign authorities that may involve the transfer of convicted persons, extradition, exchange of material evidence and other objects related to the criminal offence as well as the recognition of the decisions of the evidence rendered by foreign courts. Section XIV of the Code of Criminal Procedure, in particular, provides for the exchange of information and evidence in cases under investigation between Albanian and foreign authorities, except where state sovereignty, security or state interests are at risk.

2.3. Other Legal Measures

Besides the previously mentioned amendments to the Criminal Code and Code of Criminal Procedure, several bills have been approved that are either meant to enhance the fight against organised crime or to prevent its development. Amendments, for example, have been made to the Customs Code to reduce the still widespread tax evasion. Likewise, in order to reduce the corruption of politicians and civil servants, in April 2003 the Albanian Parliament passed the Act No. 9049 On Declaration and Control of Property and Financial Obligations of Elected Persons and Other Public Officials.

Two important prevention initiatives are the National Strategy for Children and the National Strategy for Reducing Poverty, which were both approved by the Albanian government in 2001. Both strategies envisage a series of measures that directly or indirectly can affect circumstances that may lead individuals into becoming involved in criminal activities.

The most relevant prevention initiative in this field is the National Strategy to Combat Trafficking in Human Beings, which was presented by the Council of Ministers in late 2001. Despite the fact that Albania ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Act No. 7767, 9 November 1993) and the United Nations Convention on the Rights of the Child (27 February 1992) already in the early 1990s, the fight against trafficking of women and children was not a priority in Albanian politics before 1997-1998. There was no strategy in place, the coordination between law enforcement and other actors was poor, and victims were merely treated as sources of information. This gives some indication of the low priority this issue had in Albanian politics. Assistance to victims was only provided to trafficking victims by civil society.

A new approach was finally formalised in 2001 with the approval of the National Strategy to Combat Trafficking in Human Beings. The strategy was prepared by an inter-ministerial working group on human trafficking established in June 2001 by the Prime Minister's Order No. 77 (15 June 2001). The aim of the strategy is 'to

establish the main directions of efforts in preventing and prohibiting the trafficking in human beings, to protect and help victims of trafficking and make possible their reintegration into society' (Council of Ministers, 2001: 6). This purpose will be achieved through some concrete objectives such as the completion and implementation of the necessary legal framework, the establishment of a committee by the Prime Minister to combat trafficking in human beings, improving social conditions and decreasing the level of poverty, increasing care for the trafficked victims and reintegration programmes, strengthening the cooperation among state institutions and regional police forces, and increasing public awareness (Council of Ministers, 2001: 25).

In order to fight drug trafficking, a National Strategy to Prevent Drug Trafficking was prepared and passed by the Council of Ministers with Act No. 229, 7 May 2004. The Albanian Ministry of the Interior and its specialised drug control units are currently drafting the concrete action plan implementing this strategy.

2.4. International Instruments Ratified by Albania for Combating Organised Crime

Albania has ratified several international conventions that aim to combat organised crime either indirectly or directly. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention on Human Rights became part of the Albanian legislation in 1993 and 1995, respectively. In 1998, Albania ratified the European Convention on Extradition (Act No. 8322, 2 April 1998) and two of its additional protocols. In 1999, the Albanian Parliament ratified three Conventions of the Council of Europe: the Convention on the Transfer of Proceedings in Criminal Matters (Act No. 8497, 10 June 1999), the Convention on Mutual Assistance in Criminal Matters (Act No. 8498, 10 June 1999) and the Convention on the Transfer of Sentenced Persons (Act No. 8499, 10 June 1999). The ratification of these conventions has facilitated and contributed to more effective regional and international cooperation in the fight against organised crime and can be seen a concrete step in the process of making Albanian legislation compatible with international standards.

Along with international documents in the area of criminal proceedings, Albania has ratified a series of other conventions related to combating trafficking in human beings and drugs, and terrorism. In 1992, as was previously mentioned, Albania ratified the United Nations Convention on the Rights of the Child and in 1993 the United Nations Convention on the Elimination of all Forms of Discrimination against Women (Act No. 7767, 9 November 1993).

Regarding international conventions in the area of drug trafficking, Albania is party to the 1961 United Nations Single Convention on Narcotic Drugs, and the 1971 United Nations Convention on Psychotropic Substances and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic

Substances. In May 2000 it also ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of the Council of Europe (Act No. 8446, 20 July 2000).

In April 2002, Albanian Parliament ratified the Convention on Cyber-crime of the Council of Europe. In July 2004, the Parliament ratified the Convention on the Compensation of Victims of Violent Crimes and the additional protocol of the Convention on Cyber-crime. In July 2002, the Albanian Parliament ratified the United Nations Convention against Transnational Organised Crime and two additional protocols: the protocol against trafficking of migrants by land, air and seas and the protocol on prevention, impediment and punishment of trafficking in human beings especially that of women and children (Act No. 8920, 11 July 2002). In 2000 and 2001 respectively, the two main agreements of the Council of Europe on corruption were also ratified: the Civil Law and Criminal Conventions on Corruption.

In March 2002, with Act No. 8865, the Albanian Parliament has also ratified one of the main international instruments against terrorism: the International Convention for the Suppression of the Financing of Terrorism.

According to the Albanian Constitution, the ratification of these conventions makes them an integral part of the Albanian legislation.⁹

3. Institutional Reforms

A substantial part of Albanian efforts at preventing and combating organised crime has been the enactment of various institutional reforms. The reforms have affected pre-existing state structures, such as the police and prosecution bodies, and have entailed establishing special units to combat organised crime, as well as training specialists in this area.

3.1. Reform of the Law Enforcement Apparatus and the Justice System

A thorough reform of the police was enforced in two phases with the passage of the Act No. 8291 On State Police and the Act No. 8677, On Organisation and Functioning of the Judiciary Police in 25 February 1998 and 2 November 2000, respectively. The first bill demilitarised the state police, making it part of the civil

⁹ According to Article 122 of the Constitution of the Republic of Albania, each ratified international agreement constitutes an integral part of the internal juridical system after it is published in the official journal. It is immediately applied, with the exception of the cases when this agreement is not self-applicable and requires the submission/approval of an act.

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administration, and clearly established its tasks, namely to guarantee order and public security and to prevent and investigate crime.

The law also sets the criteria that have to be met in order to become a member of the police force. This is a very important change, because before the passage of the bill in 1998 and especially in the first, difficult years of the transition most of the previous police staff were dismissed and were replaced by people who had no specific education or training, usually chosen because of their membership of political parties or connections to party leaders.

The judicial police is an important subdivision of the State Police, and was set up with the second bill of November 2000. The new body has been entrusted with very important competencies for preventing and clearing serious crimes and investigating their authors especially in the field of organised crime. Act No. 8677 established the organisation, functioning and competencies of this department.

Both before and after the enactment of the two pieces of legislation thoroughly reforming the police, several specific initiatives were taken to tackle organised crime and specifically trafficking in illegal drugs and human beings. In 1995 a National Committee for the Fight against Drugs was created at the inter-ministerial level and in 1998 Anti-Drugs and Organised Crime Sections were established within the State Police.

The Albanian anti-drug law of March 2001 also set up an Inter-Ministerial Drug Control Coordination Committee, which coordinates the activities of the 12 operational anti-drug police units active in Albania. This new body for drug control coordination was established in accordance with the provisions of the Act on the Prevention of Illegal Trafficking of Narcotic Plants and Psychotropic Substances. The first meeting of this committee was held in July 2003. In addition, a memorandum of understanding between the Minister of Finance and the Minister of Public Order was signed on 14 December 2002 to improve the coordination of anti-drug initiatives between the two ministries.

In the fight against trafficking in human beings, the Ministry of Public Order has created a central Anti-Trafficking Office and 12 regional offices in 2001. As a result of these changes, 12 regional Albanian police commissariats have an anti-trafficking unit. Special anti-trafficking units were also established at the airport, ports and at the 'green borders' with Kosovo, Macedonia, Greece and Montenegro

Organised Crime Task Forces were additionally established in February 2004. They are currently operating in the five main districts of Albania: Tirana, Durres, Fier, Vlora and Shkoder. The task forces were established with international assistance and consist of judicial police officers and prosecutors; they operate as independent units. The task forces depend on the Director of the Anti-Organised Crime Department in the General Prosecutor's Office. They have authority to investigate any criminal offence related to trafficking of narcotics or human beings, terrorism and economic crimes including money laundering.

The Ministry of Public Order and, specifically the police have also undertaken several steps to increase their cooperation with other public institutions in Albania. Action plans to prevent crime and, specifically, organised crime, were agreed on by the Directory of State Police with the General Directories of Taxation and Customs, which are part of the Ministry of Finance, on 26 December 2002 and on 6 January 2003, respectively. Some measures were also taken to enhance the prevention of money laundering. In September 2002, for example, a joint memorandum of understanding was signed by the Minister of Finance, the Minister of Public Order, the National Information Service (i.e. intelligence service) and the General Directory of the Albanian Central Bank.

Significant changes have also taken place in the Public Prosecution Service, with the Act No. 8737 of 12 February 2001. The prosecutors have important competencies regarding the investigation of organised crime and are responsible for presenting the cases to the court (Art. 1 and 24 CCP). With the bill of February 2001 special anti-trafficking and organised crime sections were established in the General Prosecutor's Office and in some district prosecution offices.

An important step in the institutional reform area has also been the establishment of the Court of Serious Crimes. In general, criminal offences are judged in first instance by districts courts. Act No. 8813 of 13 June 2002 amended Articles 1 and 11 of the Code of Penal Procedure giving way to the establishment of a Court of Serious Crimes, which is called to judge the crimes of establishing, organising and managing armed gangs and criminal organisations, crimes committed by these groups as well as any other crime punishable with a minimum of not less than 15 years of imprisonment and theft of arms (Art. 75/a CCP). The concrete organisation and functioning of the Court of Serious Crime was regulated by Act No. 9110, 24 July 2003. The court started to function on 1 January 2004.

Despite these changes, improving the functioning of the judiciary constitutes – according to Jerzy Smorawinski and Soeren Soendergaard, the two rapporteurs of the Parliamentary Assembly of the Council of Europe – ‘the single most important challenge in Albania’s transition to a normally functioning state based on the rule of law’. It is worth quoting at length their critical assessment:

The judiciary system is very weak, with poorly paid and poorly trained personnel. It is plagued by corruption, exposed to political pressures and unprotected against intimidation from crime syndicates. In 2002, 12 prosecutors have been dismissed, and other disciplinary measures have been taken against 23. Five judges have been dismissed from duty and 2 reprimanded. However, it is striking that no prosecutors or judges have been criminally prosecuted for corruption or improper professional behaviour. Such a lenient approach is difficult to understand given the pervasive character of corruption in Albania and especially within the judicial system. Firmer measures, when justified, should be used to dissuade improper conduct among judges and prosecutors. Threats to physical integrity of judges and prosecutors, and

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members of their families or their staff are also a serious concern. A tragic illustration of this threat was the recent assassination of the driver of the State Prosecutor, who was killed in the presence of the Prosecutor's family (Council of Europe, 2004: points 107-9).

The situation of the police apparatus is, unfortunately not much better. According to the European Commission, 'the police remain weak . . . the police are not able to satisfactorily guarantee consistent enforcement of the law in accordance with international standards, and public confidence remains low' (European Commission, 2004: 33). Corruption also affects the police. Police members are sometimes dismissed because of corruption, but very few are criminally prosecuted. The Commission thus warns that 'public confidence [in the police] will only grow in Albania if the police can show enhanced professionalism, improved ethical behaviours and increased investigative capacities to investigate both serious crimes and their perpetrators (ibid.: 34).

Under these conditions it is no wonder that the fight against organised crime is far from being effective. The coordination of the police and prosecutorial bodies specialised in the repression of organised crime remains limited. Though the State Police's Organised Crime Sub-Directorate has approximately 450 staff, 'its output is', according to the European Commission 'very low' (ibid.: 34). The results of the General Prosecutor's Office are also assessed as 'unsatisfactory' by the Commission. The main administrative body of the European Union sees two main shortcomings in the present system for investigating organised crime in Albania: 1) this is far too open to corruption and intimidation of investigators; 2) it lacks a true national approach. The prosecution is left to local prosecutors, with the General Prosecutor's Office having only limited supervisory powers. As formal police intelligence structures do not exist, knowledge about organised crime remains dispersed: individual police officers often know a lot about local criminals, but their knowledge is not centrally collected and exploited (ibid. 34).

Despite the progress achieved in the past ten years, there is still much to do.

3.2. Institutional Reforms and Social Measures Specifically Addressing the Trafficking of Women

In addition to the creation of the Anti-Trafficking Task Force, several other measures have been adopted to enhance specifically the fight against trafficking in human beings. As early as 1992 the Women's Issues Division was set up within the Ministry of Labour, Emigration and Politically Persecuted Persons. In 1998 this division became the Committee on Women and the Family, a central institution directly under the Council of Ministers (1998). In 2001 the committee was renamed again as the Committee on Equal Opportunities.

As mentioned earlier special anti-trafficking units exist in the police and prosecution services, but they have so far not given special attention to the protection of victims of trafficking. Rescued victims were long kept in the police commissariats and pre-detention facilities, as there were no other suitable facilities. This brought into the open the status of trafficked women as being treated as criminals instead of victims of crime. In a joint monitoring mission in 2002, the Albanian Helsinki Committee (AHC) and the International Helsinki Federation (IHF) observed that five foreign women, who were victims of trafficking, were arrested and kept for months in police pre-detention facilities (AHC, 2002: 112-4). Through a joint open statement, the AHC and the IHF addressed the Prosecutor General to intervene for the immediate release of the women, and appealed to the Albanian government to put an end to such practices.

In the last few years several shelters have been opened for victims of trafficking. In 2001, the chief of police in Fier opened a shelter to provide protection for victims from the traffickers and bar and brothel owners from whom they had escaped or had been rescued. Also in 2001 a shelter was set up in the coastal city of Vlora, which has long been the centre of the trafficking in human beings, with the support of the United States Agency for International Development (USAID) and the NGO Save the Children (IOM and ICMC, 2002: 15). The Vlora Women's Centre is a non-governmental organisation that besides providing help for foreign victims engages in awareness raising programmes against trafficking in human beings and provides support for Albanian victims of trafficking repatriated into the country. In 2003 the Ministry of Public Order also set up a centre for the victims of trafficking in Albania's capital, Tirana.

In order for trafficked women to get assistance it is essential that they are not identified by the state as illegal migrants and treated as such. A significant step in identifying victims of trafficking and an indication of the implementation of international legislation in the area of asylum and migration in Albania is the enactment of a pre-screening procedure for detained foreigners, which is to be followed by the Albanian police. On 8 February 2001, the Ministry of Public Order issued the Administrative Instruction No. 132 to all police commissariats of Albania, regarding the establishment of a pre-screening procedure for detained foreigners (IOM and ICMC, 2002: 13). As well, on 25 April 2002 an agreement was signed between the Ministry of Public Order and the Ministry of Labour and Social Affairs according to which some locations will be reconstructed and transformed into shelters for victims of trafficking (IOM and ICMC, 2002: 15).

3.3. Training Programmes for Police and Prosecutors

The legislative and institutional reforms to combat organised crime have been accompanied by training programmes for the Albanian State Police and the Public Prosecution Service (Arnowitz, 2003: 6-8). A considerable amount of training has

been offered by international organisations and by foreign police missions in the country. The OSCE is currently implementing an anti-trafficking project and IOM is working with the Office of the General Prosecutor and the Ministry of Public Order to provide training on investigative procedures for trafficking in human beings. In addition, in the framework of cooperation between IOM, the ICMC and the Ministry of Public Order, police officers of anti-trafficking units send the trafficked victims to the shelter established and operated by IOM and ICMC (MPO, 2000: 13, MPO, 2001: 6-7, MPO, 2002: 15; Arnowitz, 2003: 6). Other programmes include training sessions, such as Policing the Rights of Women targeting the teaching staff of the Police Training Institute and Police Academy in Tirana, and are provided by ICITAP, the European Union and the IIPM (Arnowitz, 2003: 6).

Training in the area of combating drugs has been provided by ICITAP and MAPE, as well as by the United Nations Drug Control Program (UNDCP) working with the Ministry of Public Order. In the framework of this cooperation the police anti-drugs units have received equipment and support to fight crime in the field of drugs. There is also close cooperation with the United States Drug Enforcement Agency (DEA), which offers training of police and customs officers.

3.4. International Police and Judicial Cooperation

International police cooperation in Albania has experienced considerable improvement since the late 1990s and Albania has signed bilateral and multi-lateral agreements with many countries.

Since 1991 Albania has an agreement with Italy and since 1992 with the Former Yugoslav Republic of Macedonia (FYROM) and Turkey for enhancing the fight against organised crime. Albania additionally participates in the Black Sea Economic Cooperation Pact on the Cooperation in the Fight against Organised Crime (BSEC), which was signed by all the Heads of State and Government of the participating countries (virtually all south-eastern European countries, including Turkey, the Caucasus countries and Russia) in 1995. In 1998, in Corfu, Greece, the Ministers of the Interior of the same countries signed the related technical agreement that made police cooperation practically possible. In 2001 some amendments were introduced to improve the original agreements and to make them more efficient in controlling organised crime (Ministry of Public Order, 2001: 8).

In addition, with Act No. 8639, 13 July 2000, Albania ratified the 'Charter on the Organisation and Functioning of the Regional Centre of the Southeast European Cooperative Initiative (SECI) in the Fight against Trans-Border Crime'. SECI was founded in the late 1990s on the basis of multi- and bilateral agreements, ratified by the 11 participating states in compliance with European standards and international agreements. In addition to the Albanian police and customs, the police agencies of Bulgaria, Greece, Hungary, Macedonia, Romania and Turkey as well as the customs organisations of Bulgaria, Greece, Hungary, Macedonia, Romania, Turkey, Bosnia

Herzegovina and Moldavia are members of SECI. The Centre, which is based in Bucharest, Romania, supports efforts at the national level in combating trafficking in human beings, drugs and stolen cars, commercial fraud and financial crime.

As mentioned previously, Albanian police also cooperate with several foreign police missions based in the country, including MAPE that has provided police management training, ICITAP (International Criminal Investigative Training Assistance Program), which has offered counselling, training and logistical assistance and the IIPM, which has provided training on combating human trafficking.

As the geographical position of Albania is strategic and suitable for illegal trafficking in the region, several initiatives have been undertaken in the framework of cooperation with the neighbouring countries and their law enforcement agencies. Albania is a member of different initiatives in the region and law enforcement agencies have participated in a series of common operations with their counterparts in neighbouring countries. In 2000, an Anti-Trafficking Centre was established in Vlora, Albania, as a common initiative with Greece, Italy and Germany. The aim of the centre is to repress and prevent all forms of illegal trafficking going through and from Vlora, which is one of the strongholds of organised crime in the country. The centre was expected to become operational at the end of 2001 but so far its results have been very scarce. As a result, it has recently being a target of strong criticism, especially from Germany, for being still unoperational (UNDCP, 2003: 5).

4. Public Awareness Education in the Fight against Organised Crime

Since the mid-1990s, Albanian civil society has progressively become aware of the problems caused by organised crime and specifically by the trafficking in human beings and has cooperated with state bodies specialised in the fight against organised crime and corruption. The role of Albanian civil society, and especially that of the NGOs working in the field of human rights and women's rights has been demonstrated in areas, such as legal counselling and constructive criticism of draft laws related to organised crime, its repression and prevention.¹⁰

¹⁰ For example, the Albanian Helsinki Committee has offered legal counselling on several draft laws such as the law on navigational conveyances, judicial police, internal inspection services, police code of ethics, and on all the organised crime-related amendments to both the Criminal Code and Code of Criminal Procedure. In their turn, the Albanian Office for the Protection of Citizens and the Albanian Group of Women in the Media signed an agreement with the Ministry of Public Order and Ministry of Labour and Social Affairs on 18 June 2002 (MPO, 2003: 3) to provide legal and psychological assistance to women and children, victims of trafficking as well as to their related families.

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Enlightened media and NGOs have also been very active in sensitising and informing the public about different laws and planned amendments as well as the means of public participation in different programmes. Several projects have been and are in the process of being implemented aimed at public education and raising awareness (Arnowitz, 2003: 8-11).

It is important that civil society is involved in the implementation of programmes and strategies in the fight against organised crime from the beginning. NGOs can in particular contribute to the process of establishing reintegration programmes for victims, operating shelters, offering free legal assistance, providing psychosocial support etc.

5. Concluding Remarks

The Albanian government has taken a series of measures to establish organised crime control policies, but its efforts so far have proven to be insufficient. Although criminal and procedural legislation have improved, Albania still needs to bring the criminal and civil legislation up to European standards. This is one of the conditions for its association to the European Union.

The Albanian experience also clearly shows that it is not enough to pass updated legislation and establish specialised anti-organised crime structures if these initiatives are not supported and implemented by professionally trained staff. The fight against corruption is essential and even more so is the process of ensuring that police and other state organs are not themselves involved in criminal activity. Further training of the police, prosecution and court administration is needed and ensuring the effective functioning of the Court of Serious Crimes is of particular importance. It is also necessary to strengthen the state security and intelligence agencies, that should become more capable of controlling and infiltrating criminal groups to collect first-hand information (see also European Commission: 2004: 34-5).

Law enforcement and judicial bodies, such as the police, prosecution offices and courts, also need to improve coordination and cooperation with each other, as well as with their counterparts in other countries. Bilateral and multi-bilateral cooperation should be strengthened even further.

The approval of the law on the protection of the victims of trafficking, witnesses and informants who provide information in the framework of the investigation of criminal organisations is essential in the fight against organised crime. The criminal legislation should not only provide for an adequate legal regulation of such issues, but it should also provide a concrete framework for the practical implementation of crime control and victim assistance programmes in Albania.

Last but not least, there is a continuing need for criminological research in this field, to critically assess both the situation of organised crime and the effectiveness of organised crime control policies.

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Anti-Organised Crime Policies in Russia

Thomas Krüßmann

1. Introduction

This critical investigation of organised crime control policies in Russia closely follows the protocol given by the two book editors. It sets out to describe how organised crime has been perceived in Russia and which research and law enforcement agendas have been drawn from the various perspectives. The second section gives an overview of organised crime policies, describing the still predominant repressive approach as well as recent evidence of a more comprehensive perspective, developed particularly under pressure from Western governments and international law. The main part recapitulates the development of legal tools for combating organised crime from the *perestroika* period up to the present. While the 1996 Criminal Code receives many critical remarks from Russian scholars for its ineffectiveness, the 2002 Criminal Procedure Code leaves many questions open, especially how the new adversarial system will fit into the *etatist*-repressive concept of 'fighting crime'. The following section deals with institutional changes in the law enforcement effort against organised crime. A hallmark of recent developments is the pervasive influence of covert law enforcement techniques and the blurring of boundaries between police and security functions. The final chapter brings some observations on international police and judicial cooperation in combating organised crime.

2. Recent Research about Organised Crime Policies

2.1. Perceptions of Organised Crime

Organised crime policies in Russia have been a topic of concern during the past 20 years not only for Russians, but for law enforcement specialists worldwide. However, like so many other issues in the often contradictory development path of modern Russia, the law enforcement effort is viewed very controversially among outside observers on the one hand and Russian citizens and scholars on the other.

Russian literature devoted distinctively to organised crime as opposed to traditional banditry or economic crime in the so-called shadow economy appeared

only in the late 1980s.¹ However, despite the warnings against the dangers of organised crime expressed in these early works, the architects of Russia's ambitious privatisation programme continued to 'transform' and 'modernise' the state sector of the economy without much regard to the forces aligning underneath the thin varnish of the official economy.² Only when voucher privatisation came to an end did figures emerge which showed that a large part of the privatised economy had been turned into the hands of a new type of shady businessman and 'oligarch'. The reaction in the Western world was one of surprise and shock (Albini et al., 1995; Handelman, 1995; Jankiewicz, 1995; Leitzel et al., 1995; Shelley, 1995a, 1995b; Vaksberg, 1992) while at the same time in Russia many articles in economics journals pointed out the criminogenic nature of privatisation legislation, the widespread attempts of state enterprise directors to hijack the privatisation process and to manipulate shareholder meetings. Hence, there can be no excuse that the sub-rosa criminalisation of the economy occurred without any prior warnings.

In any case, organised crime became a central theme in the discourse on Russian society at large, its imbalances and blatant injustices.³ However, unlike any Western discourse which considers organised crime as a particular crime threat among others, conceptually different and distinct from an otherwise (more or less) healthy social fabric, the majority of Russians perceive organised crime as a ubiquitous phenomenon. Particularly during the late Yeltsin era everyday lives were frequently touched by the criminalisation of the economy and pervasive corruption of office. In the political arena the spectre of organised crime manifested itself most visibly in the realm of 'oligarchs', Kremlin administrators and the infamous Yeltsin 'family'. Law enforcement practitioners, on the other hand, followed the example of general Aleksandr Gurov, the respected head of the Soviet Union Ministry of the Interior's Sixth Chief Administration for Combating Organised Crime, in proclaiming organised crime the quintessential threat to Russian statehood (Khabalov 1999: 124).⁴ The perception of organised crime inside Russia thus fluctuated between the extremes of a 'seen it all' fatalism and technocratic activism. The picture of a boomtown economy administered by robber barons only vanished

¹ For more details, see Louise Shelley's contribution on organised crime in Russia in Part II.

² See Yakov Gilinskiy and Yakov Kostjukovsky's article in Part I on the merging criminal classes of the traditional 'blue collar' underworld and the enterprising directors of the cooperative sector.

³ For an early representation, see the USSR Congress of Peoples' Deputies Resolution No. 976-1 of 23 December 1989 On the Intensification of the Fight against Organised Crime [reprinted in Dolgova/D'yakov (1993)].

⁴ See e.g. Gurov (1995).

when the stockmarket crash of August 1998 wiped out most of the so-called banks and financial intermediaries controlled by organised crime figures.

2.2. Recent Research

The divided perceptions of organised crime in East and West are mirrored in the recent research on organised crime policies. As far as Western research is concerned, the media frenzy about the 'Russian *mafija*' has led to a strong interest in international police and judicial cooperation with Russia particularly in the United States (e.g. Abramovsky, 1996; Asnis, 1996; Shelley, 2002; Sinuraja, 1995; Solomonov, 1999; Vassalo, 1996). However, much of this literature is written from an international law or political science perspective without much regard to Russian domestic law. In Europe the topic is notably absent from the latest Max Planck Institute publication on legal initiatives against organised crime (Gropp and Huber, 2001), and with a few exceptions (e.g. Galeotti, 1993; Krüßmann, 2001; Lammich, 1993) there is also very little research on domestic institutional or legal responses.

The picture is not much brighter when considering the domestic Russian research on organised crime policies. Kaminskii et al. (2002: 2) complain about a lack of 'complex' analysis of law enforcement responses while on the other hand the past ten years in Russia have seen a permanent current of articles and books dealing with a variety of issues in this area.⁵ However, the main reason for this seemingly contradictory situation lies in the institutional structure of the law enforcement response itself which is essentially fragmented and does not lend itself easily to a unifying perspective. In addition, the more drawn out and languishing the 'fight' against organised crime is, the less motivation there appears to be for committing resources and energy to a research effort. Only the recent signing by Russia of the United Nations Convention against Transnational Organised Crime helped to re-invigorate research on organised crime policies and shifted the attention to combating transnational forms of organised crime (Ovchinskii, 2001; Nomokonov, 2001 and 2002b; Repetskaya, 2001).⁶

A cause for disappointment is certainly the small amount of high-quality research from the higher institutions of learning of the Ministry of the Interior and the General Procuracy. Despite the fact that both institutions traditionally maintain a prestigious network of universities and colleges throughout the country, the output of dissertations in the area of law, while mostly dutifully centring on law

⁵ See the bibliography compiled by V. Nomokonov and provided at <<http://www.crime.vl.ru>>.

⁶ Signed by the Russian Federation on 12 December 2000.

enforcement issues, is usually of a fairly standard quality.⁷ On the positive side, the United States-sponsored research and training network of the Transnational Crime and Corruption Center of American University under the leadership of Louise Shelley is achieving impressive results in fostering innovative research among younger scholars.⁸

A final aspect which adversely impinges on the state of research on organised crime policies is the often hostile attitude of Russian law enforcement authorities to becoming the object of scholarly research. Whereas in the United States policing is a recognised subject in the curriculum of criminology, it does not generally feature as prominently on the European criminological agenda due to the unified militaristic traditions of police in continental Europe including Russia. It is certainly difficult to determine cause and effect, but Russian police traditionally consider any proposal to research their practices as an attempt to wash dirty laundry in public,⁹ thus discouraging any attempt to establish a police-centred research agenda.¹⁰ The problem is equally grave with regard to the domestic security services even in the limited area where they have a mandate to combat crime. After a public relations-minded effort to emphasise the law enforcement role of the KGB successors in the early years of independent Russia (Knight, 1990: 23-4), today's Federal Security Service as the most important domestic security agency has returned to its traditional role as an instrument of power and domination (Knight, 2000: 13-14).

3. Overview of Organised Crime Policies

3.1. Introduction

Many Russian scholars agree that the debate on organised crime and how to counteract it mostly evolved as part of the general debate on crime during the late

⁷ Bäckman (2000: 262): 'Given that the mainstream of criminological research in Russia is carried out by specialised police officers, Russian criminology constitutes merely a reproductive system rather than an independent and critical scientific tradition.'

⁸ Current centres are located in St. Petersburg, Moscow, Irkutsk, Saratov and Vladivostok as well as in Kharkiv, Odessa, Zaporizhzhya and Tbilisi.

⁹ See, for example, the account of Shchedrin (2000) on his experience in Krasnoyarsk. As a matter of fact, very often the results of such research turn out to be highly critical of Russian police (e.g. Human Rights Watch, 1999).

¹⁰ While this is generally true, there are also a few notable exceptions (e.g. Basova, 2003; Beck and Lee, 2004; Krüßmann, 2000; Mekhovich et al., 1999; Moraleva and Fyodorova, 1994).

perestroika years of the Soviet Union (Kaminskii et al., 2002: 7). At a time when cooperatives were increasingly used to cannibalise the state sector (Krüßmann, 1998: 61-8), Soviet President Mikhail Gorbachev applied his new powers to issue a series of decrees which was effectively aimed at fighting organised crime without using the term.¹¹

This final attempt to assert the authority of the Soviet government proved to be in vain, and the ensuing interregnum period with the infamous ‘war of laws’ between the Soviet Union and the Russian Republic laid the ground for the continuation of what was then euphemistically called ‘spontaneous privatisation’. Only when the Russian government reasserted its authority on the privatisation process, in the wake of the August putsch of 1991, did a more coherent picture emerge.

In the newly independent Russia the debate on organised crime policies was unfolding until very recently mostly in the repressive frame of ‘fighting organised crime’.¹² Only in the areas of corruption and money-laundering did a new thinking take hold which embraces a much fuller range of law enforcement responses (e.g. administrative law) and preventive measures. It is also in this latter area that international pressure on the Russian government has yielded the greatest results.

3.2. Repressive Approaches to Organised Crime

Historically, the repressive ‘fighting organised crime’ approach seems to correspond most naturally to the impulses of law enforcement professionals in Russia (Bäckman, 2000: 260). However, even within this strand of thinking a certain distinction can be made between an official approach which favours campaign-style programmatic work, and the scholarly and political debate which crystallised around certain legislation and political events.

¹¹ See, for example, Decree No. UP-793 of 27 September 1990, On Urgent Measures to Stabilise Economic Relations in the Fourth Quarter of 1990 and for the Full Year of 1991 [Vedomosti S’ezda Narodnykh Deputatov i Verkhovnogo Soveta (VSND) SSSR 1990 No. 40 pos. 812]; Decree No. UP-1201 of 14 December 1990, On Measures to Avert the Disorganisation of Production Related to the Unsatisfying State of Concluding Supply Contracts for the Year 1991 (VSND SSSR 1990 No. 51 pos. 1152); and Decree No. UP-1380 of 26 January 1991, On Measures to Combat Economic Sabotage and Other Crimes in the Economy (VSND SSSR 1991 No. 5 pos. 155).

¹² For a poignant critique, see Gavrilov (1996). In scholarly circles the prevention of organised crime is usually considered to be equally important (Gilinskiy, 1998; Luneev, 1996; Min’kovskii, Revin and Barinova, 1998), but does not seem to receive its due share of attention from law enforcement practitioners in the area of organised crime (see also Gilinskiy, 2002).

3.2.1. Programmes to Combat Organised Crime

In the area of law enforcement programmes the Security Council is the competent authority to develop priorities and implementation schedules. Its Inter-Agency Commission for the Fight against Crime and Corruption was founded as early as 8 October 1992 to coordinate the work of the Ministry of the Interior, the Defence Ministry, the (then) Security Ministry, the Customs Committee and the Bureau of Exchange and Export Controls.¹³ However, the alleged goal – to protect citizens and to intensify the fight against crime – soon fell a prey to the ensuing power struggle between President Boris Yeltsin and the Supreme Soviet. In the Inter-Agency Commission's founding decree General Aleksandr Rutskoy, then Vice-President and close ally of the Supreme Soviet, was appointed head of the Commission.

But it was only when Yeltsin received a mandate to continue his brand of economic reforms in the referendum of April 1993 that the Inter-Agency Commission moved out of the stalemate with the Supreme Soviet. Yeltsin dismissed Rutskoy and declared himself personally in charge of the Commission. But again, it was not until the Supreme Soviet was actually defeated in the September 1993 storming of the 'White House' that the Commission came to fulfill its mandate. It is certainly one of the ironies of Russian history that when the first federal programme 'On the intensification of the fight against crime during the years 1994 – 1995' was enacted the official mass privatisation policy was almost coming to an end.¹⁴ While the privatisation laws and programmes of the time did not foresee any mechanisms to screen bidders or control the origin of money invested, mass privatisation changed the economic basis of the country without the government being able to impose a coherent law enforcement response to what came to be known as organised crime.

¹³ Decree No. 1189 On Measures to Defend the Rights of Citizens, to Protect the Legal Order and to Intensify the Fight against Crime [Vedomosti S'ezda Narodnykh Deputatov (VSND) 1992 No. 42 pos. 2373], see also pos. 4 of the resolution of the Congress of People Deputies No. 4081-I of 14 December 1992 On the State of Legality, the Fight against Crime and Corruption [reprinted in Dolgova/D'yakov (1993)]. Later on the Commission was transformed into the Inter-Agency Commission of the RF Security Council on the Protection of Citizen's Rights and Public Safety, Fight against Crime and Corruption [Decree No. 1037 of 19 September 1997 On the Inter-Agency Commissions of the RF Security Council, Sobranie zakonodatel'stva RF (SZRF) 1997 No. 39 pos. 4527] and again into the Inter-Agency Commission for Public Safety, Fight against Crime and Corruption (Decree No. 1603 of 1 September 2000 Questions of Inter-Agency Commissions of the RF Security Council, SZRF 2000 No. 37 pos. 3701).

¹⁴ Enacted by Decree No. 1016 of 24 May 1994 On Immediate Measures to Implement The RF Federal Programme to Intensify the Fight against Crime During the Years 1994-1995 (SZRF 1994 No. 5 pos. 403).

Until now, the first federal programme has been followed up by two other national programmes.¹⁵ In addition, Member States of the Commonwealth of Independent States (CIS) launched an initiative to increase cooperation in the area of fighting organised crime by adopting on 17 May 1996 a 'Programme on joint measures to fight organised crime and other types of dangerous crimes on the territory of CIS Member States for the time period until the year 2000'. To implement this programme in the Russian Federation, a 'national plan' was enacted on 7 December 1996 which overlaps with the national programmes mentioned above.¹⁶ Each document contains a description of the *status quo* in fighting organised crime plus a detailed schedule of tasks, assignments and deadlines.

It is a bit doubtful to the outside observer to what extent this host of programmes and guidelines actually contributes to practical law enforcement. For academic purposes each programme contains a useful account of the official representation of organised crime at the time. As documents addressed to the various law enforcement agencies, each programme purports to effectuate and streamline the overall strategies imposed from above. While the heavy-handed command style characteristic of these documents is certainly part of the Russian police culture, it is also intimately linked to notions of hierarchy and goal fulfilment. In any case, Kaminskii et al. (2002: 15) in their discussion of international cooperation with the 'far abroad' (particularly Western governments) complain about a lack of comparable joint planning.

3.2.2 Focal Points of Debate

Within the strand of 'fighting organised crime' the above-mentioned plans and programmes did not foster much scholarly debate. Instead, the real focal points of discussion proved to be certain legislative acts. The first example which created shockwaves in Russia and abroad was Decree No. 1226 issued by Yeltsin on 14 June 1994 'On immediate measures to protect the people against banditry and other forms of organised crime'.¹⁷

¹⁵ Federal Target Programme to Intensify the Fight against Crime During the Years 1996-1997, enacted by Regulation No. 600 of 17 May 1996 (SZRF 1996 No. 22 pos. 2696) and Federal Target Programme to Intensify the Fight against Crime During the Years 1999-2000, enacted by Regulation No. 270 of 10 March 1999 (SZRF 1999 No. 12 pos. 1484) and extended through 2001.

¹⁶ Regulation No. 1427 of 7 December 1996 On the RF National Plan to Implement the Interstate Programme on Joint Measures to Fight Organised Crime and Other Types of Dangerous Crimes on the Territory of CIS Member States for the Time Period until the Year 2000 (retrieved from GARANT database).

¹⁷ Sobranie aktov Prezidenta i Pravitel'stva (SAPP) 1994 No. 8 pos. 804.

Styled as a piece of emergency legislation, it introduced far-reaching changes into the legal framework for combating banditry and organised crime. At a time when the term 'organised criminal group' had not yet entered the legal vernacular of criminal law in Russia, it empowered law enforcement, albeit with the consent of the procuracy, even before the formal opening of investigative proceedings, to order expert opinions on and to conduct – in circumvention of bank secrecy laws – preliminary financial screenings of the business dealings of persons with regard to whom there were circumstances indicating their involvement with 'organised criminal groups'.¹⁸ In the latter area the possibility of financial control was also extended to the property of relatives, dependants and also legal persons controlled by the suspect. In practice, however, these sweeping new powers were not used uniformly. For instance, in the case of St. Petersburg it is reported that the local procuracy did not consent to any of these practices (Topil'skaya, 1999: 130).

Of much greater popularity among law enforcement officials was a second set of provisions in Decree No. 1226 which permitted the preventive detainment of persons believed to be involved in 'organised criminal groups' for a period of up to 30 days. According to Mikhail Yegorov, then head of the Ministry of the Interior's GUBOP (on this institution see *infra*), during the first year after the decree came into effect the authorities detained 22,400 persons and instituted 11,000 criminal cases. He also claimed that during the same time only 202 human rights complaints were filed (Jankiewicz, 1995: 256).

Against the background of the Russian Constitution which permits the detainment of persons for only up to 48 hours without the consent of the courts,¹⁹ the decree was met with an immediate storm of protest from human rights groups.²⁰ On 22 June 1994 the State Duma (the Lower House of the Federal Assembly of the Parliament of the Russian Federation) issued a resolution 'On the protection of the constitutional rights and freedoms of citizens in the context of measures for combating crime' which harshly criticised the decree as disorganising the judicial system of the country (Kaminskii et al., 2002: 31). The decree was also met with criticism in Western legal writing (Asnis, 1996: 309-13; Lammich, 1997: 787, 1998: 54-5; Solomonov, 1999: 188-91), while Russian authors tended to be more

¹⁸ The corresponding change occurred only two weeks later when Act No. 10-FZ of 1 July 1994 (SZRF 1994 No. 10 pos. 1109) introduced the term 'organised group' as Article 17-1 into the general part of the 1960 Criminal Code of Russia. The new article defines an 'organised group' as a stable (*ustoychivaya*) group of people formed in advance for the commission of one or several offences.

¹⁹ Article 22 Russian Federation Constitution.

²⁰ 'Yeltsin's Anticrime Decree Draws Flood of Protests', *Current Digest of the Soviet Press*, 1994, vol. 46, No. 24.

sympathetic with its goals.²¹ It remained in force until 1997,²² but it continues to be a point of reference for discussions on the human rights dimension of police powers.

Another example of legislative acts provoking intense debates about organised crime policies is the bill 'On combating organised crime'. This bill was adopted by the State Duma on 22 November 1995 and by the Federation Council on 9 December 1995, but vetoed by President Yeltsin on 22 December 1995 because it allegedly violated the Constitution. (Dolgova and D'yakov, 1996: 291-2; Ivanov, 1996: 14). The State Duma returned to the bill in February 1999, but again the law did not come forth (Nomokonov, 1999: 180). Its significance lies first and foremost in the attempt to create a 'complex' law which ties together the relevant provisions of the Criminal Code and the law 'On operative investigations' (for details see *infra*) and combines them with a special subset of procedural rules outside the Criminal Procedure Code. There is an overwhelming consensus among scholarly commentators (Kaminskii et al., 2002: 30; Nomokonov, 1999: 176; Osipkin, 1998: 13) and law enforcement practitioners (Khabalov, 1999: 125) that the adoption of this kind of law would have been a useful step, if only to make the difficult legal aspects involved more comprehensible to law enforcement agencies.

In terms of its lasting significance, the bill anticipated the terminological basis for combating group crimes later enacted in the Criminal Code of 13 June 1996.²³ Other provisions, particularly on the powers of the prosecution authorities to waive criminal liability when a defendant testifies against other members of the organised crime group, seemed to be used in practice without having been introduced into the new Criminal Code (Nomokonov, 1999: 181). For other issues, the various drafts of the bill helped to circulate ideas which continue to be discussed among legal scholars and law enforcement practitioners. A prime example is the proposal to create a specialised body to combat organised crime independent and outside of the traditional structures of law enforcement in order to minimise political interference (Skoblikov, 2000). On the whole, the preparatory work in the various work groups and its publication in the influential *Organizovannaya prestupnost'* series (Dolgova and D'yakov, 1996) created a debate that continues to serve the public as a reservoir of ideas and proposals. This positive effect is also witnessed by the fact that the CIS model law 'On combating organised crime' adopted on 2 November 1996 draws heavily on the Russian experience (Mikhaylov and Fyodorov, 1998: 84).

²¹ For example Kaminskii et al. (2002: 32) whose main complaint is that the provisions of the decree should have been implemented by formal law.

²² Strangely, there is no reference to be found for a decree abolishing Decree No. 1226. But several authors (Kaminskii et al., 2002: 31; Nußberger, 1998: 85) point to the year 1997.

²³ Act No. 63-FZ (SZRF 1996 No. 25 pos. 2954). For details see *infra*.

A third area of debate concerns the problem of witness protection. Against the background of an unprecedented wave of contract killings, a law was adopted in 1995 which affords special protection to judges and different categories of law enforcement officials.²⁴ There is no doubt that trials against members of organised crime groups pose a similar danger to victims of crime and witnesses, particularly those ‘crown witnesses’ who have detailed insider knowledge about the organised crime organisation implicated. Following the example of the United States and the Italian witness protection programmes it was therefore proposed to adopt a similar system under Russian law. As a matter of fact, a bill ‘On the state protection of victims, witnesses and other persons contributing to criminal proceedings’ passed through the State Duma²⁵ and also the Federation Council, but was vetoed by Yeltsin.²⁶ The alleged reason was that the Russian government was unable to commit the funds needed to implement such a programme successfully. The lack of a witness protection programme is considered to be one of the many deficiencies of the current legal framework to combat organised crime (Kaminskii et al., 2002: 38). However, the 2002 Criminal Procedure Code introduced a number of provisions which are designed to protect victims and witnesses of crime (see *infra*).

3.3. Development of a More Comprehensive Approach

Beyond the ‘fighting organised crime’ approach there are two major areas where the debate about organised crime policies acquires a much broader perspective: the one is corruption, the other money laundering, representing a set of ‘second generation’ issues in organised crime. The difference is not only in topic and approach, but also in the forces which act to put these issues on the national agenda.

Corruption is an issue which is conceptually separate from organised crime, but also intimately linked to it. Given that many definitions of organised crime see one element of it in the quest for political influence, corruption of office is a phenomenon which opens the door to such endeavours.²⁷ The difference to traditional organised crime policies is twofold. On the one hand, despite the fact that there is a strong tradition calling for repressive measures, the public debate is more and more characterised by proposals which advocate a preventive approach beyond the means of criminal law (Kurakin, 2002; Lopatin, 2001). While the bill ‘On combating corruption’ was part of the package of laws vetoed by Yeltsin in 1995,

²⁴ Act No. 45-FZ of 20 April 1995 On the State Protection of Judges and Officials of Law Enforcement Authorities (SZRF 1995 No. 17 pos. 1455), by now heavily amended.

²⁵ Resolution No. 1391-II GD of 14 May 1997 (SZRF 1997 No. 21 pos. 2433).

²⁶ Resolution No. 187-SF of 10 June 1997 (SZRF 1997 No. 25 pos. 2817).

²⁷ See, for example, the recent work by Korzh (2002).

the current debate centres on a new law 'On the foundations of an anti-corruption policy'.²⁸ On the other hand, the difference is also in participants. It would be untrue to say that the world community is indifferent to corruption in Russia, but beyond the business interests of investors and the dangers of nuclear smuggling facilitated by corruption, the topic is not of much concern.²⁹ However, the changes that still take place in Russia are mostly the result of the work of both domestic as well as international NGO's such as Transparency International³⁰ and the Anti-Corruption Network for Transition Economies.³¹ While there is hardly a public outcry against organised crime among Russian citizens, the officially proclaimed 'civil society' has definitely become a notable force in the 'fight' against corruption.

Debates on second-generation issues such as money laundering³² and also drug and human trafficking represent issues which differ altogether from the debates on organised crime policies previously discussed.³³ It is in these areas that the international community is putting its greatest pressure on the Russian government to implement both repressive and preventive mechanisms in its domestic law. While the United States is one of the principal proponents of a worldwide regime of anti-money laundering legislation, the European Union joined forces and included a money laundering provision into its 1994 Partnership and Cooperation Agreement with Russia.³⁴ And in its 2000 Action Plan for a Joint Strategy on Russia for Combating Organised Crime³⁵ the European Union explicitly demanded

²⁸ See the debate *Yevropeyskii vzglyad* (2002).

²⁹ See, for example, the Council of Europe Criminal Law Convention on Corruption of 27 January 1999 [European Treaty Series (ETS) No. 173]. Interestingly, the RF has so far only signed (27 January 1999) but not ratified the Convention (ratification status as of 13 November 2002). It is also not even a signatory to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 21 November 1997 (ratification status as of 10 October 2002).

³⁰ See <<http://www.transparency.de>>.

³¹ See <<http://www.nobribes.org>>.

³² For Western accounts of the problem see Chung (1999) and Johnstone and Jones (2000).

³³ It is not quite clear whether and to what extent these areas are actually controlled by 'organised crime'. Some definitional problems notwithstanding, there are some authors which doubt or deny such a connection (Finckenauer, 2001: 183; Paoli, 2001: 114) while others (e.g. Caldwell et al., 1997; Stoker, 2001) affirm it.

³⁴ Article 81. The Agreement was concluded on 24 June 1994 on the island of Corfu and entered into force on 1 December 1997.

³⁵ *Official Journal*, C No. 106, 5, 13 April 2000.

ratification of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990.³⁶

By far the most powerful influence on Russia, however, is being exerted by the Financial Action Task Force (FATF) which kept Russia for a long time on its 'blacklist' of non-cooperative countries and territories. In response to this pressure Russia not only ratified the Council of Europe Convention, but implemented a comprehensive set of legislation (see *infra*) which finally prompted the FATF to remove Russia from its 'blacklist' on 11 October 2002. By contrast, the trafficking in women from Russia to western Europe and the United States is an area of concern which is only now being addressed.³⁷ Both the European Union and the United States government are devoting significant resources to fostering grassroots organisations, holding training seminars and also improving the international legal framework on the related issues. As a result, an anti-trafficking law was introduced into the Russian Duma in February 2003.

Russia is under increasing pressure to formulate its organised crime policies according to the prescriptions of international law. In addition, the implementation of these policies by law enforcement authorities is coming under an ever closer scrutiny, from a human rights point of view, by such organisations as the Council of Europe. However, the pattern in which Russia adapts and transforms is often a curious mixture of abrupt change and painful inertia, making it extremely difficult to calculate progress for a Western observer. The notion that 'Russia is large and Moscow far away' still provides the best warning against any unfounded optimism.

4. Legal Instruments

4.1. Foundations for Combating Organised Crime

4.1.1. Substantive Criminal Law

In line with the general preference for a repressive approach to combating organised crime, substantive criminal law represents the Russian government's preferred instrument for putting this fight into practice. However, the importance of criminal law extends beyond the obvious function of separating the legal from

³⁶ ETS No. 141.

³⁷ See, for example, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime.

the criminally illegal and also of providing the basis for criminal procedure. Whether or not a certain act falls under one offence or the other determines the type of pre-trial proceeding to be observed and also the law enforcement authority competent to conduct investigations. It is this unusual reliance on the technical qualification of behaviour as criminal which is a unique feature of the Russian pre-trial system. In order to cope with this complexity it seems advisable to insert a brief description of the criminal justice system to our discussion of the foundations for combating organised crime before venturing further into specific areas of law and institutions.

Russia inherited its Criminal Code from the Soviet Union's dual system of criminal law where each Union Republic had its own criminal code in line with All-Union umbrella legislation. As a matter of fact, for Russia the Criminal Code of 27 October 1960,³⁸ while heavily amended, remained in force until 1 January 1997 when a new Criminal Code replaced it.³⁹ Following the presidential veto of December 1995 which not only struck down a previous version of the Code, but also the bill 'On combating organised crime' (see supra), the final adoption of the new Code represents an important step in the overall strategy to fight crime.⁴⁰ As far as organised crime is concerned, however, the Code represents much less a break with the past than a continuation of policies and proposals contained in the organised crime bill. This becomes evident both in the general and in the special part of the Code.

As far as the general part is concerned, the most important changes occurred in the area of complicity. Following the introduction of the concept of an 'organised group' by Article 17-1 of the 1960 Criminal Code (see supra), Article 35 of the new Code proposes a breathtaking spectrum of organisational varieties for committing offences beyond the traditional categories of complicity. In addition to the category 'organised group', the 1996 Code now offers the categories 'group of persons', 'group of persons by prior conspiracy' and 'criminal society/criminal organisation' including also the association of organised groups.⁴¹ Obviously the purpose of these new categories is not to capture types of complicity which would otherwise go unpunished. It is rather to qualify certain offences as organised crime-

³⁸ VVS RSFSR 1960 No. 40 pos. 593.

³⁹ Act No. 64-FZ of 13 June 1996 On the Enactment of the Russian Federation Criminal Code (SZRF 1996 No. 25 pos. 2955).

⁴⁰ For an appraisal from a Western perspective, see e.g. Burnham (2000); Lammich (1997b/c); Pomorski (1998); and Schroeder (1997).

⁴¹ Translations of legal terms are all based on the English translation of the 1996 Criminal Code published in *Statutes and Decisions*, 1997, No. 4, 20-95 and No. 5, 13-93. For some fine points, see Reynolds (1997: 10-11).

related and to impose an increased criminal liability. However, what makes these categories so problematic for practical law enforcement is that they are not based on any kind of criminological preconception of what organised crime is, much less how it is structured (Gontar', 1999: 2; Nomokonov, 1999: 176). There is therefore a host of attempts in Russian legal literature to find doctrinally convincing solutions, particularly to the problem of how to define the elements 'stability' (*ustoychivost'*) in the legal definition of organised group and 'cohesiveness' (*splochennost'*) in the definition of criminal association (Bykov, 1997; Grib et al., 2000; Min'kovskii et al., 1997: 64; Yegorova, 1999).

The special part of the Criminal Code boasts an abundance of new offences, grouped under the heading 'Offences in the area of economic activity', and also two organisational offences applicable to organised crime, i.e. banditry and formation of a criminal association (criminal organisation). The new offences introduced appear to be fairly typical responses to white-collar crime but in the Russian context they are mostly relevant in the area of organised crime (Gerber, 2000). They include illegal entrepreneurship, illegal banking activity, fraudulent entrepreneurship, legalisation (laundering) of monetary assets or other property acquired by illegal means, illegal receipt of credit, compulsion to conclude or refuse to conclude a transaction, production or sale of counterfeit credit or settlement cards and other payment documents, improper acts in bankruptcy, intentional bankruptcy and fictitious bankruptcy. Beyond such typical organised crime offences, a total of 70 offences carry an increased criminal liability when committed by a group of persons or a group of persons based on a conspiracy.⁴² By contrast, there seem to be very few cases where the lawmaker used commission by a criminal association as an aggravating circumstance. It is also interesting to note that the aggravated circumstance of commission by a group of persons is used in about 70 per cent of cases with regard to grave and very grave offences while the remainder comes into play in the area of offences protecting democratic institutions and commerce where offences are generally of minor or medium gravity.⁴³

While it is impossible to discuss this plethora of offences in more detail, it is necessary to say at least a few words about money laundering and the organisational offences of banditry and formation of a criminal association.⁴⁴ As far as money laundering is concerned, Article 174 of the new Criminal Code represented the

⁴² See the elaborate statistics provided by Vod'ko (1997a: 15).

⁴³ See the legal categories of minor (*nebolshoy tyazhesti*) and medium (*sredney tyazhesti*) gravity crimes compared to grave (*tyazhkie*) and very grave crimes (*osobo tyazhkie prestupleniya*) in Article 15 of the Criminal Code.

⁴⁴ For a good overview, see Schroeder (2002: 220-33).

first attempt of the Russian lawmaker to grapple with this United States-imported concept even before Russia ratified the Council of Europe money laundering convention.⁴⁵ The result, however, turned out to be disastrous. A survey conducted by the Ministry of the Interior's *Sledstvennyj komitet* (see infra) found out that following the entry into force of the Criminal Code, investigators 'in practically all cases' misunderstood the objective elements of this new crime (Ivanov, 1999: 264). The doctrinal criticisms levelled against Article 174 in scholarly writing are manifold, but in essence focus on the inability of the law to limit itself to those instances which represent money laundering as a behaviour typically related to organised crime.⁴⁶ Since any unlawful activity could constitute a predicate offence and no special intent to launder illegal funds was required, a lot of financial operations typical of the shadow economy at the time were caught by the law (Tosunyan and Ivanov, 2000: 147). Following ratification of the Council of Europe money laundering convention Article 174 was substantially revised and a new Article 174-1 added.⁴⁷ The new provisions reflected many of the criticisms and gave the law a much clearer focus (Klepitskii, 2002: 42). However, despite the improvements the criminal law provisions on money laundering still give rise to many doctrinal disputes.

In the area of organisational offences, banditry is an offence well-known from Soviet times. Since it was first introduced into the 1922 Criminal Code it comprises in essence the formation and membership of 'stable' armed groups in order to attack individuals or organisations. In the 1960 Criminal Code banditry was included in the chapter on state offences because of its perceived danger to statehood at large. In the 1996 Criminal Code, it was transferred to the chapter on offences against public safety and order, thus emphasising its role as an instrument in the fight against organised crime.⁴⁸ Ustinova (1997: 6) provides statistics about convictions based on banditry. For post-*perestrojka* Russia the offence does not seem to have played a significant role, as far as convictions are concerned. In 1991 there was a total of eight convictions, 28 in 1992, 26 in 1993, 66 in 1994, and 86 in 1995.

The new Article 210 (formation of a criminal association) partly overlaps with Article 209 in that it criminalises the formation and membership of criminal

⁴⁵ Act No. 62-FZ of 28 May 2001 On the Ratification of the Convention 'On Laundering, Search, Seizure and Confiscation of the Proceeds from Crime' (SZRF 2001 No. 23 pos. 2280).

⁴⁶ See, for instance, Klepitskii (2002: 40-2) and Volzhenkin (1999: 105-13).

⁴⁷ Act No. 121-FZ of 7 August 2001 On Amendments and Changes to Various Russian Federation Legal Acts in Connection with the Adoption of the Federal Law 'On Counteracting the Legalisation (Laundering) of Incomes Received by Criminal Means' (SZRF 2001 No. 33 part I, pos. 3424).

⁴⁸ Article 209 of the Criminal Code.

associations (criminal organisations) for committing grave and very grave crimes.⁴⁹ Like Article 35(4) it relies on the element of ‘cohesiveness’, thus posing the very same problems of definition. In practice it is used very rarely. For instance, in 1997 in the whole of Russia 48 criminal proceedings were initiated, but only nine convictions were returned (Kaminskii et al., 2002: 30). In the following year the number of criminal proceedings initiated rose to 160 cases, but only in one case was conviction based on Article 210 (Kaminskii et al., 2002: 44).

4.1.2. Criminal Justice System: The Pre-Trial Stage

The Russian criminal justice system has retained a surprising degree of continuity despite the many changes introduced in its details over time. Even the latest almost revolutionary act by which Russia adopted an adversarial trial system in its new Criminal Procedure Code of 18 December 2001⁵⁰ left pre-trial procedures basically intact (Manova, 2003: 65).⁵¹ The importance of this continuity must not be underestimated because legal comparativists all over the world are witnessing a shift of balance from the trial to the pre-trial stage particularly in organised crime proceedings (Eser, 1996: 94-103). While specific aspects of organised crime in the trial phase shall be dealt with infra, the following overview is based on the 2002 Criminal Procedure Code which superseded the originally Soviet Criminal Procedure Code of 27 October 1960.⁵²

The notion of ‘fighting crime’ suggests a unitary legal structure, but in reality the picture is much more complex. In Russia, there is a variety of law enforcement authorities involved, and each of them acts within the realm of its ‘own’ law as well as on the basis of some more general laws. To simplify this picture one could say that up to the point of initiating criminal proceedings⁵³ each law enforcement

⁴⁹ To be read in conjunction with Article 35(5) of the Criminal Code.

⁵⁰ Since Act No. 174-FZ of 18 December 2001 Russian Federation Criminal Procedure Code (SZRF 2001 No. 52 pos. 4921) is for the most part in force as of 1 July 2002 (see Act No. 177-FZ of 18 December 2001 On the Entry into Force of the Russian Federation Criminal Procedure Code, SZRF 2001 No. 52 pos. 4924), it shall be henceforth referred to as the 2002 Criminal Procedure Code. In its recent history the Code has already experienced a total of nine amendments, the earliest one even before the Code entered into force (Act No. 58-FZ of 29 May 2002 (SZRF 2002 No. 22 pos. 2027)).

⁵¹ By contrast, the linking of the formal initiation of proceedings to the consent of the procuracy (Art. 146 CPC) is a very controversial novelty, but does not have any special effect on organised crime prosecutions.

⁵² VVS RSFSR 1960 No. 40 pos. 592.

⁵³ Article 140 of the Criminal Procedure Code requires the existence of ‘sufficient facts pointing to the elements of a crime’.

authority is acting in principle autonomously to determine the factual basis for this move. Leaving special units on organised crime aside for a moment (see *infra*), authorities include the police, tax police,⁵⁴ court marshalls,⁵⁵ customs authorities⁵⁶ and border guard.⁵⁷ The Federal Security Service and the procuracy do not exercise police functions, but have their own formal investigative powers.

The police which still carry the name *militsiya* from the early Soviet days,⁵⁸ have the broadest mandate to 'fight' crime. As an integral part of the federation-wide structure of the Ministry of the Interior,⁵⁹ they are divided into a protection police force and a criminal police force.⁶⁰ Both forces consist of a variety of units with various specialisations.⁶¹ Both have a mandate to prevent and investigate crime, but while the protection police gravitates to the protection of public safety and order in a preventive sense, the criminal police is exclusively entitled to investigate the more serious crimes through its *ugolovnyi rozysk* sub-unit.

When the various police authorities reach the factual basis for initiating criminal proceedings the Criminal Procedure Code provides for two types of pre-trial procedures, depending on the offence suspected: *doznanie* and *predvaritel'noe sledstvie*. The *doznanie* is essentially a simplified type of pre-trial investigation with a limited time frame of 15 to 25 days where the police authority which established the factual basis of the suspected offence essentially continues to investigate as *doznavatel'*, however controlled by the procuracy.⁶² The *predvaritel'noe sledstvie*, on the other hand, does not only allow for more generous time frames, but also requires that

⁵⁴ See regulation On the Federal Agency of Tax Police in the Russian Federation, enacted by Decree No. 1272 of 25 September 1999 (SZRF 1999 No. 39 pos. 4590).

⁵⁵ Act No. 118-FZ of 21 July 1997 (SZRF 1997 No. 30 pos. 3570).

⁵⁶ Act No. 135-FZ of 7 November 2000 (SZRF 2000 No. 46 pos. 4537).

⁵⁷ Act No. 55-FZ of 4 May 2000 On the Russian Federation Border Patrol Service (SZRF 2000 No. 19 pos. 2021). By 1 July 2003, however, the Border Patrol Service was abolished and its functions transferred to the Federal Security Service (Decree No. 308 of 11 March 2003, SZRF 2003 No. 12 pos. 1101).

⁵⁸ For a good background, see Shelley (1996).

⁵⁹ See the Ministry of the Interior regulation, confirmed by Decree No. 1039 of 18 July 1996 (SZRF 1996 No. 30 pos. 3605).

⁶⁰ Act No. 1026-I of 18 April 1991 On the Police (VSND RSFSR 1991 No. 16 pos. 503), by now heavily amended.

⁶¹ See Regulation No. 925 of 7 December 2000 On the Sub-Units of the Criminal Police (SZRF 2000 No. 50 pos. 4904) and Regulation No. 926 of the same day On the Sub-Units of the Protection Police (SZRF 2000 No. 50 pos. 4905).

⁶² Article 223(2) of the Criminal Procedure Code.

within the authority which has initiated proceedings a specialised investigation unit takes charge as *sledovatel'*.⁶³ In the majority of cases where the criminal police initiated proceedings, the power to continue investigations is thus transferred to a separate unit within the Ministry of the Interior called *Sledstvennyi komitet* with its subunits *sledstvennye upravleniya* along the federal structure.⁶⁴

As mentioned before, one of the peculiarities of the Russian criminal justice system is that the choice of pre-trial procedure and also of the authority competent to act as *doznavatel'* or *sledovatel'* depends on the offence established. While many singular offences not specific to organised crime may fall into the category of *doznanie*-type investigations, the 2002 Criminal Procedure Code assigns all the new offences introduced to combat organised crime in the 1996 Criminal Code, as well as the organisational offences of banditry and formation of a criminal association, to the *predvaritel'noe sledstvie*-type of investigation.⁶⁵ All of them come under the *podsledstvennost'* of the Ministry of the Interior structure,⁶⁶ but at the same time the law also permits that the authority which initiated proceedings acts as *sledovatel'*.⁶⁷ This effectively means that all the law enforcement authorities involved in the fight against organised crime may assume the power to continue their investigations into the pre-trial phase of criminal proceedings. It is obvious that this unclear delineation of powers which the 2002 Criminal Procedure Code continued from its 1960 predecessor carries the seeds of confusion and inter-agency rivalry (on coordination efforts see *infra*).

4.2. Operative Investigations

The distinction between policing by the various law enforcement authorities and a much narrower pre-trial phase governed by the Criminal Procedure Code would seem to imply that each law enforcement authority is using the respective set of

⁶³ Article 162 of the Criminal Procedure Code provides for two to six months, in exceptional cases also up to one year and beyond.

⁶⁴ See Decree No. 1422 of 23 November 1998 On Measures to Improve the Organisation of *predvaritel'noe sledstvie* within the System of the Russian Federation Ministry of the Interior (SZRF 1998 No. 48 pos. 5923) and Decree No. 644 of 4 June 2001 On Some Issues of the Russian Federation Ministry of the Interior (SZRF 2001 No. 24 pos. 2416).

⁶⁵ Article 151(3) of the Criminal Procedure Code.

⁶⁶ Article 151(2)(3) of the Criminal Procedure Code.

⁶⁷ Article 151(5) of the Criminal Procedure Code.

powers depending on the state of investigations.⁶⁸ However, the distinction is not so clear-cut because an additional layer of powers is introduced for so-called operative investigations (*operativno-rozysknaya deyatel'nost'*) which encompasses both policing and the pre-trial stage of criminal proceedings. This confluence of powers is well recognised in Article 164(7) of the Criminal Procedure Code⁶⁹ and in the specialised laws on the various law enforcement authorities, e.g. Article 11 (16) of the Law On the Police.⁷⁰

In Russian law, 'operative investigations' is used as a peculiar catch-all phrase for a variety of investigation techniques which include both overt and covert means and devices. While in the traditional Soviet system such investigations were conducted on the basis of often unpublished ministerial regulations, the civil rights debate during *perestroyka* made it clear that in a 'rule of law' state such practices would have to be regulated by formal law (Baskov, 1998: 24). As a result, independent Russia adopted a law 'On operative investigations' as early as 13 March 1992.⁷¹ Its major thrust was to provide a closed catalogue of twelve so-called operative investigation measures to be executed by specialised units within the various law enforcement agencies in cases where regular powers both under the 'home' law and the Criminal Procedure Code are insufficient. The purposes established by the law for using these additional powers were limited to preventing or investigating crime and locating fugitive suspects or convicted criminals. The scope of the law was thus rather limited. In addition, it provided a variety of safeguards for citizens who became targets of operative investigation measures. The overall thrust of the 1992 Law was thus much more limiting than enabling.

This general direction changed when in 1995 another Law, On Operative Investigations, replaced the 1992 Law.⁷² The new law most importantly extended the purpose of operative investigations beyond the limits of traditional law enforcement. Operative investigation measures are now permissible also to collect information

⁶⁸ For a comparative analysis of the powers of search and seizure under the police law and the Criminal Procedure Code, see Krüßmann (2001: 253-59).

⁶⁹ The same is true for the 1960 RSFSR Criminal Procedure Code which in Article 118 contains an analogous rule.

⁷⁰ As amended by Act No. 68-FZ of 31 March 1999 (SZRF 1999 No. 14 pos. 1666).

⁷¹ VSND 1992 No. 17 pos. 892, as amended by Act No. 3181-I of 2 July 1992 (VSND 1992 No. 33 pos. 1912). For a comparative analysis from a Western perspective see Lammich (1995).

⁷² Act No. 144-FZ of 12 August 1995 (SZRF 1995 No. 33 pos. 3349), as amended by Act No. 101-FZ of 18 July 1997 (SZRF 1997 No. 29 pos. 3502), Act No. 6-FZ of 6 January 1999 (SZRF 1999 No. 2 pos. 233) and Act No. 225-FZ of 30 December 1999 (SZRF 2000 No. 1 pos. 8).

on events and practices which constitute a danger for state, military, economic or ecological security. While the previous catalogue of operative investigation measures included such information-gathering techniques as interception of mail, surveillance of the spoken word and electronic communications,⁷³ the expanded catalogue now in addition provides for undercover operations, controlled deliveries and so-called 'operative experiments'. The aforementioned changes were all clearly designed to facilitate the fight against organised crime. Their practical relevance is also highlighted by a new clause which dropped the subsidiarity requirement of the 1992 Act, thus blurring the boundaries between intelligence methods and traditional police work even more.

The change of direction from a limiting to an enabling piece of legislation is most clearly visible in the Constitutional Court cases in which the constitutionality of the enabling provisions of the law was challenged. The landmark decision of 14 July 1998 was based on an action by a journalist from Volgograd against a decision of the Volgograd regional court.⁷⁴ She claimed that her privacy rights had been violated by the Volgograd regional police administration putting her on *operativnyi uchet* (on this device see *infra*) and subjecting her to various operative investigation measures after she published a series of articles critical of the Volgograd police, and later on by refusing to provide information on her file. The Volgograd regional court acknowledged that she had become the target of operative investigation measures, but did not endorse her right to receive information on her file because it contained state secrets. When the Constitutional Court – following an appeal to the Russian Federation Supreme Court – finally came to decide on the constitutionality of the provisions challenged, the majority of judges, in a 11:4 decision, endorsed the view that the law conforms to the Russian Federation Constitution and that it grants broad discretion to withhold information on grounds of state secrets. The dissenting judges in this case all provided separate *obiter dicta*. In later cases, however, the Court declined to even consider the suits filed and thus confirmed the impression that there is no desire to use the law's privacy provisions to turn it into an instrument for controlling the police.⁷⁵

⁷³ The technical support for such covert investigations is to be provided by the Federal Security Service. See Decree No. 891 of 1 September 1995 On Re-ordering the Organisation and Execution of Operative Investigation Measures using Technical Devices (SZRF 1995 No. 24 pos. 2954).

⁷⁴ Constitutional Court decision No. 86-O.

⁷⁵ Decision No. 211-O of 1 December 1999 (case brought by K. Barkovskii), and decision No. 290-O of 21 December 2000 (case brought by T.S.-M. Idalov), SZRF 2000 No. 11 pos. 1069.

4.3. Criminal Procedure: The Trial Stage

While the 2002 Criminal Procedure Code did not bring any significant changes to pre-trial procedures, it revolutionised the trial stage by adopting an adversarial mode of adjudication.⁷⁶ In the scholarly debate, however, the Code received a very mixed reception. United States legal writing on previous experiments with jury trials in Russia had been mostly positive (Plotkin, 1994; Thaman, 1995) and it was also hoped that in organised crime cases the jury would provide greater legitimacy of decisions as well as better protection against criminal influence than inquisitorial trials by professional judges (DeVille, 1999: 104). Russian scholars, on the contrary, complain that the Code is still oriented towards traditional non-organised crime and does not take account of the proposals to provide for special procedures in organised crime cases (Nomokonov, 2002a: 10; Shul'ga, 2002: 1). In essence, it seems much harder for Russian scholars to psychologically part from the concept of criminal law and procedure as instruments of state domination than to appreciate the advances in procedural design from a human rights point of view.

It remains to be seen how the new Criminal Procedure Code will adapt to the realities of Russian law enforcement and whether – as in the Italian case⁷⁷ – the perceived necessities of combating organised crime will lead to a return to a more *etatist* concept of procedure. In any case, there are two areas where the new Code responds to debates around organised crime. The one issue is the protection of the accused, and also of witnesses and victims of crime, against threats and pressure from crime groups implicated in the trial.⁷⁸ Article 11(3) of the Criminal Procedure Code provides for a set of preventive measures available both in the pre-trial stage and during trial where sufficient facts indicate a risk not only to the above-mentioned persons, but also to their relatives and other persons close to them. During the pre-trial stage, personal data on witnesses or victims of crime who participated in an investigation measure may be omitted from the investigation protocol.⁷⁹ If victims of crime or witnesses fear threats to personal safety, they may apply to have their phones tapped and conversations monitored.⁸⁰ Where the confrontation of a suspect with a witness or the victim of crime becomes necessary, the latter may choose to conduct the confrontation in a way that they may not be seen by the

⁷⁶ Article 15 of the Criminal Procedure Code.

⁷⁷ See La Spina's contribution in this Part of the book.

⁷⁸ For an overview of previous debates, see Kaminskii et al. (2002: 92-3); Mel'nikovskii (1997); Nomokonov (1999: 183); Vorozhtsov (1996).

⁷⁹ Article 166(9) of the Criminal Procedure Code.

⁸⁰ Article 186(2) of the Criminal Procedure Code.

suspect.⁸¹ Finally, the publicity of the trial itself may be suspended for the duration of the testimonies of witnesses allegedly under threat.⁸² While in the latter case the defendant is still able to exercise his confrontation right, it is also possible to organise testimonies so that the identity of the witness is not revealed.⁸³

The second area where the new Criminal Procedure Code, albeit halfheartedly, responded to the debates around organised crime is in the area of using operative investigation information as evidence. The questions involved in this area are most intriguing because they represent an important consequence of imposing an adversarial trial system on a law enforcement structure which values the defence of state interests much higher than individual rights and freedoms.

With regard to covert operative investigation measures Article 12 of the 1995 Law On Operative Investigations declares all information on officers employed, technical devices used, sources involved, as well as on the results of such measures, to be state secrets within the meaning defined by the Law On State Secrets.⁸⁴ At the same time Article 11 permits the use of the results of operative investigations in trial as evidence provided they correspond to the criminal procedure rules governing the collection, control and evaluation of evidence.⁸⁵ The positions thus outlined seem hard enough to reconcile, but the problem was complicated even more by the fact that the old 1960 Criminal Procedure Code did not contain any special provisions on operative investigations.

In the absence of such rules the law enforcement authorities involved in operative investigations decided to solve the problem on their own by adopting an instruction On the Procedure for Submitting the Results of Operative Investigations to the Competent Authorities of *Doznanie*, *Sledstvie*, Procuracy or to the Courts.⁸⁶ Repeating what they thought the prescriptions of the Criminal Procedure Code at the time were, the authorities required that the results of operative investigations had to be relevant for the matter to be proven, reveal their source and contain any

⁸¹ Article 193(8) of the Criminal Procedure Code.

⁸² Article 241(4) of the Criminal Procedure Code.

⁸³ Article 278(5) of the Criminal Procedure Code.

⁸⁴ Act No. 5485-I of 21 July 1993 (*Rossiyskaya gazeta* of 21 September 1993, reprinted in SZRF 1997 No. 41 at 8220-8235), as amended by Act No. 131-FZ of 6 October 1997 (SZRF 1997 No. 41 pos. 4673).

⁸⁵ The same provision was also to be found in Article 10 of the 1992 Law On Operative Investigations.

⁸⁶ Confirmed by order No. 175/226/336/201/286/410/56 of 13 May 1998, registered with the Ministry of Justice on 3 September 1998 (Byulleten' normativnykh aktov 1998, No. 9, 40-7), published also in Korenevskii and Tokareva (2000: 108-17).

additional information necessary to enable the judge to evaluate the information as evidence. However, information could be transmitted to the courts only after having been de-classified. Not untypically for the style of administrative law in Russia, the instruction lacks any further explanation about the basis for taking such a decision. It only provides that the decision has to be made by the head of the respective law enforcement authority following consultations with the officers who implemented the measure.

While the above-mentioned instruction has remained more or less unchallenged (Pobedkin, 2003: 64) it is interesting to speculate how the shift from an inquisitorial to an adversarial trial mode will affect the availability of the results of operative investigations in criminal trials. The 1960 Code required a thorough and objective *ex officio* examination of all facts⁸⁷ including, if necessary, the testimony of the officers in charge of the operation.⁸⁸ In the legal literature there have been some attempts to provide solutions to the problem under the old Criminal Procedure Code by admitting results of operative investigations as evidence without providing the circumstantial information necessary to evaluate them,⁸⁹ while the majority of commentators resolutely rejected this possibility (Dolya, 1996: 64-9; Korenevskii and Tokareva, 2000: 14-16; Sheyfer, 1994: 100, 1997: 59, and 2001: 51; Zazhitskii, 1995: 65; Zemskova et al., 2002: 12-15).

As far as the 2002 Criminal Procedure Code is concerned, Nomokonov (2002a: 10) asserts that the new Code provides for a special procedure by which the results of operative investigations may be introduced as evidence without indicating source or circumstances, only if the specialised unit involved certifies the authenticity of the information. There is no doubt that Article 89 of the Criminal Procedure Code now contains a provision on the use of operative information as evidence. However, the approach is a negative one: the use of operative information is excluded if it does not correspond to the evidentiary standards of the Code. From this rather brief provision, Pletnev (2002: 48) concludes that the Code's approach to this problem is insufficient because operative information by its very nature cannot be used as evidence. Petrukhin (2002: 151), on the other hand, detects a 'certain contradiction' in the relationship between Article 89 of the Criminal Procedure Code and Article 11 of the Law On Operative Investigations, but means to solve the situation by mere textual interpretation.

⁸⁷ Article 20 of the Criminal Procedure Code.

⁸⁸ See the principle of 'immediacy' (*neposredstvennost'*) in Article 240 of the Criminal Procedure Code.

⁸⁹ Bednyakov (1991: 119-23); Bezlepkin (1991: 101). See also the discussion by Baskov (1998: 30) who considers such proposals to be 'anti-state and anti-constitutional'.

In fact, the legal position of the Criminal Procedure Code is ambivalent. By their very nature, some results of operative investigations (e.g. observations) may be introduced as evidence in the form of witness testimony or as real evidence.⁹⁰ Apart from such traditional forms of evidence, the Code also provides for the evidentiary category of 'other documents'.⁹¹ Such documents within the meaning of the law do not only include written documents, but surprisingly also pictures as well as audio- and video recordings. To introduce them into the trial, Article 285 of the Criminal Procedure Code requires that the information contained therein may be 'pronounced' on the condition that they are authenticated and relevant to the matter to be proved. Nomokonv (2002a: 10) may have referred to this provision, but in general the situation is still unclear. While traditional 'immediacy' in principle excludes second-hand evidence, the procedural confrontation right of Article 6 of the Council of Europe Human Rights Convention, to which the Russian Federation subscribed, will make it much harder in the future to introduce operative information as evidence without the defendant being able to challenge it.⁹² At this point in time it seems that the legal issues involved in this area of law have not even reached the stage of open discussion in Russian scholarship.

4.4. New Instruments related to Organised Crime

4.4.1. Control of Money Laundering Activities

Money laundering, including the illegal transfer of capital abroad, and most recently also terrorist financing became central targets in the overall strategy to combat organised crime in Russia. The legislation adopted in connection with the ratification of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime thus included not only changes to the Criminal Code (see *supra*), but also the implementation of mechanisms to detect, record and investigate instances of money laundering and terrorist financing.⁹³

At the centre of the new systems stands the Committee for Financial Monitoring, a financial intelligence unit (for details see *infra*) which acts as the principal

⁹⁰ Article 74(2) No. 2 and No. 6 Criminal Procedure Code. According to Korenevskii (in Kozak and Mizulina 2002: 222), these are the most frequently used types of evidence in the Russian court practice.

⁹¹ Article 74(2) No. 6 in conjunction with Article 84 Criminal Procedure Code.

⁹² Act No. 54-FZ of 30 March 1998 (SZRF 1998 No. 14 pos. 1514).

⁹³ Act No. 115-FZ of 7 August 2000 On Counteracting the Legalisation (Laundering) of Incomes Acquired through Crime, and the Financing of Terrorism (SZRF 2001 No. 33 part I pos. 3418), as amended by Act No. 112-FZ of 25 July 2002 (SZRF 2002 No. 30 pos. 3029) and Act No. 131-FZ of 30 October 2002 (SZRF 2002 No. 44 pos. 4296).

clearance point for all notifications of suspicious transactions. Banks and other financial institutions, under penalty of losing their licence, must comply with two types of requirements. The one called 'mandatory control' requires that transactions of certain types above the amount of 600,000 roubles (around € 16,700) are documented and notified to the Committee for Financial Monitoring, the other called 'internal control' calls on the banks and other financial institutions to set up internal procedures, employ specially trained staff and have suspicious transactions of all kinds notified to the Committee. The rules for the 'internal control' mechanism are to be developed and supervised by the relevant financial sector regulators, or, where there is no such regulator, by the Committee itself. In both cases the notification is to be transmitted within the next working day.

The relevant guidelines and regulations have been adopted during the latter half of the year 2002, so it is too early to judge the efficacy of this system. In any case, Russian commentators praised the Law for realistically taking into account the realities of organised crime's grip on banks and other financial institutions (Ivanov, 1999: 262). While it is never possible to exclude corruption among the employees of financial institutions, the Law under the 'mandatory control' system does not grant any discretion whether to notify or not. Also, it does not involve the financial institutions in investigations beyond the stages of documentation and notification. Finally, the penalty for non-compliance seems sufficiently harsh to deter abuse or malpractice. On the other hand, the benefits of the 'internal control' mechanism will largely depend on the active role of the industry regulators. As in many other cases, the closer the regulator to the regulated industry, the more likely the danger of regulatory capture.

4.2.2. Preventive Registration of Persons Involved in Organised Crime

Some new and interesting proposals reflect the growing consensus (see supra) that the problem of organised crime cannot satisfactorily be solved without including further preventive measures in the arsenal of law enforcement. Even under the existing legislation there is the possibility for law enforcement authorities to register persons (*zavesti delo operativnogo ucheta*) in cases where the preconditions of operative investigation measures are met.⁹⁴ The purpose of such registration is to collect and systematise the data available, particularly with regard to the usually well-known leaders of the traditional Russian underworld (*vory v zakone*). Depending on the individual case, the *uchet* can be quite comprehensive, especially since there are no limitations on what kind of data may be stored and for how long. For a Western observer there is a surprisingly small amount of awareness of the data protection problems involved when Article 10(3) of the Law On Operative

⁹⁴ Article 10 of the 1995 Law On Operative Investigations.

Investigations proclaims that ‘the fact of registering a person’s data does not give rise to limitations of constitutional rights and freedoms’.

This rather carefree attitude to personal rights and freedoms is also demonstrated in another proposal which is somehow related to the idea of *operativnyi uchet* (Nomokonov, 1999: 179). Boytsov and Gontar’ (2000) propose to adopt a law ‘On measures to combat violent organised crime’ the main idea of which is borrowed from Japanese law, i.e. the public registration of persons related to organised crime. While the *operativnyi uchet* is a covert measure which by its very nature cannot have any preventive effect, the registration proposed under the new scheme is overt and must be communicated to the person concerned. It is also limited in time and may be challenged in the courts. The basic idea, however, is that registration will give rise to a variety of administrative measures. Such measures include the possibility of examining the person’s financial background similar to the mechanism provided in Yeltsin’s Decree No. 1226, and also of imposing various limitations on a person’s freedom of movement.

5. Institutional Changes

5.1. Main Pillars of the Fight against Organised Crime

5.1.1. Russian Federation Ministry of the Interior

The Ministry of the Interior’s criminal police is the institution most heavily involved in the fight against organised crime. In addition there have always been specialised sub-units within the Ministry of the Interior’s structure which assumed special tasks in law enforcement.⁹⁵ For instance, as early as the 1930s a chief administration for the fight against banditry operated within the structure of the People’s Commissariat of Internal Affairs. In the area of combating organised crime, the Sixth Chief Administration under Gurov acquired nearly legendary fame in the final years of the Soviet Union.⁹⁶ It worked primarily through its own regional units called *shesty upravleniya /otdeleniya* depending on their position in the hierarchy of the Ministry of the Interior.⁹⁷

⁹⁵ See the Ministry of the Interior homepage at <<http://www.mvdinform.ru>>.

⁹⁶ It was founded by presidential Decree No. UP-1423 of 4 February 1991 On Measures to Intensify the Fight against the Most Dangerous Crimes and their Organised Forms (reprinted in Dolgova and D’yakov (1993)).

⁹⁷ The creation of these formations actually preceded the founding of the Chief Administration by almost a year! See Council of Ministers Regulation No. 496 of 22 May 1990

After the Russian Ministry of the Interior acquired independence from the Soviet mother institution, it followed the example and created a Chief Administration for Organised Crime (GUOP,⁹⁸ later renamed GUBOP⁹⁹) which represented the top of a chain of 12 regional administrations,¹⁰⁰ about 90 administrations in the Ministries of the Interior within the Russian republics¹⁰¹ as well as the Ministry of the Interior's lower level departments of the *kray* and *oblast'* administrative structure.¹⁰² In addition, there were hundreds of sub-units in the various cities. While the RUBOPs were subordinated to the GUBOP, the lower level structures all followed the principle of dual subordination.

Until recently, the Ministry of the Interior also controlled rapid reaction forces to combat organised crime. These forces dated back to the year 1992¹⁰³ and existed throughout the past decade.¹⁰⁴ Their activities seem to have been entirely regulated by internal instructions. From the founding decree it is merely clear that equipment and arms are to be provided by the Ministry of Defence, and that their task is mainly to combat armed organised crime groups. The rapid reaction forces thus appear to represent a militarised approach to combating banditry in the traditional sense rather than a sophisticated approach to uncovering economic crime. They seem to have been disbanded recently, but their exact status is not clear.¹⁰⁵

On the whole, the complex array of structural units and subordinations on the lower levels of the Ministry of the Interior's hierarchy makes it very difficult for an outsider to distinguish the aforementioned organised crime sub-units from the other specialised sub-units within the criminal police such as *ugolovnyi rozysk*,

On Creating Inter-Regional Sub-Units of the USSR Ministry of the Interior for the Fight against Organised Crime (reprinted in Dolgova and D'yakov (1993)).

⁹⁸ GUOP was created in February 1992 (Ovchinskii and Ovchinskii 1993: 51).

⁹⁹ *Glavnoe upravlenie po bor'be s organizovannoy prestupnost'yu*, see Decree No. 433 of 24 April 1998 Questions of the Russian Federation Ministry of the Interior (SZRF 1998 No. 17 pos. 1915).

¹⁰⁰ RUBOP – *regional'nye upravleniya po bor'be s organizovannoy prestupnost'yu*.

¹⁰¹ UBOP/OBOP – *upraveniya/otdely po bor'be s organizovannoy prestupnost'yu*.

¹⁰² UVD – *upravleniya po vnutrennim delam*.

¹⁰³ Decree No. 1189 of 8.10.1992, see supra.

¹⁰⁴ Regulation No. 925 of 7 December 2000 On the Structural Units of the Criminal Police (SZRF 2000 No. 50 pos. 4904, as amended by Regulation No. 558 of 26 July 2001, SZRF 2001 No. 32 pos. 3325) lists among others the subunit for the fight against organised crime including special rapid reaction detachments.

¹⁰⁵ Regulation No. 60 of 6 February 2003 (SZRF 2003 No. 7 pos. 636) at least excludes the rapid reaction detachments from the structure of the criminal police.

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the unit for combating economic crime, the illegal drug trade and others. In the absence of meaningful statistics it is also difficult to judge the relative weight of the organised crime subunits as compared to the other sub-units (Vod'ko, 1997b: 21). In addition, some regional variations have to be taken into account. For instance, Filippov (2003) points out that the Far Eastern RUBOP has been praised by former Minister of the Interior Sergey Rushaylo for its unique approach to intelligence-led policing. Compared to regular criminal investigation units and also the unit for the fight against economic crime, it had been freed from the chores of police book-keeping and allowed to concentrate on long-term strategic operations (ibid.). However, this privilege ended in the year 2000 when federation-wide new statistical requirements for police work were made.

Currently, there is much dismay among scholars and also possibly among police practitioners about the out-of-the-blue abolition of the GUBOP structure by the current Minister of the Interior, Boris Gryzlov. He decided to abolish GUBOP¹⁰⁶ and turn the lower level administrations into units called *operativno-rozysknye byuro*. Whatever meaning this reshuffle had, it was clearly regretted by commentators who maintained that the 'structure' had just about begun to achieve results (e.g. Nomokonov, 2002a: 8). Filippov reports that when in October/November 2001 the Far Eastern RUBOP was abolished, 200 staff members were laid off or transferred to the Khabarovsk regional UVD. All documentations and databases were handed over to the newly founded Ministry of the Interior's Chief Administration for the Far Eastern Federal District whose chief called the material 'rubbish' (Filippov, 2003: 132). Such scathing remarks aside, it is currently very difficult to assess the capabilities of the Ministry of the Interior to combat organised crime.

5.1.2. Federal Security Service

Throughout later Soviet and recent Russian history there has been a contentious relationship between the Ministry of the Interior and the domestic security agencies in the area of combating crime, particularly organised crime (Baskov, 1998: 34; Gregory, 1995: 120; Knight, 1988: 191-93; Ovchinskii and Ovchinskii, 1993: 58). However, while the role of the Federal Security Service in the area of pre-trial investigation of crime is rather straight-forward, its powers and functions during the prior 'stages' of intelligence work and operative investigations are blurred and purposefully made unclear under the existing legislation.

As far as the institutional side is concerned, the KGB, once feared for being the 'sword and shield' of the Communist Party, has been sent through a series of dazzling transformations. During the interim period after the August putsch of 1991

¹⁰⁶ See the respective presidential Decree No. 644 of 4 June 2001 On Some Questions of the RF Ministry of the Interior (SZRF 2001 No. 24 pos. 2416).

it was abolished and replaced by a system of confederate security institutions,¹⁰⁷ while the Russian government simultaneously recreated its own KGB to inherit the Soviet Union KGB's resources located on its territory.¹⁰⁸ Only two months later, the Russian KGB was restructured into the Federal Security Agency.¹⁰⁹ The next institutional mutation occurred less than a month later when Yeltsin ordered the amalgamation of the Ministry of the Interior with the Federal Security Agency into a Ministry of Security and Internal Affairs.¹¹⁰ It was this latter decree which gave rise to a most remarkable Constitutional Court case brought by some Supreme Soviet deputies who challenged the super-ministry's constitutionality.¹¹¹ The Constitutional Court agreed and ordered the separation of the Ministry. As a result, the security branch was re-grouped as Russian Federation Ministry of Security,¹¹² later on broken up into the Federal Service for Counter-Espionage and other agencies¹¹³ to finally reappear as the now well-known Federal Security Service (FSB).¹¹⁴

Beyond technicalities,¹¹⁵ it is important to note that in the climate of insecurity and economic crisis predominant under Yeltsin many of the best KGB specialists 'changed sides' and pursued 'careers' either in the business of private protection

¹⁰⁷ Regulation of the Soviet Union State Council No. GS-8 of 22 October 1991 On the Reorganisation of State Security (VSND SSSR 1991 No. 44 pos. 1239).

¹⁰⁸ Decree of 30 September 1991 On Measures to Guarantee RSFSR State Security (VSND 1991 No. 41 pos. 1302).

¹⁰⁹ Decree of 26 November 1991 On the Restructuring of the RSFSR Committee for State Security into the RSFSR Federal Security Agency (VSND 1991 No. 48 pos. 1683).

¹¹⁰ Decree of 19 November 1991 On the Founding of the RSFSR Ministry of Security and Internal Affairs (VSND 1991 No. 52 pos. 1902).

¹¹¹ Constitution Court decision of 14 January 1992 (VSND 1992 No. 6 pos. 247).

¹¹² Decree No. 42 of 24 January 1992 On the Founding of the Russian Federation Ministry of Security (VSND 1992 No. 5 pos. 229).

¹¹³ Decree No. 2233 of 21 December 1993 On the Abolition of the Russian Federation Ministry for Security and the Creation of the Russian Federation Federal Service for Counter-Espionage (SAPP 1993 No. 52 pos. 5062).

¹¹⁴ Decree No. 633 of 23 June 1995 On Priority Measures to Implement the Federal Law 'On the Federal Authorities for State Security in the Russian Federation' (SZRF 1995 No. 26 pos. 2453). Finally, Decree No. 308 of 11 March 2003 (SZRF 2003 No. 12 pos. 1101) ultimately reversed the previous separation of functions among the the domestic security agencies and reinstated the Federal Security Service as the only player in the field.

¹¹⁵ See also the very thorough analyses by Luchterhandt (1996) and Rahr (1994).

or directly in the organised crime world.¹¹⁶ This negative selection took place not only within the KGB successors but also within the Ministry of the Interior, and left the main pillars of fighting organised crime with more and more unmotivated and corruptible officers.¹¹⁷ However, while under the current President and ex-KGB officer Vladimir Putin the Federal Security Service has regained its prestige, the Ministry of the Interior is still suffering from the emaciation of its cadres.

For the Western observer most surprising are the formal investigation powers traditionally granted to the domestic security service under the various Criminal Procedure Codes.¹¹⁸ Currently the Federal Security Service is not only – as one might expect – in charge of investigating offences in the area of state security and international crimes, but also economic crimes such as drug trafficking¹¹⁹ and illegal technology export¹²⁰ which both have an apparent relationship to organised crime. The most significant characteristic of the Federal Security Service's role in the area of law enforcement is, however, the disparity between its formal pre-trial investigative powers and the broadly circumscribed areas of 'other' activities (Vod'ko, 1997b: 21).

The legal regulation, or rather mentioning of 'other activities', is a relatively new phenomenon the later stages of which unfolded in the Russian Federation more or less in tandem with the legal regulation of operative investigations. First, however, it was the Soviet Union legislator who broke the ice and adopted a law which not only regulated the KGB's activities within the traditional fields of espionage and counter-espionage as well as pre-trial investigations, but also conferred a mandate to combat organised crime and terrorism as far as they had an effect on state security.¹²¹ While the Law itself was soon suspended in the newly independent Russia, the Russian legislator followed suit and adopted a law On the

¹¹⁶ See also the highly critical accounts of Knight (2000: 12) and Waller and Yasman (1995) on the KGB's and also its successors' involvement in organised crime and corruption.

¹¹⁷ Shelley (1999: 81) reports that in 1993 Russian police officials suggested that 13,000 Ministry of the Interior employees were directly collaborating with organised crime groups 'and many more were accepting bribes from so called mafias'.

¹¹⁸ Article 126 of the 1960 Criminal Procedure Code; Article 151 of the 2002 Criminal Procedure Code.

¹¹⁹ Article 188(2)-(4) of the Criminal Code

¹²⁰ Article 189 of the Criminal Code.

¹²¹ Article 2(1) of Act No. 2159-I of 16 May 1991 On the Authorities of State Security in the USSR (VSND SSSR 1991 No. 22 pos. 630). On the attempts of KGB head Kryuchkov to secure this mandate, see also Wishnevsky (1989).

Federal Authorities for State Security.¹²² This Law is most notable for de-linking the mandate to combat organised crime and the so-called *narkobiznes* from state security¹²³ and also for acknowledging unspecified powers of the then Ministry of Security to combat organised crime which neither coincided with the formal investigative powers under the Criminal Procedure Code nor with powers of operative investigation.¹²⁴ Under the current Law¹²⁵ the presence of the (now) Federal Security Service in the area of combating crime, particularly organised crime, is fully recognised.¹²⁶

To return once again to the institutional side, it is quite remarkable that the internal structure of the Federal Security Service does not reflect this rather clear-cut extension of its mandate. This does not of course concern the task of pre-trial investigations which is traditionally incumbent on the *Sledstvennoe upravlenie*. Dating back to the time when the Soviet Union KGB first received formal powers to conduct *predvaritel'noe sledstvie* in the year 1963, KGB *sledstvennye upravleniya* were formed along the federal structure of the Soviet Union down to the *kray* and *oblast'* levels. They were only once briefly disbanded during the post-Soviet KGB transformations, but quickly reinstated 'for the respected quality of their work' (Baskov, 1998: 31).¹²⁷ By comparison, the (first) statutes of the FSB adopted on 23 June 1995 do not provide for a specialised administration on combating organised crime.¹²⁸ They rather seem to divide up this new task among a host of

¹²² Act No. 3246/1-I of 8 July 1992 (VSND 1992 No. 32 pos. 1871), as amended by Act No. 5306-I of 1 July 1993 (VSND 1993 No. 33 pos. 1308) and Act of 12 August 1993 (VSND 1993 No. 36 pos. 1438).

¹²³ Article 2 lit. d).

¹²⁴ Article 12 lit. e).

¹²⁵ Act No. 40-FZ of 3 April 1995 On the Federal Authorities for State Security in the Russian Federation (SZRF 1995 No. 15 pos. 1269), by now heavily amended and also renamed On the Federal Security Service. See also the regulation On the Federal Security Service, confirmed by Decree No. 806 of 6 July 1998 (SZRF 1998 No. 28 pos. 3320).

¹²⁶ Article 10 *ibid.* Upon closer inspection, however, there are a number of inconsistencies between the security laws and the statutes of the Federal Security Service (Krüßmann 2001: 267-79).

¹²⁷ Decree No. 2106 of 22 November 1994 On the Creation of the Investigation Administration of the Russian Federation Service for Counter-Espionage as well as Investigation Sub-Units within the Russian Federation Authorities for Counter-Espionage (SZRF 1994 No. 31 pos. 3255).

¹²⁸ Confirmed by Decree No. 633 On Priority Measures to Implement the Federal Law 'On the Federal Authorities for State Security in the Russian Federation' (SZRF 1995 No. 26 pos. 2453).

‘operative’ administrations the names and purposes of which are hardly cognisable to the outsider.¹²⁹ The (second) FSB statutes of 6 July 1998 streamlined the internal structure to a large extent and created a Department of Economic Security which seems to have its focus in the area of organised crime.¹³⁰ Nevertheless, the issue of coordination has not become any clearer to the outside observer.

5.2. New Actors in the Area of Combating Organised Crime

Above, we made the argument that despite the traditionally heavy focus of Russian law enforcement on repressive approaches there is an increasing awareness of preventive measures particularly in the area of money laundering. This argument would not be complete without discussing two institutions which have recently been created to control the flow of illegal money.

One is the Committee on Financial Monitoring (see also *supra*) which acts as the linchpin of the system of domestic money laundering controls.¹³¹ The Committee is clearly not a law enforcement authority, but a financial intelligence unit, subordinate to the Ministry of Finance. Its task is to evaluate incoming notifications and use the data for analysis purposes. In addition, it has the power to request further information from the relevant financial institutions. If it establishes sufficient grounds that a money laundering offence has been committed, it is required to forward the case to the competent law enforcement authority for further investigation. Since money laundering offences very often involve the illegal export of capital, the Committee also has an important part to play in the international exchange of information. On the other hand, investigative assistance, provisional measures and most importantly confiscation as the main areas of international cooperation under the Council of Europe money laundering regime all come under the competence of the relevant law enforcement authorities and the courts.

As far as the Ministry of the Interior is concerned, the Committee on Financial Monitoring’s work is to be supplemented by a Bureau for the suppression of the legalisation of criminal incomes, created on 26 September 2002 by a decree of Minister of the Interior Gryzlov. Its main task is to conduct operative investiga-

¹²⁹ For example, *upravlenie spetsial’nykh operatsii, operativno-poiskovoe upravlenie, upravlenie operativno-tekhnicheskikh meropriyatiy*, and so on.

¹³⁰ Confirmed by Decree No. 806 of 6 July 1998 (SZRF 1998 No. 28 pos. 3320).

¹³¹ In accordance with Act No. 115-FZ of 7 August 2001 (see *supra*) the Committee was founded by Decree No. 1263 of 1 November 2001 (SZRF 2001 No. 45 pos. 4251), as amended by Decree No. 409 of 4 April 2003 (SZRF 2003 No. 15 pos. 1346). Its statutes were confirmed by Regulation No. 211 of 2 April 2002 (SZRF 2002 No. 14 pos. 1311).

tions on the flow of money related to weapon and drug trafficking, prostitution and economic crimes. As an institution, it is located within the Ministry's criminal police department.

5.3. Issues of Coordination

In the discussion of the various agencies involved in combating organised crime we repeatedly encountered the problem of institutional coordination. The issue is crucial to the law enforcement effort not only because of the sheer number of agencies involved, but also because failure to adopt the 'complex' approach favoured by the organised crime bill leaves coordination as the only viable alternative (Mikhaylov and Fyodorov, 1998: 79).

As discussed supra, a first attempt at coordination was made within the framework of the Security Council. After the power struggle between Yeltsin and Rutskoy had been settled, it was decided that in order to improve the coordinating role of the Inter-Agency Commission for the Fight against Crime and Corruption, the head of the General Procuracy was to become *ex officio* head of the Commission.¹³² In practice, however, the coordinating function of the Commission proved to be insufficient because its activities more or less ended when it adopted a crime-fighting programme (Vod'ko, 1997b: 22).

A new initiative was therefore launched which builds on the idea of establishing the procuracy as the central coordinating authority.¹³³ When the law On the Procuracy was significantly amended in 1995¹³⁴ legislators included a new Article 8 which defined the coordinating functions of the procuracy. According to the new system, the Prosecutor-General is in charge of coordinating law enforcement agencies on the federal level, lower-level heads of procuracies the respective authorities on their level.¹³⁵ Coordination is to be achieved mainly by consultative means, i.e. the convocation of regular conferences, increased exchange of information and coordinated planning activity. The main criticism levelled against this system by

¹³² See Decree No. 1037 of 19 September 1997 supra.

¹³³ Decree No. 567 of 18 April 1996 On the Coordination of Law Enforcement Activity in the Fight against Crime (SZRF 1996 No. 17 pos. 1958). See also the comments by Ryabtsev (1996).

¹³⁴ Act No. 2203-I of 17 January 1992 (VSND 1992 No. 8 pos. 366), as amended by Act No. 168-FZ of 17 November 1995 (SZRF 1995 No. 47 pos. 4472).

¹³⁵ Details of the system were regulated by Decree No. 567 of 18 April 1996 On the Coordination of the Activity of Law Enforcement Agencies in the Fight against Crime (SZRF 1996 No. 17 pos. 1958).

commentators is that without any powers to force coordination the approach will invariably turn into a purely formal exercise (Vod'ko, 1997b: 22).

6. International Cooperation in Combating Organised Crime

6.1. International Police Cooperation

While in western Europe international police cooperation has quickly outpaced judicial cooperation, its benefits in the East-West context, particularly with regard to Russia, still seem to be rather limited (Gregory, 1995: 118). Perhaps the most active cooperation framework is the Task Force on Organised Crime in the Baltic Sea Region founded in 1996.¹³⁶ Europol has earmarked the Russian Federation as one of its preferred 'third states' to enter into cooperation agreements with, but so far the process of concluding such agreements has not moved ahead. On a global level, cooperation is channelled primarily through the Interpol National Central Bureau in Moscow. The Bureau was founded as a subdivision of the criminal police and is located within the criminal police department of the Ministry of the Interior's central apparatus. Its history supposedly dates back to 27 September 1990, but it received legal status only in 1996.¹³⁷ In addition to such multilateral frameworks there is a sizable number of bilateral agreements on cooperation concluded by the Russian Federation Ministry of the Interior with the Ministries of the Interior of the 'far abroad'.¹³⁸

Perhaps the greatest obstacle to police cooperation in the East-West context is the high fluctuation of cadres on the Russian side. Frequently Western police officials voice their frustration about sudden and unannounced personnel changes which destroy the networks of contact and trust so carefully created. Despite this rather obvious pattern, representatives of police in the Western world still hope that through providing equipment and training loyalties and networks of trust can be created. Such professional bonhomie notwithstanding, it is surprising that the idea is also shared by the United States and European governments. They invest

¹³⁶ See <<http://www.balticseataaskforce.dk>> and in particular the Report to the Heads of Government, presented at the Baltic Sea States Summit in St. Petersburg in June 2002 (ibid.).

¹³⁷ Decree No. 1113 of 30 July 1996 On Participation of the Russian Federation in the Activities of the International Criminal Police Organisation – Interpol (SZRF 1996 No. 32 pos. 3895). See also Regulation No. 1190 of 14 October 1996 confirming the statutes of the Interpol National Central Bureau (SZRF 1996 No. 43 pos. 4916).

¹³⁸ See the compilation by Moskal'kova and Slyusar' (1996).

large amounts of money into offering training opportunities to the Ministry of the Interior, in the case of the United States through the FBI-sponsored International Law Enforcement Academy (Fehervary, 1997a, 1997b; King and Ray, 2000; Shelley, 1999: 83-4),¹³⁹ in the case of the European governments through the Central European Police Academy (MEPA) as well as through bilateral partnership networks of national police academies especially in Finland, Germany and the Netherlands (De Jong, 2002).¹⁴⁰ In all cases, however, the actual benefit of trust and cooperation tends to evaporate within short periods of time.

By contrast, relations among CIS Member States in police cooperation appear to be tightly knit. First multilateral agreements relevant to combating organised crime were signed in 1992,¹⁴¹ followed in 1996 by an executive agreement 'On cooperation in the area of combating organised crime' and a number of bilateral agreements.¹⁴² In the same year the CIS 'Programme on joint measures to fight organised crime [...]' was adopted, and the Russian Ministry of the Interior established an Office for the Coordination of the Fight against Organised Crime which is located in its central apparatus and acts as a channel of communication to other CIS Member States the Ministries of the Interior where authorities do not require direct channels of communication. Empirically, there is nothing known about intra-CIS cooperation, but it seems that the framework is heavily tilted towards the Russian Federation Ministry of the Interior.

6.2. International Judicial Cooperation

The Russian Federation has been remarkably open to entering into international judicial cooperative relationships. In doing so, however, it followed a pattern which is reminiscent of the Soviet tradition in this area. While the Soviet Union discouraged any kind of judicial cooperation with 'capitalist' countries except in the area of prosecuting war criminals, in 1958 it began to actively encourage the conclusion of a network of bilateral comprehensive conventions on legal assistance

¹³⁹ See <<http://www.usis.hu/ilea.htm>>

¹⁴⁰ Founding states of MEPA are Austria, Czech Republic, Germany, Hungary, Poland, Slovakia, Slovenia and Switzerland. For more details see Fehervary (1997a, 1997b).

¹⁴¹ CIS agreements On Cooperation in the Area of Combating Crime, signed in Alma-Aty on 24 April 1992, reprinted in Ovchinskii and Chernikov (1996: 610-5); On Cooperation in the Area of Information Exchange signed in Cholpon-Aty on 3 August 1992 (ibid., 616-20) and On Cooperation in the Fight against the Illegal Trafficking in Narcotics and Psychotropic Substances, signed in Kyiv on 21 October 1992 (ibid., 620-4).

¹⁴² This so-called Ashkhabad Agreement was signed on 17 February 1994. It is reprinted in Moskal'kova and Slyusar' (1996: 73-9).

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in civil, family and criminal matters with nearly all of its socialist allies, including Yugoslavia (Majoros, 1983a, 1983b; Schultze-Willebrand, 1982). The socialist allies were permitted direct channels of communication among themselves; the Soviet judicial authorities, by contrast, had to channel requests either through the USSR Supreme Court or the General Procuracy (Ginsburgs, 1970: 657).

Today a similar dividing line is visible in judicial cooperation between the so-called 'near abroad', encompassing all CIS Member States and a few other ex-Soviet states, and the 'far abroad'. Within the 'near abroad', judicial cooperation is governed by the Minsk Convention on mutual legal assistance in civil, family and criminal matters, concluded on 22 January 1993.¹⁴³ An additional protocol of 28 March 1997¹⁴⁴ permits direct channels of communication for the competent authorities of CIS Member States. Relations with the 'far abroad', by contrast, are still burdened with distrust and problems (Wilkitzki, 1995: 97; 1998: 186). This is particularly visible in the relations between the Russian Federation and those signatories of the Minsk Convention which also joined the Council of Europe judicial cooperation framework. In ratifying both the 1959 European Convention on Mutual Assistance in Criminal Matters and the 1978 Additional Protocol thereto the Russian government without any reservations agreed to Article 26 of the 1959 Convention which stipulates that the Convention supersedes all previously concluded treaties, conventions or agreements between any two Contracting Parties, thus making the Minsk Convention inapplicable *inter se*.¹⁴⁵ In hindsight, this consequence may have been undesirable, but it follows precisely the letter of the Convention (Milinchuk, 2001: 47). However, among practitioners and also scholars in Russia (e.g. Volzhenkina, 2001: 132) there is much resistance to this consequence.

The European Union has tried to use its partnership and cooperation process with Russia to convince the Russian government 'to ratify *and fully implement*' the Council of Europe judicial cooperation system.¹⁴⁶ However, unlike the approach to cooperation with the 'near abroad', the Russian government insisted on the

¹⁴³ *Byulleten' mezhdunarodnykh dogovorov* 1995 No. 2, 3-28. The Convention was ratified by the Russian Federation on 4 August 1994 (Act No. 16-FZ) and entered into force on 19 May 1995.

¹⁴⁴ Published in the Special Supplement No. 3 to the journal *Vestnik Vysshego Arbitrazhnogo Suda Rossiyskoy Federatsii* of March 1999 and ratified by Act No. 124-FZ of 8 October 2000 (SZRF 2000 No. 29 pos. 1144).

¹⁴⁵ ETS No. 30 and ETS No. 99, both ratified by Act No. 193-FZ of 25 October 1999 (SZRF 1999 No. 43 pos. 5132).

¹⁴⁶ See in particular the 2000 Action Plan for a Joint Strategy on Russia for Combating Organised Crime, mentioned supra.

(permissible) reservation that the function of a central authority for the purposes of cooperation would be divided up. While such reservations are not uncommon among western European Member States of the Council of Europe, the Russian version of 'central authority' is hard to reconcile with the spirit of the Convention. Thus the Supreme Court became the central authority for all questions which concern its own operations. The Ministry of Justice is the central authority for all requests concerning the operations of the courts except the Supreme Court. However, to the extent that the furnishing of assistance upon request does not require the assent of the courts or the procuracy, each of the more specialised investigation and prosecution authorities (Ministry of the Interior, Federal Security Service, Federal Tax Police etc.) may itself act as central authority. Finally, the General Procuracy retains residual powers to handle requests. Practical experience shows that this multitude of 'central authorities' dysfunctionally reinforces the internal structure of the separate and mostly non-communicating law enforcement hierarchies.

A final layer of international documents offering a framework for judicial cooperation consists in the global conventions adopted at United Nations level, which invariably include a section on judicial cooperation in cases where Member States otherwise lack specific treaty relationships. The most important conventions in this respect are the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, as well as the 2000 United Nations Convention against Transnational Organised Crime.¹⁴⁷ While the Soviet Union had traditionally been averse to non-treaty based judicial cooperation, the recently adopted 2002 Criminal Procedure Code brought a significant break with the past. Chapters 53 through 55 now contain Russia's first domestic law on judicial cooperation. In some substantive areas (e.g. dual criminality) it is even more progressive than some of the bilateral treaties concluded, but on the technical side the channels of communication provisions mirror the system already in place through ratification of the Council of Europe Convention.

7. Concluding Remarks

In the conclusion authors are asked to try to assess the effectiveness of the legal and institutional reforms related to organised crime. However, neither conviction rates nor any kind of police 'book-keeping' (of which there is plenty in Russia) could present an accurate picture of the law enforcement effort. Key to an understanding is instead the distinction of the bases on which the discourse on organised crime policies in Russia is built. In asking to assess the effectiveness of such policies the editors quietly assume a perspective which is a good example of Western

¹⁴⁷ See Albrecht and Fijnaut (2002).

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rational and functionalist thinking: certain types of crime pose a challenge to society, and by adopting certain measures these can be more or less reliably counteracted. In Russia, this view would certainly be endorsed by the representatives of the law enforcement establishment. Like their Western counterparts, they have been eager to conjure up ever new crime threats. While the 'war on drugs' in the 1970s and 1980s was still predominantly a United States affair, the threat of 'organised crime' during the 1990s and finally 'transnational organised crime' and 'international terrorism' after the terrorist attacks of 11 September 2001 appear to represent an ever-accelerating spiral of worldwide emergency situations, demanding ever more extreme emergency measures to cope. The fact that organised crime is solidly on the agenda of the Russian lawmaker shows that this rhetoric keeps falling on fertile ground in Russia as well.

However, there is not a single piece of evidence that any of the newly introduced instruments in the 'fight' against organised crime have advanced this goal in any measurable way. Instead it seems that any new instrument provided by the lawmaker immediately becomes transformed and absorbed into existing practices by those who are called upon to administer it – the law enforcement officials. Manova (2003: 64) perceptively points out that 'unfortunately, the tradition of Russian investigative practice is such that any exception permissible under the law will immediately be turned into a rule by the investigating officers.' Though such kind of institutionalised perversion is usually acknowledged by the predominant rational-functionalist pattern of discourse as a matter of 'law in books' and 'law in action', in the case of Russia such a conciliatory approach means stretching the explanatory force of the concept beyond its limits.

The competing perception which shall be offered here contends that to the extent that organised crime has become an institutionalised feature of Russian society, the law enforcement effort has likewise become largely compromised. To discuss the relative effectiveness of one or other legal instrument is a purely academic exercise, as long as the authorities in charge of law enforcement continue to be very often part of the organised crime world themselves. It has not been the focus of this article to examine the 'criminal-political nexus', corruption among law enforcement officials, the politicisation of investigations or the overwhelming influence of the Federal Security Service. Each of these issues is politically very sensitive and must be broached only on the basis of solid factual material. For the purpose of these concluding remarks, however, it seems important to emphasise the high degree of interdependence between the organised crime world and those who are called upon to combat it. A thorough reform of the Ministry of the Interior's police forces, built on professional ethics and a commensurate degree of material resources, may be a much more effective tool to drain the morass of *kryshivanie*, i.e. networks of criminal protection, than any new law enforcement campaign.

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Comparative Synthesis of Part III

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It is all too evident from the contributions in this part of the book, which focus on the policies conducted in a number of European countries with a view to coping with the problems of organised crime more effectively, that these problems have brought about important changes in the past few years at the individual country level, and not just at European Union and Council of Europe level. These changes have affected legislation in a great many areas (e.g. legislation on criminal matters, the police, customs and excise, and taxation), as well as organisation of public administration.

1. A Dichotomy or a Continuum?

Though all countries have been affected by this process of change, there are considerable country-by-country differences in both the scale on which the changes have been implemented and the extent of these changes. At first sight it is tempting to make a distinction between countries of the former Soviet Union and countries that were considered part of western Europe. This is because one might think that, in the wake of the predominantly peaceful Revolution of 1989, countries in the first category have had to make much greater efforts all around to deal with the new problems than countries in the second category.

On reflection, however, this dichotomy does not stand up to scrutiny. Amid all the revolutionary upheaval in their political, socio-economic and cultural systems, countries like Russia, Albania, Poland and the Czech Republic have undeniably gone to great lengths to formulate proper answers to the difficult questions raised by forms of organised crime of which they had little or no previous experience. If, however, we take into consideration the multifarious and far-reaching policy that has been developed in Italy to spike the guns of the various echelons of the mafia, we must conclude that this dichotomy does not hold water and that there is more to be said for categorising countries on the basis of a continuum.

If we look at the scale on which legislation has been amended in the aforementioned countries, and also the extent to which the police, judiciary, customs, etc. have been re-organised, there is something to be said for putting countries like Denmark and Spain at one end of the continuum and countries like Italy and

Russia at the other end. France and the Czech Republic, for instance, might come somewhere in the middle.

It is not easy to explain, however, the differences between the three groups of countries. To some extent these can probably be attributed to significant differences in the seriousness (nature, scale and development) of the problems of organised crime, or at least to significant differences in the way politicians, journalists and police officers define this seriousness. To some extent they can also be clearly traced back to significant differences in the general political situation in which countries sometimes find themselves. This does not just refer to the political instability to which some eastern European countries have fallen prey in the aftermath of 1989. In Spain, for example, the problem of ETA terrorists has overshadowed the problem of organised crime for many years.

2. Internationalisation of Policy

Despite the (occasional) explicative power of national factors, it is impossible to understand policy developments in the individual countries solely on the basis of the changes in their domestic political situation and, in particular, their own experience of organised crime. Previous contributions focusing on individual countries clearly show that the organised crime policies of virtually all countries were largely formulated in the context of their cooperation under the auspices of the European Union, the Council of Europe and the United Nations, or in the context of their cooperation with other individual countries – not just European states, but also the United States. Here, we are not simply talking about the ratification of conventions on police and judicial cooperation or cooperation between customs authorities, including the transposition of these conventions in national legislation and their effect on the re-organisation of national services to facilitate cross-border cooperation. There is so much more involved: the review of criminal legislation, police legislation and privacy legislation, the reform of important institutions (ministries, the judiciary) and services (the police, the public prosecution service, the customs authorities, the army, the intelligence services), the channelling of available funds to the fight against serious crime, the revision of strategies in order to curb such crime and, last but not least, the retraining of officers to ensure that all these changes are implemented in practice and do not just remain on the drawing board.

It is by no means excessive to say that, in Europe, policy on organised crime has increasingly transcended national boundaries in recent years and has become a matter of international politics and hence also of the foreign policy of individual countries. The ideas that are put forward in this respect in the recent European Security Strategy of the European Union (see the introduction to this Part) therefore tie in well with what has been happening in Europe for years, at an ever faster pace and on an ever larger scale.

This internationalisation of policy on organised crime well explains why the changes that have taken place on several fronts in individual countries are so similar, whether they involve the centralisation of the police, the judiciary and the customs authorities, or the creation of special units within these institutions, or the introduction of intrusive methods of investigation, such as phone tapping, anonymous witnesses and undercover agents.

Incidentally, internationalisation of policy can also throw up negative similarities between countries, not just positive ones, as is plainly evident in the adoption of an administrative, preventive approach to organised crime. Most countries do not have such an approach in place or have not properly implemented one; Italy and the Netherlands stand alone in this respect. The one-sidedness – in other words, the predominantly repressive bias – of the policy that is propagated by the European institutions and/or by major countries in relation to the fight against organised crime is also reflected in the policy that many individual countries have conducted over the past few years. Viewed alongside the earlier conclusion that there are considerable differences in the scale on which individual countries have revised their policy for whatever reason, this conclusion naturally raises certain questions about both the substance of the international/foreign policy that is conducted in this particular area and the way in which it came about.

The first question that comes to mind is whether the policy that is conducted by the European institutions – the European Union and the Council of Europe – is not far too uniform: one and the same policy for each Member State. Given the not insignificant differences between countries, would it not be advisable to differentiate more? For instance, should a distinction not be made between compulsory measures that all Member States must adopt because they relate to mutual cross-border cooperation and optional measures they can choose to implement, depending on the problems that actually crop up in each individual country?

The second question ties in with this last point: when determining which optional measures to adopt, is it not necessary to scrutinise more closely the policy developments that actually occur in the Member States, and not just at the national level, but also at a regional or local level? This approach at least offers some guarantee that the range of measures on offer is as wide as possible, thus ensuring that the Member States really do have a choice. It also provides some assurance that the latest developments ‘on the front’ are quickly incorporated into the policy that is pursued across the board.

This brings us to the third question. Precisely because organised crime is a serious problem that manifests itself locally in a variety of guises, is it not advisable that the formulation of policy should no longer be solely in the hands of representatives of national authorities in the permanent consultative bodies of the European Union and the Council of Europe, but that local authorities and important implementing bodies should be much more directly involved? Consultation can of course be organised in various ways. As far as the local authorities are concerned, one option

would be to provide a forum for local authority representatives from 25 or 40 of the largest cities in Europe to meet and share their experiences. As regards the implementing bodies, consultation between the various police forces that operate in the European Union Member States in the larger airports and seaports might be one way forward.

In any case every effort must be made to prevent the internationalisation of policy leading to a situation where this policy becomes alienated from the very problems it is designed to tackle or is not in line with the policy conducted locally to control these problems.

3. Policy on Organised Crime: By Definition Controversial

The changes that countries have introduced in their legislation and in the organisation of their national administration over the past few years are of course not all as new or innovative as they might seem. The creation of special units within national police forces is a measure that – as the French example shows – has been traditionally employed in order to combat certain problems more effectively. And the fact that in recent years many countries have incorporated so-called special methods of investigation into their Code of Criminal Procedure does not imply that such methods were not used in the past: undercover agents have been doing their shadowy work for centuries. This does not alter the fact – and the contributions in this Part are evidence of this – that in many countries the development of a policy on combating organised crime not only required a great deal of lengthy debate, but also could only really get off the ground when murders or scandals – think of Italy, but also France Ireland, and the Netherlands – had to some extent silenced heated discussions about current or future policy and had created sufficient support for new policy initiatives. This automatically raises the question as to why policy designed to combat organised crime is clearly almost by definition so controversial.

Based on the contributions in this book, the first point that can be made is that this has to do with the actual problem of organised crime. More particularly, it is by no means always clear, or at any rate it is by no means always possible to make it clear to sections of the population, whether this is actually a new problem or a redefinition of a problem from way back. Ultimately, a great deal of organised crime amounts to the production and/or smuggling and/or supply of illegal goods and/or services. And if it is possible to reach some sort of consensus on the problem, or at least on the definition of the problem, then it is often not easy to indicate how big and how serious that problem really is. In any case, the less apparent aspects of this problem prevent it from being easily recognised by the public at large. Another factor in many countries is the serious lack of empirical research into important forms of organised crime. The uncertainty that prevails about the real proportions of the problem cannot be dispelled this way either.

The difficulties surrounding the definition and understanding of the problem of organised crime can carry so much weight in policy discussions in this area, because the measures usually proposed to cope with this problem can, in turn, very easily cause serious difficulties. Measures designed to increase or tighten up investigative powers always come up against complex and sensitive dilemmas, such as that between the effectiveness of the administration of criminal justice and the rights of citizens when such powers are wielded. Consequently, these measures automatically provoke much public debate. And of course measures that have a bearing on the reorganisation of the public sector can easily jeopardise the vested interests of institutions and services, and quickly raise important questions – particularly in federal states – about the general organisation of the administrative structure. They can just as quickly incite resistance.

The various contributions in this Part of the book leave no room for doubt that all these difficulties can nevertheless be overcome to some extent. Many countries have rewritten their Code of Criminal Procedure in a number of areas and reorganised various government departments. This process usually takes up a great deal of time and energy – endless discussions, committees of inquiry – for the government, Parliament, departments, etc. And the energy expended is still not always enough to garner solid public support for the policy to be pursued. As mentioned earlier, it would need a serious incident (murder, scandal) – as well as considerable political pressure from the outside – to overcome resistance. Furthermore, it should not be overlooked that it is often not possible to say beforehand how effective certain measures will be against the targeted crime problems; nor is it possible to establish in advance how much it will cost – in terms of human, material and financial resources – to implement such measures effectively. These problems can also give rise to serious difficulties in the ongoing debate, as repeatedly noted in the various contributions.

It is worth making the point here, however, that, given how difficult it has been since the 1980s for many western European countries to put together any sort of consistent policy on organised crime, it should really not be surprising that by and large this has been an even more uphill task in eastern European countries. For one reason, after the unexpected collapse of the Soviet Union, eastern Europeans were not at all familiar with modern problems of organised crime, and for another, for a long time there was little in the way of political stability or financial resources to tackle these problems energetically. On the other hand, of course, some of these countries were put under considerable pressure by the European Union to adopt western European policy in this area – the famous *acquis communautaire* – and were also given assistance (in the form of funds and expertise) to actually establish such a policy in their own country. Several of the contributions here do, however, point out – and for good reason – that this policy remained a ‘policy in the books’ in some respects and little if any of it was actually implemented.

4. The Importance of Academic Research into Organised Crime and the Policies in This Area

This last point brings us to the fourth theme that we would like to mention in these concluding remarks: namely the fact that it is obvious from reading the country reports of Part III that there is extremely little academic research into the organised crime policies conducted by individual countries and international institutions in Europe. Apparently only the Netherlands and Germany have occasionally produced work in this area.

This of course raises the question of how it is that an issue that features so prominently on the political agenda is so little regarded by academic researchers. To some extent – there is no other explanation – the reasons underlying this neglect are the same as those given in the introductions to Parts I and II. The neglected academic assessment of organised crime control policies may well be the result of specific, additional reasons, though. One obvious example is the controversial nature of these policies: this easily deters national authorities and institutions from commissioning research into how such policies came about and how they have been implemented, because they fear that academic studies may only stir up even more controversy.

Another factor that should not be ruled out is that domestic and international government bodies have no interest in the results of such research revealing that there is a huge difference between the policy as formulated on paper and what has been achieved in practice. In other words, public bodies may well fear that independent assessments come to the conclusion that the expectations aroused at the policy presentation stage in terms of being able to control problems could only partly be fulfilled, if at all.

A third likely reason is that there are simply too few researchers who are interested in systematically analysing and evaluating the policies conducted. It is worth noting here that it is not just European researchers who usually – even in Italy (see the contribution by Antonio La Spina) – find it more interesting to write about the phenomenology of organised crime rather than about the problems of combating it. Even in the United States, a book like *Gotham Unbound. How New York City was Liberated from the Grip of Organized Crime* (New York University Press, 1999) by James Jacobs is a rarity.

Be that as it may, precisely because organised crime in Europe is still a rather intangible subject and policy in this area is such a controversial issue, the present sorry state of academic research, particularly as regards this last point, is regrettable. As a result it is more than appropriate to emphasise the importance of such research here.

Academic research into the true facts of organised crime in cities, in countries, in border regions or in subcontinents or continents is in itself of importance, if we are to create a clear picture for the public at large of what this form of crime actually

represents in society. In such an important area as this, why should a society like ours settle for snapshots in the media or for stories by journalists and police officers? It follows from this of course that a thorough analysis of this problem would provide an excellent starting point for developing a proper policy, and could also ensure considerable public support for such a policy. This last point is so important because organised crime policy is, in a manner of speaking, inherently highly controversial and the debate on the subject can easily degenerate into a political fight in which ideas and delusions about reality are more important than reality itself.

Quite apart from concern for an effective policy, thorough research into the forms and background of organised crime is also of great importance for the further development of general criminology. It can make an important contribution to reorienting the theories developed within this discipline, which in the past few decades have been so dominated by problems of safety in urban areas and growing juvenile delinquency.

The importance of academic research into the development and implementation of organised crime control policy is primarily indicated by the fact that we are concerned here with controlling a significant societal problem; it is therefore vitally important to know how the policy works and what effect(s) it has on this problem. Complementary to this, the relevance of this research is emphasised by the major interests at stake in such a policy, whether these are citizen's rights or the general organisation of the national administration. To ensure that these interests are properly protected, it is not too much to ask that academic research be conducted into the policy pursued. And of course this research should and must meet certain requirements: not just requirements relating to the progress of criminal investigations and personal privacy and safety, but certainly also requirements concerning the scope and depth of the research itself. Policy on organised crime generally covers many areas and is often legally and organisationally complex. Research into this policy must reflect this multiplicity and complexity.

Ideally, both kinds of research – research concerned with organised crime itself and research focusing on the policy conducted – would be incorporated into one single research project. This would ensure that due attention is paid to the interaction that always exists in some form between these two phenomena. How could someone research the effectiveness of policy without having a proper picture of the problem of organised crime itself? A pre-condition for an integrated research project of this kind is, however, that research groups are formed whose members are capable of productively combining normative legal analysis with empirical socio-academic research.

PART III
ORGANISED CRIME CONTROL POLICIES

Comparative Synthesis of Part III

Cyrille Fijnaut and Letizia Paoli

It is all too evident from the contributions in this part of the book, which focus on the policies conducted in a number of European countries with a view to coping with the problems of organised crime more effectively, that these problems have brought about important changes in the past few years at the individual country level, and not just at European Union and Council of Europe level. These changes have affected legislation in a great many areas (e.g. legislation on criminal matters, the police, customs and excise, and taxation), as well as organisation of public administration.

1. A Dichotomy or a Continuum?

Though all countries have been affected by this process of change, there are considerable country-by-country differences in both the scale on which the changes have been implemented and the extent of these changes. At first sight it is tempting to make a distinction between countries of the former Soviet Union and countries that were considered part of western Europe. This is because one might think that, in the wake of the predominantly peaceful Revolution of 1989, countries in the first category have had to make much greater efforts all around to deal with the new problems than countries in the second category.

On reflection, however, this dichotomy does not stand up to scrutiny. Amid all the revolutionary upheaval in their political, socio-economic and cultural systems, countries like Russia, Albania, Poland and the Czech Republic have undeniably gone to great lengths to formulate proper answers to the difficult questions raised by forms of organised crime of which they had little or no previous experience. If, however, we take into consideration the multifarious and far-reaching policy that has been developed in Italy to spike the guns of the various echelons of the mafia, we must conclude that this dichotomy does not hold water and that there is more to be said for categorising countries on the basis of a continuum.

If we look at the scale on which legislation has been amended in the aforementioned countries, and also the extent to which the police, judiciary, customs, etc. have been re-organised, there is something to be said for putting countries like Denmark and Spain at one end of the continuum and countries like Italy and

Russia at the other end. France and the Czech Republic, for instance, might come somewhere in the middle.

It is not easy to explain, however, the differences between the three groups of countries. To some extent these can probably be attributed to significant differences in the seriousness (nature, scale and development) of the problems of organised crime, or at least to significant differences in the way politicians, journalists and police officers define this seriousness. To some extent they can also be clearly traced back to significant differences in the general political situation in which countries sometimes find themselves. This does not just refer to the political instability to which some eastern European countries have fallen prey in the aftermath of 1989. In Spain, for example, the problem of ETA terrorists has overshadowed the problem of organised crime for many years.

2. Internationalisation of Policy

Despite the (occasional) explicative power of national factors, it is impossible to understand policy developments in the individual countries solely on the basis of the changes in their domestic political situation and, in particular, their own experience of organised crime. Previous contributions focusing on individual countries clearly show that the organised crime policies of virtually all countries were largely formulated in the context of their cooperation under the auspices of the European Union, the Council of Europe and the United Nations, or in the context of their cooperation with other individual countries – not just European states, but also the United States. Here, we are not simply talking about the ratification of conventions on police and judicial cooperation or cooperation between customs authorities, including the transposition of these conventions in national legislation and their effect on the re-organisation of national services to facilitate cross-border cooperation. There is so much more involved: the review of criminal legislation, police legislation and privacy legislation, the reform of important institutions (ministries, the judiciary) and services (the police, the public prosecution service, the customs authorities, the army, the intelligence services), the channelling of available funds to the fight against serious crime, the revision of strategies in order to curb such crime and, last but not least, the retraining of officers to ensure that all these changes are implemented in practice and do not just remain on the drawing board.

It is by no means excessive to say that, in Europe, policy on organised crime has increasingly transcended national boundaries in recent years and has become a matter of international politics and hence also of the foreign policy of individual countries. The ideas that are put forward in this respect in the recent European Security Strategy of the European Union (see the introduction to this Part) therefore tie in well with what has been happening in Europe for years, at an ever faster pace and on an ever larger scale.

This internationalisation of policy on organised crime well explains why the changes that have taken place on several fronts in individual countries are so similar, whether they involve the centralisation of the police, the judiciary and the customs authorities, or the creation of special units within these institutions, or the introduction of intrusive methods of investigation, such as phone tapping, anonymous witnesses and undercover agents.

Incidentally, internationalisation of policy can also throw up negative similarities between countries, not just positive ones, as is plainly evident in the adoption of an administrative, preventive approach to organised crime. Most countries do not have such an approach in place or have not properly implemented one; Italy and the Netherlands stand alone in this respect. The one-sidedness – in other words, the predominantly repressive bias – of the policy that is propagated by the European institutions and/or by major countries in relation to the fight against organised crime is also reflected in the policy that many individual countries have conducted over the past few years. Viewed alongside the earlier conclusion that there are considerable differences in the scale on which individual countries have revised their policy for whatever reason, this conclusion naturally raises certain questions about both the substance of the international/foreign policy that is conducted in this particular area and the way in which it came about.

The first question that comes to mind is whether the policy that is conducted by the European institutions – the European Union and the Council of Europe – is not far too uniform: one and the same policy for each Member State. Given the not insignificant differences between countries, would it not be advisable to differentiate more? For instance, should a distinction not be made between compulsory measures that all Member States must adopt because they relate to mutual cross-border cooperation and optional measures they can choose to implement, depending on the problems that actually crop up in each individual country?

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would be to provide a forum for local authority representatives from 25 or 40 of the largest cities in Europe to meet and share their experiences. As regards the implementing bodies, consultation between the various police forces that operate in the European Union Member States in the larger airports and seaports might be one way forward.

In any case every effort must be made to prevent the internationalisation of policy leading to a situation where this policy becomes alienated from the very problems it is designed to tackle or is not in line with the policy conducted locally to control these problems.

3. Policy on Organised Crime: By Definition Controversial

The changes that countries have introduced in their legislation and in the organisation of their national administration over the past few years are of course not all as new or innovative as they might seem. The creation of special units within national police forces is a measure that – as the French example shows – has been traditionally employed in order to combat certain problems more effectively. And the fact that in recent years many countries have incorporated so-called special methods of investigation into their Code of Criminal Procedure does not imply that such methods were not used in the past: undercover agents have been doing their shadowy work for centuries. This does not alter the fact – and the contributions in this Part are evidence of this – that in many countries the development of a policy on combating organised crime not only required a great deal of lengthy debate, but also could only really get off the ground when murders or scandals – think of Italy, but also France Ireland, and the Netherlands – had to some extent silenced heated discussions about current or future policy and had created sufficient support for new policy initiatives. This automatically raises the question as to why policy designed to combat organised crime is clearly almost by definition so controversial.

Based on the contributions in this book, the first point that can be made is that this has to do with the actual problem of organised crime. More particularly, it is by no means always clear, or at any rate it is by no means always possible to make it clear to sections of the population, whether this is actually a new problem or a redefinition of a problem from way back. Ultimately, a great deal of organised crime amounts to the production and/or smuggling and/or supply of illegal goods and/or services. And if it is possible to reach some sort of consensus on the problem, or at least on the definition of the problem, then it is often not easy to indicate how big and how serious that problem really is. In any case, the less apparent aspects of this problem prevent it from being easily recognised by the public at large. Another factor in many countries is the serious lack of empirical research into important forms of organised crime. The uncertainty that prevails about the real proportions of the problem cannot be dispelled this way either.

The difficulties surrounding the definition and understanding of the problem of organised crime can carry so much weight in policy discussions in this area, because the measures usually proposed to cope with this problem can, in turn, very easily cause serious difficulties. Measures designed to increase or tighten up investigative powers always come up against complex and sensitive dilemmas, such as that between the effectiveness of the administration of criminal justice and the rights of citizens when such powers are wielded. Consequently, these measures automatically provoke much public debate. And of course measures that have a bearing on the reorganisation of the public sector can easily jeopardise the vested interests of institutions and services, and quickly raise important questions – particularly in federal states – about the general organisation of the administrative structure. They can just as quickly incite resistance.

The various contributions in this Part of the book leave no room for doubt that all these difficulties can nevertheless be overcome to some extent. Many countries have rewritten their Code of Criminal Procedure in a number of areas and reorganised various government departments. This process usually takes up a great deal of time and energy – endless discussions, committees of inquiry – for the government, Parliament, departments, etc. And the energy expended is still not always enough to garner solid public support for the policy to be pursued. As mentioned earlier, it would need a serious incident (murder, scandal) – as well as considerable political pressure from the outside – to overcome resistance. Furthermore, it should not be overlooked that it is often not possible to say beforehand how effective certain measures will be against the targeted crime problems; nor is it possible to establish in advance how much it will cost – in terms of human, material and financial resources – to implement such measures effectively. These problems can also give rise to serious difficulties in the ongoing debate, as repeatedly noted in the various contributions.

It is worth making the point here, however, that, given how difficult it has been since the 1980s for many western European countries to put together any sort of consistent policy on organised crime, it should really not be surprising that by and large this has been an even more uphill task in eastern European countries. For one reason, after the unexpected collapse of the Soviet Union, eastern Europeans were not at all familiar with modern problems of organised crime, and for another, for a long time there was little in the way of political stability or financial resources to tackle these problems energetically. On the other hand, of course, some of these countries were put under considerable pressure by the European Union to adopt western European policy in this area – the famous *acquis communautaire* – and were also given assistance (in the form of funds and expertise) to actually establish such a policy in their own country. Several of the contributions here do, however, point out – and for good reason – that this policy remained a ‘policy in the books’ in some respects and little if any of it was actually implemented.

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This last point brings us to the fourth theme that we would like to mention in these concluding remarks: namely the fact that it is obvious from reading the country reports of Part III that there is extremely little academic research into the organised crime policies conducted by individual countries and international institutions in Europe. Apparently only the Netherlands and Germany have occasionally produced work in this area.

This of course raises the question of how it is that an issue that features so prominently on the political agenda is so little regarded by academic researchers. To some extent – there is no other explanation – the reasons underlying this neglect are the same as those given in the introductions to Parts I and II. The neglected academic assessment of organised crime control policies may well be the result of specific, additional reasons, though. One obvious example is the controversial nature of these policies: this easily deters national authorities and institutions from commissioning research into how such policies came about and how they have been implemented, because they fear that academic studies may only stir up even more controversy.

Another factor that should not be ruled out is that domestic and international government bodies have no interest in the results of such research revealing that there is a huge difference between the policy as formulated on paper and what has been achieved in practice. In other words, public bodies may well fear that independent assessments come to the conclusion that the expectations aroused at the policy presentation stage in terms of being able to control problems could only partly be fulfilled, if at all.

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Academic research into the true facts of organised crime in cities, in countries, in border regions or in subcontinents or continents is in itself of importance, if we are to create a clear picture for the public at large of what this form of crime actually

represents in society. In such an important area as this, why should a society like ours settle for snapshots in the media or for stories by journalists and police officers? It follows from this of course that a thorough analysis of this problem would provide an excellent starting point for developing a proper policy, and could also ensure considerable public support for such a policy. This last point is so important because organised crime policy is, in a manner of speaking, inherently highly controversial and the debate on the subject can easily degenerate into a political fight in which ideas and delusions about reality are more important than reality itself.

Quite apart from concern for an effective policy, thorough research into the forms and background of organised crime is also of great importance for the further development of general criminology. It can make an important contribution to reorienting the theories developed within this discipline, which in the past few decades have been so dominated by problems of safety in urban areas and growing juvenile delinquency.

The importance of academic research into the development and implementation of organised crime control policy is primarily indicated by the fact that we are concerned here with controlling a significant societal problem; it is therefore vitally important to know how the policy works and what effect(s) it has on this problem. Complementary to this, the relevance of this research is emphasised by the major interests at stake in such a policy, whether these are citizen's rights or the general organisation of the national administration. To ensure that these interests are properly protected, it is not too much to ask that academic research be conducted into the policy pursued. And of course this research should and must meet certain requirements: not just requirements relating to the progress of criminal investigations and personal privacy and safety, but certainly also requirements concerning the scope and depth of the research itself. Policy on organised crime generally covers many areas and is often legally and organisationally complex. Research into this policy must reflect this multiplicity and complexity.

Ideally, both kinds of research – research concerned with organised crime itself and research focusing on the policy conducted – would be incorporated into one single research project. This would ensure that due attention is paid to the interaction that always exists in some form between these two phenomena. How could someone research the effectiveness of policy without having a proper picture of the problem of organised crime itself? A pre-condition for an integrated research project of this kind is, however, that research groups are formed whose members are capable of productively combining normative legal analysis with empirical socio-academic research.

General Conclusion

Letizia Paoli and Cyrille Fijnaut

Since the 1980s organised crime has become a relevant policy issue for most European countries and international European organisations. To control organised crime, a flurry of initiatives has been launched. Intrusive investigative methods and increased sentences have been introduced and the police agencies and prosecutorial services of most countries have undergone substantive reforms, seeing considerable increases in their budgets and powers. With the adoption of the European Security Strategy in December 2003, the fight against organised crime has also become a priority for the European Union and its Member States' foreign policy. As was the case with the central and eastern European states that joined the European Union in 2004, all European Union neighbouring states and trading partners are put under considerable pressure to make their criminal legislation and justice systems conform to European Union 'orthodoxy' in organised crime control.

Despite the undeniable policy relevance of organised crime, little is yet known about the great variety of phenomena labelled with this term or about the impact and effectiveness of the measures adopted to prevent and repress it. This book tries to start filling these gaps, by bringing together 33 experts to systematically compare for the first time the historical and contemporary patterns of organised crime and the related control policies in thirteen European countries. As we have stressed repeatedly in this long volume, our ambition has not been to make conclusive statements on either theme, but we merely wanted to pursue a new research path, convinced of its political necessity and scientific value.

Although, ironically, interest in organised crime has ebbed in the very country where the term was first coined – the United States – its growing political relevance is a trend that does not concern Europe alone. As demonstrated by the rapid implementation of the United Nations Convention against Transnational Organised Crime, domestic governments worldwide are willing to go to great lengths to thoroughly reform their criminal law, criminal procedure and criminal justice systems in order to better tackle the problem of organised crime. Though since September 2001 the fight against terrorism has jumped right to the top of the policy-making agenda, the topic of terrorism has not entirely superseded that of organised crime, as the links between the two are continuously stressed by policy-makers and the measures adopted to tackle them are, to a considerable extent, complementary. If anything, the

urge to prevent new devastating terrorist attacks has further reduced policy-makers' restraint to back ever more intrusive preventive and investigative methods.

Empirical knowledge about organised crime and the impact of its control policies is even more limited in the rest of the world than in Europe. Given this serious gap in knowledge and the significance of the reforms made in the name of organised crime worldwide, it would be advisable for Article 28 of the United Nations Convention on Transnational Organised Crime not to remain a dead letter. This article calls parties to the convention to promote scientific research on organised crime. If political will would only make sufficient research funds available, investigation and comparison of the real nature, extent and threat of organised crime and the impact and effectiveness of related control policies in Europe and the rest of the world would constitute an ambitious but – politically and scientifically – valuable research programme for the years to come.

General Conclusion

Letizia Paoli and Cyrille Fijnaut

Since the 1980s organised crime has become a relevant policy issue for most European countries and international European organisations. To control organised crime, a flurry of initiatives has been launched. Intrusive investigative methods and increased sentences have been introduced and the police agencies and prosecutorial services of most countries have undergone substantive reforms, seeing considerable increases in their budgets and powers. With the adoption of the European Security Strategy in December 2003, the fight against organised crime has also become a priority for the European Union and its Member States' foreign policy. As was the case with the central and eastern European states that joined the European Union in 2004, all European Union neighbouring states and trading partners are put under considerable pressure to make their criminal legislation and justice systems conform to European Union 'orthodoxy' in organised crime control.

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