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# **ORGANISED CRIME AROUND THE WORLD**

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# Foreword

The spread of organized crime around the world has stimulated considerable national and international action. Much of this action has emerged only over the last few years. The tools to be used in responding to the challenges posed by organized crime are still being tested.

One of the difficulties in designing effective countermeasures has been a lack of information on what organized crime actually is, and on what measures have proven effective elsewhere. Furthermore, international discussion is often hampered by the murkiness of the definition of organized crime; while some may be speaking about drug trafficking, others are talking about trafficking in migrants, and still others about racketeering or corruption.

This report describes recent trends in organized crime and in national and international countermeasures around the world. In doing so, it provides the necessary basis for a rational discussion of the many manifestations of organized crime, and of what action should be undertaken.

The report is based on numerous studies, official reports and news reports. Given the broad topic and the rapidly changing nature of organized crime, the report does not seek to be exhaustive. Instead, it focuses on general trends, which are illustrated by recent information from specific countries.

Helsinki and Trento, 2 March 1998

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# Summary

## Organised Crime around the World

This report seeks to provide an overview of the recent trends in organised crime and the countermeasures taken against it throughout the world. The framework used in analysing groups, activities and policies is the Political Declaration and Global Action Plan against Organised Transnational Crime, adopted at the World Ministerial Conference on Organised Transnational Crime held in Naples, Italy, on 21-23 November 1994. The principles of this Plan set specific guidelines to be followed by member states at the national and international levels.

The Political Declaration and Global Action Plan focus on the need for strict and effective legislative measures and operational instruments, and a co-ordinated strategy of international co-operation against organised crime. These documents call for acceptance of a common definition of organised crime, criminalisation of membership of criminal associations or participation in conspiracies, enactment of evidence-gathering techniques, witness protection programmes and legislation providing for confiscation of the illicit proceeds. These are the points through which this report develops the analysis of the characteristics of organised criminal groups and their activities world-wide, and the national and international responses to the threat that they raise.

The analysis of the interaction between these two elements has been the focal point of attention at TRANSCRIME - University of Trento since its establishment in 1994 and has inspired the structuring of the five background documents used for the World Ministerial Conference on Transnational Organised Crime held in Naples in 1994 and the preparation, in particular, of two and a half of them.\*

Since the 1994 World Ministerial Conference is the starting point, the analysis covers recent developments in the phenomenon. This report is divided into four chapters each of which, with different aims, describes the trends in organised crime activities and measures taken against them.

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\* In the original these documents have been gathered in Ernesto U. Savona and P. Williams, *Five Papers.....*”, July 1994, mimeo, and published in the UN official version in P. Williams and E.U. Savona (eds) *The United Nations and Transnational Organised Crime*, Frank Cass, London, 1996.

**Chapter One** gives a general overview of the tendencies and changes displayed by criminal enterprises. Particular attention is paid to the possibility of elaborating a common definition of organised crime. This has long been a source of controversy and contention, probably because of differences in the way different persons and countries approach various aspects of the problem. Nevertheless, an unequivocal, common definition of organised crime could make co-operation among different countries easier.

In this chapter new trends in criminal subjects and activities are analysed. The aim is to demonstrate how criminal organisations modify their structure and goals in response to changes in world markets and their regulation. The changes in the subjects involve, for example, the recruiting of professionals with specific skills in order to infiltrate new markets more effectively and efficiently and therefore earn greater profits. As regards changes in the activities, criminal organisations are expanding into new markets and engaging in new and less risky activities. In both cases, this has come about because assessment of the opportunities for profit and of the risks involved suggests that the former outweigh the latter.

This chapter also highlights the concept of interdependencies among crimes and activities, which is a useful theoretical tool in understanding how organised crime has altered its modes of operation and therefore in improving control strategies. The offences committed by organised criminal groups are growing increasingly interdependent, constituting a sort of illegal chain in which the organisational structure links them together. In order to finalise a particular crime of importance (in terms of effects or gains), organised criminals utilise a chain of offences. This interdependence among crimes is often a manifestation of the progressive specialisation of criminal organisations. Once it is realised that the activities of organised criminal groups are increasingly interdependent, it becomes easier to understand the way in which transnational organised crime shifts from one activity to another. In practice, a criminal group with already-trained personnel, already-acquired means, already-tested trafficking routes, already-developed corruption networks, and already-existing contacts in different countries of the world, will move into new illicit markets, adding new activities to the ones in which it already specialises.

The purpose of **Chapter Two** is to provide an overview of the recent trends of illicit activities within organised crime in various areas in the world (North America, Central and South America, Western Europe, Eastern Europe, Africa and the Gulf States, Asia and Oceania) and the changes in criminal groups which operate at the international level. The areas in which organised criminal groups are most active have been singled out and their structures are described. This is the reason why the organisational device of this chapter varies from time to time, moving from activities and groups to the states involved, as examples rather than as an exhaustive list. Since there are major



diversities among countries and regions, this chapter has an informative rather than an analytical purpose.

As far as individual groups are concerned, we have tried to illustrate their characteristics and structuring and the way in which they spread on national and transnational levels, penetrating new markets and exploiting the loopholes existing in the legal and economic systems of many countries.

Market globalisation and the subsequent abolishing of borders, together with the advantages offered by technological innovations, have created opportunities for new profits for existing and emerging criminal groups which have adapted themselves to the new needs of the market. The demand for illegal goods and services has changed and in turn resulted in an increase in the associated crimes such as trafficking in migrants (and their exploitation in local criminal circuits for prostitution, black market, theft, drug pushing, etc.), environmental offences, drug smuggling, money laundering activities, and trafficking in stolen vehicles. At the same time, criminal groups have learned to exploit the loopholes and legislative discrepancies present in some geographical areas and they have spread into sectors where the risk of being arrested and heavily sentenced is relatively low, especially compared to the attractive economic return. A typical example of this trend is fraud in general and specifically fraud against the financial interests of the European Union.

**Chapter Three** describes the recent main initiatives taken internationally against organised transnational crime by both governmental and non-governmental organisations (the United Nations, the Council of Europe, the G7/P8, the European Union, the Organisation for Economic Co-operation and Development, the Organisation of American States) as well as other forms of action, such as bilateral agreements. The aim of this chapter is to inform the reader about the recent developments of international action.

The role of international organisations, both governmental and non-governmental, is to overcome the problems that arise among countries because of legislative discrepancies and inefficient co-operation (in information-sharing, in joint investigations, in the provision of assistance in legal procedures - such as testimony-taking, locating persons and freezing forfeitable assets - and in extraditing criminals).

The action taken by these organisations is aimed at counteracting, at the international level, the criminals' transnational development which appears to be mainly due to their wish:

- to set a distance between the location in which the illicit activity is conducted and the place from which they direct their operations, making it more difficult for law enforcement agencies to reach the core of the organisation;
- to diversify their activities among several countries in order to maximise opportunities and minimise the “law enforcement risk”. In particular, they develop tactical alliances with local criminal groups, taking advantage of their expertise and local range of action, and they exploit the internation-

- alisation of financial systems to conduct money-laundering operations, thereby concealing the origin of illicit profits;
- to respond to the international development of police and judicial co-operation.

The aim of **Chapter Four** is to describe national legislation against organised crime, in terms of both substantive legislation (focusing on the criminalisation of organised crime and the introduction of measures allowing asset forfeiture and confiscation) and procedural legislation (focusing on special means of investigation and witness protection programmes). This chapter also provides a brief survey of the results achieved by law enforcement agencies and of their methods.

Different countries respond according to the specific local threats raised by the criminal groups they have to deal with. Despite the fact that policies against organised crime therefore vary according to the goals that they pursue (prevention or crime control), in this report attention is focused only on the ways in which criminal law and law enforcement have been adjusted to national legal systems. Three issues in particular characterise the modern approach to the matter, and it is therefore these that are analysed in this chapter:

- the offence of belonging to a criminal organisation;
- the forfeiture and confiscation of illicitly acquired assets;
- law enforcement agencies and special means of investigation, including witness protection programmes.

Reconstructing the legislation of different countries in these three areas is virtually impossible, given that change takes place extremely rapidly, so that information may be outdated and contradictory. For this reason, the information set out in this chapter should be considered as solely indicative of country-specific situations. The data derive from various sources: the United Nations, the P8 Group, the European Union, the OECD, the Council of Europe and other major organisations, as well as from reports prepared by experts on individual countries.

The sources used when researching and developing this report were the following: analyses and legislation provided by a world-wide network of experts on organised crime trends and countermeasures; papers presented at national and international conferences; reports written by universities and research institutes; and material provided by governmental and non-governmental organisations and law enforcement agencies. Given that the materials derive from different sources, and in view of the frequent changes made to legislation against organised crime, it may be that some information is dated and/or not fully correct.

# 1 Organising Crime

## 1.1 Introduction

This report seeks to provide an overview of recent trends in organised crime and the countermeasures taken against it throughout the world. The Political Declaration and Global Action Plan against Organised Transnational Crime adopted at the World Ministerial Conference on Organised Transnational Crime held in Naples, Italy, on 21-23 November 1994 has been taken as the framework in the analysis of groups, activities and policies that follows. The principles agreed upon by member countries at Naples represent a milestone in the prevention of organised crime because they set out specific guidelines to be followed at the national and international levels.

The Political Declaration focuses on the need for strict and effective legislative measures and operational instruments, and a co-ordinated strategy of international co-operation. Particular stress is placed on defeating “*the social and economic power of criminal organisations and their ability to infiltrate legitimate economies, to launder their criminal proceeds and to use violence and terror*”. At the same time, the Declaration emphasises the importance of prevention and control measures linked to specific national and regional situations. Organised crime in developing countries and countries in transition is deemed of particular concern, for it may seriously hamper their economic and social growth. Help should therefore be given to these countries so that they can develop appropriate control strategies, and international co-operation is also required so that the discrepancies among country-specific laws on organised crime and related activities can be eliminated.

The Global Action Plan envisages acceptance of a common definition of organised crime and urges the increased collection, analysis and dissemination of statistics and information on organised crime trends among countries.

The Action Plan calls on the member-states of the United Nations to adopt the following recommendations:

- They should base their action plans on the expertise gathered by the states most actively committed to combating organised crime in regard to substantive, procedural and regulatory legislation;
- They should penalise membership of criminal associations or participation in conspiracies, and they should introduce corporate criminal liability into their legal systems;
- They should provide their investigative agencies with “*evidence-gathering techniques, such as electronic surveillance, undercover operations and controlled delivery*”, with due regard for the right to privacy and with the

stipulation that these techniques shall be subject to judicial approval and supervision;

- They should consider the introduction of witness protection programmes and the granting of special treatment to co-operative witnesses who facilitate the collection of first-hand information on the structure, membership and *modus operandi* of criminal organisations;
- They should jointly endeavour to introduce all the measures necessary to ensure transparency and integrity in business, finance and administration, thereby curbing corrupt practices and money laundering;
- They should promote bilateral and multilateral agreements and conventions in order to improve reciprocal legal assistance in the investigation and prosecution of organised crime. More specifically, countries should develop more effective international instruments with which to combat organised crime.

Further recommendations are intended to deprive criminals of their illicit proceeds. Since profit is the main goal of criminals, policies that seek to target their economic power are of the utmost relevance. In this respect countries should:

- criminalise money laundering
- develop ethical standards in public administration, in business and in the liberal professions, introduce rules to ensure the transparency of financial transactions, and limit financial secrecy;
- in order to deprive criminals of their illicit proceeds, consider “*legislative measures for the confiscation of the illicit proceeds, asset forfeiture [...] and the freezing or seizing of assets*” together with “*the possibility of sharing forfeited assets and - under specific conditions and always under judicial proceedings - of confiscating illicit proceeds without a criminal conviction, or confiscating sums that are higher than those relating to the crime for which judgement has been passed*”.

The Political Declaration and the Global Action Plan provide the framework for the present report, which examines the characteristics of organised criminal groups and their activities world-wide, and the national and international responses to the threat that they raise. The analysis of the interaction between these two elements has been the focal point of attention at TRANS-CRIME - University of Trento since its establishment in 1994 and has inspired the structuring of the five background documents used for the World Ministerial Conference on Transnational Organised Crime held at Naples in November 1994 and the preparation, in particular, of two and a half of them.<sup>1</sup>

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1 These documents have been gathered in an original version in Ernesto U. Savona and P. Williams, *Five Papers.....*”, July 1994, mimeo, and published in the UN official version in P. Williams and E.U. Savona (eds) *The United Nations and Transnational Organised Crime*, Frank Cass, London, 1996 .

Since the 1994 World Ministerial Conference is the starting point, the analysis will cover recent developments in the phenomenon.

Chapter One gives a general overview of the tendencies and changes displayed by criminal enterprises. Particular attention will be paid to the possibility of setting out a common definition of organised crime. New trends in subjects and activities will be analysed, while interdependencies among crimes and activities will be highlighted.

Chapter Two describes the different processes that characterise the dynamics of organised crime in the different regions of the world (North America, Central and South America, Western Europe, Eastern Europe, Africa and the Gulf States, Asia and Oceania), singling out the areas in which organised criminal groups are most active, and describing their structure. Due to the major diversities among countries and regions this chapter has an informative more than an analytical purpose. Both criteria and methodology used are explained at the beginning of the chapter itself.

Chapter Three describes the principal recent international initiatives taken against organised transnational crime by both governmental and non-governmental organisations (the United Nations, the Council of Europe, the G7/P8, the European Union, the Organisation for Economic Co-operation and Development, the Organisation of American States) as well as other forms of action, such as bilateral agreements. The aim of this chapter is to inform the reader on the recent developments in international action.

Chapter Four describes national legislation against organised crime, in terms of both substantive legislation (focusing on the criminalisation of organised crime and the introduction of measures allowing asset forfeiture and confiscation) and procedural legislation (focusing on special means of investigation and witness protection programmes). The chapter also conducts a brief survey of the results achieved by the law enforcement agencies and of their methods.

The sources used when researching and developing this report were the following: analyses and legislation provided by a world-wide network of experts on organised crime trends and countermeasures; papers presented at national and international conferences; reports written by universities and research institutes; and material provided by governmental and non-governmental organisations and law enforcement agencies. Given that the materials derive from different sources, and in view of the frequent changes made to legislation against organised crime, it may be that some information is dated. In order to remedy this shortcoming, reports from the media have sometimes been used.

## 1.2 Towards a common definition of organised crime

Defining the concept of organised crime has long been a source of controversy and contention, probably because of differences in the way different persons and countries approach various aspects of the problem. Nevertheless, there has often been a need for an unequivocal, common definition of organised crime that, due to the cross-border character that this form of crime has assumed, could make co-operation among different countries easier. It is vital for the understanding of the organised crime issue to decide whether or not a certain category of crime should be determined to be “organised crime”, and then decide how to delineate that category,<sup>2</sup> and finally to decide how resources should be allocated and assess how effectively they have been used in preventing and controlling it.<sup>3</sup>

The essential characteristic of the term “organised crime” is that it denotes a process or method of committing crimes, not a distinct type of crime itself, nor even a distinct type of criminal<sup>4</sup>. This is the reason why a good definition of organised crime should grasp the essential aspects of the “process” whereby certain criminals carry out criminal activity, increasingly within a transnational arena. This “process” is what adds the additional level of danger and social threat. In the following, some definitions are outlined which correspond to different purposes (legislation, law enforcement, research) and therefore focus on different characteristics of organised crime.

In the United States a definition of organised crime to be found in Federal statutes is set out by Public Law 90-351, the Omnibus Crime Control and Safe Streets Act of 1968: “Organised crime means the unlawful activities of members of a highly organised, disciplined association engaged in supplying illegal goods and services, including but not limited to gambling, prostitution, loan sharking, narcotics, labour racketeering, and other unlawful activities of members of such associations”. This statute defines organised crime less in terms of unlawful activities than in terms of those who commit them. It also lists a number of unlawful activities, but these are not necessarily those that define organised crime.

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2 M.E. Beare, *Criminal Conspiracies, Organised Crime in Canada*, Nelson Canada, 1996, p. 219.

3 M.D. Maltz, “Toward Defining Organised Crime”, in H.E. Alexander and G.E. Caiden, *The Politics and Economics of Organised Crime*, D.C. Heath and Company, 1986. See also M.D. Maltz, *Measuring the Effectiveness of Organised Crime Control Efforts*, Monograph No.9, The University of Illinois at Chicago, The Office of International Criminal Justice, 1990.

4 M.E. Beare, *op. cit.*, p.14.

The Federal Organised Crime Control Act of 1970 (PL 91-352) - enacted in the United States two years after the Safe Streets Act - did not provide a definition of organised crime. The Racketeer Influenced and Corrupt Organisations (RICO<sup>5</sup>) Act, as part of the Federal Organised Crime Control Act, makes it a crime to infiltrate, participate in, or conduct the affairs of an enterprise<sup>6</sup> in a manner similar to racketeering. An enterprise is defined as any “*association in fact*” comprised of two or more people. A racketeering act (also called a RICO predicate) is defined as virtually any serious federal felony, and as most state felonies. A second statute addressed to organised criminal activity in the United States is the Continuing Criminal Enterprise (CCE) statute<sup>7</sup>, which is designed to counter the threat raised by large-scale drug trafficking organisations. The statute makes it illegal to engage in a “*continuing criminal enterprise*”. The term “continuing criminal enterprise” is given a statutory definition, which like the RICO statute, is descriptive of the factual functioning of criminal organisations. The CCE statute, unlike the RICO statute, is restricted to drug trafficking organisations.

In Canada<sup>8</sup>, where the term “organised crime” does not appear in the current English version of the Canadian Criminal Code (CC), the 1989 Proceeds of Crime law uses the term “enterprise crime”. The French version of the Criminal Code uses the phrase “*infraction de criminalité organisée*”. The Criminal Code’s reference to enterprise crime - *infraction de criminalité organisée* - lists twenty-four offences deemed to be enterprise organised crime and designated drug offences to which the Proceeds of Crime legislation applies<sup>9</sup>.

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5 The RICO Act is part of the 1970 Federal Organised Crime Control Act and is found at 18 USC §§ 1961-1968.

6 § 1961 states that “enterprise” includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

7 The CCE statute is found at 21 USC § 848.

8 M.E. Beare, *op. cit.*, pp. 19-20.

9 The Canadian Criminal Code (S. 462.3) states that “enterprise crime offence” means an offence against any of the following provisions: bribery of judicial officers; bribery of officials; frauds upon the government; breach of trust by public officer; corrupting morals; keeping a gaming or betting house; betting, pool-selling; bookmaking; keeping common bawdy-house; procuring; murder; theft, robbery; extortion, forgery; uttering forged documents; fraud, fraudulent manipulation of stock exchange transactions; secret commissions; arson; making counterfeit money; possession of counterfeit money; uttering counterfeit money; laundering proceeds of crime; possession of property obtained by crime; designated drug offence; conspiracy or an attempt to commit the above; an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence listed above.

In Germany the so-called “Organised Crime Law”<sup>10</sup> (OrgKG) of 1992, an amendment to the code of criminal procedure, avoids any definition of the term “organised crime”, although the German Bundeskriminalamt (BKA, the Federal Bureau of Investigation) defines organised crime as follows: “*organised crime is the planned commission of criminal offences, determined by the pursuit of profit and power, which individually or as a whole, are of considerable importance, whenever more than two persons involved collaborate for a prolonged or indefinite period of time, each with own appointed tasks*

- *by using commercial or business-like structures, or*
- *by using violence or other means suitable for intimidation, or*
- *by exerting influence on politics, the media, public administration, judicial authorities or the economy”<sup>11</sup>.*

The main components of this definition are planned continuous criminal activities with some sort of organisational division of labour, and it also applies to the manner of doing business, not to classes, ethnicity or supposed formal structures of Cosa Nostra, Mafia, or other identified criminal groups<sup>12</sup>.

In Italy, the definition<sup>13</sup> of Mafia-type crime is contained in art. 416-*bis* of the Penal Code, which was introduced into the Code in 1982. An association is “Mafia-type” when its members systematically use intimidation and conditions of subjection deriving therefrom to commit crimes, to gain control over economic activities and to acquire unlawful advantages.

Mafia-type crime has been defined by the Italian legislator in terms of the traditional behaviour of the Sicilian Mafia, but the result is a general legal definition which applies to any criminal group that acts in a similar manner, no matter in what part of the country it operates, and no matter what it calls itself.

At the international level, too, numerous different approaches have been taken to the need for a common definition of organised crime. These approaches correspond to different perceptions of what organised crime means and to the different purposes to which the definition could be put. Part

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10 In July 1992 the Federal Parliament passed the Prevention of Drug Trafficking and Other Forms of Organised Crime Act (Gesetz zur Bekämpfung des illegalen Rauschgifthandels und anderer Erscheinungsformen der Organisierten Kriminalität - OrgKG).

11 Arbeitsgruppe Justiz/Polizei des BKA, May 1990.

12 P.C. Van Duyne, “Organised Crime, Corruption and Power”, in *Crime, Law & Social Change*, Kluwer Academic Publishers, 1997.

13 G. Turone, “Mafia-Type Criminality: the Special Features of Italian Criminal Law and Procedure to Combat It”, Paper presented at the *Council of Europe Multilateral Seminar on Organised Crime*, Minsk (Belarus), 16-18 September 1996.



of the problem for the international community in trying to deal with organised transnational criminal groups is that there is no single organisation or behavioural paradigm that provides a constant and accessible frame of reference. Criminal organisations vary in size, scale, geographical scope, relationship with the power structures in home and host states, internal organisation and structures, the combination of instruments that they use to avoid law enforcement and to pursue their criminal enterprises, and the range of their legal and illegal activities<sup>14</sup>. Many transnational criminal organisations resemble major multinational corporations and often have a similar managerial hierarchy. At the same time, they maintain a flexible structure which enables them to relocate funds or to react quickly to law enforcement efforts or to new opportunities for making illicit profits<sup>15</sup>.

The Naples Political Declaration and Global Action Plan<sup>16</sup> lists the following six characteristics of organised crime: (a) group organisation to commit crime; (b) hierarchical links or personal relations which enable leaders to control the group; (c) the use of violence, intimidation and corruption to earn profits or control territories or markets; (d) the laundering of illicit proceeds to further criminal activity and to infiltrate the legitimate economy; (e) a potential for expansion into any new activity beyond national borders; and (f) co-operation with other organised transnational criminal groups. Organised crime can thus be described as a form of economic commerce which uses threats, physical force and violence, extortion, intimidation or corruption, as well as supplying illicit goods and services.

As of 1997, the United Nations Draft Framework Convention Against Organised Crime states that, for the purposes of the Convention, “organised crime” means group activities of three or more persons, with hierarchical links or personal relationships which enable their leaders to earn profits or to control territories or markets, internal or foreign, by means of violence, intimidation or corruption, both in furthering criminal activity and infiltrating the legitimate economy, in particular by means of:

1. Illicit traffic in narcotic drugs or psychotropic substances, and money-laundering, as defined by the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;

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14 Review of Priority Themes, *Implementation of the Naples Political Declaration and Global Action Plan against Organised Transnational Crime*, Report of the Secretary-General, UN doc. E/CN.15/1996/2.

15 *Ninth United Nations Congress on the Prevention of Crime and Treatment of Offenders*, Cairo, Egypt, 29 April-8 May 1995, UN doc. A/CONF.169/5.

16 Economic and Social Council, *Implementation of the Naples Political Declaration and Global Action Plan against Organised Transnational Crime*, report of the Secretary-General, UN doc. E/CN.15/1996/2.

2. Traffic in persons, as defined by the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, of 2 December 1949;
3. Counterfeiting currency, as defined by the International Convention for the Suppression of Counterfeiting Currency, of 20 April 1929;
4. Illicit traffic in or the theft of cultural objects, as defined by the UN Educational, Scientific and Cultural Organisation Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970 and the International Institute for the Unification of Private Law Convention on Stolen or Illegally Exported Cultural Objects of 24 June 1995;
5. The theft of nuclear material, its misuse or threats of its misuse to harm the public, as defined by the Convention on the Physical Protection of Nuclear Material of 3 March 1980;
6. Terrorist acts;
7. Illicit traffic in or the theft of arms and explosive materials or devices;
8. Illicit traffic in or the theft of motor vehicles;
9. The corruption of public officials.

The Draft Convention also states that the term “organised crime” covers commission of an act by a member of a group as a part of the criminal activity of such an organisation.

In explaining their position on a convention against organised transnational crime, several governments<sup>17</sup> have mentioned the lack of an agreed definition of the phenomenon. Others do not consider the lack of an acceptable definition of organised transnational crime to be an insurmountable obstacle against elaboration of such a convention. These governments have emphasised the need to counter this type of crime at the global level, and the positive advocacy and the “peer pressure” effects that a convention of this kind would produce. A number of governments have also emphasised the threat raised by organised transnational crime, rather than the activities in which criminal organisations may be engaged at any given point in time. This appears to stem from the understanding that the flexibility and diversity displayed by organised transnational crime makes it more productive to focus on characteristics than on activities.

The Criteria (divided into Mandatory and Optional) defined by the European Commission and adjusted by the Expert Group on Organised Crime of

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17 Economic and Social Council, *Review of Priority Themes, Implementation of the Naples Political Declaration and Global Action Plan against Organised Transnational Crime*, report of the Secretary-General, UN doc. E/CN.15/1996/2.

the Council of Europe<sup>18</sup> may also be useful in defining the term ‘organised crime’. The Mandatory criteria are:

1. Collaboration of three or more people;
2. For a prolonged or indefinite period of time;
3. Suspected or convicted of committing serious criminal offences;
4. With the objective of pursuing profit and/or power;

The Optional criteria are:

5. Having a specific task or role for each participant;
6. Using some form of internal discipline and control;
7. Using violence or other means suitable for intimidation;
8. Exerting influence on politics, the media, public administration, law enforcement, the administration of justice or the economy by corruption or any other means;
9. Using commercial or business-like structures;
10. Engaged in money laundering;
11. Operating on an international level.

The legal and international definitions of ‘organised crime’ tend to converge, so that the term denotes a method of conducting criminal operations which is distinct from other forms of criminal behaviour. Its salient features are violence, corruption, ongoing criminal activity, and the precedence of the group over any single member. Organised criminal groups are characterised by their continuity over time regardless of the mortality of their members. They are not dependent on the continued participation of any single individual.

Current understanding of organised crime, at the national and international level, should take account of two significant changes which will have a major impact on law enforcement. First, organised criminal groups have broadened their operational range. Second, they no longer operate wholly in competition with each other but have demonstrated a willingness and an ability to work collaboratively.<sup>19</sup> Focusing on organised crime with these aspects in mind, and also focusing on it as a process rather than on the people who engage in it, may enable the investigators and analysts to move away from unconscious stereotyping and to broaden their understanding of the range of organised crime.<sup>20</sup> Ethnicity has frequently been cited as a determinant of organised criminal group membership, but this is often misconstrued. Without denying that foreign ethnic elements have played and still do play a recognisable role

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18 Conseil de l’Europe, Comité d’experts sur les aspects de droit penal et les aspects criminologiques de la criminalité organisée (PC-CO), questionnaire, Strasbourg, August 1997.

19 M.E. Beare, *op. cit.*, p. 218.

20 M.E. Beare, *op. cit.*, p. 219.

in the various manifestations of organised crime, it may be better to abstract from the (social or ethnic) backgrounds of the organised criminal groups and examine their (criminal) economic activities.<sup>21</sup> The question changes from “who” to “how”: How do organised criminal groups organise themselves to meet public demand? What are the parameters of organised crime groups? How can we best conceptualise the symbiotic relationship between organised criminals and others (organised businessmen<sup>22</sup>, politicians and bureaucrats)?

## 1.3 Trends in organised crime

### 1.3.1 Trends in subjects

A recently-noted and distinct trend in organised crime is the restructuring of criminal enterprises in response to changes in world markets and their regulation. Technological development and the new opportunities provided by the globalisation of financial markets and communications are key factors in understanding the development of organised crime groups. In order to exploit these new opportunities, criminals must acquire a much higher level of expertise, and this is often possessed only by professionals. As a consequence criminal organisations are increasingly recruiting professionals with specific skills so that they can infiltrate new markets and earn greater profits.

Fraud against the interests of the European Union and money laundering are good examples of the trend. Money laundering often involves banking and financial institutions, as well as the legitimate enterprises in which the illicit money is invested. When the laundering of money is the main task of an organisation - which undertakes a series of fraudulent activities such as the counterfeiting of invoices and the corruption of bank employees for the purpose - it frequently relies on the advice of professionals and consultants. Moreover, organised criminal groups need professionals not only as external consultants but as full members of the group. Since such professionals are more and more essential for risk management and money laundering activities, this full membership strengthens their loyalty to the group. Achieving the most profitable balance between opportunities and the risk of law enforcement, in fact, requires criminal managers able to combine ruthlessness and violence with the complex skills that managing corruption requires.

Some of the changes in organised crime have been brought about by the altered environment<sup>23</sup> in which criminal organisations operate. The growing

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21 P.C. Van Duyne, *op. cit.*, p. 203.

22 G.W. Potter, *Criminal Organizations, Vice, Racketeering, and Politics in an American City*, Waveland Press Inc., 1994, p. 19.

globalisation of financial markets and communications, together with the increased effectiveness of law enforcement control activities, are provoking a series of changes in the structure of organised crime groups and in their relations with other criminal groups.<sup>24</sup>

Evident today, therefore, is the growth of transnational criminal organisations able to adapt to changes in this global environment rather than to national changes. Analysis of the transnational operations of criminal groups in association with multinational organisations is therefore of paramount importance. Since criminal activities are transnational, the criminal groups engaged in them must be able to deal with different markets, even if this means developing a structured organisation, like a corporation, with different tasks and sections for every phase from production to marketing.<sup>25</sup>

Large, monolithic and rigidly hierarchical structures have proved relatively easy targets for law enforcement operations. The results of these operations suggest that criminal enterprises are now replacing a centralised structure, often without multinational characteristics, with more flexible and decentralised ones. The current trend seems to be towards the creation of small organisations based on mutual understandings and agreements, and with relatively few operating procedures, adjusting them to new market features so that they can maximise the profits deriving from new business opportunities and minimise their vulnerability to law enforcement (arrest of their members and the seizure of their assets).<sup>26</sup>

This re-organisation of criminal enterprises in terms of structure seems to be happening along the lines of more flexibility and more co-operation with other criminal groups.

A flexible structure allows for the prompt re-organisation of illicit activities according to demand and to the number of competitors. Occasional businesses or specific targets increasingly require small sub-units<sup>27</sup> of criminal specialists, who work with external individuals to provide services and expertise in fields unknown or not directly accessible to the criminal organisation, thus enabling their rapid adjustment to new market opportunities. An

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23 H. Mintzberg, *The Structuring of Organisations: a Synthesis of the Research*, Englewood Cliffs - NJ, 1979.

24 For an analysis of the relationships between globalisation and criminal organisations see E.U. Savona in co-operation with F. Lasco, A. Di Nicola, P. Zoffi, "Globalisation of Crime. The Organisational Variable" paper prepared for *The 15<sup>th</sup> International Symposium on Economic Crime*, Jesus College, Cambridge, UK, 14-20 September 1997.

25 T.C. Schelling, Economics and Criminal Enterprise, in R. Andreano, J.J. Siegfried, *The Economics of Crime*, 1980, p.389.

26 M.D. Southerland and G.W. Potter, "Applying Organisation Theory to Organised Crime", in *Journal of Contemporary Criminal Justice*, vol.9, n.3, August 1993.

27 J. Hage and M. Aiken, *Social Change in Complex Organisations*, New York, 1970.

outstanding example is provided by the Nigerian networks in the drugs market. Small groups of executives, or even individuals, carry out operational tasks or missions co-ordinated and instructed by a strategic centre in the country of origin. Further examples are provided by the fraudulent activities of Belgian or Dutch white-collar criminals and by the car thefts carried out by Polish and Yugoslav organisations, networks which have acquired specific expertise in the division of labour.

Flexibility also means that the hierarchical distance between the leaders of a criminal enterprise and the rank-and-file is increasing. Although this trend is not displayed by every organisation, it concerns at least the larger ones or some phases of their production cycle. A further consequence is that the 'trail of evidence' linking the crime and the top level becomes difficult to detect, and this provides insulation against law enforcement. At the lower levels, work is carried out by small units ('cells') which are aware of only a part of the organisation's activities or which operate only as servicing units. This phenomenon has been observed in the drug markets, where 'veterans' are able to recruit a wide network of trusted executives.

At the political and law enforcement level, attention is being paid to the problem of collusive agreements among criminal groups designed to optimise opportunities and risk (in this case, trading fewer opportunities for less risk).

These agreements are often reached in order to enter new markets. Sometimes, at the lower levels (mainly those of street drug smuggling or prostitution), violence is used to gain supremacy among exploiters of the same market, cases in point being the East European groups in Germany, or street gangs in the United Kingdom. The other method is to co-operate with enterprises already in control of these markets, and which have greater knowledge of local conditions and are more attuned to local problems, rather than trying to set up as a competitor in unfamiliar territory.

An example of the effectiveness of these tactical arrangements is provided by that between Colombian cartels and local Polish groups on the distribution of cocaine in those European markets in which networks of Polish citizens provide a crucial set of contacts.

These collusive agreements are favoured by a combination of different variables, most notably: lengthy conflict among criminal groups with the inevitable spread of violence, the structural weakening of organisations due to infiltration, defection or the conviction of their leaders, changes in markets, reduced resources, demand for specialisation, or the increased risk of law enforcement.

The alliances thus created may take a wide variety of forms, including combined operations, licensing or franchising agreements, and joint ventures. Tactical arrangements are developed. In many respects, these activities typify a large part of the drug-trafficking industry, in that they are carried out by small, independent organisations set up to exploit a particular trafficking route and a specific method to circumvent customs and law enforcement.

Many of them are small-scale tactical alliances based on transnational networks, but when they prove effective they display an inherent capacity for growth. Their flexible structure makes it likely that they will be disbanded and their constituent elements reassembled in a different pattern. Tactical alliances are made for specific purposes, and they are often followed by a search for further partners, which will make shipments to other locations using different methods of concealment.

The aim of co-operation among criminal organisations is often the circumvention of law enforcement and of national regulations. Accordingly, the principal purpose of some criminal alliances is risk reduction. Criminal organisations enter into alliances with governments, either through corruption or coercion or, more frequently, a combination of the two. A recurrent feature is the extensive use of bribery - for example, in Italy - to strengthen control over the territory, to minimise the risk of law enforcement, and to increase the criminals' advantage over competitors. Another example is provided by the criminal networks involved in European Union or VAT frauds, which must necessarily develop ties with institutions both at the national and European level. Criminal groups transporting illicit goods across European Union borders, too, must have accomplices at some level in the customs service.

### 1.3.2 Trends in activities

In recent years, there has been an evident tendency for illicit activities to expand into new markets, and for new and less risky activities to develop. In both cases, this has come about because assessment of the opportunities for profit and of the risks involved suggests that the former outweigh the latter. Indeed, the opportunity/risk ratio is always the decisive variable that orients criminals in their choice of activity. The problem is that this ratio is perceived differently according to the organisational and professional capabilities of a criminal group.

Technological developments in telecommunications, including telephone, fax and computer networks, the explosive increase in the use of computers in business, the development of electronic systems in the banking and financial sectors, which use wire transfers to shift enormous amounts of cash around the world very rapidly: all these combine to favour interdependence among businesses and their internationalisation. Just as legal businesses are expanding internationally in response to the globalisation of markets, so too are criminal enterprises seeking to develop their illicit activities at the international level in order to take advantage of the discrepancies between the legal systems of countries in different parts of the world, and in order to gain access to new markets.

Some of the most traditional crimes, such as drug trafficking, remain highly productive businesses. However, owing to advances in legislation, and in some cases owing to increased penalties for certain crimes, they have

also become rather risky. Other criminal activities may be less productive, but they involve less risk. Economic crimes belong to this latter group. In many countries some sorts of crime, such as large-scale fraud, ecological crimes and alien trafficking, are less closely targeted by law enforcement. Moreover, investigation of these crimes is much more difficult, and the sanctions are often more lenient than for drug-related crimes.

Alien smuggling or trafficking in aliens is a relatively new phenomenon.<sup>28</sup> It is a business that links migration more and more closely with crime, and it is characterised by the increasing involvement of organised criminal groups. Intervention by the latter is changing the nature of the relationship between migration and crime by introducing three connected links: trafficking, exploitation and induced criminality. Quite often, these links belong to a chain managed by the same criminal organisation. Criminals provide the supply to meet this demand by furnishing services for illegal migration (from fake documents to transportation). Once these migrants have arrived at their destinations, they often find that they have little chance of earning regular incomes or of receiving welfare assistance. They are consequently preyed upon by the same or other criminal organisations, which place them in local criminal markets, such as drugs and prostitution. As a consequence of this exploitation, the illegal immigrants commit more crimes in the host countries than does the native population. The high crime rates of aliens in host countries should therefore also be read in the light of the trafficking-exploitation-induced criminality circuit.<sup>29</sup>

Computer crimes are playing an increasingly significant role in the new international dimension of organised crime. Among the crimes most commonly committed with the use of computers are money laundering and fraud. Electronic networks offer enormous opportunities for the movement of capital without the need to use a traditional institution to act as an intermediary. Illicit funds can easily be moved through countries in which policies to counteract money laundering are marginal or non-existent.<sup>30</sup> Use of these computer networks enables criminals to operate internationally without physically crossing national borders. They can thus maximise their business

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28 The former term usually refers only to the physical transport of the migrant across national borders, while the latter is usually used when the emphasis is on the condition of exploitation of the migrant.

29 Transcrime, *Migrazione e criminalità - la dimensione internazionale del problema*, Milano, CNPDS, 1996, pp. 53-72; E.U. Savona, G. Da Col, A. Di Nicola, "Migrazioni e criminalità in Europa", in L. Tomasi (ed.), *Razzismo e Società Plurietica. Conflitti etnici e razzismi giovanili in Europa*, Milano, F. Angeli, 1997, pp. 191-207; E.U. Savona, A. Di Nicola, "Migrazioni e criminalità. Trent'anni dopo", in *Rassegna Italiana di Criminologia*, IX (1), 1998.

30 Financial Action Task Force on Money Laundering, *Report 1996-1997*, Paris, France, 1997.



and investment opportunities while at the same time reducing the risk of identification. Cyberspace is still a safe territory, in fact, relatively immune to control policies. In a system in which millions of transactions take place without being checked by financial institutions, it is virtually impossible to organise effective supervision.<sup>31</sup>

Fraud in general - and in Europe, fraud against the financial interests of the European Union - is a growing source of illicit proceeds for organised criminal groups. Fraud is committed not only by professionals in legitimate industry, at the margin of their businesses, but also by extensive organised crime networks. As regards fraud against the European budget, in Belgium, the Netherlands, Portugal and Italy the criminals involved have developed into well-established criminal trading communities. In 1996, losses amounted to 1.3 million ECU (somewhat over \$1.4 billion at current exchange rates) and approximately 1.6 per cent of the European Union budget for that year.<sup>32</sup> The fact that “two or three per cent of the cases are important and represent more than two-thirds of the money involved”<sup>33</sup> demonstrates that these are large-scale organised financial crimes.

In Europe, considerable alarm has been provoked by the trafficking in nuclear materials from the countries of the former Soviet Union. Although it is almost certain that for the moment these traffickers are greedy freelancers, traders, adventurers or opportunists<sup>34</sup> looking for a quick profit, rather than criminal organisations, it is likely that criminal organisations will enter this market for extortion purposes in the future. If purchasers cannot be found, and if the material is on hand, then extortion may be particularly attractive. There are currently several hundred tons of weapon-usable fissile material under inadequate physical security and material control in Russia. Kilograms of this material have been stolen from institutes in Russia since the break-up of the Soviet Union, and a proportion of it is not intercepted before it leaves Russian soil. The quantities already stolen (and fortunately intercepted) are enough to manufacture small nuclear weapons. It has been noted<sup>35</sup> that sufficient fissile material can be diverted from Russian stockpiles, with a high probability of success, to provide a sub-national group with one or two nuclear weapons, or even a rogue state with a sizeable arsenal.

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31 K. Alexander e R. Munro, “Cyberpayments: Internet and Electronic Money Laundering: Countdown to the Year 2000”, in *Journal of Financial Crime*, 4 (2), November 1996, p.159.

32 Commission des Communautés Europeennes, *Protection des Interets Financiers des Communautés - Lutte contre la fraude*, Rapport Annuel 1996, Bruxelles, p. 1.

33 Commission des Communautés Europeennes, *op. cit.*, p. 2.

34 R. Atkinson, “Official Say Contraband Not a Threat”, in *The Washington Post*, August 28, 1994.

35 T.B. Cochran, *Prepared Testimony Before the Senate Committee on Foreign Relations*, European Subcommittee, 23 August, 1995.

### 1.3.3 The management of crimes: interdependencies among crimes and among activities

A survey of the world-wide activities of transnational organised crime groups yields the following picture of the ways in which they have altered their modes of operation, with closer interdependence among specific crimes (vertical interdependencies, or chains of individual crimes) and among complex criminal activities (horizontal interdependencies, or interdependencies among chains of crimes). A preliminary definition of these concepts may be helpful, since they may be somewhat unclear. ‘Crime’ is used here to denote individual conduct punished by law, while ‘activity’ denotes the illicit conduct as a whole (as a chain of individual crimes) and comprises the means, knowledge and personnel of the criminal enterprise, as well as the expertise that it develops in order to pursue its main criminal purpose (so that, e.g., the skills acquired in corrupting officials when trafficking in drugs can be used when trafficking in migrants or in arms).

It can be shown that the offences committed by organised criminal groups are growing increasingly interdependent, constituting a sort of illegal chain in which the organisational structure links them together. Vertical interdependence among crimes arises when, in order to perpetrate a final crime, one or more intermediate and instrumental offences are committed by the same criminal organisation. In other words, in order to finalise a crime of particular importance (in terms of effects or gains), organised criminals utilise a chain of offences. This interdependence among crimes is often a manifestation of the progressive specialisation of criminal organisations.

Numerous examples of vertical interdependency can be cited. For instance, as far as fraud, corruption and money laundering are concerned, analysis of criminal schemes and inspection of the *modus operandi* of criminals shows that these three crimes are often functionally related, in that one of them is the end-result of a criminal scheme and the other two are intermediate steps towards it. Analysis of cases in which fraud against the European budget is the final goal often reveals the corruption of customs personnel and public employees of the European Commission, or of member states. The proceeds of such fraud are often laundered in order to conceal their criminal origins and to avert the risk, if the fraud is discovered, of the sum being recovered. When laundering money becomes the main goal of an organisation, frequently acting under the advice of professionals and consultants, the process moves through a series of fraudulent activities, such as the counterfeiting of invoices and the corrupting of bank employees. Since this activity often involves banking and financial institutions, as well as the legitimate enterprises in which the illicit money is invested, fraud and corruption are the most frequent means used to achieve this goal. When corruption is the aim, fraud and money laundering are instruments for achieving it, the former at the beginning and the second at the end. “Operation Clean Hands” in Milan (Italy) revealed that massive corruption of politicians

by private enterprises was accomplished by creating - through false accounting or fake invoices - slush funds. The money thus obtained was then laundered and reinvested.<sup>36</sup>

Turning to the trafficking of migrants and their exploitation (especially of migrant women and children) in the prostitution markets of host countries, the same pattern of vertical interdependence among offences emerges. In fact, in order to perpetrate these crimes, a criminal organisation involved in alien smuggling activities (also with the further purpose of sexually exploiting migrants or of placing them on black labour markets) must usually plan the commission of further offences, such as deception, illegal immigration, corruption of public officials and theft and counterfeiting of documents for use in their trafficking operations.

Once it is realised that the activities of organised criminal groups are increasingly interdependent, it becomes easier to understand the way in which transnational organised crime shifts from one activity to another. The more a criminal organisation develops horizontal interdependencies, the more it is characterised by opportunism. The horizontal interdependencies, distinctive of opportunistic criminal organisations, display a pattern of diversification rather than one of specialisation. The concept of horizontal interdependencies among activities refers, in fact, to the connections established among different activities by the same criminal organisation. A criminal enterprise usually relies on the particular expertise, skills and means acquired in a specific illicit sector to expand its criminal activities, changing into new criminal circuits. In practice, a criminal group with already-trained personnel, already-acquired means, already-tested trafficking routes, already-developed corruption networks, and already-existing contacts in different countries of the world, will move into new illicit markets (adding new activities to the ones in which it already specialises).

Examples of these horizontal interdependencies are readily available. One thinks, for example, of the connections established between drug trafficking and alien smuggling operations by the Albanian groups which transport both nationals and drugs across the Adriatic Sea. The same applies to the organised crime groups of Asiatic origin which move illegal immigrants across the Canada-US border, utilising the routes, means and methods already developed for the smuggling of cigarettes. Generally speaking, when activities of this kind involve diverse forms of trafficking (in drugs, arms, humans, toxic waste, stolen vehicles), it is not difficult for criminals to shift from one form to another, exploiting the knowledge that they have already acquired.

A further example of this kind of horizontal interconnection is provided by the operations of Turkish organised crime groups, which use the wide

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36 E.U. Savona, "Learning from Criminals how to Combat Them: the Interdependencies among Fraud, Money Laundering and Corruption in Europe", paper prepared at *The 8<sup>th</sup> International Anti-corruption Conference*, Lima, Peru, 7-11 September, 1997.

network of corruption created while conducting their classic illegal activities (drug trafficking, protection, prostitution, the sale of false documents) to undertake their relatively new activity of alien trafficking from Eastern and Central Asia to Western Europe.

The trend described here warrants closer attention in terms of policy. In order to maximise the risk to criminals, criminal law and law enforcement should concentrate on the interdependencies among crimes and among activities, rather than considering them from a single perspective. As regards the vertical interdependence among crimes in particular, special and stiffer penalties should be introduced for criminals involved in a series of logistically and organisationally inter-linked criminal offences aimed at the commission of a final crime.

## 1.4 The money from organised crime

Monetary profit is the fulcrum of all the choices and conduct of organised criminal groups. It drives the development of numerous activities and of numerous organisational aspects of criminal syndicates. Analysis of organised crime requires explanation of how it operates in relation to profit-making and the re-investment of profits in existing criminal markets.

A criminal organisation conducts its activities in the criminal market in a similar manner to a legitimate enterprise in the legal one: indeed, criminal groups are frequently compared to legal businesses. Both seek to earn profits by selling the goods and services that they produce, and both use their profits to pay the people who work for them. They invest their money by purchasing new technologies or machinery, by taking on new personnel, and/or by enhancing their human resources in order to improve productivity. Both of them diversify their investments among different fields in order to increase profits, and they seek to expand into new markets: new geographical markets (the large multinationals, for example) or new product markets (offering new products or new goods to which they can easily convert without undertaking major structural change). In pursuing these aims, both occasionally forge alliances with other enterprises.

However, criminal and legal enterprises differ substantially in terms of their opportunities and risks. Criminal enterprises are able to offer illegal services and goods, and they can use violence, intimidation and corruption. Corruption is an especially useful means available to criminal organisations, and it is used world-wide to infiltrate the legal systems of countries and to increase opportunities to obtain wealth and power. Various European groups can be cited (with the recent phenomenon of the corruption of European Union officials) as examples of criminal groups involved in the massive use of corruption, together with the Turkish Mafia, the Nigerian cartels, Indian criminal organisations, Yakuza groups and Triads. Moreover, criminal enter-

prises are also able to distort competition when they infiltrate the legitimate economy, given that they can rely on dirty money to re-capitalise their legal entities with criminal proceeds. Legal enterprises borrow capital by paying an official interest rate, but this is not paid by enterprises able to use criminal profits to meet their needs for liquidity and capital.

Of course criminal enterprises incur greater risks compared with legal businesses: the fact that they behave unlawfully exposes them to the danger of losing their members and capital, as a result of action by law enforcement authorities and judicial power. In exchange for their wide-ranging power of action, they must run the risk of being dismantled by the authorities of various countries.

These criminal enterprises engage in two basic forms of crime in order to earn profits. One is crime in which an exchange takes place between money, on the one hand, and goods and services on the other. This is the case of goods like drugs, arms, stolen cars, waste or nuclear materials, and services like prostitution or the transportation to industrialised countries of illegal aliens (with the help of fake documents or corrupted officials), who are then placed on the illicit market. The second form of crime is characterised by the lack of a transaction in favour of the exploitation of resources, as in the case of fraud or computer crimes.

The former category of crimes is therefore characterised by the matching of supply and demand. In providing the supply, criminals have become expert in shaping the desires and needs of their potential clients. This is the case of the extortion market, for example, in which money is obtained in exchange for protection (although in practice the menace against which the client is protected is the criminal organisation itself). It is also the case of alien smuggling, where it is the criminal groups themselves who sometimes deceive would-be migrants, offering them job opportunities and misleading them as to the dangers involved in the journey. Furthermore, by relying on the human resources provided by alien smuggling, organised crime can also increase demand for foreign prostitutes (by offering prostitution at cheaper prices) and increase the demand for children prostitutes (by advertising this kind of prostitution as safer).

To make money from these crimes, transnational organised criminals evaluate the different markets of the world, seeking to identify the sources of products to be sold and the circuits in which to sell them. Since they are transnational, they can also exploit both the criminal resources available in a certain region (drugs, a demand for emigration, luxury cars, nuclear materials, etc.) and the demand for illicit products in a different or richer geographical area (drugs, foreign and child prostitution, arms, luxury cars, etc.).

The development of new criminal markets in the world has involved two regions in particular. One is the Golden Triangle in East Asia, the traditional area of opium production today of increasing importance due to its contiguity to China and the flourishing activity of alien smuggling. The other is the large

area comprising the former Soviet Union and the other Eastern European countries. The collapse of the communist regimes in these countries, and their difficult transition to democracy and a market economy, have provided native and foreign criminals with substantial opportunities for gain. The African continent, although not a leading area of criminal exploitation, also shows signs of burgeoning organised crime. Increased fraud and corruption has been noted in Southern and Eastern Africa; and it is also apparent that narcotics trafficking, arms smuggling, the theft and resale of commodities, as well as other white-collar crimes, have generated considerable proceeds, which are now being laundered. While the traditionally wealthy regions (North America and Europe) are still the best markets for a wide variety of illicit products, the above-mentioned countries are developing ever larger markets for such traditional goods as drugs. At the same time, they are helping to increase demand for new goods (stolen cars for example) or for new services (illegal migration). Transit countries are contributing to the multiplication of traditional illicit routes by supplying transit services (transportation, fake documents, logistical support, etc.), diversifying them and differentiating the means of transport and the customers to whom the service is offered, and managing the distribution of the same goods within their territory.

The second category of offences (those that cannot be described in terms of supply and demand, such as fraud or computer crimes) are of increasing interest to organised criminal rings, who commit numerous kinds of fraud: against the financial interests of the European Union, for instance, or credit card and insurance fraud, and others besides. Criminal gangs in Europe especially, as well as Nigerian criminal organisations, and Russian and Asian groups in North America, are increasingly involved in this criminal activity. Linked to this behaviour, of course, is the mounting need of these organisations for professionals in their ranks, with the consequence that greater professionalism and greater complexity can be identified as the recent developments manifest in organised crime. Organised criminals seemingly turn to activities such as fraud in order to maximise opportunities and at the same time minimise risks. They in fact choose a field of action in which advantages in term of profits outweigh disadvantages in terms of law enforcement (the risk of being identified, arrested and sentenced and of having their assets confiscated). Economic crime is generally difficult to investigate, and it is often punished with with less severe penalties than those applied to more classical organised crime offences. Therefore, generally speaking, many changes in the activities of organised criminal groups, in the geographical areas in which they decide to operate and in the connections established among them, result from their constant reaction and adjustment to opportunities for gain and to the likelihood of law enforcement.

It is evident that, besides personal ambitions and the benefits accruing to individuals, the organisation itself requires money and power to carry out its activities. The more complex the structure of a criminal group, the more it

relies on its capital. Money, in fact, is one of the best means to establish connections and to undertake internal and external transactions. As far as internal relations are concerned, the more stable the group, the more loyal are its members and affiliates, with the consequence that the organisation itself represents the main, if not the only, source of revenue for its members. In the field of external relations, money enables criminal groups to establish connections with each other and with public officials and authorities. Criminal groups are able to corrupt public officials by enticing them with the prospect of easy profits, or they forge alliances with other national criminal organisations, using money as the link.

But money may be the 'Achilles' heel' of a criminal organisation. It leaves an evident trail behind it, so that it is sometimes possible for law enforcement agencies to trace the movements of dirty money to reconstruct the criminal group's activities and identify its members. No one is willing to do business with a criminal organisation if the money involved is not 'clean', at least apparently (or formally). Since criminals want to utilise their profits without difficulty (to buy other illicit goods or to invest in legitimate industries, etc.), their money must be 'laundered' to conceal its criminal origin. Consequently, money-laundering activities have become an integral part of the criminal cycle. In this regard, a recent trend should be stressed: criminal groups make increasing use of the services provided by financial experts in their money laundering schemes. Very often these professionals become affiliates of the organisation, becoming progressively incorporated into its structure. Sometimes, as in the cases of Colombian Cartels or the Italian Mafia, criminal enterprises set up autonomous cells and charge them with the task of laundering criminal proceeds by developing new money laundering techniques.

A specific and widely-used method to launder the proceeds of crime is investment in licit activities (such as the construction business, the tourist industry or the banking sector). Criminals increasingly use legal businesses to diversify their investments and obtain legitimate incomes, but they also do so in order to reduce the overall risk of detection and the seizure of their capital. As a consequence, the traditional distinction between the illicit and legitimate *modus operandi* of organised criminals is becoming less clear-cut, with the result that the distinction between what is criminal and what is legal also grows increasingly blurred.

Another reason why criminals infiltrate the licit economy is that they are constantly in search of respectability. Organised criminals use infiltration into the 'upper world' as a means to climb up the social ladder. The history of criminal organisations shows that penetration into legitimate business is a stage in the evolution of numerous criminal organisations, as evidenced by past American experience and the current situation in the ex-Soviet Union countries. In the latter, the criminal class is now gaining respectability by extending its activities into legitimate businesses, and it will probably merge with the ruling classes in the future.

This penetration into the legitimate economy is achieved principally through the investment of illicit money in company shares. By purchasing a limited corporation, the criminal investor gains personal legitimacy, as well as a profitable and apparently reputable method of commingling licit and illicit funds, without the direct use of financial institutions. Depending on the surrounding economy or on the criminal culture, such penetration may be accomplished by means of violence, extortion, usury, or other, more sophisticated financial methods.

In conclusion, the aspects to be considered when devising policies against organised crime can be summarised as follows:

- crimes like fraud, corruption and money laundering increasingly require the services of economic and financial experts. Organised crime is turning to these offences because it must find new and less risky criminal sectors, utilise its capital and broaden the spectrum of its criminal activities;
- organised crime exists because it operates as an enterprise and because it can count on the liquidity of its money and on the opportunities offered by this liquidity;
- the increased use of economic concepts when speaking about criminal organisations.

In conclusion, one may suggest the following guidelines for political action:

- when defining organised crime, its recently-acquired economic components should be borne in mind. The concept of organised crime should be extended to include not only the traditional types of organised crime but also other forms of economic crime, because of the high level of organisation required to commit them. Organised financial crime or organised business crime are merely different names for the same phenomenon: criminals commit crimes in order to earn profits, and in order to do so they require a stable organisation. These forms of behaviour, therefore, should be included in any broad concept of organised crime;
- following the recommendations of the 1994 Naples' Conference on Organised Transnational Crime, policies designed to deprive organised crime groups of their money are essential. It is better to seek to dismantle the organisation as a whole by attacking its capital, rather than concentrating on its individual members or bosses.



# 2 Organised Crime Across Borders

## 2.1 Introduction

This chapter describes the recent trends of illicit activities within organised crime in various areas in the world and the changes in criminal groups which operate at the international level. Market globalisation and the subsequent abolishing of borders, together with the advantages offered by technological innovations, have created opportunities for new profits for existing and emerging criminal groups which have adapted themselves to the new needs of the market. The demand for illegal goods and services has changed and in turn resulted in an increase in the associated crimes such as trafficking in migrants (and their exploitation in local criminal circuits for prostitution, black market, theft, drug pushing, etc.), environmental offences, drug smuggling, money laundering activities, and trafficking in stolen vehicles.

At the same time, criminal groups have learned to exploit the loopholes and legislative discrepancies present in some geographical areas and they have spread into sectors where the risk of being arrested and heavily sentenced is relatively low, especially compared to the attractive economic return. A typical example of this trend is fraud in general and specifically fraud against the financial interests of the European Union.

The purpose of this chapter, therefore, is to provide an overview of this transformation in various countries in the world, grouped by major geographical areas (North America, Central and South America, Western Europe, Eastern Europe, Africa and Gulf States, Asia, Oceania). The description starts from the main criminal activities carried out in each geographical area, highlighting those national and transnational rings which are most heavily involved. Therefore, attention is concentrated within each geographical area on those states in which organised crime groups present major concern. As far as single groups are concerned, we have tried to illustrate their characteristics and structuring and the way in which they spread on national and transnational levels, penetrating new markets and exploiting the loopholes existing in the legal and economic systems of many countries. This is the reason why the organising device of this chapter varies from time to time, moving from activities and groups to the states involved, taken as examples rather than as an exhaustive list.

As said in section 1.1, the information relies on different sources that should be continuously updated due to the frequent changes that take place in the phenomena considered.

## 2.2 Organised crime around the world

### 2.2.1 North America

Two countries, Canada and United States, belong to this region. Illegal drugs remain a significant public policy issue in this area, particularly the high level of violence associated with both drug distribution and use. While different in the origin of organised crime, these two countries tend to present today progressive similarities in the evolution of the organised crime - money laundering cycle. The contiguous geographical position and the development of their economies are inviting factors for organised criminal groups for illegal activities and infiltration into legitimate industries.

Organised crime groups involved in a wide variety of illegal activities throughout Canada and the United States are increasingly entering the legitimate business world; business enterprises are used as bases for the planning of illegal activity, the laundering of criminal proceeds and the receiving of merchandise with illicit products hidden in it. There are several highly structured organised criminal groups operating in both these countries. The Cosa Nostra, involved in all ranges of criminal activity, including drug trafficking, fraud, labour racketeering, money laundering, murder and corruption of public officials, no longer appears to be the dominant criminal organisation since it has an old, rigid and monolithic structure that hardly adapts to the flexibility of the market.<sup>1</sup> In a rapidly changing criminal market, old criminals disappear or change and are replaced by new ones, in order to exploit the new crime opportunities and to resist attempts at repression.<sup>2</sup> Although still dominant in some big cities of the United States and Eastern Canada, Mafia power and influence is waning as a result of a combination of factors such as the increased effectiveness of the criminal legislation enacted in the past years, the increased number of convictions achieved, and the change in the value patterns of those new generations of criminals that have replaced the old ones who have died or been eliminated by law enforcement policies.

Colombian cocaine cartels, Jamaican Posses, Russian organised crime groups and Chinese Triads all have a strong and growing presence in the United States and are involved in large scale drug trafficking, money laundering, smuggling people across the borders and loan sharking. Black and Hispanic groups dominate criminal activity in their respective ethnic neighbourhoods. Typically, they control much street-level drug dealing and some

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1 P. Reuter, "The Decline of the American Mafia", in *The Public Interest*, n. 120, Summer 1995, p. 96.

2 *United Nations Conference On Organised Transnational Crime*, Naples, Italy, 21-23 November 1994.

distribution activity above street level. They often interface with international traffickers who control wholesaling and regional distribution.

Nigerian drug traffickers, considered an emerging organised crime group, have made enormous inroads in setting up drug organisations.<sup>3</sup> They are structured into numerous small, semi-autonomous criminal groups whose members live and work in the cell structure. Although these criminal groups have established a reputation in the USA for significant credit card fraud, they also play a major role in drug trafficking. Couriers travelling by commercial airlines have been the principal means used by these organisations to move heroin from source countries to the USA. In the 1990s, Nigerian drug traffickers further expanded their activities to include carrying South American cocaine from Brazil to Europe via Lagos.

Further to organised crime groups, such as Colombian Cartels and Jamaican Posses, the main concern today in the North American region centres on criminal groups originating from Russia and other Eastern European countries. These groups have quickly become major underworld players in Montreal, Toronto and Vancouver and, although they have been in Canada less than a decade, they have such a widespread presence in the country that they could threaten the stability of the economy.<sup>4</sup> Russian crime syndicates in this country are involved in contract killing, tax and health-care fraud, alien smuggling, extortion, drug trafficking and money laundering: they launder their profits through Canadian banks and set up businesses that act as fronts for criminal operations.<sup>5</sup> In August 1995, the United States Federal authorities unsealed indictments that provide new evidence of the growing power of Russian organised crime in the metropolitan regions.<sup>6</sup> They are organised, structured, cohesive groups of Russian emigrants who have banded together to commit very sophisticated crimes on a large financial scale. The authorities revealed ties between Russian emigrant criminals and the traditional Italian organised-crime families. Russian organised crime activity in the USA has been identified in cases involving such criminal activities as extortion, contract murders, prostitution, insurance and Medicaid fraud, counterfeit documents, tax evasion, credit card fraud, cellular telephone cloning, money laundering, car theft and drug trafficking. Although Russian organised groups are not currently major actors in the US drug market, given these groups' capabilities, resources and the experience that many of them have with drugs in the former Soviet Union, it is highly

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3 "Nigeria – a Country Overview", in *The National Drug Intelligence Center*, Pennsylvania, 17 March 1994.

4 *The Calgary Herald*, 22 August 1995.

5 *The Calgary Herald*, 22 August 1995.

6 "Russian Émigrés Are among 25 Named in Tax Fraud" in *The New York Times*, 8 August 1995.

probable that drug trafficking will become a growing part of their activity in the USA.

Asian organised crime in Canada is flourishing in several metropolitan areas; these criminal groups are involved in crimes that reach beyond the Asian community, including such white-collar crimes as money laundering, credit card fraud and counterfeit cheque schemes, as well as in illegal migrant smuggling operations, and in sophisticated major theft rings. There are also clear indications that Asian criminal organisations have established links with various other criminal groups, including the Hells Angels and Italian, Iranian, Nigerian, Lebanese and Aboriginal organised crime. Most of these connections are established for the purpose of drug trafficking, tobacco smuggling, credit card fraud and counterfeiting. In Canada and in the United States there is also increasing evidence of the presence of the Japanese Yakuza crime syndicate, the Triads, and gangs commonly associated with the international expansion of Asian organised crime. The crimes they perpetrate are similar to those of the traditional Mafia organisations, but there is concern about the growing level of violence and corruption often associated with Asian organised crime operations.<sup>7</sup>

The main Triad groups operating in Canada include the Kung Lok, 14K, Sun Yee On, United Bamboo, and Wo Hop To. In addition to the Chinese/Hong Kong gangs, Vietnamese gangs operate across Canada, employing a combination of intimidation and force. These gangs commit a vast array of crimes, including extortion, illegal gambling and legalised gaming fraud, smuggling (aliens, alcohol, and cigarettes), trafficking in cocaine and heroin, prostitution, credit-card fraud, forgery<sup>8</sup> and home invasions. The Japanese Yakuza crime syndicates focus on narcotics smuggling, tourist scams and the sex trade.

In Canada and in the United States Asian and Latin American organised criminal groups play the most important part in alien smuggling. Until the Canadian government drastically cut taxes in 1994, the illegal importation of untaxed cigarettes was a booming business. With that source of revenue now dwindling, smugglers have moved from tobacco to people.

Although the vast majority of illegal Chinese immigrants is still coming by air, in August 1991 a new type of operation began to take shape. It involved the use of Taiwanese ocean-going cargo ships and fishing vessels to smuggle illegal Chinese immigrants to the USA.<sup>9</sup> The following incident, which hit the headlines and raised public concern in the United States, highlights this

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7 Criminal Intelligence Service Canada, *1996 Annual Report on Organized Crime in Canada*, in *Transnational Organized Crime*, Volume 2, Number 4, Winter 1996, p.136.

8 M.E. Beare, *op. cit.*, 1996.

9 Z. Wang, "Ocean-Going Smuggling of Illegal Chinese Immigrants: Operation, Causation and Policy Implications, in *Transnational Organized Crime*, Volume 2, Number 1, Spring 1996, p. 49.

growing problem: in 1993 about 280 illegal Chinese immigrants, *en route* from Thailand, were stranded on Rockaway Peninsula, near New York, resulting in 10 people drowned and 16 seriously injured. Each passenger had paid about US\$ 30,000 for the journey.<sup>10</sup> This method of alien smuggling represents a diversification of the far-flung smuggling networks that for years have brought small groups of Chinese labourers to the United States by air through Canada and Central America. The current tide of smuggling illegal Chinese immigrants is operated by crime syndicates. Their operation is transnational in that smugglers have to hire recruiters, sailors, corrupt officials, drivers, document forgers, employment agents and gangs in mainland China, Hong Kong, Taiwan and the United States. Law enforcement intelligence believes that the 14K, Wo To Wo, Sun Yee On, Big Circle Boys and United Bamboo are the primary suspect groups for these smuggling operations. Consequently, the smuggling of illegal Chinese immigrants by sea is far more than an immigration issue. It is a manifestation of Asian organised crime groups that are committing transnational crime in a very blatant way.<sup>11</sup>

Another growing problem in the North American area is the incidence of criminal gang activity. Outlaw motorcycle groups have changed greatly in recent years: not only have they begun to tap into the influence networks controlled by Mafia organisations with which they affiliate, but they have been building up their own contacts with the economic and social establishment. While initially gang members were used in secondary roles or as hit-men for more sophisticated operations, they now carry out their own complex organised crimes and operate in more equal partnership with other criminal groups.<sup>12</sup> Outlaw motorcycle gangs are the major recognisable organised crime groups involved in large-scale methamphetamine and LSD trafficking. These gangs are also increasingly involved in the lucrative underground trade in precursor chemicals.

There are different outlaw motorcycle gangs also in Canada, of which the Hell's Angels are the most powerful and best organised. They are increasingly controlling the import, distribution and sale of illicit drugs such as cocaine and cannabis with the support of other outlaw motorcycle gangs across the country. They also appear to be increasing their involvement in the contraband trading of alcohol and tobacco.

In the United States, motorcycle gangs, such as the Hell's Angels, have also become well organised and engage in a wide variety of criminal activity, sometimes developing into international suppliers. The 1994 Violent Crime

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10 M. Goldish, *Immigration. How should it be controlled?*, 21<sup>st</sup> Century Books, New York, United States, 1994, pp. 7-9.

11 Z. Wang, "Ocean-Going Smuggling of Illegal Chinese Immigrants: Operation, Causation and Policy Implications, in *Transnational Organized Crime*, Volume 2, Number 1, Spring 1996, p. 64.

12 M. E. Beare, *op.cit.*

Control Act created new provisions aimed at criminal street gangs, by increasing the maximum prison sentence under certain circumstances by up to 10 years, for gang-related federal drug or violent offences committed by members of a criminal street gang. The Act defines a “criminal street gang” as an “ongoing” group or association of five or more persons that has as one of its primary purposes either (a) the commission of a federal drug offence punishable by at least five years in jail, or (b) the commission of a federal violent offence.

Of particular concern to law enforcement personnel is the level of organised Albanian activity within the United States. By the early to mid-1980s, Albanians in cities and suburbs outside Detroit and New York were already involved in crimes ranging from robbery to extortion. Indeed, by 1985, Albanians were already gaining notoriety for their drug trafficking. This activity became predominant along the so-called Balkan Route. American Drug Enforcement Administration officials estimated that by 1985 between 25 and 40 per cent of the US heroin supply was taking this route - with Albanian assistance. Ten years later, more organised, disciplined and out on their own, Albanian crime gangs increased the scope of both their activities and geographic locations within the United States.<sup>13</sup>

The USA and Canada also have a wide variety of structured indigenous groups involved in criminal activities such as smuggling of cigarettes, alcohol, illegal aliens, guns, drug distribution, theft and fraud. Law enforcement officials are particularly concerned about the links that have been established between Asian criminals, traditional organised crime, and aboriginal criminal operations.<sup>14</sup> Certain Native American communities near or on the Canada-US border continue to be the major strongholds for contraband smuggling into Canada. The commodities involved include alcohol, tobacco and firearms. In Western Canada, Native American street gangs are becoming more prominent; they are gaining a foothold in prostitution, drugs, and crimes against persons. The street gangs have strong connections with Native Americans in the prison population and recruit many of their members there.<sup>15</sup>

The proximity to the huge US market, the porousness of the US-Canadian border, and the volume of legitimate financial flows have facilitated the development of money laundering activities in Canada. Even without its connection to the US market, Canada’s stable currency and government, advanced financial system, free movement of funds, and democratic safe-

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13 G. Xhudo, “Men of Purpose: The Growth of Albanian Criminal Activity”, in *Transnational Organized Crime*, Volume 2 , Number 1, Spring 1996, p.15.

14 M.E. Beare, *op. cit.*

15 Criminal Intelligence service Canada, 1996 Annual Report on Organized Crime in Canada, in *Transnational Organized Crime*, Volume 2, Number 4, Winter 1996, p. 141.

guards on police powers combine to make the country an inviting international money-laundering location. Many of the money-laundering operations that have touched Canada have had an international component often originating in drug-trafficking activities. The assets resulting from those activities move through banks as well as through investments in real estate, precious metals, gold shops<sup>16</sup>, commodities, insurance, securities and foreign exchange. Currency exchange houses, particularly those located in cities along the US border, are suspected of moving large amounts of drug money between the two countries.<sup>17</sup> Canadian banks are also attractive because of their Caribbean branches; a common method of money laundering is to deposit illicit proceeds in a Canadian bank and then transfer the funds to the traditional tax haven countries in the Caribbean.<sup>18</sup>

Not only is the USA the world's major consumer of illicit drugs, but its financial systems, banks and non-banks, are used to launder narcotics profits. Considering the money-laundering activities carried out in the USA, no reliable figures on its amount can be delivered. The dimension is certainly huge, owing to the wide range of illegal activities. Organised crime proceeds range from transportation and distribution of illegal narcotics to racketeering, illegal gambling, loan-sharking, extortion, corporate and bank fraud, embezzlement, prostitution, alien smuggling, and other serious organised criminal activities which generate large amounts of cash. White-collar crime proceeds come from illegal funds, insurance fraud, securities and commodities fraud, telemarketing fraud, advance fee fraud, and other types of corporate fraud.

Individuals who launder money to and from the USA use a variety of techniques to avoid detection by law enforcement. Criminals often hide ill-gotten funds until they can smuggle the money to another destination. Although hiding funds increases the risk of seizure by authorities, or theft by other criminals, it also eliminates the need for a professional money launderer, who charges a fee to assist in transferring the money through legitimate financial institutions. This technique was evident in a New York case where authorities seized millions of dollars in currency, as well as business records, from an alleged furniture and appliances warehouse.<sup>19</sup>

Another method for laundering money involves structuring financial transactions. An increasing use of non-bank financial systems, unevenly regulated in the USA, especially as the placement stage for cash, has been observed. These include a wide variety of exchange houses, such as: the *casas de cambio* of Latin America, the *Hui Kwan* and *Chop Houses* of the

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16 The 1996 International Narcotics Control Strategy Report ( hereinafter: INCSR), p. 536.

17 The 1996 INCSR, p. 536.

18 The 1995 INCSR; see also the 1997 INCSR, p. 562.

19 *FBI Law Enforcement Bulletin*, March 1993.

Orient, and the *Hundi* and *Hawala* systems of the Orient, South Asia and the Middle East. The non-bank systems also include insurers, mortgagees, trading companies, gold and precious metal dealers, check cashing services, express delivery services and other money movers of varying degrees of sophistication and capability.

Also, in order to confuse the efforts of law enforcement, money launderers use the current system of wire transfers to create intricate and almost untraceable series of financial transactions. The use of wire transfers is probably the most important instrument used for layering illegal proceeds in terms of both the volume of money that can be moved and the extent to which transfers occur.

### 2.2.2 Central/South America

Central and South America are geographically similar but politically and economically quite different. While some Central American countries are among the most acknowledged centres for money laundering, some South American countries are characterised by intense cocaine production and drug trafficking problems. As a consequence of globalisation and unification of markets, to the traditional drug destinations in Europe and North America the more recent markets in the Middle East and Eastern Europe have been added. Transshipment from Mercosur (Brazil, Argentina, Uruguay and Paraguay) to the new transshipment points in Africa (South Africa, Nigeria) has been consolidated, and even destinations as far away as Australia and the Far East have become increasingly common. Latin American cocaine is also exchanged in the Middle East for heroin, which is sent back to the Latin American kingpins who re-route it to the traditional destinations.<sup>20</sup>

Illegal migrant trafficking is a major international business in this region, where some countries are mainly source countries and others transit ones. The trafficking of migrants is basically controlled by international organised criminal networks. Trafficking organisations operate with near impunity, as alien smuggling is a crime only in few recipient countries and penalties are minimal. In Central America, alien smugglers operate openly since only Honduras and Panama have an anti-smuggling law.<sup>21</sup> Trafficking in women and children for the purpose of commercial and/or sexual exploitation is an important and increasing phenomenon in Latin America, especially in the Dominican Republic. Sources in this country state that they have the fourth

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20 G.H. Millard "Drugs and Organised Crime in Latin America", in *Journal of Money Laundering Control*, Volume One, Number One, June 1997, p. 73.

21 J.M. Winer, "Alien Smuggling: Transnational Crimes Versus National Borders", presentation to *The Working Group on Organized Crime*, National Strategy Information Center, Washington, DC, 8 October, 1996.



highest number in the world of women working overseas in the sex trade, after Thailand, Brazil and the Philippines.<sup>22</sup> The main concentration of these women is to be found in Austria, Curaçao, Germany, Greece, Haiti, Italy, The Netherlands, Panama, Puerto Rico, Spain, Switzerland, Venezuela and the West Indies. Central America is also increasingly used as a conduit for the irregular movement of persons. Significant numbers of Central American nationals contribute to migrant trafficking flows heading towards Mexico and the United States.

Central and South America are melting pots for organisations such as the Cartels, Italian and US Mafia, Lebanese and Nigerian syndicates and even newcomers from Eastern Europe.<sup>23</sup> Criminal organisations in this area vary in size, scale and in the range of criminal activities. Although many of the activities of organised crime groups remain the same, they have expanded their area of operation and their levels of co-operation. The criminal activities range from the production and sale of illegal drugs to support for terrorist groups, smuggling of cars and people, engaging in financial and banking fraud, smuggling of embargoed commodities, and laundering huge amounts of illicit money. The organised crime groups operating in Central and South America are characterised by enormous financial resources, international links, and the use of sophisticated international business techniques to maintain their illicit operations. Indeed, some criminal organisation use sophisticated marketing assessments to guide their operations and to study trade patterns to facilitate smuggling. Many groups and the most capable drug-trafficking organisations have fluid and decentralised structures to allow them to adapt not only to rapid changes in the marketplace but also to challenges posed either by competitors or governments.

The most important growth factor of organised crime in this area has been the development of a global network for illegal drug trafficking that produces extraordinary revenues. Money laundering is an important issue that touches both Central and South America. It is due to the interlacing of different components: proximity to the USA, the biggest market of cocaine consumers and an attractive financial market, foreign debt and the use of dollars in South America, weak governments and the extensive poverty of many of its countries. The narcotics trade generates enormous amounts of money which have to be integrated into the formal economy through a complex web of money laundering activities. Countries such as Colombia and Venezuela are witnessing the wholesale displacement of legitimate businesses from sectors of the economy such as construction, tourism and agriculture, because

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22 IOM Migration Information Programme, *Trafficking in Women from the Dominican Republic for Sexual Exploitation*, Budapest, Hungary, June 1996.

23 G.H. Millard, *op. cit.*

launderer-controlled companies are using their laundering commissions as subsidies to undercut their competitors.

Another area of concern in Central and South America are the criminal gangs of various kinds which have been appearing in Belize, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama, differing in size, degree of organisation, strategies, operating methods and extra-regional connections in their criminal activities. In Costa Rica and Panama, they are relatively better organised and use more sophisticated criminal methods; in other countries they are organised more informally. The members gather for the purpose of committing crimes such as swindles, confidence games, assaults (often armed), property theft, extortion, sexual crime and even murder. Some of these crimes are closely associated with drug use and trafficking. Costa Rica, El Salvador, Guatemala, Honduras, Panama and Nicaragua also report the presence of organised car theft rings operating both locally and internationally. These gangs steal vehicles, dismantle them and sell them in parts or use them for export, ransom, or insurance fraud. Vehicle theft rings in these countries are associated with corrupt public officials who lend services in falsifying documents and other information related to the ownership of stolen vehicles.<sup>24</sup>

As regards the drug trade, Peru and Bolivia are considered the largest producers of coca leaves, and much of this production is refined into intermediate base paste, and flown clandestinely to Colombia for final processing into cocaine.<sup>25</sup> The powerful criminal organisations and their laboratories are located in Colombia. This country, in fact, is strategically located between the coca-producing nations and the routes through the Caribbean and Central America that lead to the North American and European markets. Colombian organised crime has shown enormous flexibility in entering new markets, forging critical alliances with other crime groups and using sophisticated techniques to launder its money.<sup>26</sup> The Colombian cartels are vertically integrated global businesses, a structure that enhances the criminal groups' ability to create whole new markets for goods and services. This can be done either by creating new products, like crack, which revolutionised the USA cocaine market in the mid-1980s, or by opening up new market areas, as the cocaine cartels have attempted to do in Europe, establishing links to the Mafia and other European criminal organisations.

Colombian drug traffickers are increasingly using groups in Brazil, Argentina, Chile and Venezuela to tranship cocaine to Europe, though distribu-

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24 ILANUD (United Nations Latin America Institute for Crime Prevention and the Treatment of Offenders), *Justice in Progress*, Central America Isthmus, October 1994, p.37.

25 G.H. Millard, *op. cit.*

26 L.I. Shelley, "Transnational Organized Crime", in *Journal of International Affairs*, Volume 48, Number 2, Winter 1995, p. 479.

tion remains in the hands of European, principally Italian, organised crime.<sup>27</sup> The cartels are also trying to expand their markets into Asia. They are establishing links to major Asian heroin traffickers, sometimes exchanging cocaine for heroin. Moreover, the Colombian cartels are exploring, on a large scale in the Andes, the potential of growing opium in marketable quantities. In addition to their efforts to develop ties with other criminal groups, the cartels have also forged relationships with organised crime groups emerging from terrorist organisations like the Sendero Luminoso in Peru and the Revolutionary Armed Forces of Colombia. The cartels receive armed protection, and the insurgents receive large sums of money with which to underwrite their efforts, particularly to acquire arms.

Money laundering is a natural corollary of the cocaine trade,<sup>28</sup> and Colombia continues to be one of the primary money-laundering concerns in the Western hemisphere.<sup>29</sup> A considerable portion of the funds and property obtained from drug trafficking, including funds and property that belong to criminal organisations based in Colombia, are located in countries other than those which are traditionally considered to be “drug-producing” countries. Although a substantial portion of such funds may be controlled from Colombia, this does not necessarily imply their passage through the country or the active participation of Colombian agents in the process.<sup>30</sup>

A recent Colombian police report stated that, with the successful imprisonment of major cartel leaders in Colombia, the drug industry is moving to Mexico, making it and Brazil the new Latin American drug centres.<sup>31</sup> Organised crime in Mexico is dominated by four consolidating cartels which have emerged from local gangs organised by the Colombian cartels to help in their cocaine smuggling operations to the United States. The Mexican gangs have grown so rich and powerful from such activity that they have gained co-equal status with their Colombian sponsors. Mexico is also a major source for marijuana and heroin available in the USA. In league with the Chinese Triads, the Mexican cartels also smuggle large numbers of illegal Chinese migrants into the USA.

In Mexico, the drug trade has become a local problem in terms of addiction, corruption, organised crime, and other related socio-economic problems, and the Mexican Government is using the military effectively in the war on drugs. As a mid-transfer point for narcotics proceeds to Colombia,

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27 Hearing of the Terrorism, Narcotics and International Operations Subcommittee of the Senate Foreign Relations Committee, in *Federal News Service*, 20 April, 1994.

28 The 1996 INCSR, p. 538.

29 J. Mozzo, “Drug Money Flooding Colombia’s Economy”, in *Reuters*, Money Report, Bonds Capital Market, 24 March, 1994.

30 Colombian Banking and Financial Entities Association.

31 *Latin America Political Affairs*, 9 February, 1996.

Mexico has become a major destination point for laundering proceeds from narcotics sales by Mexican drug organisations. A great deal of currency is also returned from the USA through Mexico, en route to South America. Traffickers are reverting to bulk shipments of drug currency; having been 'stung' by enforcement officials through Operation Green Ice, they are more fearful of being detected through improved US bank reporting requirements. Large quantities of cash are secreted in tractor trailers or cars, often carrying legitimate merchandise, which are driven across the Southwest border (some bulk shipments are by air). Inside Mexico, cash is placed into the financial system, or moved in bulk further to South America.

Once placed in Mexico's financial system, drugs cash is being moved in a variety of forms, including wire transfers and drafts drawn on Mexican banks, payable through US correspondent accounts.<sup>32</sup> Also, drug traffickers move assets through foreign exchange houses, investments in real estate and commercial ventures and transfers abroad. Colombian cartels are purchasing businesses in Mexico in preparation for the trafficking and laundering opportunities that will develop under the North American Free Trade Agreement (NAFTA). In Mexico traffickers also make specific use of currency exchange houses, since the government does not regulate the *casas de cambio*. These *casas* can only exchange one form of currency for another. Another role in money laundering is to create a layer of anonymity between the owner of the currency and the financial institutions where the *casa* has an account; that account can be used to wire transfer funds. Illegal proceeds are also invested in legitimate enterprises and the money laundering which occurs can involve loans, letters of credit, offshore banking transactions and other schemes.

Situated half-way between Colombia and the USA, Guatemala is a major transit country for cocaine, as well as a producer of opium and marijuana. Haiti remains a base for Colombian trafficking organisations and an increasingly important transshipment point for South American cocaine to the United States. Jamaica is both a major producer of marijuana and a flourishing transshipment site for South American cocaine *en route* to the USA, the Bahamas, Canada and Europe. Many major criminal organisation in Jamaica also deal in cocaine, since it is more lucrative and easier to conceal.

Panama is a major narcotics money-laundering centre and a key transshipment point for narcotics flowing from South America.<sup>33</sup> A dollar-based economy, the Colon Free Zone (CFZ), weak controls on cash and commodity imports/exports and lax incorporation regulations, make Panama particularly vulnerable to the laundering of drug profits and to organised crime problems.

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32 The 1996 INCSR, p. 565.

33 "500 Million Dollars Laundered in Panama Every Month", in *The Xinhua General News Service*, 22 July 1993.

Peru is the world's largest producer of coca. The criminal organisations in Peru typically act as regional subsidiaries of the Colombian Cartels and deal directly with the growers, initiating the first stage of refining raw coca into cocaine paste or base. Peru has also been considered as one of the money laundering countries.<sup>34</sup> Its unregulated 'parallel' or 'black' market provides an exchange mechanism for tens of millions of drug and legitimate dollars. Complicating the drug and money laundering picture in Peru is the violent guerrilla organisation called *Sendero Luminoso*. Terrorists protect the drug traffickers, negotiate between growers and drug traffickers for handsome payments and use the proceeds to finance more terrorism.

Uruguay's role in the international drug trade is that of a money-laundering centre. It is an important financial centre within the South American area. Economic stability, unrestricted currency exchange and strict bank secrecy laws and tax advantages have made the country a haven for Argentine and Brazilian investors. These conditions create the potential for large-scale money laundering. The country's location also makes it a natural transit point for drugs transported between Argentina and Brazil as well as to the USA and Europe.

Colombian criminal organisations use Venezuela to handle large quantities of drugs destined for the USA and Europe. Venezuela is also a bridge for essential chemicals used by the Cali drug mafia to process cocaine. Venezuela's proximity to Colombia, a weak judiciary system and absence of strong bank controls make Venezuela vulnerable to money laundering.<sup>35</sup>

Bolivia is a country in which the economic and political influence of the cocaine industry is and has been indisputable, amounting to a large portion of the entire economy and dwarfing other sectors. After Peru it remains the second largest producer of coca leaf. The trend in recent years is towards the emergence of larger, more powerful, and more violent local criminal organisations, particularly in the eastern part of the country. Money laundering arises from indigenous cocaine production and export by drug traffickers who repatriate revenues from international trade. The Bolivian financial system is not a significant factor in South American drug money laundering.<sup>36</sup> But Bolivia is a serious concern because money laundering, like corruption, contraband smuggling, and drug trafficking, is widespread, and there are few effective controls to prevent it. Bolivian traffickers launder drug proceeds through the purchase of real estate and the operations of front businesses.

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34 *The Money Laundering Alert*, July 1991.

35 "Drug Money Laundering Flourishes in Venezuela", in *Journal Of Commerce*, 19 April 1993.

36 The 1996 INCSR, p. 532.

Argentina is a purchase zone for precursors needed for cocaine production and it serves as a transit point from Bolivia to Europe and North America. The country has witnessed the presence of criminal groups like Italian Mafia heroin traffickers and Colombian and Bolivian cocaine dealers, and there have been numerous documented cases of money laundering. Illegal funds are mainly related to narcotics trafficking but some of them consist of illicit funds from bribery, tax evasion, contraband and other criminal activities. International cash transactions and the use of monetary instruments have increased in correlation with the increase of money laundering. Colombian, Italian, Bolivian and Argentine traffickers launder drug money through banks, businesses, hotels and casinos; traffickers are also investing in office buildings, shopping malls, hotels and condominiums. Argentina, Uruguay and Chile are currently subject to the largest money laundering operations in Latin America.

In Brazil, the marginal economy deals mostly with the proceedings of drug trafficking, trafficking in children, gambling, and weapon smuggling. Together with Mexico, the country is an important route for the export of cocaine from Bolivian and Colombian producers to North American, Middle Eastern or European markets. Colombian or Bolivian trafficking organisations control most of the drug shipments transiting the country. Sometimes Brazilians are involved in the transactions. Brazil is quite often used as a kind of refuge for Mafia bosses, who co-ordinate their illegal activities from this country. During 1993, the Brazilian Federal Police identified a drug syndicate comprising Nigerian nationals (headed by a US national) who were regularly smuggling cocaine to Lagos, Nigeria. The drug was concealed inside fish exports sent to West African countries under the name of a fictitious fish export firm established in north-east Brazil.<sup>37</sup>

Although Chile does not produce cocaine, it is a transit country for South American cocaine smuggled to world markets. The presence of money-laundering specialists who represent the world-wide interests of the Medellin and Cali cartels, other Colombian and Peruvian groups, and European arms and heroin organisations suggests that Chile is becoming a more important money laundering location. A main attraction for the drug mafias is the possibility for money laundering provided by Chile's liberal foreign investment laws. Chile's robust economy is attracting drug dollars as well as legitimate investment. Moreover, drug money is laundered not only in the banking system but also through the booming construction and fishing industries. Also, *casas de cambio* are reportedly laundering drug money from Peru, Colombia and Bolivia. In the free-trade zone money laundering is facilitated by the utilisation of bearer bonds, which can be bought in any sum.

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37 *Nigeria - a Country Overview*, National Drug Intelligence Center, Pennsylvania, 17 March 1994.

In view of its strategic location, Costa Rica has had for some time a substantial presence of organised crime groups, such as the Colombian drug traffickers. Not only drugs but bulk shipments of cash are known to transit the country, and significant money-laundering activity has been revealed. Some launderers smuggle funds into the country and convert them into Costa Rican currency before depositing them in bank accounts.

### 2.2.3 Western Europe

#### *Western European overview*

Western Europe is characterised by the presence of Italian organised crime groups not only in Italy but also in France and Germany, and sporadically even in Austria and the United Kingdom, and by the development of “domestic bilateral organisations” operating from country to country, for example between Belgium or the United Kingdom and the Netherlands in order to take advantage of the opportunities offered by drug price differences in these countries. In other countries, specifically in France, the United Kingdom and Spain, there are domestic organised groups (gangs).

Western Europe is also a cross-roads for other criminal groups operating internationally. From the West, Colombian cartels are still mainly predominant in the importation of cocaine, helped by national criminal groups. Galicians in Spain and the Mafia in Italy co-operate with the cartels to import and distribute cocaine in the whole of Europe. From the South, Nigerian groups are responsible for drug trafficking and also exercise their expertise in fraud. Other groups from the Maghreb area are involved in the importation of hashish. From the East, Chinese Triads have established stable communities in Spain, the Netherlands, the United Kingdom, Italy, Austria, Belgium and Portugal. Their main activities in drug trafficking, alien smuggling, local extortion, illegal gambling and prostitution rackets are interrelated. Turkish and Pakistani groups control the trafficking of heroin from the Middle East and Central Asia through former Yugoslavia or other Eastern countries.

Part of Europe’s modern criminal history is the threat of the progressive expansion of organised groups from Eastern and Central Europe, mainly from Russia. But to call these groups “Russian” means keeping an old label for a new product. The process of criminal fragmentation that is happening today in Russia, in other CIS republics and in the states of former Yugoslavia should be closely watched, especially for its future implications for the European geography of organised crime. Talks with national law enforcement agencies in many European countries confirm that groups of Russian, Polish, Czech, Rumanian and former Yugoslav origin are active in Spain, Germany, Belgium, Denmark, France, Italy, Austria, the United Kingdom, the Netherlands and Sweden. Their main activities are drug trafficking, the export of stolen cars, alien smuggling and prostitution.

Organised crime development in Europe shows a progressive increase in sea, air and land trafficking routes to Europe and onward routing from key European points to outside countries. Spain and Italy are still the major entry points for cocaine in Europe, along with Portugal. Spain may be considered the natural bridgehead for drug traffickers entering Europe and its geographical location provides countless coastal landing sites.<sup>38</sup> DEA estimates that 80% of all cocaine destined for Europe transits through Spain.<sup>39</sup> Drugs, dropped in plastic bags on the high seas from ships or planes, are collected and brought ashore by Galician fishing boats and then distributed in Europe.<sup>40</sup> The Colombian cartels found a natural gateway in Spain for importing their cocaine into all European countries. Another gateway used by Colombians to import cocaine into Spain is Barajas airport, near Madrid; Colombian traffickers stow the cocaine on fly weekly commercial airline flights from Bogota to Madrid. As regards cocaine trafficking in Italy, “Operation Cartagine” of March 1995 revealed that the business is monopolised by a well-structured Mafia organisation (‘Ndrangheta in this specific case), working in collaboration with the Colombian cartels and with the Italian-American Caruana family. The ‘Ndrangheta is believed to purchase and sell a huge amount of cocaine throughout the entire country, without competition from other criminal organisations. It operates at the same hierarchical level and with the full co-operation of the Colombians. Law enforcement officials observed that ‘Ndrangheta men may occupy leading positions in the Colombian cartels.<sup>41</sup> Some experts state that Colombian Cartels also have links with the Sicilian Mafia<sup>42</sup>.

Portugal is also an important transit point for cocaine from South America, heroin from Southwest Asia, and hashish from North Africa destined for Western Europe.<sup>43</sup> Portugal’s location and close linguistic and historic ties with Brazil and the former Portuguese colonies in Africa facilitate the transit of drugs and attract traffickers from those countries. Cocaine arrives by ship from Brazil and transits Portugal on its way to the rest of Europe. The African route (Angola, Mozambique and Cape Verde) is used as an alternative to the Balkans for the transporting of heroin from Pakistan and Southwest Asia to

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38 “Spain Responds to Growing European Drug, Dirty Money Problems”, in *Money Laundering Alert*, No. 5, Vol. 4, 1993, p. 7.

39 The 1996 INCSR, p. 395.

40 F. Smith, “Laundered Drugs Cash Feeds a Spanish Sicily”, in *The Observer*, 17 April 1994, p. 18.

41 “Coca, Colombiani & ‘Ndrangheta” in *La Repubblica*, 23 March, 1995.

42 E.U. Savona, “Mafia Money Laundering versus Italian Legislation”, in *European Journal on Criminal Policy and Research*, September 1993; W. Lee Rensselaer, *Colombian-Italian Criminal Co-operation*, Global Advisory Services, mimeo, 1994.

43 The 1995 INCSR, p. 367.



Western and Northern Europe. Hashish enters by boat from Morocco and is transported by lorry to Spain and Northern Europe.<sup>44</sup> Much of the drug trade is controlled by gangs based in Galicia, a region in Northwest Spain in which a dialect similar to Portuguese is spoken. Close ties between Colombia's cocaine cartels and the Galician gangs have been reported by senior police officials.<sup>45</sup>

Transshipment of heroin from Central Asian regions and Middle Eastern countries, and of cocaine from South America, seems also to be conducted by Nigerians through the main international airline points. Also, Turks and Kurds are involved in heroin trafficking from production points to Germany and the United Kingdom, passing through the Balkan routes and Greece. Germany is a major drug-consumer country in Europe. Because of its central geographical location and its major seaports and airports, Germany also serves as a transit country for the flow of drugs from Asia, Central and South America to Britain and Central Europe (heroin), Western Europe (marijuana) and Eastern Europe (cocaine). Germany is not a major narcotics-producing country, although there is small-scale production of amphetamines. Nevertheless, heroin represents the largest volume of illicit trafficking, usually shipped to or through Germany from Southwest Asia via Turkey, Bulgaria, Hungary, Poland, the Czech Republic, Romania and Austria. Most of this traffic is controlled by Turkish, Slav, North African and Italian groups, as well as indigenous syndicates. On the other hand, cocaine smuggling is controlled by Colombians, who recently have turned to Rostock and Germany's other Baltic ports as a route to the European market.<sup>46</sup> Germany is also a significant consumer of amphetamines produced in Poland and the Netherlands, and of cannabis and opiates from Southwest and Central Asia.<sup>47</sup>

Due to consolidated interaction among Russian, Chinese and Vietnamese gangs, Austria has become a transit country for heroin coming from the Central Asian regions and for cocaine arriving via Central Europe and Russia. In Southern Europe, Albania is being used, instead of the traditional transit route through former Yugoslavia, for drug trafficking and, to some extent, for smuggling aliens into Italy, a point of entry into Europe. France is a transit route for hashish originating in South West Asia and North Africa. Ireland is another entry point for sea-borne drugs (hashish from North Africa) destined for the United Kingdom and continental countries.

Ports and airports in Europe are the main points of onward transmission inside and outside Europe. Many cases reveal Nigerian criminals, especially

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44 The 1996 INCSR, p. 383.

45 D. Brough, "Portugal Struggles to Stop Influx of Drugs to Europe", in *The Reuters European Community Report*, 12 March 1995.

46 The 1996 INCSR, p. 356.

47 The 1996 INCSR, p. 354.

active in this context, as importers of cocaine and heroin along routes involving Lagos (Nigeria), London, Athens, Antwerp (Belgium) and other main international airline destinations. They also act as exporters to the United States (Chicago) and Canada (Toronto). Part of the heroin imported by Nigerians and hashish from South West Asia and Northern Africa first crosses France, and then is re-exported to other European and North American or Canadian markets. Also, opium enters through French borders and, after being refined locally, is exported as pure heroin.

In the Netherlands, local networks are becoming one of the main producers of synthetic drugs in Europe. From the Netherlands they are exported through new routes leading away from the European Union; these routes are also used for the trade in marijuana and hashish, which is still flourishing. Several internal routes are designed to transport synthetic drugs produced in the Netherlands and amphetamines produced in Poland to Sweden, Finland and other European countries via Dutch, Belgian and Polish networks. Belgium is a consumer market for synthetic drugs, and the trafficking is carried out through co-operation between networks of Belgian and Dutch citizens. Denmark is a popular transit point for drugs destined for the Nordic region. It is also the largest foreign exchange dealer among the Nordic countries, accounting for about 45 per cent of the turnover. South American cocaine and Southwest Asian heroin traffickers use Denmark's transportation system to move their products to Scandinavia, Western Europe and the USA. Danish officials are concerned that the use of narcotics is spreading from large urban areas to small communities; they estimate that there are now approximately 10,000 addicts. Heroin and hashish are the drugs of choice, but the use of cocaine and amphetamines is growing.<sup>48</sup>

### *The entry of Eastern European organised crime into Western Europe*

The entry of Eastern European organised crime into the international market has changed and increased the routes traditionally used. Russia, together with the Baltic States, Finland, Sweden and other Eastern European regions are becoming the new two-way-routes for illegal activities: drug trafficking and illegal aliens smuggling from Southeast Asia to the West and car theft from Germany, the UK and the Netherlands towards the Eastern countries and Asia.

Two main migration routes lead through Poland. The Eastern route, controlled by Russian organised crime, is used to transport Asians (mainly Armenians, Indians and Afghans) and Africans (mostly Somalis, Algerians and Nigerians). The Southern route is most often used by Balkan residents, mainly Romanians. The Eastern route starts in Moscow, from where the Asians and Africans take trains to Belarus and are then transported by car to

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48 The 1995 INCSR, p. 329.

the Polish border with Lithuania or to Ukraine, and finally into Western Europe.

Police investigations confirm that in 1993 there were close contacts between Finnish organised crime and the flow of Russian and Estonian prostitutes into the country. According to the police, there are also suspected links between the sex trade and the laundering of illicit money. Police warn that the proceeds from this kind of organised crime may be used to help establish Russian gangs in Finland.<sup>49</sup>

Smuggling of nuclear material, an alarming phenomenon that has touched Germany, also involves Eastern European organised criminal groups. This dangerous traffic has placed Germany in the front line. The government is deeply concerned about the growing evidence that Germany is becoming the main smuggling route for nuclear material from the former Soviet Union.<sup>50</sup> Today the problem should be considered as another opportunity offered by the network created by former agents of the STASI (the now-defunct East German secret police) and their KGB colleagues.<sup>51</sup>

Beside Germany, Russian criminal organisations are active in the United Kingdom. Russians come to the United Kingdom to invest in expensive properties with suitcases full of cash. Britain is still the favourite destination for Russian organised crime. This is partly because of the language: English is overwhelmingly the second language of Eastern Europe, and Britain, with its cheap airline connections, is seen by many visitors as a natural route for America, and partly because Britons have a reputation for minding their own business, unlike countries where nosy neighbours ask questions.<sup>52</sup> Russian criminal organisations bring to Britain some of the criminal activities, such as prostitution, that they carry out in their own country. In Britain there is concern that violence may seep in on the back of Russian businesses. There have been frequent media reports of extortion. The extent of laundering in the United Kingdom is disputed. There can be no doubt that the explosion of commerce in Russia has created vast new wealth for entrepreneurs, legal and illegal. But not much of this seems to be making its way to the United Kingdom. There are perhaps 20,000 Russian businesses operating in Germany but only a few dozen in the United Kingdom.<sup>53</sup>

Eastern European groups originate mainly from the former Soviet Union and use the British banking system to launder the proceeds of their crimes.

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49 The 1996 INCSR, p. 550.

50 D. Ljunggren, "Russia Disowns Plutonium Seized in Germany", in *Reuter News Service*, 15 August 1994.

51 J. Kampfner, "Smuggled Plutonium Seizures May Be Just Top of the Iceberg", in *The Daily Telegraph*, 18 August 1994.

52 "Backpacks and Bandits", in *The Times*, 31 August 1994.

53 "U.K.: a Load of Old Roubles", in *The Independent*, 12 July 1994.

There have been examples of Russian criminals seeking to commit crimes in the UK with forged and false documents and valuable instruments, with the help of certain gangs which specialise in counterfeiting. There is also considerable evidence that Polish gangs are moving into the production of amphetamines.

Also in the Greek part of Cyprus the problem seems to concern Russians and other former Soviets, like the dozen people deported recently on suspicion of extortion, and allegations of money laundering by Russian mobsters. Russia, like Cyprus, has laws making it illegal to export capital without permission from the competent authorities, the respective Central Banks. In fact, the Russian Government has also warned the Central Bank of Cyprus about the type of Russian creating business in Cyprus. It has claimed that many have Mafia connections and although Cyprus is benefiting from their money, their presence is not in the island's best interest.<sup>54</sup>

### *Chinese organised crime in Western Europe*

Alien smuggling is another very profitable activity organised crime groups deal with in Europe. For example, Chinese human smuggling gangs have set up a major base in Austria.<sup>55</sup> Moreover, the Chinese Triads are an important and growing foreign organised group operating in Spain. Madrid has a thriving Chinese community that has become a breeding ground for organised crime gangs specialising in extortion. The authorities have outlined the main areas of influence of these burgeoning gangs and have explained the difficulties of combating them. There seem to be widespread Triad-based activities, such as illegal immigration, near-slave labour, extortion, prostitution, drugs and gambling. According to the Spanish police large operations are controlled by Triads and groups based on Triad organisations. Chinese restaurants and businesses operating in Spain are subject to Triad extortion, while food and imported goods stores are fronts for heroin smuggling. The gangs also force restaurants to buy imported goods from them. In addition, they run Asian-only underground casinos and prostitution rackets involving young girls, many of whom are forced into the trade.<sup>56</sup>

In the United Kingdom the Chinese Triads have their bases in London, Manchester, Hull and Glasgow. They make money from drug trafficking, prostitution, credit card fraud, protection, extortion, illegal gambling, immigration and, more recently, also counterfeiting, video piracy and money laundering. To expand their interests in the UK, Triads use violence and intimidation within Chinese communities. It is difficult to persuade wit-

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54 The 1996 INCSR, p. 543.

55 D. Fauqueaux, "Austria Emerging as Centre of Eastern Europe's Underworld", in *Agence France Presse*, 2 September 1995.

56 The Ministry of the Interior in Spain, *Report on Organized Crime*, 1993, p. 15.

nesses to come forward because of brutal reprisals and intimidation. According to press sources, there would also be evidence that Chinese gangsters have become involved in organised financial operations. Further to drug trafficking, these operations have been characterised by a centralised organisation capable of operating through a host of jurisdictions, often in sophisticated financial products such as commodities futures contracts. Chinese criminals have exploited Vietnamese ones and only a few Vietnamese have risen to positions of any significance in the Triads. However, there are indications that small groups of Vietnamese criminals are breaking away from the Chinese-dominated gangs and either establishing themselves within their own territories or operating on a “freelance” basis. The Vietnamese gangs have international contacts and have established their credibility with international heroin trafficking operations, in particular those based in the Golden Triangle.<sup>57</sup>

### *EU Fraud*

A relatively new, but quickly increasing, criminal activity in Europe is represented by VAT frauds. This is one of the major concerns of the Belgian authorities. Well-established organised crime networks of Belgians and Dutch citizens carry out extensive fraud scams against VAT and European Union regulations. The network organisations consist of white-collar criminals and long-standing criminals with traditional backgrounds. They test new market opportunities and elaborate existing ones like the oil market and the hi-fi market. Immigrants who have settled in Belgium appear to take the initiative in these markets: for instance, Pakistanis have done so with oil, ex-Yugoslavians with hi-fis, and Italians with car import and export. In order to improve these illicit traffics, the Italian minority in Wallonia maintains strong Mafia relations with Italy.

Besides Belgium, the criminal activity of fraud against the European Union is carried out for example in the Netherlands, France, Greece and, most of all, Italy. As regards European Union fraud, there is an unclear transition zone between the fraudulent entrepreneur who fiddles European Union regulations in the margin of his enterprise and the organised fraudster who can only run his company if he commits fraud. Organised European Union-fraudsters operate more often than not on a cross-border crime basis. While the organisational kernel is small, they need a large and experienced network of co-operating fraudsters and legitimate entrepreneurs to carry out their fraud schemes. Very often, organised European Union-fraud is only feasible with the help of corrupt officials: documents have to be stamped, subsidies have to be “smeared” and investigation must be prevented or

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57 “China’s New Drugs War”, in *The Straits Times*, 29 December 1992. See also “Narcotics Trafficking”, in *Sunday Post*, 3 January 1993.

delayed. Areas which generate a great deal of money are: mineral oil, cigarettes, alcohol and home electronics. Phoney exports are made to North Africa and Eastern Europe. It has recently become clear that Eastern European entrepreneurs are no longer only “receiving” documents and/or cheap goods, but are themselves exploring the fraud options on the European market. There is also evidence of investment fraud carried out by Canadian organised fraudsters, operating out of Amsterdam and targeting victims in the surrounding jurisdictions. The principal Canadian organisers can be characterised as veterans, operating for years in several jurisdictions and in connection with Canadian-Italian crime families.

Since 1 January 1993, the date on which customs barriers were eliminated in the EU, in Italy too, criminals have increasingly utilised their capabilities in VAT fraud, mainly involving livestock. Customs investigations have shown that criminal organisations use false invoices to evade VAT on beef imports from Germany, Belgium and the Netherlands. The mechanism was simple and exploited weak transitional legislation (in force until 31 December 1996) which allowed payment of VAT according to the amount declared by the buyer, not according to customs controls at the border. The “triangulation” method of false invoicing is relatively straightforward: the Italian buyer uses a “*cartiera*” (shell company run by frontmen) which acts as intermediary between the foreign company and the Italian one. The shell company receives the documents regarding the purchase and issues an invoice to sell the goods back to the Italian firm, without paying VAT. If checks are made, the Italian firm can show documents regarding an internal operation between it and the “*cartiera*”. These “*cartiere*” are born and die very quickly in order to leave no trace behind.<sup>58</sup> Fraud is not restricted to oil, meat and agricultural products (even if these are still the main sources of illicit income<sup>59</sup>) but also involves imports of every kind of goods and adopts ever more sophisticated methods. It turns out, in fact, that a third of all detected EU-fraud is committed in Italy. In monetary terms, the balance is even worse: 67.5 per cent of the total sum is defrauded in Italy (ECU 79,49 million)<sup>60</sup>, especially in the regions of Sicily, Calabria, Apulia and Campania, where there is a closer connection with organised crime.<sup>61</sup>

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58 R. Miraglia, “E ora gli evasori scoprono le mucche”, in *Il Sole 24 Ore*, 27 January 1994.

59 Ministero dell’Interno, *Rapporto annuale sul fenomeno della criminalità organizzata per il 1994*, Rome, April 1995, tab. 3, p. 296.

60 A. Criscione, “L’Italia truffa l’Europa ma frena i reati domestici”, in *Il Sole 24 Ore*, 12 May 1994.

61 Guardia di Finanza - Servizio centrale di investigazione sulla criminalità organizzata, *Relazione annuale sul fenomeno della criminalità organizzata*, Rome, 1994, p. 16.

### *Organised crime in Italy*

Beside frauds, Italian criminal organisations are involved in a variety of illicit activities, also because the Italian organised crime framework, known under various definitions, is complex. In Italy, the term generally refers to the Sicilian Mafia or Cosa Nostra, the Neapolitan Camorra, the Calabrian 'Ndrangheta and the "Sacra Corona Unita" in Apulia. The most important of these, however, is clearly the Cosa Nostra in Sicily. Its most important criminal activities are, besides drug trafficking, illicit investments in the building sector, the waste disposal business, counterfeiting and arms trafficking.

The building sector has always been a privileged area for investment by organised crime in Italy because it does not require advanced technology or expertise, it can be used as a money-laundering mechanism (through the payment of wages, purchases of machinery and materials), and it is considerably instrumental to control of the territory in order to provide work and to channel political consensus. Around 1988, criminal clans realised the importance of waste disposal as an illegal business and moved into the sector, creating a network of fictitious companies to channel bribes to the political parties.<sup>62</sup> The Sacra Corona Unita entered the business, collaborating when necessary with Cosa Nostra, Camorra and 'Ndrangheta.

Another new and profitable activity is counterfeiting, for which direct links have been established with foreign criminal organisations, especially Russian organised crime. The forging of documents is an activity which can be both profitable and suitable for a wide range of purposes: false papers for illegal immigrants, false bank documents, such as credit cards,<sup>63</sup> certificates, bonds, means of payment, and recently also US dollar banknotes. This is why the Italian criminal organisations which control printing houses are either forging dollars or, using a special chemical process, converting one-dollar banknotes into 100-dollar ones. They then sell this cash to the Russian organisations, which either spend it in Western countries or circulate it within their domestic economic systems. In exchange for forged dollars, the Italian organisations receive arms, chemicals for drug production and raw materials to place on legal markets. Also very important is the production of counterfeit goods, brands and fashion items, which are then exported to the new and profitable markets in Eastern European countries.

The flourishing illegal arms trade in Italy is almost exclusively in the hands of the Italian Mafia (specifically the 'Ndrangheta), linked to its international activity of economic and financial intermediation. Particularly dangerous

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62 Guardia di Finanza - Servizio centrale di investigazione sulla criminalità organizzata, *op. cit.*, p. 15.

63 See also Comando Generale della Guardia di Finanza, "Utilizzo fraudolento delle carte di credito", in *Bollettino informativo*, 1995.

arms (bazookas, automatic firearms and a wide range of explosives) have come into the country from the arsenals of former Yugoslavia, imported with the help and cover provided by import-export firms located in foreign countries.<sup>64</sup>

### *Local organised crime groups in Western Europe*

Besides more traditional organised criminal groups, there exist a number of local organisations which represent a problem in a number of European countries. According to the Danish police, motor cycle gangs in Denmark are the exclusively Danish organised groups. These are mainly associated with illegal drug trafficking and have international ties with parent or similar organisations abroad. Their recognised fields of operation are: drug trafficking, car theft and human smuggling.<sup>65</sup> Similar patterns have been discerned in Finland and Sweden.

In Ireland, Dublin's criminal gangs are currently witnessing the emergence of a new side to the IRA, determined to seize control of Ireland's underworld. The IRA must find new ways of raising money because many of its traditional sources are drying up and, therefore, the West's most feared paramilitary gang is reinventing itself as a dominant criminal force. The new IRA's most significant success has been to team up with a north-side Dublin criminal gang in the biggest robbery in Ireland's history, the Brink's-Mat heist in Dublin, in January 1995. Falling revenues have also forced the IRA to diversify. Since 1993, it has been off-loading drinking clubs under the direction of one of the IRA's Northern Command finance officers. The pattern is simple: social clubs, ostensibly owned as friendly societies by their members, are sold to businessmen in return for an over-the-counter payment to the members and a larger under-the-counter payment to the IRA.<sup>66</sup> The IRA has also been involved in bank robberies in co-operation with Irish American gangs in the United States, in illegal exports from America of alcohol, tobacco and heavy arms equipment, and in smuggling illegal immigrants through Canada to the United States. The IRA is also responsible for the widespread circulation and sale of counterfeit currency; American customs believe about US\$ 25 million worth of bogus dollars are currently being circulated by the IRA. The scope and reach of the IRA's operations, built up for purposes of political subversion but now turning into a dangerous criminal organisation, put it in an ideal position to move in at the top layer of the Irish criminal underworld.

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64 Ministero dell'Interno, *op. cit.*, pp. 267-283.

65 "Denmark: New Campaign against Burglaries", in *Insurance Research Letter*, 1 April 1994.

66 L. Clarke and J. Burns, "Republic of Ireland: IRA Godfathers Strive to Build up New Mafia", in *Sunday Times*, 12 March 1995.



The term 'Yardies' is used to describe drug dealers with links to the Caribbean, in particular to Jamaica. They are based mainly in the United Kingdom in South London, particularly Brixton, but also in Manchester, Bristol, Birmingham, Leicester, Nottingham and Leeds. Yardies are distinguished by their readiness to use extreme violence and firearms. There is also concern about their increasing use of witness intimidation. British criminal groups also include the Bikers, including the Hell's Angels, who are divided into sub-gangs and are involved in firearms, drug trafficking, car theft and extortion. Several gangs are believed to have set up legitimate businesses with an underground banking system. The Hell's Angels have joined forces with Colombian cartels for cocaine trafficking. They have bought up a fleet of merchant ships to import drugs from South America and use sophisticated technology to recover consignments of drugs. There is evidence that these gangs have opened numerous Swiss bank accounts and taken partial control of the real estate sector.<sup>67</sup>

#### *Money laundering in Western Europe*

Money laundering is a very widespread illicit activity in Europe. All the above-described criminal activities, in fact, generate huge amounts of illicit proceeds which need to be laundered. In Western Europe there are a number of offshore centres, such as Malta and the Isle of Man, and very important international banking and financial centres like Luxembourg, Liechtenstein, Switzerland, Germany and the United Kingdom. In addition, money laundering can be found in other Western European countries.

Since 1988, in an attempt to develop the domestic economy, the government of Malta has turned the country into an off-shore financial centre.<sup>68</sup> As a result, Malta has become an attractive haven for tax evasion and money-laundering practices. Under the off-shore legislation, businesses with an off-shore base in Malta pay only a five per cent tax on declared income; as well as banking, off-shore brokering, general trading companies, holding companies owning trading businesses and insurance are allowed. The Isle of Man, a British Crown's possession, but an independent territory with its own independent Parliament, as well as its own fiscal system distinct from the British one, is also becoming a leading off-shore centre. In fact, the island's main economic resource is its banks, exempt companies, trusts, insurance companies, investment funds, etc. The Isle of Man is well placed for local businessmen seeking to avoid UK financial regulations but who want to operate in the European time zone.<sup>69</sup>

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67 A. Levy and I. Burrell, "Hell's Angels Flood Britain with Drugs", in *Sunday Times*, 9 April 1995.

68 "Malta: The Newest Off-shore Banking Centre Has Learned from the Experience of Others", in *Euromoney Supplement*, 27 December 1988.

Luxembourg is one of the world's most important international banking and financial centres and, as such, risks attracting criminal organisations and illicit assets. This risk increases with the country's specific tax haven legislation regulating the financial sector, consisting of strict bank secrecy laws, absence of exchange controls, and lack of a withholding tax on interests. Numerous international banks are located in Luxembourg, where they operate as "universal banks" pursuing an unrestricted range of activities. This may provide a crucial channel for the transfer of illegal earnings from the country of origin to another destination. Luxembourg's attraction as a centre for laundering suspect money has increased in recent years, following introduction of tougher measures against money laundering in neighbouring Switzerland.<sup>70</sup>

Liechtenstein is renowned as a haven for investors seeking to place their money, often by funnelling it through companies set up in Liechtenstein purely to escape tax authorities. In fact, funds deriving from tax evasion, drug trafficking and other illicit activities are believed to pass through Liechtenstein's banks.

The German banking system is one of the largest in the world, and its currency plays a fundamental role in international financial transactions. Money laundering has increased rapidly in recent years, so that Germany is now considered to be one of the most important money-laundering centres.<sup>71</sup>

Switzerland has no major domestic criminal organisation operating on its territory, and criminals come mainly from outside. It is a typical transit country in terms of criminal activities, and the same applies to money laundering. In most of the money-laundering cases investigated in Switzerland, the crime producing the money to be laundered was committed abroad.

Switzerland is, however, an important drug-connecting point for flights from Asia, the Middle East and Africa and attracts traffickers from those regions. Most of the drugs transit the country to other European countries. Swiss authorities believe that the distribution of heroin in Switzerland is controlled by Lebanese or Kosovo Albanians who reside in the country illegally or are seeking asylum.<sup>72</sup> Money laundering involves proceeds from all three major smuggled drugs (cocaine, heroin and cannabis), and illegal earnings deriving from this traffic are converted in Switzerland. The largest traffickers are generally not present in the country during these transactions. Switzerland's long-established laws on bank secrecy, and its role as leading

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69 S. Pagani, "Isle of Man Seeks to Join Big League of Tax Havens", in *Reuter*, 26 March 1991.

70 "Liechtenstein Proposes Outlawing Money Laundering", in *Reuters News Service*, 2 September 1994.

71 The 1993-1994 FATF Report, p. 11.

72 The 1995 INCSR, p. 386.

world financial centre, make its banking system a significant target for money-laundering operations. Nevertheless, Switzerland is regarded as more important as a tax haven than as a money-laundering centre, since Swiss laws do not allow legal assistance if tax evasion is the only alleged crime.<sup>73</sup>

Foreign criminal organisations are attracted by the size and sophistication of the financial infrastructure in the United Kingdom, including the services offered by financial havens such as the Channel Islands and the Isle of Man, where they channel the proceeds of their activities using the offshore banking facilities. In fact, as one of the world's most important commercial and financial centres, the United Kingdom attracts a high volume of currency transactions, both licit and illicit, through British financial institutions.

#### 2.2.4 Eastern Europe

In the international framework of organised crime, Central and Eastern European criminal organisations raise an increasingly serious threat because of their rapid expansion and the large amount of illicit proceeds that they produce. Local criminal groups have reorganised themselves and are expanding internationally, while foreign groups have started to infiltrate these countries' markets, although to differing extents from country to country.

These countries have undergone major political changes which have also involved the reorganisation of economic systems into free markets. Both local and foreign criminal organisations have benefited from the situation, using the opportunities offered by economic systems to expand their traffic and to invest their illicit proceeds in the financial system by corrupting political figures and public officials.

Since the fall of communism, at the state level in some countries local groups have managed rapidly to occupy key positions in the economy and the administration. They have thus acquired monopoly over illicit activities in the big cities and also initiated important processes of internationalisation, crossing the borders of their respective national markets. At the same time, these groups are either in competition or build strategic alliances with foreign-organised criminal groups, who have extended their activities to these countries and, above all, have started to invest large amounts of capital.

Trafficking in drugs, prostitution, art objects, stolen cars and arms are forms of organised crime in which local and foreign groups, active in Eastern Europe and in the Balkans, have traditionally been involved and which are carried out at the international level. Beside these, new forms of organised crime linked with the transition to a market economy have rapidly developed: tax evasion, illicit activities in the privatisation process, infiltration of the

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73 The 1997 INCSR, p. 581.

legal economy by criminal elements, illicit traffic in migrants, extortion and, last but not least, money laundering.

Drug trafficking poses two problems in this area which are different but interrelated: the first concerns the creation of new traffic routes across the region; the second concerns the production in some countries of psychotropic and synthetic drugs and their international trafficking. Moreover, new routes have grown up in the Eastern European states. Authorities have determined the existence of a new channel through Romania and Hungary. One of the major Balkan routes runs from Pakistan through Turkey and Bulgaria into Western Europe; another passes from Nigeria to Malta before moving into Central Europe. Both are the final sections of a network which ships drugs from India, Nepal, Thailand and Laos.<sup>74</sup>

Heroin traffickers make use of Hungary's modern road and rail transportation systems, as well as the Danube-Rhine canal system, on which river barges from the Black Sea pass through Hungary, to move their illicit cargoes westward. Seizures of cocaine also underscore Hungary's role as an entry point for drugs originating in Latin America. Turkish drug-trafficking groups continue to spearhead smuggling operations through Hungary. In addition, South American traffickers are making inroads into Hungary, and more recently several Colombian cocaine couriers have been apprehended at the Budapest international airport.<sup>75</sup>

Because of the war in Bosnia-Herzegovina, also Poland has to some extent replaced the Balkans as a favourite route for heroin, hashish and other drugs smuggled to the West. Not only a transit country, Poland is also becoming a consumer and a producing country. Poland's amphetamine industry constitutes the most sophisticated indigenous narcotics enterprise in Europe. Considering the extremely high purity of the final product, it is obvious that criminal groups use first-class laboratory equipment and highly qualified chemists. Like successful trafficking organisations elsewhere, Polish amphetamine gangs are starting to invest in the legal economy. Moreover, outside Poland, especially in Germany and the Scandinavian countries, they 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, even Colombian cocaine. The Cali Cartel recruits Polish couriers to smuggle cocaine across the Polish-German border. For instance, in October 1991, Polish Customs at Warsaw Airport arrested a Colombian nurse carrying 600 grams of cocaine in vials which she had

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74 "Bulgaria: Weapons, Drugs and Addiction", in *The Geographical Drug Despatch*, July, 1993.

75 The 1995 INCSR, p. 343.

swallowed. The cocaine was destined for further transshipment to the Netherlands.<sup>76</sup>

The drug trade is also escalating in all three Baltic States: Estonia, Latvia and Lithuania. Organised criminal groups from this region are deepening their involvement in the illicit drug trade and establishing closer links with criminal organisations in the West and the former Soviet Republics. Open borders and proximity to markets in Scandinavia offer trafficking networks alternative routes to Western European heroin markets. Central Asian and Russian crime groups have now begun to establish smuggling networks through the region, and nascent money laundering operations are suspected in all three countries.<sup>77</sup> Estonia, Latvia and Lithuania have also been used in the last few years as conduits for illegal migrants from Asia to Europe. Illegal migrants pay several thousand dollars to be taken to the Baltic States and then by ferry to, for example, Sweden.

Similarly, there is no doubt about the involvement of Belarusian criminal organisations in human trafficking. In Belarus, illegal immigration is not only a source of great concern, but is connected to both organised crime and drug trafficking. Illegal immigration and most other forms of trafficking involve inherently transnational networks. In the case of Belarus, many of these links originate within the Soviet Union: with the disintegration of the Union and the emergence of domestic linkages among independent states, they became transnational overnight. Belarus has consequently become vulnerable to penetration by transnational criminal organisations from Russia, the Caucasus and Central Asia. At the same time, there have been cases of groups from Belarus active in Poland and Germany.

Beside drug and migrants trafficking, also the traffic in stolen cars organised by, among others, Russian and Ukrainian criminal groups is increasing noticeably. In fact, Russia, the Baltic states and, to a lesser extent, Ukraine rank as the most promising markets for stolen cars. Three main routes pass through Eastern European countries. Through the Balkan route, stolen vehicles are driven from West European countries towards the Middle East. Otherwise, stolen cars are driven from Western European countries via Poland, the Czech Republic and Hungary to the CIS countries. The Northern route, finally, brings cars by ferry from the Nordic states and Germany directly or through Finland to the Baltic countries and Russia.<sup>78</sup>

The problem with foreign cars in Russia (including stolen ones) is that they are usually stolen again, this time from the new owners to be sold once again in the Republics of Central Asia or the Caucasus. Sometimes it is the same syndicate that sold a stolen car to a Russian which steals it again and

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76 “Drugs in the East - Eastern Europe”, in *Foreign Policy*, 22 March 1993.

77 The 1996 INCSR, p. 325.

78 M. Liukkonen, *Motor Vehicle Theft in Europe*, HEUNI Paper no. 9, 1997, p. 16.

transports it further into the ex-Soviet hinterland. The market is thriving, as expensive models are in high demand. Often cars are stolen ‘on order’: if the future buyer is in a hurry, a stolen car may even be brought in by air. Virtually all Russian dealers in foreign cars will only accept already-renovated cars from abroad. In the case of stolen cars (as opposed to genuine second-hand cars) the renovation takes place in Poland, the Baltic Republics and, on rarer occasions, in the Czech Republic, Slovakia or Hungary.<sup>79</sup>

In Bulgaria, organised groups are corrupting customs officers and traffic police authorities, and ‘legalise’ the cars stolen from Western countries with forged documents. Three main channels have been uncovered: the ‘Vienna channel’ - that is, the importing of stolen cars from Germany, Italy and Austria and their wholesaling to local car shops; the ‘Russian or Moldovian channel’ which exports stolen Bulgarian cars to the former Soviet Republics; and the ‘Macedonian channel’ which deals in stolen cars from Bulgaria and exports them to Macedonia and Albania. Many car shops in Sofia have stickers in their windows announcing that they are protected by a security or insurance firm known to have underworld links. As a clear warning to rival gangs to keep clear, this practice seems the safest option for many Bulgarians.

Within the framework of the growth and diversification of international economic-financial crime, forgery of money and of other valuable documents has increased alarmingly. “Some groups prefer literally to make their own money: counterfeiting is one of the most pervasive crimes in Belarus, with rarely a day going by without counterfeit money being discovered. The most popular counterfeit notes are dollars, but German marks and Russian rubles are also produced. There are also forged “superdollars” which are extremely difficult to distinguish from authentic notes, but the majority of counterfeit money consists of dollar bills to which one or more zeros are added by specialist forgers, in some cases in Belarus itself”.<sup>80</sup>

The traffic in strategic materials and radioactive substances has proliferated since the break-up of the former Soviet Union and the simultaneous relaxing of controls. In their search for buyers of these goods *en route* to Germany, the United States or to some Islamic countries, such as Iran and Libya, Russian criminal organisations have called in the support of Romanian gangs.

Russian criminal organisations are alleged to be major exporters of crime, as well as being extremely active within Russia. In a broad sense, organised crime in Russia is a merger among criminal groups, Russian godfathers, state officials, former Communist Party members and members of elite society.

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79 L.L. Fituni, “CIS: Organised Crime and Its International Activities”, in *Russian Academy of Sciences*, 1993.

80 P. Williams, “Drug Trafficking and Organised Crime in Belarus. Political, Social and Economic Consequences”, paper prepared for the *United Nations Drug Control Programme*, October 1995.

The levels of organisation of Russian crime are frequently described as three circles. The first is characterised by street fighting and so-called 'gangsterism'. At this level, there is relatively little organisation, although it would seem that these groups account for a significant number of the estimated 8,000 organisations currently existing in Russia.<sup>81</sup> The second circle consists of better-organised groups which aim higher than street robberies and burglaries, seeking money and power, and using corruption as a key device to expand their operations to the regional and interregional level. It has been estimated by the Russian police that such groups spend between 30% and 50% of their incomes on bribes for officials. The third circle is a network of entrepreneurs in league with ex-members of the Communist Party elite and with some corrupt state officials. In some cases, these entrepreneurs have served time in prison or else began their criminal careers in gangs involved in theft, robbery or extortion, and then advanced into the upper reaches of criminal activity.

It is almost impossible to draw the line between the state and organised crime. High-ranking regional government officials have requested the co-operation of crime organisations in the transport of gold out of the country, in one case 10 tons and in another more than 20. Some former and current state officials (including military, security, militia and customs officials) collude with the underworld in the smuggling of natural resources, raw materials, and almost anything else besides. The range of activities carried out jointly by criminal groups and corrupt state officials includes extortion, contract murder, hostage-taking, kidnapping, prostitution, gambling, narcotics trafficking, the smuggling of raw materials, natural resources and antiques, bribery, car theft, the theft of and trade in weapons, bank fraud schemes and many others.

According to Ministry of Interior officials, in addition to weapons and narcotics, the most profitable areas of Russian organised criminal business are:

1. financial, property and other types of frauds. About 30% of groups specialise in this area. They 'control' - as the Russians put it - over 40,000 businesses, including state enterprises (2000), associations (4000), co-operatives (9000), small enterprises (7000), banks (407), exchanges (47), markets (697);
2. violent crimes. So-called 'gangsterism' is most characteristic of the groups with a lower degree of organisation. Groups in the former Soviet Union have stable contacts with criminal entities in several countries

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81 G. Caldwell and S. Galster (Global Survival Network in collaboration with the International League for Human Rights), "Crime & Servitude: an Exposé of the Traffic in Russian Women for Prostitution", a preliminary report prepared for presentation at the Conference on *Criminal Justice Issues in the International Expatriation of Women and Children*, 7 April 1997.

including Germany, the United States, Poland, Hungary, China, Israel and Austria.<sup>82</sup>

The Russian criminal organisations are also involved in the trafficking of women. Even when they are not directly responsible for trafficking women overseas, Russian *mafia* organisations may provide a *krisha* (roof) or security and protection for the operations. According to Europol Drugs Unit experts, in Russia and throughout the world such trafficking “is organised by criminal groups who kidnap, imprison and force females into prostitution by the use of, at times, extreme violence and intimidation”.<sup>83</sup>

The current stage of organised crime in Russia involves the consolidation of the criminal underworld in the various regions of the country. The so-called *vory v zakone* or “thieves professing the code” - leaders of the underworld - are adapting to recent dramatic changes. There is massive corruption of government officials, and criminal groups are developing intelligence and counter-intelligence capabilities to neutralise all forms of social control. The *vory v zakone*, frequently also translated as “thieves in law”, occupy a position of authority and honour in the criminal hierarchy. By tradition, *vory v zakone* scorn everything associated with “normal” society. It is difficult to gauge their current status: on the one hand, the view from Moscow is bleak; on the other, the criminal elite is apparently adapting to the vast changes that the former Soviet Union has undergone.

According to Ministry of Interior sources, *vory* are making territorial gains outside Moscow. Traditionally, they are very active in the Krasnodar, Khabarovsk and Primorsky territories, and also in the Rostov, Irkutsk, Amur and Tiumen regions. In the past decade, the significant spread of *vory v zakone* has been noted throughout Russia, particularly in the Far East, Siberia and in the Ural Mountain region. In the 1990s, other regions are reported to have fallen under the influence of *vory*: Pskov, Omsk, Smolensk, Buryatia and others. *Vory v zakone* are beginning to operate internationally, either to expand their activities or to seek refuge from the disintegrating order of the criminal world of the former Soviet Union. Some fifty *vory v zakone* are said to operate out of Vienna, from where they control a variety of activities back in Russia.<sup>84</sup>

Open frontiers to Western Europe have influenced the development of all criminal activities. Local criminal organisations have reorganised themselves in order to exploit the new situation and to become more internationally competitive. The multiplication of investment opportunities has also

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82 J. Serio, “Russian organized crime: an overview”, mimeo, Chicago, 1995.

83 G. Caldwell and S. Galster (Global Survival Network in collaboration with the International League for Human Rights), *op. cit.*, p. 4.

84 Ibidem.



favoured the penetration of foreign criminal groups. Due to the loopholes in legislation and the inefficiency of law enforcement agencies, Eastern Europe is ideal terrain for the expansion of all forms of trafficking by large international criminal groups.

This is said to be the case of Romania, for example. An active role in Romanian criminality is played by Turkish and Arab citizens, who are present in the country in very large numbers, especially in the large urban areas. Organised into criminal groups, they commit a vast range of crimes ranging from theft, robbery and forgery to kidnapping, drug trafficking and murder. They are known to be well-organised into criminal networks and are equipped with sophisticated weaponry.

As regards ethnic groups, Chinese citizens are directly involved in Romanian criminality and Mafia-type activities. Analysis of police criminal investigations which involved Chinese citizens as either perpetrators or victims has shown that most of them come to Romania for illegal purposes and personal interests, with their formally declared purposes (economic, commercial, cultural, etc.) in fact representing only a minor part of their activities. In order to hide their real intentions, most Chinese citizens set up commercial societies and, after obtaining a permit of residence in Romania, withdraw the capital deposited in the bank. In this way the company becomes a fictitious one, and the share in foreign currency invested by the Chinese citizens in the joint venture is insignificant.

Also Hungary has been targeted by foreign organised crime groups, including Chinese Triad gangsters. The gangs mostly comprise ethnic Romanians, Russians, Ukrainians and Serbs, but Hungary's burgeoning Chinese community is also beginning to develop its own criminal structure.

The country is particularly concerned about the activities of the Italian Mafia, which is believed to have established an enormous base for illicit funds in Austria while spreading its money-laundering operations through the inexperienced and vulnerable Hungarian financial sector. In Italy and Hungary the Mafia is also blamed for recent seizures of vastly increased amounts of Asian heroin. It has recently diversified into numerous other areas of operations including the trade in toxic wastes, property, precious stones and metals, antiques and art, transport, construction and, significantly for Hungary, financial holding companies.

Another criminal threat of even greater significance to the Slavic countries as a whole, rather than just to Hungary and Austria, is Russian organised crime, which comprises an estimated 5,700 individual groups. The main areas of its business are drugs, prostitution, metals, weapons and nuclear materials, money laundering, art and car theft, and the recruitment of mercenaries.<sup>85</sup>

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85 "Hungary Seeks Joint Assault on Organised Crime", in *Reuter Textline*, 2 May 1995.

With very few exceptions, all the countries in the region display worrying levels of money laundering. The transition to a market economy has provided criminals with ample opportunities to invest their illicit proceeds. While at present there are numerous factors, including currency restrictions, lack of confidence in the banking system or in economic conditions, actual or potential turmoil and political instability, that combine to make laundering rather difficult, the opening of frontiers to Western Europe and the privatisation process act as strong incentives for the investment of dirty money.

A first set of considerations regards the sectors of the legal economy used for money laundering. From the banking sector to financial non-bank institutions, from privatised enterprises to the real estate market, these are all potential targets for criminals.

Unlike in the European Union, where the directive on money laundering contains specific provisions to protect the banking system, banks in Central and Eastern Europe are still widely used for money laundering because of loopholes and, in some cases, a lack of legislative provisions. This enables vast quantities of black money to enter the new banking systems and then to leave these countries, which makes them the ideal choice for the initial depositing of illicit funds.

This is the case of Poland, where activities related to money laundering take the external form of either legal financial transactions (e.g., banking operations) or legal transactions which violate particular administrative arrangements (e.g., safety standards in the banking system), or illegal operations forbidden by regulations and subject to economic and penal law sanctions.

Banks are only one of the money-laundering mechanisms used. As already mentioned, the whole of the East European financial system risks being infiltrated by ill-gotten proceeds. In Bulgaria, for example, as the country moves towards a market economy, not only are the 'classic' laundering methods used, but huge amounts of money are also laundered through participation in the privatised tourist industry, light industry and other profitable branches, and through investment in 'projects of exclusive necessity'. This form of money laundering in part involves the sheltering of illicit gains by the former *nomenklatura* (officials).<sup>86</sup> Since 1994, there has been increasing concern about the vulnerability of the poorly regulated financial system to money laundering.

Organised criminal groups in one country establish alliances with other groups abroad in order to create new methods for money laundering. For example, the Ministry of the Interior of the Russian Federation (MVD) reports that organised smuggling groups have set up branches in Russia to

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86 "Police Officials Interviewed on Banking Offences and Organised Crime", in *BBC Summary of World Broadcast*, 10 February 1993.

launder drug money. The authorities' lack of control over joint ventures and other private enterprises in Russia, as it moves toward a market economy, hinders the Government's ability to control such activity. The MVD's lack of money-tracing mechanisms compounds the problem. However, Russian and foreign observers agree that drug money is only a small component of the general money-laundering scenario. In addition to the proceeds from the crimes listed above, there are stolen Party funds and profits from price-fixing schemes, tax evasion, graft and corruption. The gross movement through licit and illicit channels back to the West also includes private capital fleeing Russia's political and financial instability.

In Belarus, too, joint ventures provide a particularly attractive method for money laundering, and they require careful supervision. Although law enforcement agencies monitor joint ventures involving Italians and Latin Americans, there is a clear need for greater professional expertise on money-laundering matters, and for even closer scrutiny than these activities have hitherto been subjected to.<sup>87</sup>

## 2.2.5 Africa and Gulf States

### *Northern Africa and Gulf States*

Northern African countries have been grouped together with the Gulf States because of their geographical position and their common denominator, which is Islamic law. As regards organised crime activities, these nations are especially concerned with drug-related problems, although some worries have also been expressed in connection with money laundering, particularly in Egypt, Bahrain, Kuwait and the United Arab Emirates (UAE).

Algeria has relatively modest problems of drug consumption and trafficking, although domestic consumption and the transit trade in cannabis and pharmaceuticals appeared to be increasing until the border with Morocco was closed. Cannabis seems to be the only narcotic cultivated or produced in Algeria, and it is grown for domestic consumption. The Algerian Government estimates that 95% of the narcotics brought into Algeria, primarily hashish from Morocco, are re-exported to Europe or the Middle East.

Since 1994 Egypt has played an important role as a transit point for opium and cannabis *en route* for other countries in the Middle East, Europe and the United States. Egypt continues to serve as a significant transit point for heroin from Southeast and Southwest Asia to Europe and the United States. Cultivation of cannabis and opium is a small but growing problem, and the

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87 P. Williams, *op. cit.*

Government of Egypt has been aggressive in eradicating suspected plantations, while also beginning to address the transit problem in the Suez Canal.<sup>88</sup>

Iran is an important heroin supplier to the West. Historically, the country has been a transshipment point for illicit opiates produced in Afghanistan and Pakistan. The eight-year war with Iraq and recent efforts by the Iranian Government have considerably, but not completely, disrupted this traffic. Traditionally, traffickers brought drugs into Iran from the East and then shipped them out again through the West into Turkey and other countries in the Middle East. Iran is also a major transshipment point for illegal opiates, primarily opium and morphine base moving from the Golden Crescent to Turkey, where it is refined prior to its further distribution in Europe and the USA. Iran also cultivates opium poppies. The US Government estimated in 1993 that 3,500 ha were given over to the cultivation of opium poppies, and it also receives intermittent reports that drug-related corruption is endemic among Iranian law enforcement and security personnel. According to these reports, there is extensive bribing of border guards to allow drug caravans through the reinforced border crossings. Arrested traffickers are sometimes set free on payment of a bribe. Iran's economic difficulties - particularly its inflation rate of approximately 50% and an unemployment rate of more than 30% - are likely to contribute to corruption.

Jordan is mainly a transit country for drugs from the Lebanon to Egypt and Saudi Arabia. The Jordanian authorities are concerned that the opening of new border crossing points with Israel may make the country even more attractive to international trafficking organisations.

Morocco is one of the world's largest producers of cannabis, given that its cultivation and sale is the main economic activity of a large portion of Northern Morocco. Most Moroccan production is processed into hashish resin or oil, and exported to Europe, Tunisia, and Algeria for consumption or for re-export. Latin American cocaine and Asian heroin also enter the country, both to service a small but growing domestic market, and for transshipment to Europe. The drugs are trafficked along routes traditionally used for the cannabis trade. Cocaine from South America is transhipped across Morocco by air to Europe, primarily by Latin American and West African couriers, or by sea from ports in Casablanca and Tangier. Some cocaine enters Morocco from Europe, as payment in kind for exported cannabis, and is sold domestically. Small amounts of heroin from Asia arrive in Morocco for transshipment to Europe and, to a lesser extent, for domestic distribution.<sup>89</sup>

The Moroccan hashish industry generates sufficient income to cause governmental concern, and Spanish officials are allegedly concerned about

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88 The 1995 INCSR, p. 417.

89 The 1995 INCSR, p. 433.

the laundering of drug proceeds through the Spanish enclave of Ceuta.<sup>90</sup> The hashish-exporting networks repatriate their profits to Morocco in the form of contraband goods and electronic equipment. Profits are banked or invested in businesses and real estate in Northern Morocco. The volume of bank deposits in cities like Tangiers and Nadour in the North are far greater than any amount commensurate with the level of economic activity in the region.<sup>91</sup>

Some of the countries belonging to Northern Africa and the Gulf States, namely Egypt, Bahrain, Kuwait and the United Arab Emirates, have money laundering problems. In Egypt, money laundering is now perceived as a serious issue particularly closely related to the illegal dealing in narcotics. The most frequent money-laundering methods are possession of company equity to operate illegal businesses such as hotels and car dealerships in which dirty money is mixed with clean money and is therefore difficult to trace, separate and define.<sup>92</sup> The Persian Gulf State of Bahrain became quickly aware of the danger of drug money from other financial centres, such as Panama, being laundered in its very substantial financial and off-shore banking industry. Interestingly, Bahrain at present hosts more than fifty off-shore banks from different parts of the world. In fact, largely responsible for such confidence in the stability of its financial system is strict adherence to bank secrecy and confidentiality. Prior to the Iraqi invasion, Kuwait was a major Middle Eastern financial centre with a significant potential for money laundering. Banking activity and financial services were disrupted by the invasion and occupation, but the aftermath of the Persian Gulf War created new opportunities for money laundering. Rapid repatriation of capital, transfers of large sums for construction and other rebuilding activities and the confusion and chaos following the war have resulted in regulation less stringent than in the other Gulf Co-operation Countries. Scandals involving theft and fraud in the oil and banking industries have recently surfaced, as have reports of corruption and vulnerability in the banking and other sectors of the economy.<sup>93</sup> Dubai, in the United Arab Emirates (UAE), has a long tradition of gold dealing, an activity which is particularly suited to smuggling and money laundering. The Emirates are also strategically located for the clearance of proceeds from drug dealings with Southwest Asia, given their open banking practices, free convertibility of currency, and opportunities for smuggling gold or other valuables into the Indian subcontinent. Of particular relevance are Dubai's banks and gold markets, the latter

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90 "Spanish Police Hold 34 in Andalusia Drugs Swoop", in *The Reuter Library Report*, 26 April 1993.

91 The 1997 INCSR, p. 627.

92 The 1994 INCSR, p. 525.

93 The 1994 INCSR, p. 527.

being a traditional hub for gold smuggling. There is evidence that these gold markets have laundered drug proceeds from various drug markets, including India and Pakistan, and from other localities as far away as Australia. The likelihood is that narcotics proceeds are also laundered through banks in the United Arab Emirates; and it is a certainty that the underground *hawala* system has been used to transmit drug proceeds.

#### *Africa - the remaining countries*

The criminal situation in Africa displays two principal features: first, the role played by drug production and trafficking; second, the existence of unlawful activities, such as diamond and emerald smuggling, firearms smuggling, vehicle theft, fraud and commercial crime run by structured criminal organisations (Nigerian gangs mainly, but also Namibian and South African ones) which tend to operate transnationally.

Money laundering is not particularly prominent in this area. A number of factors combine to reduce the incidence of money laundering on the African continent. The relative poverty of many economies and populations leaves little opportunity for the laundering of the proceeds from domestic crime. Turbulent conditions or fear of turmoil in countries like Somalia or Algeria have hampered the development of money-laundering centres. The factors that elsewhere encourage money laundering - such as stable banking and currency conditions and a tradition of governmental *laissez-faire* towards foreign deposits - are lacking in many African countries. Consequently, only a few of them have experience of this particular form of crime.

By contrast, drug-related activity is an extremely serious problem in the majority of African nations because many of them are used as trafficking routes, and some also produce drugs.

Botswana, for example, is a transit country primarily for Mandrax (methaqualone) shipped through East and Central Africa from India and destined for South Africa. Botswana is not a major producer or consumer of illegal drugs, although there is some local production and use of marijuana; Mandrax is consumed in limited quantities.<sup>94</sup>

Cameroon is not a significant narcotics producing or consuming country, although there has been an increase in Asian heroin smuggled to Nigeria via Cameroon. The growth of drug trafficking in 1994 was a consequence of worsening economic conditions, the devaluation of the CFA franc and a more determined effort by traffickers in neighbouring Nigeria to take advantage of relatively weak controls at Cameroon's border posts and airports.

Cape Verde is not a significant narcotics producer or consumer country, although it is a transit route for narcotics, particularly cocaine, shipped by sea and air from Asia and South America to Europe and North America.

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94 The 1995 INCSR, p. 447.

The Ivory Coast is a transit point for heroin from Asia and cocaine from South America bound for the North American and European markets. The production of narcotics in Ivory Coast is confined to the cultivation of low-grade cannabis. Abidjan serves as a regional hub for both international airline travel and financial activity and is thus an attractive staging-post for the transshipment of narcotics.

The only illicit drug produced and consumed in Ethiopia (where it is licit) is qat, some of which is also exported to neighbouring countries. Addis Abeba's international airport is increasingly being used as a narcotics transshipment point, primarily for heroin originating in India and Thailand and destined for Europe and North America. Criminal sentences in Ethiopia for trafficking offences are not severe and do little to deter drug couriers. A large consignment of heroin (10 kgs) was seized at Addis Abeba's Bole International Airport in 1994, and resulted in the arrest of several Nigerians and one Ethiopian.<sup>95</sup>

Drug trafficking is also one of the most profitable criminal activities in Ghana. Ghana's role as a transit route for cocaine from Latin America and heroin from Asia - both ultimately bound for the USA and Europe - has increased in spite of intense efforts by the government in law enforcement and public awareness raising. The government of Ghana also has acknowledged the ongoing cultivation of marijuana and mounting drug consumption in the country. It believes that, in addition to the long-established Nigerian-Ghanaian organisations based in Accra, international groups headquartered elsewhere are now operating in Ghana. The inauguration of direct flights to the USA enhanced Accra's appeal as a drug transit point. Counter-narcotics agencies have also uncovered the growing use of international mail to smuggle heroin from Thailand into Ghana. Cocaine seizures have decreased markedly from their 1993 levels. Ghanaian counter-narcotics officials believe that cocaine couriers now primarily employ swallowing methods rather than external concealment, which makes detection more difficult. Cocaine couriers are normally Ghanaian nationals who obtain the drugs in Rio de Janeiro and travel to the Ivory Coast or Nigeria. They then return to Ghana overland or by air. Both heroin and cocaine are transhipped to the USA or to the UK and other parts of Europe. The majority of drug trafficking organisations appear to be run by Nigerians who have formed small syndicates, with Ghanaians serving as couriers.<sup>96</sup>

Kenya is another popular transit point for consignments of Southwest Asian brown and Southeast Asian white heroin. Drugs typically enter the country from India, Pakistan and Thailand. They are then picked up by non-Kenyan African couriers and transported through Nigeria and other West

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95 The 1995 INCSR, p. 419.

96 The 1995 INCSR, p. 421.

African countries to Europe and the USA. Kenyan drug enforcement agencies also report that cocaine from South American source-countries is bartered for heroin in Kenya. Cocaine is then exported to Europe, while heroin is shipped to the USA.<sup>97</sup>

The principal criminal activity in Mauritius is the trafficking of heroin brought into the country from Bombay by couriers using commercial airlines. The volume of the traffic suggests that a significant portion of shipments is for onward transport, although there is no real evidence to confirm this belief. Good air and sea connections to Europe and South Africa, the establishment of a free port, a growing off-shore banking industry, and the large cash turnover of its successful tourist industry, all indicate that Mauritius may develop into a major narcotics transshipment point and money-laundering centre.

In recent years, Mozambique has grown into a significant transshipment point for narcotics (primarily Mandrax and hashish, but also cocaine) destined for the South African and European markets. The country's drug trade appears to be partly tied to regional arms trafficking and stolen vehicles syndicates, and it is facilitated by Mozambique's extensive transportation links with neighbouring countries. Mozambique is not an important centre for money laundering, but there is increasing concern that money laundering and related financial crimes may become significant problems as a result of these criminal activities.<sup>98</sup> Local interdiction efforts are extremely weak because of the undermining of the country's counter-narcotics unit. Marijuana use is common among rural Mozambicans and it is often cultivated for traditional medicinal purposes, not for exportation.

Senegal is an important transit point for heroin and cocaine, given its good air and sea connections with Europe and North America, as well as its worsening economic climate. The suspension of direct commercial flights between Lagos and New York in 1993 increased the importance of Dakar as a direct transit point for Nigerian criminal organisations smuggling Asian heroin to the USA. Senegal is not a major drug-producing country. The only drug crop cultivated is cannabis, sold mostly for local consumption. Nor is there evidence that Senegal is a major money laundering centre. According to the 1996 International Narcotics Control Strategy Report, there have been speculation that narcotics money has been invested in some of Senegal's coastal tourist resorts; this speculation, however, was not corroborated.

Sudan is neither a significant producer nor a consumer of illicit drugs, but it is gaining increasing importance as a transshipment point for the international drug trade. Sudan's strategic location at the cross-roads of Africa,

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97 The 1995 INCSR, p. 427.

98 The 1997 INCSR, p. 636.



along with its 500 km of largely unpatrolled coastline on the Red Sea, offers easy entry and exit for drug shipments.

Tanzania is strategically located on established and developing narcotics trafficking routes. There is mounting concern about Tanzania's apparently increasing use as a transit point for Mandrax from India and other drugs such as heroin and cocaine moving from the Asian subcontinent to South Africa. Most narcotics enter the country from Pakistan or India via air or sea routes, or overland from Kenya. Onward shipments are then frequently moved to Zambia, Mozambique, Malawi and South Africa.<sup>99</sup>

Zimbabwe is not an export producer of illicit drugs, but its location and relatively well-developed infrastructure make it a convenient drug transshipment point. Regionally-grown marijuana destined for Europe and South Africa, as well as Mandrax from India and cocaine from South America, cross Zimbabwe's borders and move through its airports in significant quantities.<sup>100</sup>

Turning to the control of drug markets in the African continent, the power of Nigerian criminal organisations, together with Namibian, South African and Zambian groups, should not be minimised. These powerful criminal organisations (especially the Nigerian ones) are also very active in other criminal fields like the smuggling of goods, fraud, and vehicle thefts.

Nigerian criminal enterprises continue to expand their operations, not only throughout the continent, and especially in West Africa, but also in North and South America, Europe and Asia. In Africa, Nigerian traffickers use Ghana, the Ivory Coast, Senegal and South Africa as springboards for the transporting of heroin and cocaine to Europe and the United States.

Nigerian drug trafficking to Liberia and other West African countries causes particular concern. Nigerian trafficking organisations control courier networks which move heroin from Asia to the USA and Europe. Unlike past courier systems, which moved drugs in bulk, Nigerians use large numbers of small-scale smugglers, each carrying a tiny quantity of heroin, sometimes packed in condoms and then swallowed.<sup>101</sup>

It may be helpful to list some of the countries in which Nigerians have been found to carry on their trafficking activities. International investigations have revealed that they use the following as transit conduits for heroin: Austria, Bangladesh, Belgium, Bulgaria, Canada, Caribbean Basin, Egypt, Ethiopia, France, Germany, Ghana, Greece, Hong Kong, Hungary, India, Indonesia, Italy, Jamaica, Japan, Kenya, Lebanon, Liberia, Mexico, Nepal, The Netherlands, Oman, Pakistan, Panama, Philippines, Poland, Russia,

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99 The 1996 INCSR, p. 471.

100 The 1996 INCSR, p. 474.

101 National Drug Intelligence Center, *op. cit.*.

Senegal, Singapore, South Korea, Spain, Sri Lanka, Switzerland, United Arab Emirates and the United Kingdom.<sup>102</sup>

The loose-knit Nigerian smuggling organisations are connected by blood, marriage and tribe; the most typical of them are headed by a ‘drug baron’ in Nigeria with financial resources. The baron may ‘hire’ several couriers, who then share in a percentage of the drug profits. Not only in their own country, but also abroad (as in the United States), members of Nigerian trafficking groups tend to operate in ‘cell’ structures. These cells are usually headed by a “lieutenant”, supported by a “recruiter”, a “cell leader” and various “soldiers”.<sup>103</sup>

It has been estimated that there are around 500 small Nigerian organised crime cells operating throughout the world: the geographical extension of their criminal network enables them to commit a wide range of transnational criminal activities. A medium cell consists of about ten to forty people and there is great freedom in the movement of personnel and information from one cell to another. The cells operating in various cities are in close contact with each other and, unlike the Colombian Cartels or Italian organised crime groups, they tend to avoid internal struggles and conflicts, thereby making the efforts of law enforcement agencies more difficult.<sup>104</sup>

The primary point for drugs carried by Nigerians and entering the USA is New York’s JFK Airport, although other airports are now being increasingly used. A recently discovered route has involved flights from Lagos to the United States, with an intermediate stopover in either Montreal or Toronto. Likewise, drugs are increasingly transported by Nigerians departing from Bangkok, Bombay, New Delhi or Lagos airports with stopovers in the United Kingdom. The other most popular transit locations are Italy, Germany, Switzerland and the Netherlands. Airports in Japan, South Korea and Eastern Europe have also been utilised as transit points. Nigerian drug organisations quickly adapt in response to increasingly vigorous international law enforcement, finding new methods to evade detection, and altering and expanding their heroin smuggling routes and markets.

Another significant trend has been the dramatic increase in transshipments of cocaine by Nigerians to Europe and the United States. Traffickers import South American cocaine, especially from Peru and Colombia, for re-export to the USA and Europe and, to a lesser extent, for consumption in Nigeria. According to Interpol, 80% of the cocaine transiting Africa in 1992 was seized in three countries: Italy, Switzerland and the United Kingdom. Nigerians buy cocaine in Bolivia or Colombia, and then transport it to Rio

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102 Organizational Intelligence Unit, Federal Bureau of Investigation, *Overview of International Organized Crime*, 1995, pp. 48-49.

103 National Drug Intelligence Center, *op. cit.*

104 Organizational Intelligence Unit, Federal Bureau of Investigation, *op. cit.*, pp. 48-49.

de Janeiro or Sao Paulo for shipment to Lagos, Nigeria, where the drug trafficking organisations hire couriers to carry the drug to European destinations.<sup>105</sup> They also ship cannabis - the only illicit drug grown in Nigeria - to Europe and other countries in West Africa. Although the Nigerian government has sought to take action against narcotics trafficking and money laundering, rampant corruption appears to facilitate both these activities.<sup>106</sup>

However, Nigerian criminal activities are not limited to drug trafficking alone. Nigerian criminal organisations are closely involved in extortion and large scale fraud involving credit cards, banks and commercial businesses. Nigerians are particularly adept at obtaining false identity documents which they use for student loan frauds, social service frauds and insurance frauds.<sup>107</sup> As a consequence, financial institutions and many other businesses worldwide lose hundreds of millions of dollars per year<sup>108</sup>.

For instance, in recent years, Nigerian criminal groups have exploited the potential profits offered by advance fee frauds:<sup>109</sup> the U.S. Secret Service estimates that Nigerian advance fee letter schemes (mail fraud) cost Americans \$ 250 million a year.<sup>110</sup> In these scams, foreign businessman or firms are solicited by Nigerians (for claimed fiscal or other purposes) to deposit large sums of money from Nigeria (usually from 10 to 30 million dollars) in their personal bank accounts in exchange for a percentage of the total amount transferred. In order to finalise the transfer the businessmen or the firms are requested by the criminals to send a fee and/or other information relating to their bank accounts and economic activities (like the company letter head or credit card data). Once the Nigerian contact receives the fees or the information, it vanishes and the information is usually used to obtain illegal gains through further frauds.<sup>111</sup>

Nigerians are also very active in the production of fraudulent identity cards, credit cards and other documents. This is largely confirmed by law enforcement operations in which members of these organisations have been arrested and the materials used to forge documents have been seized. More-

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105 National Drug Intelligence Center, *op. cit.*.

106 The 1995 INCSR, p. 435.

107 "Problems and Dangers Posed by Organized Transnational Crime in the Various Regions of the World", in P. Williams and E.U. Savona (eds.), *The United Nations and Transnational Organized Crime, Transnational Organized Crime*, Special Issue, Volume 1, Number 3, Autumn 1995, pp. 19-20.

108 Organizational Intelligence Unit, Federal Bureau of Investigation, *op. cit.*, p. 51.

109 See United States Department of State, Bureau of International Narcotics and Law Enforcement Affairs, *Nigerian Advance Fee Fraud*, Department of State Publications, April 1997.

110 J. Winer, *Nigerian Crime*, Statement before the Subcommittee on Africa of the House International Relations Committee, Washington D.C., 11 September, 1996.

111 Organizational Intelligence Unit, Federal Bureau of Investigation, *op. cit.*, p. 52.

over, Nigerian organised syndicates conduct bank frauds by obtaining bogus identity cards and opening accounts at numerous different banks, which they use for money laundering, for the depositing or writing of fraudulent cheques, and the obtaining of cash advances on credit cards. Nigerians are also developing credit card frauds on a global scale. Once they obtain the cards (illegally forging or receiving them), they use them to purchase expensive goods or to rent cars.<sup>112</sup>

Nigerians also utilise other West Africans, including Ghanaians, Gambians, Kenyans, Malians, Senegalese, Tanzanians and Zairians, in their criminal activities. They also have links with the Colombian Cartels and the Jamaican Posses (in this case for the distribution of drugs and to inflict violence on members who have lost favour with the organisation).<sup>113</sup>

Namibian criminal organisations are involved in two main activities: drugs and diamond smuggling. Though not a drug producing country itself, Namibia has started to be used as a transit route for Mandrax and cocaine from Latin America and Asia smuggled via Angola to South Africa. The smuggling of diamonds is one of the main sources of income for Namibians. More than 60 per cent of the country's diamond production is classified as gem diamonds, which increases the attractiveness of the activity. The smuggled and stolen diamonds find their way to Europe, where they are sold to diamond cutters and then pass into the legal market.<sup>114</sup> Moreover, several attempts at organised fraudulent scams, mainly originating in Nigeria, have been discovered. A total of 14 cases of fraud involving organised crime syndicates were investigated in 1996. Besides Namibians, citizens from Nigeria, Tanzania, the United Kingdom and the USA were also involved.<sup>115</sup> The theft and smuggling of motor vehicles has also developed into a highly organised activity in Namibia, which is used as a transit route and a dumping ground. As well as Namibians, South Africans, Tanzanians, Angolans and Zambians have been arrested for this crime.<sup>116</sup>

In South Africa, criminal gangs engage in almost all forms of criminal activities besides drug trafficking, such as vehicle theft, housebreaking, prostitution, murder, robbery, extortion, fraud and commercial crime. The extent of organised crime is accentuated by the fact that 481 organised crime syndicates are currently known to be operating in or from within South Africa. The vast majority of crime syndicates operate in or from within the

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112 Organizational Intelligence Unit, Federal Bureau of Investigation, *op. cit.*, p. 53.

113 Organizational Intelligence Unit, Federal Bureau of Investigation, *op. cit.*, p. 55.

114 M. A. Pool and J. Tjivikua, "Organise Crime: A World Perspective", paper presented at the *Third International Police Symposium*, Kanagawa University, Yokohama, Japan, 28 November-1 December 1996.

115 *Ibidem*.

116 *Ibidem*.

Gauteng Province, and many of the organised crime syndicates in the country operate internationally.<sup>117</sup>

The illegal drug trade has grown enormously in the past two decades. The South African drug market is dominated by cannabis, Mandrax, cocaine, heroin and LSD. Statistics compiled by the South African Narcotics Bureau (SANAB) show a sharp rise in cocaine trafficking to South Africa. South Africa is fast becoming a transit point and consumer market for cocaine from South America, mainly due to the country's accessibility by sea, land and air routes and the demand for illicit drugs. Significant quantities of cocaine from South America, particularly Brazil, transit Nigeria to South Africa. The cocaine trade in the country, especially in the Gauteng, is largely dominated by Nigerians operating from hotels in Johannesburg. It was reported in 1994 that the South African Narcotics Bureau arrested 14,278 people for drug-smuggling, unlawful possession and dealing in drugs.<sup>118</sup> Methaqualone, or Mandrax as it is locally known, is largely a South African problem, since the country is the world's largest consumer of this substance.

South Africa is also undoubtedly the major source of stolen vehicles in Africa. The South African Police have recently recovered vehicles originally stolen in South Africa from as far afield as Cyprus, Greece, Portugal and Australia.

A significant trend is the growing presence of Triads in the South African criminal markets. The most prominent Triad societies currently operating in South Africa are the Wo Shing Wo Group and the 14K. The Triads view South Africa as the gateway to Africa for the expansion of their smuggling networks, and as an especially attractive market for drug trafficking. Other organised crime activities pursued by the Triad societies are prostitution and the smuggling of ivory, rhino-horn, diamonds, gold, *abalone* and *sharkfin*. Triads are also involved in white-collar crime, fraud, tax evasion, money laundering, forgery and the fraudulent use of credit cards. Triad society members assist illegal aliens to obtain passports, identity documents and visas. Lesotho is frequently used by Triad societies in South Africa as a springboard for the entry of illegal aliens from Asian.<sup>119</sup>

In Zambia, apart from drug trafficking, the most lucrative activities by organised crime groups are the theft of motor vehicles, firearms smuggling, commercial poaching, bank frauds and money laundering. These are all cross-border crimes which ramify through the Southern African region. Motor vehicles stolen from Zambia find their way to Zimbabwe, Namibia,

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117 South African Police Service, *Organised Crime - A South African Perspective*, 29 September 1995.

118 "S. Africa: Target Country of Drug Smugglers", in *The Xinhua News Agency*, 5 July 1995.

119 *Ibidem*.

Botswana, Mozambique, South Africa and Zaire, and vice versa. Foreign nationals living in Zambia, mostly Zairians, Zimbabweans and West Africans are behind this illicit activity.<sup>120</sup> Zambia has seen a proliferation of all types of drugs. Whereas initially the country was only a transit point for illicit narcotics shipments, principally Mandrax from the Asian subcontinent to Botswana and South Africa, today most drugs are in fact for local consumption: they include hashish, Mandrax, opium, heroin, cocaine, morphine amphetamine and LSD. Some of these drugs are manufactured locally in clandestine laboratories.<sup>121</sup> With direct and indirect air routes to and from South America, Asia and Europe, Zambia is strategically situated on established and developing narcotics-trafficking routes. West African heroin traffickers use Zambian documentation and couriers to ferry drugs to Europe and North America. Cannabis is the only drug cultivated in Zambia. Money laundering by regional traffickers, made easier by economic liberalisation, is increasing as well.<sup>122</sup> Zambia's narcotics traffickers appear to be growing bolder and are smuggling increasingly larger consignments. In April 1995, Canadian drug officers impounded a record four tons of Zambian cannabis. Two weeks later, a Korean national was arrested in the Zambian capital of Lusaka on being found in possession of over four tons of cannabis, as well as equipment to make heroin.<sup>123</sup>

Criminals in Zambia also engage in the illicit trade in emeralds. West African nationals (the majority of whom are Senegalese and Malians) and Zairean nationals have formed cartels which illegally sell precious stones in Europe, South East Asia and North America.<sup>124</sup> In recent years, Zambia has experienced an increase in fraud cases, ranging from bank fraud to insurance, credit cards and computer scams. The most common are bank frauds involving cheques and other bills of exchange.<sup>125</sup>

As already mentioned, money laundering is not perceived as a threat in the African continent; nevertheless it is present as an important criminal activity in Gambia, Ghana, Kenya, Mauritius, Nigeria and Zambia.

Gambia's location - with direct flights to three European capitals several times weekly, together with its liberalisation of economic policies and the continued existence of centrally planned economies in neighbouring countries - make it a potentially very attractive country for organisations or

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120 F.K. Ndhlovu, "On Organised Crime: a World Perspective", paper presented at the *Third International Police Symposium*, Kanagawa University, Yokohama, Japan, 28 November- 1 December, 1996.

121 Ibidem.

122 The 1995 INCSR, p. 452.

123 "Weak Laws Help the Traffickers", in *Inter Press Service*, 30 May 1995.

124 F.K. Ndhlovu, *op. cit.*

125 Ibidem.

individuals engaged in money laundering. This results in a surprising volume and variety of currencies traded on the informal “kerbside” market. This is largely due to Gambia growth as a mercantile entrepreneurial centre for trading, with no restrictions on foreign exchange. The most common practice of money laundering in the sub-region involves company invoices (which the purchasing companies use to justify the transfer or transportation of huge sums of currency from their country into Gambia for onward transmission overseas) and money transportation through ‘suitcase deals’ using couriers who physically move cash to Gambia from Europe and the United States.

Prior to 1992, there was no evidence of significant money-laundering activity in Ghana. Records seized in Colombia and investigations of the Cali and Medellin Cartel have revealed cartel transactions in Ghana, and it is now believed that non-bank financial institutions, e.g. exchange bureaux, in the country provide money-laundering services, as do non-bank financial institutions run by Ghanaian nationals in North America, some of which are tied to exchanges in Ghana. There is increasing evidence in the United States that drug proceeds and the revenues from criminal activity are being laundered through non-bank financial institutions controlled and operated by Ghanaians. Money laundering involves the proceeds from diamonds, gold and narcotics.<sup>126</sup>

Kenya has long been considered a potential money-laundering centre because of its well-developed international banking community and its role as a transit point for Southwest and Southeast Asian heroin. There are preliminary indications of currency flows and the presence of criminal elements consistent with money laundering. United States Customs report that Nigerian traffickers move money through international banks in Nairobi. It has long been suspected that this activity is organised by Nigerian drug traffickers moving funds through Kenya, possibly through the South Asian *hawala* informal banking system. There are suggestions that the bulk of drug money is laundered by overseas bank-account holders well connected with the “political establishment.” Since 1989, the media have reported that some gambling houses and hotels along Kenya’s Indian Ocean coast are being used as hideouts by drug traffickers, although the authorities have denied these reports.<sup>127</sup>

Mauritius established an off-shore financial centre in July 1992. As of mid-May 1995, there were 2,379 licensed off-shore companies in the country, including seven banks.

Nigeria has become the focus of global concern about the development of money laundering in Africa. In the 1980s, numerous Nigerian nationals were found to be acting as heroin couriers, while the Nigerian economy was

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126 The 1997 INCSR, p. 632.

127 The 1996 INCSR, p. 560.

sustained by oil revenues. As these revenue diminished in the late 1980s, Nigerian organisations became major heroin traffickers on a global scale, as well as highly successful practitioners of credit card swindles and other frauds like advance fee schemes. As a consequence Nigerian banks proliferated. The proceeds from these criminal activities, particularly drug trafficking by five major organisations, are believed to be laundered through bank and commodity transactions conducted by Nigerian nationals. Although there is occasional evidence of transactions involving non-Nigerian sources of criminal revenues, such as the Colombian cartels, money-laundering services seem to be furnished primarily for Nigerian nationals or in aid of Nigerian drug traffickers. Nigerians use a variety of methods to launder money, including bulk smuggling in refrigerators and other merchandise which is later sold, wire transfers to Hong Kong and Thailand, couriers and the purchase of “junk commodities” which are later sold at high prices.<sup>128</sup>

Relative to the size of the country’s economy, money laundering is an increasing problem in Zambia as well. The Bank of Zambia and the Drug Enforcement Commission consider money laundering to be rampant in the banking industry. Economic liberalisation and the elimination of foreign exchange controls have enabled traffickers to launder drug profits through banks and exchange houses with comparative ease.<sup>129</sup> In some cases, proceeds from Mandrax sales in South Africa are converted through the purchase of luxury automobiles and manufactured goods, which are then imported into Zambia and resold, often after bribes had been paid to reduce customs duties.<sup>130</sup> Drug traffickers from Zambia are apparently engaged in increasing drug-money laundering by banks and exchange houses and through the importing and resale of luxury and manufactured goods, partly driven by the desire for scarce foreign exchange. Similarly, criminal syndicates which organise the theft of motor vehicles and aggravated robberies intermingle the proceeds with legitimate money in banks and other investment portfolios. Numerous Zambian companies are in effect legal fronts for money laundering. Most of them are trading companies like wholesalers, confectioners and bakers, beer and liquor outlets, the public transport services and commercial banks.<sup>131</sup>

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128 A.H Wankel, “Prepared Statement Before the House Banking and Financial Services Committee”, in *Federal News Service*, 28 February 1996.

129 The 1997 INCSR, p. 639. See also “Cocaine, Heroin Threat on the Rise Worldwide”, in *The Straits Times*, 6 April, 1994 p. 4.

130 The 1994 INCSR, p. 538.

131 Ndhlovu F.K., *op. cit.*



## 2.2.6 Asia

### *Middle-East*

In Middle-East Asia the most serious and dangerous threats posed by organised crime are connected with drug production and trafficking. The countries in this area suffer from criminal drug-related problems, inasmuch as they constitute the transit ring of an international trafficking chain, although some of them are themselves drug producers. Turkey is the country in the region with the most stable criminal organisations: Turkish groups do not concentrate on drugs alone, but engage in other criminal activities as well. In Israel the presence of Russian organised crime elements is becoming an increasing menace. In particular criminal elements from CIS countries are still using Israel for laundering their huge capitals. The police possesses information that Jewish “sharks” from among immigrants from the former Soviet Republic are actively operating in Israel under the guise of successful businessmen.<sup>132</sup>

Some concern has been voiced concerning the Middle East peace process. The open borders and improved regional trade relations resulting from the process will probably increase drug trafficking through Israel. Since drug cultivation and production are a problem in the countries surrounding Israel, the country is a potential trafficking route, particularly from Lebanon, which is a major transit country for hashish and heroin *en route* to Egypt. Israel therefore lies on a drug transit route for heroin, which enters airports and seaports from south-west Asia via Turkey, and from south-east Asia via Europe, and then moves through Israel to Egypt.

Lebanon is a major hub for narcotics production and trafficking since it has historically been a source country for opium-based drugs and hashish. The country’s success in 1994, when it achieved a dramatic reduction in the cultivation of both opium and cannabis, was offset by the continued processing of imported narcotics.<sup>133</sup>

In Syria, too, the most profitable criminal activity is drug trafficking. The country’s drug trafficking problems stem from its occupation of Lebanon’s Bekaa Valley, where it still maintains a military presence but fails to enforce anti-narcotics controls. Syria is a transit point and a refiner of heroin: Lebanese-produced hashish and heroin destined for Europe and the USA, transit the country, while morphine base and opium from Asia enter Syria via Turkey on their way to processing laboratories in the Bekaa Valley. Cocaine, heroin and hashish refined in Lebanon and Turkey transit Syria *en route* to markets in the Persian Gulf region. Syria is an important transit point

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132 A. Kerzhintsev, “Israel trying to keep CIS criminals out of the country”, in TASS, 26 December 1997.

133 The 1995 INCSR, p. 429.

for narcotics flowing through the Middle East to Europe and, to a lesser extent, the USA. Raw materials for the production and processing of heroin and cocaine reportedly transit Syria on their way from Turkey to Lebanon.

Turkish criminal organisations are particularly active in drug trafficking. There are three principal criminal organisations in Turkey with international links. The most important of them is the Turkish Mafia (the “Babas” - Turkish for “fathers”), a loose collection of gangsters originating from the area lying to the east of the Black Sea port of Samsun. These gangs have established themselves in Istanbul and other Western Turkish cities, and they maintain links with Turkish immigrant communities in Germany and other Northern European countries, including the Netherlands. Other groups active in the country are the Iranian Mafia, which comprises thousands of Iranian immigrants and reportedly maintains links with the Iranian secret service SAVAMA, and the separatist Kurdish Workers’ Party (PKK), which in turn has links with Turkish Kurdish immigrant communities in Germany, the Netherlands and the UK.

The Babas and the Iranian Mafia obtain narcotics from the growing areas in Southeast Turkey and also import them from Afghanistan (via Iran). Narcotics from Afghanistan are transported across Iran and then, allegedly with the assistance of Iranian revolutionary guards, proceed to the point at which Turkey, Iraq and Iran meet. Here they are loaded into containers on Turkish refrigerated International Road Transport (TIR) lorries and transferred to Istanbul. (Virtually all opium production in the Afyon area, Western Turkey, has been used for legal medicinal purposes since the 1970s). Most narcotics-smuggling between Turkey and Europe is carried out by the Babas, although the PKK mounts its own operations.<sup>134</sup>

As well as controlling the Turkish drug markets, the Babas, the Iranian Mafia and the PKK are active in prostitution, protection rackets, money-laundering and the traffic in false documents. They are also prominent in the alien smuggling market: they control a large proportion of the flow of immigrants from Asia seeking to move westwards along the Balkan route. There are also signs that a joint venture comprising Turkish, Pakistan and Greek criminal organisations controls migrant flows of Asiatics, Kurds and Middle Easterners. The most dramatic recent development is the extension by Turkish criminal groups of their influence into the legal system, after infiltrating parts of the government, the customs authorities, the police and security forces. The year 1997 is replete with examples of this trade, with hordes of migrants (mainly Kurds) crowded by unscrupulous Turkish traffickers on to old and dangerous boats as they try to reach the Italian coast. Recent events have shown, in fact, that the organised crime groups mostly closely involved in

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134 *International Trends in Organised Crime*, a report for the Dutch Ministry of Justice, May 1993.

human smuggling to Italy comprise Turks, Greeks, Kurds, Iraqis and Pakistanis.<sup>135</sup>

Turkey has also emerged as a major money-laundering country. Given the country's location as a cross-roads between Europe and Asia for the movement of narcotics and drug trafficking proceeds, Turkey and Turkish traffickers figure prominently in European drug trafficking. They control the bulk of the European heroin trade, and millions of illicit drug dollars are consequently spirited out of Europe into Turkey. Payments for shipments of heroin to Europe enter Turkey on lorries and international buses, through underground banking channels, or other methods. Funds are also deposited in European banks and then wire-transferred to international accounts. Foreign currency may be freely purchased by nationals, and foreign exchange accounts may be opened.

### *South Asia*

Criminal organisations engage in numerous illicit activities in South Asia. Although the greatest concern centres on the trafficking and production of drugs, there are criminal organisations throughout the Asian region involved in other illicit activities such as gold and arms smuggling. Of particular concern are the organised criminal groups that operate in India, given their infiltration of the legal system by means of violence and, especially, corruption. Money laundering is widespread, but is especially rife in Nepal, Pakistan and India.

As regards drug production and trafficking, India, Pakistan, Afghanistan and Nepal in South Asia have important connections with Europe and the USA via the Middle East (and Turkey). There is some cannabis cultivation in Bangladesh, primarily for local consumption, and in recent years the country has grown vulnerable to drug trafficking because of its close proximity to the Golden Triangle and the drug-producing countries. The authorities fear an increase in the transshipment of narcotics from Myanmar and India, and report the beginning of shipments from Pakistan and Afghanistan.

India is an important cross-roads for international narcotics trafficking. It is located between the two main sources of illicitly-grown Asian opium, the Golden Triangle and the Golden Crescent, and is itself the world's largest producer of licit opium. India is also a transit route for illicit narcotics from Afghanistan, Pakistan and Myanmar, bound mainly for the European market. Although Indian traffickers have effected large shipments of heroin directly to the USA and Canada, the most dramatic recent increase has been in the

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135 D. Frisullo, "La holding degli schiavisti", in *Narcomafie*, September 1997, pp. 6-9; M. Garbesi, "I mercanti di schiavi - al Viminale 300 nomi", in *La Repubblica*, 4 January 1998; M. Garbesi, "Io mercante di uomini accuso la polizia turca", in *La Repubblica*, 6 January 1998.

trafficking of Indian-produced methaqualone to Southern and Eastern Africa.<sup>136</sup> Indian traffickers are developing a drug transit route through China.<sup>137</sup> Criminal organisations produce semi-refined heroin from both diverted legal opium and illegally grown opium. Poppies are grown illicitly in the Himalayan foothills of Kashmir and Uttar Pradesh, and in Northeast India near the Bangladeshi and Burmese borders in the states of Manipur, Mizoram, Nagaland and Arunachal Pradesh.

Nepal is not yet a major drug transit country, although its 1,000 mile border with India, as well as its proximity to Pakistan and Myanmar, make it an ideal alternate route for illicit narcotics moving through Asia to Europe and the USA. Southwest and Southeast Asian heroin is smuggled into Nepal across the porous Indian border and through Katmandu's international airport.

Pakistan is a significant producer and transit country for opiates and cannabis products. Considerable amounts of Afghan opium, morphine base and cannabis products are either processed in laboratories in Pakistan or transhipped through the country. Pakistan is the second-largest source of heroin after the south-east Golden Triangle. Its tribal border areas are the main centres of production, and opium grown on both sides of the border is used.<sup>138</sup>

In Afghanistan, payments for opium and heroin made in US dollars, German marks or gold are used by traffickers and warring factions to purchase weapons in Pakistan or Iran, or to buy commodities which are then smuggled back into Afghanistan.<sup>139</sup>

The smuggling of commodities, especially gold, is widespread in Bangladesh because of the country's geographical location and lack of natural boundaries. The importing of gold into Bangladesh is subject to customs restrictions, and increasing clandestine flows of gold are indicative of its growing problem of money laundering. Moreover in Bangladesh, there is a wide-spread child sex industry, aimed primarily at "the local population or is associated with trafficking in girls. Human rights lawyers in Pakistan have reported a considerable increase in the number of Bengali women being sold into prostitution in Pakistan. Bangladeshi women and girls are also auctioned for the sex industry or servile forms of marriage in India and the Middle East. In the last 10 years, an estimated 200,000 women have been trafficked, including girls as young as nine years of age".<sup>140</sup>

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136 The 1995 INCSR, p. 213.

137 The 1991 INCSR.

138 The 1997 INCSR, p. 247.

139 The 1997 INCSR, p. 229.

140 The source of these data is *End Child Prostitution in Asian Tourism* (ECPAT). They can be found at the Internet site of this organisation, at the following address: <http://www.rb.se/ecpat/country.htm>

Particular attention should be paid to the situation in India. Organised groups in the country have assumed transnational dimensions and are involved in a wide range of criminal activities. There are two major syndicates in the country. One of the largest and best-known organised crime syndicates was until recently based in Bombay but now works out of Dubai. When in Bombay, its operations extended to the states of Maharashtra and Gujarat. Its 'army' of dedicated killers does not hesitate to liquidate anyone setting themselves up as a rival or questioning the authority of its leader.

The other major syndicate is "Dhanbad Mafia" which controls the workforce in the country's coal belt. It does so through loan sharking, since it holds virtual monopoly over coal transport and all economic activity in and around Dhanbad in the state of Bihar. This syndicate is notorious for its ruthlessness in liquidating anyone deemed to be an enemy or an informer.

Apart from these two major syndicates, which wield enormous money and political power, there are numerous other criminal organisations which commit every type of trans-border crime, such as drug trafficking, the smuggling of arms and ammunition and other contraband goods, port control and dock thefts, gambling and loan sharking, import and export fraud (customs fraud), money laundering, etc. The syndicates have their headquarters at Amritsar (Indo-Pakistan border-Punjab sector), Jaisalmer and Barmer (Indo-Pakistan border-Rajasthan sector), Siliguri and Gorakhpur (Indo-Nepal border), and Imphal and Aizawl (Indo-Myanmar border). Most of the syndicates use India's long coastline - particularly the west coast and the southern part of the east coast - for the bulk of their illicit landings of contraband, or for their shipments of drugs and other prohibited goods. The majority of them have links not only with others involved in related criminal activities (smugglers have links with drug traffickers and both have links with money launderers) but also with criminal organisations operating in other countries, such as Singapore, Hong Kong, the United Kingdom and the USA.

Another criminal activity now flourishing in India is the trafficking of children for the sex trade. Women and children are transported from Nepal and Bangladesh to the brothels of Bombay and Calcutta. Bangladeshi children are taken through India *en route* to Pakistan. Children from one region of India are trafficked into other countries. In February 1996, Bombay police raided India's largest brothel and rescued over 400 women and children: 218 of them had been brought from Nepal. The women and children were detained by the police, who have since been unable to release them because the governments of India and Nepal have refused to co-operate on the matter.<sup>141</sup>

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141 The source of these data is *End Child Prostitution in Asian Tourism* (ECPAT): they can be found at the Internet site of this organisation, at the following address: <http://www.rb.se/ecpat/traffick.htm>

In India a long-standing informal money-laundering network of great sophistication, the '*hawala*' system, is now being used for narcotics-related financial transfers. The *hawala* is only one component of India's underground economy, which involves a broad range of consumer goods, foreign currencies (particularly dollars), and gold. Throughout India and much of South Asia the *hawala* or *hundi* systems rival the underground Chinese banking system and are an integral part of a large underground economy which moves money, gold, and consumer goods across the subcontinent.

### *Eastern Asia*

From a criminal point of view, Eastern Asia is a highly complex region in which every form of criminal behaviour associated with organised crime can be found: drug production and trafficking, prostitution, gambling, fraud, smuggling, trafficking in aliens with a view to their exploitation, and significant levels of money laundering. This is mainly due to the presence of well-established international organised rings throughout the region. Most of these organisations are internationally notorious and raise severe problems at the global level because of the transnational nature of their activities (Chinese Triads and Japanese *Yakuza* are the best-known groups operating in the sub-region).

As a consequence, the criminal menace in this geographical area relates primarily to drug trafficking and production (Myanmar produces more opium than any other nation in the world); secondly, and more in general, it relates to all the activities of these powerful criminal groups, with their ability to cross borders and pursue their operations in different regions of the world, to contract alliances with other criminal groups, and to switch rapidly from one criminal activity to another: and all this in an opportunistic criminal endeavour to maximise opportunities and reduce risks to the minimum.

Almost all the Eastern Asian countries are involved in the illegal drugs market. The People's Republic of China is one transit route for heroin from neighbouring Myanmar, Laos and Vietnam to the USA and other overseas markets. Besides China's geographical position, its transport and communication links consequent on economic development facilitate the movement of narcotics together with legitimate goods. Myanmar is the origin of most of the heroin that transits China.

Hong Kong is also an important transshipment centre for heroin from Southeast Asia, although the volume of the drug passing through the country may be diminishing. In contrast to this apparent decline in heroin movement, there has been an increase in transshipments through Hong Kong of crystal methamphetamine produced in China for sale in Japan, the Philippines and the USA. The amount of heroin detected transiting Hong Kong for Taiwan, Japan and the USA fell in 1994, and heroin arriving in Hong Kong is increasingly intended for domestic consumption.

Since 1989, Myanmar has become the world's largest producer of opium and heroin. Drug trafficking criminal organisations protected in ethnic enclaves at the periphery of central government control are the main forces behind the massive expansion in the Burmese drug trade. These armies, consisting mainly of ethnic minorities, are controlled by Chinese or Sino-Burmese drug traffickers, who use their private armies to protect heroin refineries and drug caravans. By means of the political control exercised by these large, standing drug armies, traffickers are able to oversee the production of most of 1994 Myanmar's estimated 2,030 metric tons of opium gum. Essential chemicals used for the processing of this gum into heroin are obtained from China, Thailand and India. The bulk of Myanmar's opium and heroin output leaves the Shan state through unmarked crossings on the porous Chinese and Thai borders. Drug-trafficking ethnic groups like the Wa and Kokang control most of this territory along the rugged frontiers with China and northern Thailand. Trafficking routes from Northern Myanmar to the Indian and Bangladeshi borders are used to a lesser extent to move heroin to Western markets, but they serve as key channels of supply to the growing addict populations of Bangladesh and Eastern India. They are also used for the large-scale importing of Indian-produced acetic anhydride into Myanmar.<sup>142</sup> As Myanmar produces more opium than any other nation, the population's economic reliance on narcotics production hinders its eradication.

Taiwan is not a producer of heroin, but it is a consumer of heroin and methamphetamine. Though not produced in Taiwan, heroin is transhipped to and through the country. Numerous smugglers have been arrested while attempting to smuggle drugs into Taiwan concealed in a variety of products and materials. Most of the heroin entering the country apparently arrives on ships, concealed in a variety of products, including labelled canned goods, machinery or lumber. Smuggled amphetamines usually enter the island on fishing boats, many of which carry drugs from mainland China. The transit of drugs through Taiwan principally involves heroin, although US information indicates that amphetamines are also sent to Japan and the Philippines, either from or via Taiwan.<sup>143</sup>

In East Asia, not only drug trafficking, but also alien smuggling, theft, murder, extortion, credit card fraud, prostitution and illegal gambling are dominated by the Triads and the Japanese *Yakuza*.

The Triads are based in Hong Kong, with outposts in Taiwan. However, from these countries they have spread with little difficulty into China and Japan, establishing links with local criminal groups. The Triads are highly structured, but they do not direct crime from the top as do the vertically

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142 The 1995 INCSR, p. 241.

143 The 1995 INCSR, p. 284.

integrated cocaine cartels. Triads serve as criminal networks through which their members organise various enterprises. Largely ethnically based, they use rituals, oaths, secret ceremonies and incentives to ensure loyalty. Family affiliation is important in the major Triads, while individual membership provides credibility and influence.

As regards structure, there are three main types of Triad society in Hong Kong: those operating on an unstructured, unilateral basis with no established leadership or “parent” Triad to oversee their activities; those operating on traditional lines with carefully assigned office-bearers; and those operating according to new principles. The Triads using new methods pose the greatest threat: they operate in more compact units than do their traditional counterparts, with a leader and a closely-knit central committee. Their business-like methods reflect a new direction in Triad-related crime, that could also change in relation to the present political changes that have taken place in Hong Kong.

The Triads are opportunistic insofar as, unlike the Colombian cartels, they engage in a broad range of crimes. Their presence causes particular concern in China because Triad gangs slip easily in and out of the Chinese mainland and form alliances with Chinese criminals. However, Triad activity on the Chinese mainland has so far primarily focused on investments in legal businesses, given their awareness of the stricter controls exercised by the Chinese law enforcement agencies. The Triads, together with Chinese criminal groups, dominate the importing of heroin into the USA at both ends of the pipeline. The smuggling of illegal Chinese aliens into the USA and European nations has also grown into a lucrative business for international Asian organised crime.<sup>144</sup> With an annual turnover estimated at more than 3.5 billion US\$ in 1994, human smuggling from China had become a priority activity of many Chinese criminal organisations. Syndicates of Chinese traffickers - often in collaboration with Russian, Middle Eastern and European gangs - have created a global network covering more than thirty countries.<sup>145</sup> The Triads in control of the Chinese criminal market “bring in huge sums, exploiting the Chinese people’s despair and desire to make a fortune abroad, thus creating a fertile ground for recruiting petty criminals

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144 See, among others, R. Godson and W.J. Olson, *International Organised Crime*, National Strategy Information Centre, August 1993; P.J. Smith, “Illegal Chinese Immigrants Everywhere, and No Let up in Sight”, in *International Herald Tribune*, 26 May 1994; Ministero degli Interni - DIA, *Relazione semestrale. Giugno 1995*, Rome, 1995, p. 113; K. Chin, “Chinese Alien Smuggling and Organized Crime”, paper presented at the *International Conference on Migration and Crime: Global and Regional Problems and Responses*, Courmayeur, 5-8 October 1996; Z. Whang, “Ocean-Going Smuggling of Illegal Chinese Immigrants: Operations, Causation and Policy Implications”, in *Transnational Organized Crime*, Volume 2, Number 1, Spring 1996, pp. 49-65.

145 P.J. Smith, *op. cit.*



and cheap labour force. It has been ascertained that Chinese criminal organisations use illegal traffic of migrants as a means for introducing into a certain territory people knowing from the start that in order to pay their transportation they will have to commit all kinds of crimes for the organisation.”<sup>146</sup>

The Chinese local groups with which Triads establish contacts endeavour to imitate feudal and overseas underworld societies by electing ring-leaders, formulating domestic rules and regulations, and giving themselves such exotic names as the ‘13 Taibac’, ‘9 Betrothed Brothers’, ‘Butterfly Gang’, ‘100 Birds Gang’. These criminal groups are usually composed of relatives, friends or schoolmates. They dominate certain areas and commit crimes consisting mainly of the misappropriation of property. They collude with and manipulate local malefactors in such crimes as smuggling, trafficking in drugs and firearms, theft, robbery, murder, extortion, fraud and illegal immigration, thereby escalating crime rates, encouraging local organised crime, and gravely compromising local social security.

Like the Triads, the Japanese Yakuza, too, has been involved in significant criminal activities across national borders, including trafficking of methamphetamine into Hawaii and California and the smuggling of guns from the USA into Japan. The Yakuza maintains a significant presence throughout much of Southeast Asia, where Japanese criminals have become a major organising force in the sexual slavery of women. The Philippines, for example, have been used by the Yakuza as a base for production and smuggling of amphetamines and hand guns.<sup>147</sup> In addition, the Yakuza has moved into gambling, fraud and money laundering. In Hawaii, Yakuza members have been closely involved in the sex and drug trades, and they have also invested heavily in real estate. The police and Yakuza gangs have for many years maintained a “*modus vivendi*” whereby as long as the Yakuza confine serious violence to their own ranks, and do not threaten civil order, their activities are to some extent tolerated.

In Japan, the Yakuza - or the *Boryokudan* (violent ones) as it is also known - has been much more visible than most other criminal organisations. There are several major organisations internally to the Yakuza, the most important of which is the Yamaguchi-gumi. The second largest gang is the Inagawa-kai, while the third largest is the Smiyoshi-kai.<sup>148</sup> The Yakuza has been riven by internal warfare among its various branches, but this has not prevented it from infiltrating legitimate business and extending corruption into the political system.

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146 Ministero degli Interni - DIA , *op. cit.*, p. 113.

147 D.E. Kaplan and A. Dubro, *Yakuza*, Macmillan, New York, 1986, p. 208.

148 See “Asian Organised Crime: The New International Criminal”, Hearings before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate, One Hundred Second Congress, Second Session, 18 June and 4 August 1992, p. 125.

Recent evidence indicates that Japan's organised crime syndicates are branching out into the lower Yangtze river basin in Southern China, apparently attracted by China's booming economy. Using such legal fronts as legitimate joint ventures, karaoke bars and hotels, they employ Chinese-speaking Triad members from Taiwan to work with local criminals and seek out bases for their operations<sup>149</sup>. Yakuza have also been implicated in the smuggling of Chinese workers into Japan as cheap labour, and in the enticement of women from mainland China, Taiwan and Southeast Asia to work as prostitutes or bar hostesses in Japan. In April 1993, three members of the largest Japanese gang, the Yamaguchi-gumi, were arrested in Kumamoto Prefecture while attempting to smuggle 145 Chinese into Japan.<sup>150</sup>

Japanese organisations tend to establish close relationships with Korean crime syndicates as well. Several groups in South Korea are linked, or are trying to forge links, with Japanese gangs involved in drug trafficking and smuggling. These gangs have opened clandestine gambling dens in Seoul to attract Japanese tourists, who easily fall prey to fraudulent gambling swindles. Korean methamphetamine manufacturers supply factions within Japan's organised crime syndicates. It is believed that a significant portion of this multi-billion dollar trade returns to South Korea, which is also a major supplier to the methamphetamine markets in Hawaii and on the West Coast of the USA. Nevertheless, although the techniques of Korean criminals are becoming more sophisticated, brutal and mobile, organised crime in South Korea is still in its infancy.

There have been increasingly frequent but largely unconfirmed reports of collaboration between the "*boryokudan*" and the cocaine cartels. The South American cocaine cartels have established a presence in Japan as they try to expand their markets into the Far East. In 1994, several suspected narcotics traffickers from Third World countries, including a member of Colombia's Cali cartel, visited Japan. In the same year, Nigerian traffickers were discovered using Osaka and Okinawa as points for transshipment of heroin, indicating that Japan may become a more frequently used transit point for narcotics shipments. There are continuing reports of Thai and Chinese nationals trying to tranship heroin through Japan.<sup>151</sup>

A growing number of corporations, including the nation's largest, are beginning to stand up to the professional groups of extortionists that have victimised them for decades. Before the passage of a 1982 amendment to Japan's commercial law banning corporations from paying "protection

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149 Y. Sharma, "Yangtze Yakuza Worries Authorities", in *Inter Press Service*, 24 August 1994.

150 "Japan's Organised Crime Infiltrating South China", in *Japan Economic Newswire* 12 August 1994.

151 The 1995 INCSR, p. 264.

money” to the *sokaiya*, there were an estimated 6,000 of these racketeers in the country.<sup>152</sup>

The Japanese Yakuza is now emerging from the underground. Despite the protracted economic downturn, Yakuza gangs are steadily expanding their money-making activities into the corporate sector and boosting the number of corporate crimes in the process, according to the Japanese National Police Agency. To date, Yamaguchi-gumi has been the most commercially successful of the Yakuza syndicates. Now that the government’s 1992 Violent Groups Control Law has made it more difficult for Yakuza groups to operate in their own names, crime bosses have strengthened their relations with *sokaiya* and *uyoku*, right-wing extremists who sometimes extort money from companies by threatening them with blackmail and harassment.<sup>153</sup>

US officials believe that a significant amount of money laundering - including drug money laundering - has been going on in Japan for years. The *boryokudan* have probably taken advantage of the wide-open Japanese banking system. Furthermore they have penetrated the real estate market in Seoul. US officials continue to believe that narcotics and other money laundering in Japan is a more serious problem than is indicated by arrests or prosecutions. Drug Enforcement Administration (DEA) agents estimate that approximately 40 per cent of the income of the *boryokudan* organised crime syndicates derives from drug trafficking, and the remainder from other criminal activities.<sup>154</sup>

Besides Japan, money launderers also operate extensively in Myanmar and Taiwan. In Myanmar, the free-market rate of exchange often rises to ten times above the official standard. The parallel economy is the only viable commercial system in the country, and given the political situation and the instability of the *kyat*, neither legitimate businessmen nor traffickers wish to hold *kyats* or use the banking system. In Taiwan, money laundering and other financial crimes are believed to have increased in the wake of measures to liberalise the country’s financial system. Tracking illicit proceeds is difficult, because licit and illicit funds are intermingled in the underground financial system, which is now sufficiently sophisticated to process large loans, and even trades in stock to an extent that rivals the official exchanges. The underground economy is estimated at roughly 25 per cent of the legitimate economy. Narcotics money-laundering in Taiwan is heroin related. Funds entering Taiwan can be transferred from the official banking system to the unofficial traditional remittance system, and vice versa. Money laundering

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152 K.W. Kin, “Japan’s Mafia Guns for Senior Execs”, in *The Strait Times*, 20 October 1994.

153 “Organised Crime Rises to the Surface Economy. Police Report Shows Growing Activity”, in *The Nikkei Weekly*, 14 February 1994.

154 The 1994 INCSR, pp. 531-532.

takes place within both the official banking system and the non-bank financial system. There are no legal exchange houses or non-banking financial institutions, although there are unlicensed or illegal exchange houses which allegedly handle drug money from Hong Kong.

### *South East Asia*

Considering that Laos and Thailand are two of the three countries forming the Golden Triangle (the third one is Myanmar), the importance assumed by drug criminal markets in South East Asia is obvious. Various criminal organisations operate in this area, engaging in a wide variety of criminal acts, of which extortion, illegal gambling, arm robbery and traffic, prostitution and alien smuggling are the more common. In this context it is important to underline two main trends taking place in the area: first, the continuing flow of foreign criminal organisations entering and operating in the Eastern Asiatic criminal markets (this is particularly evident in Philippines and Thailand); second, the prominent role played by criminal Vietnamese organisations.

Cambodia shares borders with Thailand, Laos and Vietnam, and lies near the major trafficking routes for Southeast Asian heroin. Cannabis is cultivated in Cambodia, primarily in areas near the Thai border and it is believed to enter Thailand. Opium is believed to transit Cambodia from Laos to Thailand. Small amounts of heroin are known to transit Cambodia on their way to Vietnam, Hong Kong, Australia and the USA.<sup>155</sup>

Indonesia is not a major narcotics processing country or a narcotics money laundering centre, but it increasingly serves as a transit point for Southeast Asian heroin, including transshipment to the USA. Marijuana is produced in large quantities primarily for domestic consumption. Indonesia's millions of square miles of territorial sea and island waters include some of the world's busiest international straits and provide countless opportunities for the smuggling of narcotics and other items. Indonesia's maritime authorities lack the resources to adequately interdict narcotics smuggling via sea. While Indonesia has not been for a long time a major drug transit country, since 1994 an increase in cases of heroin smuggling has indicated that narcotics traffickers from Thailand, Nepal, Myanmar and Nigeria would be increasingly using Indonesia for the transshipment of heroin to the USA, in particular to Los Angeles.<sup>156</sup>

Opium is produced in the ten northern provinces of Laos. It is grown primarily by ethnic minority groups, who have always cultivated it by tradition. There are indications that Laos is increasingly being used as a

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155 The 1995 INCSR, p. 248.

156 The 1995 INCSR, p. 260.

transit point for major criminal groups moving heroin from Myanmar to Thailand, Cambodia, Vietnam and China. There is no estimate of the extent of trafficking through Vietnam, although officials of both countries believe it occurs and grow increasingly concerned.<sup>157</sup>

Malaysia is a transit point for heroin from Myanmar and Thailand to markets in the USA, Australia and Europe. Illicit heroin processing, heroin trafficking, and a growing addict population continue to be serious problems. However, no opium poppies are grown in Malaysia. Heroin smuggling into the country is believed to be centred in Northwest Malaysia and across the land border with Thailand. Increased controls along this land border have resulted in more smuggling by sea. There is speculation that narcotics are being shipped directly to Malaysia from Myanmar, but the evidence is scarce.

Marijuana, hashish, crystal methamphetamine and heroin are the main illegal drugs in the Philippines. The Philippines are also Hong Kong's chief supplier of marijuana, and they have also become the second-largest marijuana grower, behind Mexico and ahead of Colombia: in 1994 the provinces in the extreme North and South produced around 1,800 tons of the substance. Most of the marijuana grown in the Philippines is exported to Australia and Japan. Hashish is also produced for export to Europe, Australia, and Japan. The Philippines are a transit point for heroin and crystal methamphetamine bound for points in East Asia, the Pacific, Europe, and the USA. The transit of heroin by couriers occurs at all Philippine international airports. In addition to these drugs, the Philippine authorities have made several small cocaine seizures over the last few years.<sup>158</sup> The country, in fact, has become a major transshipment point for cocaine originating in Colombia and Peru. The international drug trade is also creating unlikely alliances in organised crime, such as the trade among the 14K Triad, the Bamboo Union of Taiwan (which moves drugs to South Korea and Japan), the military-dominated Big Circle Boys (which run Southern China's drug laboratories), and Japan's Yakuza (which also has great influence on Philippine organised crime). According to the Narcotics Command Director, there are 36 drug syndicates, with around 2,000 dealers, in the Philippines.<sup>159</sup>

Some of the local Philippine drug syndicates have connections with international syndicates which use the country as a transit point for heroin and cocaine moving from the Golden Triangle and the Golden Crescent to the USA and Europe. The Chinese 14K and the United Bamboo Gang traffic "shabu" from Mainland China and Taiwan. Latin America's predominantly cocaine trafficking syndicates have reportedly branched out into East and

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157 The 1995 INCSR, p. 266.

158 The 1995 INCSR, p. 279.

159 "Crime Syndicates Link up in Drug Trade", in *South China Morning Post*, 9 April 1995.

Southeast Asia, including the Philippines. As a source of cannabis, the Philippines rank as the second-largest exporter in Southeast Asia.<sup>160</sup>

Drugs enter Singapore by land, air and sea, by courier and car, from Myanmar, Thailand and Malaysia. Singapore has not yet been designated a major drug transit country, although it is developing into a significant transshipment point. There have been several cases in which heroin has been placed in containers in Thailand and shipped to Singapore, where it is then re-labelled 'Product of Singapore' and given a new termination bill of lading. Drugs transit Singapore *en route* to the USA, Europe, Australia and other destinations.<sup>161</sup>

Although Thailand, together with Laos and Myanmar, is one of the Golden Triangle countries, illicit opium cultivation is no longer a serious problem in the country. However, owing to its relatively advanced economy and highly developed infrastructure, Thailand remains a primary export transit route for the bulk of the illicit drugs produced in the Golden Triangle. Road building and other development projects in North Thailand have facilitated access to Thailand's transportation system for international trafficking organisations, especially those with ties to producers in neighbouring Myanmar. Whilst there has been an increase in the use of alternate routes (e.g. through China), Thailand's well established drug trafficking groups, with their contacts in Hong Kong, Taiwan and China, and its superior transportation infrastructure and international cargo-handling facilities - both sea and air - are factors that will persuade the major traffickers to continue to use Thailand as their principal transit route. These same roads have also enabled insurgent ethnic groups in Myanmar (many of which are engaged in the drug trade) to import commodities from Thailand and from the outside through Thailand. These materials include the essential chemicals used in heroin processing.<sup>162</sup> Thailand connects neighbouring countries with the international market for drugs. Thai and Thai-Chinese financiers engage in trafficking from Laos and from ethnic minority insurgent groups in Myanmar. Burmese insurgents finance their resistance activities by producing and protecting narcotics. Relationships between Thai military and civilian officials and these groups, formed for security and economic reasons, foster production and trafficking, and some of them have been involved in narcotics activities. Traffickers from Western nations produce and market marijuana in Thailand, while Thai producers cultivate cannabis and opium poppy domestically. Golden Triangle opium is refined into morphine and heroin in Myanmar and trafficked

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160 Country Report presented by the Republic of the Philippines at the 9<sup>th</sup> *United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, Cairo, Egypt, 29 April - 10 May 1995, pp. 11-12.

161 The 1995 INCSR, p. 282.

162 The 1995 INCSR, pp. 288-289.

through Thailand into the international market. Highway and rail systems serve as conduits for drugs flowing from the Golden Triangle. Narcotics leave by passenger and car aircraft, ocean-going transport vessels and fishing trawlers, and in commercial vehicles bound for Malaysia.<sup>163</sup>

Scattered opium cultivation goes on throughout the northern provinces of Vietnam, which too are being increasingly used as a transit point for Southeast Asian heroin. This has been confirmed by seizures of Golden Triangle heroin on its way to Vietnam from Thailand and by seizures of onward shipments from Vietnam to Taiwan, Hong Kong, and Southern China - all major transit points for Southeast Asian heroin *en route* to the USA and other Western markets. Heroin shipped from Vietnam has been seized in Australia, and there are suggestions that heroin may also be entering or leaving Vietnam across the northern border with China.<sup>164</sup>

Besides drug-related crimes, numerous other criminal activities are pursued by criminal groups in this sub-regional area. For example, regarding the Philippines in particular, one finds kidnapping for ransom, drug trafficking, illegal logging, arms trafficking, the white slave trade, illegal gambling and white-collar crimes. Rapid technological development in the Philippines has made the criminal syndicates in the country better organised. Now highly sophisticated and more firmly entrenched, they have expanded both their power and wealth. The country's location on the Asia-Pacific rim provides transnational organised crime syndicates with a strategic hub for their operations. In 1994, the number of organised crime groups in the Philippines dropped substantially to around 780, which was 27% lower than in 1993, and membership likewise declined by 32%. Metropolitan Manila accounted for 49% of identified crime syndicates.<sup>165</sup>

Other criminal activities widespread in the Philippines are international gun-running and car thefts. Gun-running is flanked by the clandestine shipment of firearms, crew-served weapons, ammunition and explosives for communist insurgents and Muslim secessionists. Locally-made and cheap handguns proliferate, while smuggled firearms enter the country through the 'southern back door' via commercial aeroplanes and shipping lines. Illegal trafficking in local guns is easier and more lucrative because legitimate marketing documents are not required and because prices are cheaper. Many of these sophisticated and high-powered weapons are transported into the

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163 The 1991 INCSR, p. 269; See also, "Probe into Burmese Drug Barons and Failed Hong Kong Bank", in *Agence France Presse*, 17 July 1991; "Worries Arise over Sri Lanka Push to Become Mini-Switzerland of Asia", in *Thomson's International Banking Regulator*, 23 August 1991, Volume 1, Number 31, p.1.

164 The 1995 INCSR, p. 297.

165 Country Report presented by the Republic of the Philippines at the 9<sup>th</sup> *United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, Cairo, Egypt, 29 April-10 May 1995, p. 11.

country by visiting *balikbayans* (Filipino immigrants visiting the country), sometimes in collaboration with local gun-running syndicates.

An upsurge in motor vehicle theft in 1994, with the majority of incidents occurring in Metro Manila, was attributed to a flourishing market in which clandestine car dealers work with syndicates in the manufacture of fake car registration certificates.<sup>166</sup>

Human trafficking is an illegal activity widespread not only in Philippines, but also in Thailand. It is a extremely common practice and yields large profits with low risks, although it deprives would-be migrants of their most basic rights and places their lives in jeopardy. Women and children especially are highly vulnerable as major sources of earnings in the markets for prostitution and sex tourism. Numerous Filipinos from the provinces fall victim to illegal recruitment agencies, while many others are preyed on by foreign syndicates involved in the prostitution trade in Asian and European countries. "In recent years, cases of international trafficking of Filipinos for purposes of prostitution have increased, as more and more women are either duped or have opted to leave the country illegally in search for work. In almost all of the cases, the women are led to believe that they would work as entertainers, singers or domestic workers, only to be deceived once they reach their destinations"<sup>167</sup>.

Human trafficking gangs are among the largest and best-organised foreign crime rings operating in Thailand. Thailand "has... become the major importer, exporter and transit country in the international trafficking sex trade. This is a highly organised and lucrative trade involving millions of girls and women world wide. It is organised by international and Asian criminal groups where the girls often use false passports and documents and travel through Malaysia, Hong Kong and/or Singapore to reach their destinations. There have been recent reports that girls as young as 13 are being trafficked and sold into brothels in Australia and Japan."<sup>168</sup>

The extensive presence of foreign criminal organisations in Thailand has given rise to considerable alarm. Gangs of other nationalities commit various crimes, including banknote forgery, fraud, robbery, drug trafficking and human smuggling. According to police officers in charge of combating

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166 Country Report presented by the Republic of the Philippines at the 9<sup>th</sup> *United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, Cairo, Egypt, 29 April-10 May 1995.

167 The Government of the Republic of Philippines, "Trafficking of Women in Migration: Perspective from the Philippines", paper presented at *Eleventh IOM Seminar on International Response to Trafficking in Migrants and the Safeguarding of Migrant Rights*, Geneva, 26-28 October 1994, p. 4.

168 The source of this data is *End Child Prostitution in Asian Tourism* (ECPAT): they can be found in the Internet site of this organisation, at the following address: [www.rb.se/ecpat/country.html](http://www.rb.se/ecpat/country.html).



organised crime, in recent years the majority of serious crimes in Thailand have been committed by foreigners rather than locals: at the top of the police watch list are criminals from mainland China, Taiwan, Hong Kong and Singapore. Other gangs comprise Singaporeans, Burmese, Pakistanis, Syrians, Bangladeshis, Sri Lankans, Filipinos, Indonesians, Germans and British nationals. Moreover, higher-profile but deadly Yakuza rings have infiltrated Japanese businesses in Thailand. Gangs from the former Soviet Union have also moved in, along with Russian prostitutes. According to a report recently compiled by Thai police, Chinese gangs are involved in almost every type of crime, ranging from drug trafficking, prostitution and labour abuse to robbery and human smuggling.<sup>169</sup> Pakistani and Syrian gangs engage in money and passport forgery, jewellery theft and bank robbery, while Bangladeshi and Sri Lankan gangs specialise in forged passports. Philippine and Indonesian rackets organise burglaries of hotels and jewellery outlets, according to police investigations. The bulk of the crime committed by Burmese gangs involves drug trafficking and the smuggling of people to third countries. German and British criminals are mainly engaged in white-collar crime, fraud, and forced prostitution

Turning to another regional question, it appears that Vietnamese gangs are overtaking the Chinese Triads as the most serious threat raised by Asian organised crime. These gangs are involved in the distribution of heroin, extortion, illegal gambling and armed robberies.

Money laundering takes place mostly in Malaysia (which is fast becoming a major financial centre in the Asia-Pacific), Singapore and Thailand. Money laundering not only jeopardises the financial sector, it also affects the political stability and development of the country. Numerous offshore financial institutions have set up in Malaysia, and the country may become a safe haven for money to be laundered, with its deleterious consequences. The various factors that make Singapore the world's fifth largest financial centre, and a likely successor to Hong Kong as the major regional centre after 1997, make it attractive to money launderers. With increasing exploitation of its myriad money remittance shops, many of them with international connections, Singapore has become a country of choice for some Asian traffickers seeking to take advantage of its highly developed and very prosperous financial sector. The belief that drug and other money is laundered through both the bank and non-banking financial systems is based upon cases in Australia, Hong Kong and elsewhere with Singaporean connections, but Singapore itself is a major money laundering centre.<sup>170</sup> Thailand has the potential to become Asia's next significant money-laundering centre, not only because of the large volume of drug deals taking place in the country,

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169 "Thailand: Beware of foreign odds", in *Bangkok Post*, 19 February 1995.

170 The 1995 INCSR, pp. 529-530.

but also because of attempts by neighbouring financial centres to curb money laundering. While not regarded in the past as a significant money-laundering centre, Thailand has the all necessary ingredients to become one: it is a hub for heroin and other drug trafficking from the Golden Triangle; it has a two-tiered system of banks and underground financial syndicates, both with ties to the major financial centres (Hong Kong and Singapore); it has inadequate narcotics controls, inadequate cross-border currency monitoring, and no anti-money laundering laws. Significant money laundering already occurs in the Thai-Malaysia border area.

### 2.2.7 Oceania

Organised crime in Oceania can be treated jointly with Australia, given its pre-eminent importance in the region. In fact, New Zealand, another major country in Oceania, shows little sign of being affected by a significant and internationally-based organised crime problem. Some important Oceanian islands are also used for money-laundering activities or for drug trafficking.

Australian organised crime is both fluid and multi-dimensional, with numerous organised criminal groups involved in a wide range of criminal activities as and when opportunities present themselves. This is due to the growing entrepreneurial form assumed by organised crime in the country: criminal structures are far less rigid, and individual contacts and networking among criminals appear to be expanding, both within Australia and internationally.

Criminal organisations operating in Australia engage in both traditional and new illicit activities. Some of them are based on ethnic membership, notably the Chinese Triads, Vietnamese organised crime groups, Japanese Yakuza, Italian organised crime, Lebanese criminal groups, Rumanian organised crime groups and Colombian cocaine syndicates. Four Triad groups have been identified as active in Australia: the 14K, which is well entrenched in Sydney but has offshoots in Melbourne; the Big Circle, which has been noticeably active in both Melbourne and Sydney; the Sun Yee On, linked to an alleged blackmailing racket in Melbourne; and the Wo Yee Tong and Wo Shing Wo, sub-groups of the Wo Group, members of which have been identified in Melbourne. These criminal groups are involved in illegal gambling, extortion, blackmail and heroin shipments to Australia. Vietnamese organised crime groups have grown rapidly in size and power over the last ten years. Their illegal operations include heroin distribution, extortion, illegal gambling and armed robberies. Australian Federal Police investigations have also revealed the presence of Japanese Yakuza members in Australia, although their visits to the country are believed to be linked with efforts to launder crime proceeds through real estate. In 1994, the police launched a state-wide campaign against Japanese organised crime syndicates believed to be trying to gain a foothold in the north-eastern part of Aus-

tralia.<sup>171</sup> Italian organised crime is a national network, held together by family relationships, lifelong friendships and mutual interests, rather than being a corporate structure. Its activities are centred on the commercial cultivation of cannabis and related money laundering, but some members are also involved in the importing and distribution of heroin and cocaine, extortion, and other offences. According to reports in the 1970s, a number of family-based Lebanese criminal networks were involved in the importing of heroin and hashish into Australia from Lebanon. As regards Rumanian organised crime groups, in a number of states members of this small community are involved in the importing of small amounts of heroin and social security fraud. Colombian Cartels have used Australia as a transit country for both drugs and money, and they are also trying to expand their share of the Australian cocaine market.<sup>172</sup>

The methods used to move drugs into Australia are unclear because trends are mostly estimated, as in other countries, from law enforcement seizures, which do not always accurately represent the real magnitude of the trade. It appears that the bulk of cannabis and amphetamines consumed in Australia are produced domestically, while heroin and cocaine are imported: heroin comes mainly from the Golden Triangle region in Southeast Asia, and cocaine is imported from South America. Many of Australia's seizures involving imported drugs are made in Sydney, the country's main international gateway and drug distribution centre. However, the long unprotected coastline in other parts of the country, particularly around the North, also provides cause for concern. It was once argued that Australia's isolated position on the world map raised a barrier against trafficking. But modern shipping and Australia's strong economy have removed geographical barriers and made Australia as vulnerable to illicit drug importation as any country in Europe or North America. The volume of legitimate cargo arriving in Australia is expanding, and the countries of Asia are rapidly becoming its most important trading partners.

In the last few years Australia has seen the increased presence of Asian criminal groups, which are more dangerous than the longer-established European ones. The country has been singled out by Asian crime groups as a "soft target" in particular for the quickly growing and increasingly lucrative heroin trade. The growth of Asian-based crime and increasing evidence of co-operation among groups, particularly the more violent Vietnamese gangs, has not been at the expense of other organised crime. These various criminal groups have developed "considerable expertise" and each now specialises in

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171 *The Asahi News Service*, June 1994.

172 G. Hughes, "Australia: Australia's Crime Links with Asia", in *The Age*, Melbourne, 10 September 1995.

its own narrow area of crime, with little direct competition.<sup>173</sup> Greater economic clout resulting from the expanding markets for heroin and cocaine has enabled organised crime groups to buy information and the latest technology with which to protect their operations and to bribe corrupt officials. The use of corrupt or compliant individuals is often crucial to the success of money-laundering schemes.

A number of significant organised criminal networks are active internally to the Australian economy, mainly in the large cities. For this reason, too, Australia is increasingly a target for money laundering activities,<sup>174</sup> especially since the tightening of banking regulations in the Caribbean, Latin America and Europe. The main source of the money laundered in Australia is the narcotics trade, but other forms of criminal activity generate profits which require laundering: fraud, illegal gambling, illegal prostitution, large-scale robbery and theft, arms smuggling, organised motor vehicle theft, shoplifting, and breaking and entering. Japanese Yakuza and Vietnamese gold smugglers are actively engaged in money laundering, as are Hong Kong Triads and ethnic Chinese from Hong Kong and Singapore.<sup>175</sup> In 1994, a number of major money-laundering cases involved the transfer of funds to countries in Asia, particularly Hong Kong.<sup>176</sup>

The Australian casino industry, luxury goods industry and gold bullion industry are particularly vulnerable to money laundering. Apart from the CTRA (Cash Transactions Reporting Agency) reporting requirements for purchases with more than A\$ 10,000 cash, the exporting of gold bullion is not at present reportable under the Reports Act and there is no requirement for bullion dealers to check the identities of customers purchasing and selling bullion. Moreover, Australian lawyers (solicitors) are required to keep records of all transactions relating to their trust accounts, but (although they process large-scale cash transactions) they are not included in the definition of “cash dealer” in the Report Act and are therefore not required to lodge suspect or significant transaction reports. This renders solicitor trust accounts vulnerable to laundering schemes, particularly ones involving real estate transactions.

Besides Australia, also the Solomon Islands, Vanuatu and Nauru are susceptible to the laundering of illicit proceeds. In the Solomon Islands, the laundering of drug money is an established practice run by Australians and Chinese, and appears to be tolerated by politicians who treat it as a source of

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173 Ibidem.

174 “Australia: Clean up of Money Laundering”, in *Australian Financial Review*, 27 February 1995.

175 The 1994 INCSR, p. 535.

176 Information provided by FATF.

development funds.<sup>177</sup> Vanuatu and Nauru are among the countries whose economies are used to convert drug profits into financial assets of apparently legitimate origin. Vanuatu is a sophisticated offshore banking centre with connections to Thailand, Hong Kong, England and France. Vanuatu has registered more than 100 foreign banks, and incorporated more than 1,000 companies, over 600 of which are considered offshore companies. It is believed that traffickers use these corporations to establish bank accounts in countries other than Vanuatu, and then launder money through these foreign banks.

In Guam, by contrast, there is no evidence that major criminal groups are using the country to launder drug money.<sup>178</sup> However, Guam is still the most significant transshipment point in the Pacific insular area for heroin moving from Southeast Asia to the USA. Its location, less-sophisticated drug detection equipment, and access to the US Postal System, make Guam a prime location for traffickers wishing to break a large shipment of drugs down into smaller loads for transport.

New Zealand is a completely different case. Owing to its relative isolation, and close control by the police, New Zealand is not likely to become a major drug producing, trafficking, or money laundering country. It is not a major international banking centre and the scale of money laundering activity in the country is believed to be low, although there is evidence that some laundering of drug funds and proceeds from commercial crime does take place.<sup>179</sup>

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177 “Pacific Islands: locking the criminals out of the Paradise”, in *Australian Financial Review*, 21 November 1991.

178 “Drugs in the Pacific On Rise; But Federal Combat Bucks Are Tight”, in *States News Service*, 29 July 1991.

179 The 1994-1995 FATF Report.

# 3 International Responses to Organised Crime

## 3.1 A tightening web of international co-operation

The growing concern regarding the development of organised crime, considered in the previous chapter, has been translated in an increasing number of international initiatives dealing with this issue. These initiatives, which are described in this chapter, have influenced those enacted at the domestic level and which are considered, in turn, in chapter Four.

On the criminals' side their transnational development is mainly due to:

- their wish to set a distance between the location in which the illicit activity is conducted and the place from which they direct their operations, making it more difficult for law enforcement agencies to reach the core of the organisation;
- their wish to diversify their activities among several countries in order to maximise opportunities and minimise the “law enforcement risk”. In particular, they develop tactical alliances with local criminal groups, taking advantage of their expertise and local range of action, and they exploit the internationalisation of financial systems to conduct money-laundering operations, thereby concealing the origin of illicit profits;
- their wish to respond to the international development of police and judicial co-operation.

On the other side, the role of international organisations, both governmental and non-governmental, is to overcome the problems that arise among countries because of legislative discrepancies and inefficient co-operation (in information-sharing, in joint investigations, in the provision of assistance in legal procedures - such as testimony-taking, locating persons and freezing forfeitable assets - and in extraditing criminals). Their aim is to ensure that rapid national action should not be hampered by the laborious mechanism of supra-national policies.

This chapter illustrates the actions of the major international organisations against organised crime (United Nations, Council of Europe, G7/P8, European Union, Organisation for Economic Co-operation and Development, Organisation of American States) and other initiatives taken at the international level, from the World Ministerial Conference on Organised Transnational Crime held at Naples, Italy, in November 1994 onwards. Furthermore, the most recent bilateral agreements on the same issue will be considered.

## 3.2 The role of international organisations in the fight against organised crime

### 3.2.1 United Nations

The United Nations has always played a central role in the fight against organised transnational crime in all its specific manifestations, for example corruption, money laundering, and trafficking in illegal migrants.

The main multilateral instrument in the fight against organised crime is the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This Convention is a law enforcement instrument and contains provisions requiring the development of international co-operation in the fields of extradition, asset forfeiture, mutual legal assistance, co-operation among the law enforcement agencies of member-states, control of precursor and essential chemicals and crop eradication. One hundred and fifty countries have to date signed the Convention, which is a significant demonstration of consensus. The thirteen governments that are signatories to the Convention but have not yet taken steps to become a party include: Austria, Gabon, the Holy See, Indonesia, Israel, Jamaica, Kuwait, Maldives, Mauritius, New Zealand, Philippines, Switzerland and Zaire. As of 1997, forty-five governments had neither signed the Convention nor become a party to it: Andorra, Anguilla, Armenia, Aruba, Benin, Bermuda, British Virgin Islands, Cambodia, Cape Verde, Central African Republic, Chad, Comoro Islands, Congo, Djibouti, DPR Korea, Estonia, The Gambia, Georgia, Haiti, Hong Kong, Iceland, Iraq, Kazakhstan, Kiribati, Korea, Laos, Lesotho, Liberia, Liechtenstein, Mali, Marshall Islands, Micronesia, Mongolia, Mozambique, Namibia, Papua New Guinea, Samoa, San Marino, Sao Tome and Principe, Singapore, South Africa, Taiwan, Tajikistan, Thailand, Turks & Caicos, Vanuatu and Vietnam.<sup>1</sup>

In recent years the United Nations has taken several further steps in the fight against organised crime.

To help address the problem of the progressive internalisation and sophistication of criminal groups, in 1994, at the World Ministerial Conference on Organised Transnational Crime held in Naples, Italy, UN member States adopted the Naples Political Declaration and Global Action Plan against Organised Transnational Crime, with a view to strengthening and improving *“national capabilities and international co-operation against organised transnational crime and [to] laying the foundations for concerted and*

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1 The 1997 INCSR.

*effective global action against organised transnational crime and the prevention of its further expansion*".<sup>2</sup>

The Political Declaration and Action Plan points out the necessity for a generally accepted definition of organised crime and the need to highlight its main structural characteristics and *modus operandi*. In order to prevent and combat the phenomenon, reliable statistics and information are necessary, as well as substantive, procedural and regulatory legislation, and organisational structures. Further to national action, particular importance is placed on international co-operation. In this regard, bilateral and multilateral assistance must be improved, as well as agreements and conventions on extradition, mutual legal assistance, intelligence-gathering, and exchange and co-operation at the prosecutorial and judicial levels. It is important that all these issues be tackled at the regional level, in order to devise appropriate regional strategies to prevent the criminal groups operating in a particular region from spreading their activities further afield. Since profit is the main goal of criminal organisations, the Action Plan also urges member states to criminalise money laundering, to adopt legislative measures for the seizure and confiscation of illicit proceeds, and to heighten the transparency of financial systems.

As regards the further development of international instruments, the Ministerial Conference requested the Commission on Crime Prevention and Criminal Justice to examine the feasibility of drawing up a convention against organised transnational crime. Moreover, the Commission was given the task of monitoring the follow-up and implementation of the Political Declaration and the Action Plan, to "*translate it into practice to the widest possible extent at national, regional and international levels*".

The UN General Assembly approved the Naples Political Declaration and Global Action Plan<sup>3</sup> in its resolution 49/159. Moreover, the Economic and Social Council, in its resolution 1995/11 of 24 July 1995, requested the Commission on Crime Prevention and Criminal Justice to ensure and monitor their full implementation, and asked the Secretary-General to canvass the views of governments on the opportunity and impact of instruments, such as a convention against organised transnational crime. In the same resolution, the Council proposed the creation of a central data bank of information on existing legislation, regulatory measures and organisational structures directed against organised crime. In pursuance of these resolutions, a Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Action Plan was convened in Buenos Aires in November 1995. The Work-

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2 UN Economic and Social Council, "Draft Resolution. Naples Political Declaration and Global Action Plan against Organised Transnational Crime", in *World Ministerial Conference on Organised Transnational Crime*, Naples, Italy, 21-23 November 1994, UN doc. E/CONF.88/L.4.

3 UN doc. A/49/748, annex, chap. 1, sect. A.



shop called for increased technical co-operation, strategic co-ordination, legislative action and other measures to combat organised crime. In order to promote national and regional action, the Workshop adopted the Buenos Aires Declaration on Prevention and Control of Organised Transnational Crime.<sup>4</sup>

At its fifth session in 1996, the Commission on Crime Prevention and Criminal Justice continued to review the implementation of the Action Plan. In its resolution 1996/27 of 24 July 1996, the Economic and Social Council requested the Secretary-General to assist in the implementation of the Action Plan, to continue with the collection and analysis of information on the structure and other aspects of organised crime, and to provide technical assistance to member-states requesting it. In its study on the feasibility of drawing up an international convention, the Council requested the Secretary-General to take account of the Buenos Aires Declaration. The same resolution set up the Working Group on the Implementation of the Political Declaration and Global Action Plan against Organised Transnational Crime and gave it the task of assisting the Commission in implementing the Action Plan.

The Intergovernmental Expert Group is also taking an important part in development of an international instrument against organised transnational crime. During the Ninth United Nations Congress on the Prevention of Crime and Treatment of Offenders<sup>5</sup>, in resolution 2, entitled “International co-operation and practical assistance for strengthening the rule of law: development of United Nations model instruments”, the Commission on Crime Prevention and Criminal Justice was urged to consider establishing an intergovernmental expert group to analyse practical recommendations for the development of mechanisms of international co-operation, as well as the development of model legislation on extradition. The Intergovernmental Expert Group Meeting on Extradition, convened by the Secretary-General in accordance with Economic and Social Council resolution 1995/27, was held in Italy in December 1996.<sup>6</sup>

On 12 December 1996, the General Assembly adopted resolution 51/120, which requested the Secretary-General to invite all states to state their opinions on the elaboration of a convention on organised crime, taking into

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4 UN Economic and Social Council, *Recommendations of the Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Action Plan Against Organised Transnational Crime*, Buenos Aires, 27-30 November 1995, UN doc. E/CN.15/1996/2/Add.1, annex.

5 Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cairo, Egypt, 29 April-8 May, 1995.

6 Intergovernmental Expert Group on Extradition, Siracusa, Italy, 10-13 December, 1996.

account a draft UN framework convention introduced by the Government of Poland.<sup>7</sup>

In April 1997, a meeting<sup>8</sup> in Italy on the same issue discussed a draft framework convention against organised crime, together with the opinions of governments.<sup>9</sup> The necessity for a clear and specific common definition of organised crime was stated, together with a list of offences to be covered by it (namely fraud, money laundering, extortion and usury, kidnapping, computer crimes, illicit trafficking in children, murder and infliction of injury and trafficking in illegal firearms).

On 21 July 1997, during its 36th plenary meeting, the Economic and Social Council adopted resolution 1997/22, which requested the Intergovernmental Group of Experts - then elaborating the preliminary draft of the convention against organised crime - to take account of existing international instruments, the United Nations draft framework convention presented by the Government of Poland, and the reports of the Working Group on the Implementation of the Naples Declaration and Action Plan. The Council recommended that priority be given to the following issues:

“(i) *Measures for judicial and police co-operation, particularly in relation to mutual assistance, extradition, money laundering and confiscation of illicit assets, protection of witnesses, information sharing, training and other forms of technical assistance;*

[...]

(ii) *Provisions related to criminal offences, particularly in the area of criminal associations, conspiracy and money laundering;*”<sup>10</sup>.

It also recommended that consideration be given to specific provisions relating to crimes such as trafficking in children and illegal migrants, corruption, theft of motor vehicles, and offences related to firearms.

One of the most important issues, the scope of organised crime to be covered by the convention, is still to be agreed upon. Another open question is to what extent the convention will deal with the criminalisation of membership in a criminal organisation. The convention shall in all probability cover such issues as extradition, mutual legal assistance, co-operation between law enforcement and judicial personnel, money laundering, and the freezing, seizure and confiscation of the proceeds of crime.

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7 UN doc. A/C.3/51/7, annex.

8 The Informal Meeting on the question of the elaboration of an international convention against organised transnational crime was held at Palermo, Italy, from 6 to 8 April 1997.

9 UN doc. E/CN.15/1997/7/Add.1.

10 UN Economic and Social Council resolution 1997/22, *Follow-up to the Naples Political Declaration and Global Action Plan against Organised Transnational Crime*.

Furthermore, the United Nations has always been active in the fight against the specific criminal conduct typical of organised criminal groups. Specific manifestations of organised crime, such as bribery and corruption, the smuggling of illegal migrants and the illicit traffic in children, were addressed at the sixth session of the Commission on Crime Prevention and Criminal Justice.

On 24 July 1995, the Economic and Social Council adopted resolution 1995/10 on criminal justice action against the organised smuggling of illegal migrants across national borders. It condemned the practice of smuggling illegal migrants, which is an activity which frequently involves highly organised criminal groups with international ties. Moreover, it emphasised that a significant number of countries still lack criminal legislation on the issue.<sup>11</sup>

On 12 December 1996, the General Assembly adopted resolution 51/62 entitled “Measures for the Prevention of the Smuggling of Aliens”. The United Nations Declaration on Crime and Public Security, contained in resolution 51/60, is of particular relevance, since articles 1 and 7 (d) of the Declaration specifically refer to organised trafficking in persons and the organised smuggling of migrants across borders.<sup>12</sup>

The United Nations has also given high priority to the problems created by spreading corruption. In accordance with General Assembly resolution 49/157, the Commission on Crime Prevention and Criminal Justice took consideration of the recommendations of the Ninth UN Congress on the Prevention of Crime and Treatment of Offenders, the background papers of which included the draft international code of conduct for public officials<sup>13</sup>. The Economic and Social Council adopted resolution 1995/14, requesting the Secretary-General to finalise the draft code on the basis of consultations with governments. In the same resolution the Council urged states to develop and implement anti-corruption measures in the same resolution. In December 1996, the General Assembly adopted the International Code of Conduct for Public Officials<sup>14</sup>. According to this Code, a public office is a position entailing the duty to act in the public interest. The code focuses on issues concerning the conduct of public officials, such as: (a) conflict of interest and disqualification; (b) disclosure of assets; (c) acceptance of gifts or other favours; (d) confidential information; (e) political activity. With resolution

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11 UN Economic and Social Council, *Measures to combat the smuggling of illegal migrants*, report of the Secretary-General, UN doc. E/CN.15/1996/4.

12 UN Economic and Social Council, *International co-operation in combating transnational crime: smuggling of illegal migrants*, report of the Secretary-General, UN doc. E/CN.15/1997/8.

13 UN doc. A/CONF.169/14, annex I.

14 General Assembly, Resolution 51/59, *Action against Corruption and the International Code of Conduct for Public Officials*.

51/191, the General Assembly also adopted the United Nations Declaration against Corruption and Bribery in International Commercial Transactions.

In July 1997, the Crime Prevention and Criminal Justice Division organised the African Regional Ministerial Workshop on Action against Organised Crime and Corruption in Senegal. At its final meeting, the Workshop unanimously adopted the Dakar Declaration, in which the Ministers and Representatives of the African States expressed their concern about the increase and expansion of organised criminal activities, corrupt practices and bribery in international commercial transactions.<sup>15</sup>

As regards drug trafficking, the United Nations Drug Control Programme (UNDCP) actively promotes adherence to and implementation of international drug control treaties, such as the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. In 1996, the UNDCP provided assistance to 15 countries in the drafting and implementation of national drug control legislation and regulations.<sup>16</sup>

### 3.2.2 The Council of Europe

Founded in 1949, the Council of Europe is the oldest and most extensive European political organisation, and it covers every policy area except defence. Based in Strasbourg, France, it comprised, on 1 April 1997, 40 member countries<sup>17</sup>. Applications for membership from five European states had been submitted and are being examined.

The action of the Council of Europe against crime is channelled through the European Committee on Crime Problems (CDPC). Particular attention is paid to the functioning of Council of Europe penal law conventions, permanently monitored by the Expert Committee on the Operation of European Conventions in the Penal Field (PC-OC).

The most recent action against organised crime is the final declaration and action plan adopted by the presidents and prime ministers attending the 2nd Summit of the Council of Europe,<sup>18</sup> held in October 1997. The issues covered

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15 UN Crime Prevention and Criminal Justice Division, *United Nations Action against Corruption and Bribery*, September 1997.

16 Annual Report of the Secretary-General on the Work of the Organisation, UN doc. A/52/1.

17 Member states are: Albania, Andorra, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and the United Kingdom.

18 The Second Summit of the Council of Europe was held in Strasbourg on 10 and 11 October 1997.

deal with democracy and human rights, social cohesion, security, democratic values and cultural diversity, the Council's structures and working methods. From the point of view of the present analysis the issue of security is of particular importance. The countries attending the meeting agreed as follows: to strengthen international co-operation in the fight against terrorism; to boost co-operation between member states in combating corruption, including its links with organised crime and money laundering; to strengthen co-operation in tackling problems related to the use of and trafficking in illicit drugs; and to ensure common standards for the protection of children undergoing or at risk of inhuman treatment, the aim being to prevent all forms of exploitation including child pornography.<sup>19</sup>

In view of the specific problems faced by Central and Eastern European countries in their fight against organised crime, and in particular against money laundering and corruption, the Council of Europe has launched two major projects.

The "Octopus" Project is a joint venture with the Commission of the European Communities (Phare Democracy Programme). Its aim is to evaluate the situation in sixteen Central and Eastern European countries with regard to legislation and practice against corruption and organised crime. The programme was established in June 1996 and is set to run for eighteen months. The countries involved in the project are: Albania, Bulgaria, Czech Republic, Croatia, Estonia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Russian Federation, Slovakia, Slovenia, "the Former Yugoslav Republic of Macedonia" and Ukraine.

The Octopus project consists of four stages. The first comprises evaluation of the problems of organised crime and corruption, followed by an assessment of the efficiency of the countermeasures already taken by the countries considered. As a result of this first stage, recommendations and guidelines for action, as well as actions to promote co-operation at regional level, have been formulated for each of the beneficiary states by five Council of Europe experts. The third and fourth stages consist respectively of a follow-up on implementation of the recommendations and guidelines formulated by the experts and final evaluation of the impact of the project, with further proposals.<sup>20</sup>

The second initiative is the Programme for mutual evaluation of anti-money laundering measures in countries not covered by the Financial Action Task Force (FATF), about to be launched by the Council of Europe's

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19 "Main points of Council of Europe declaration, action plan, in *Agence France Presse*, 11 October 1997.

20 Joint Programmes between the Council of Europe and the Commission of the European Communities, <http://www.coe.fr/ong/ejoint.htm>.

European Committee on Crime Problems with help from FATF itself.<sup>21</sup> This is an evaluation programme for countries that have already adopted legislation against money laundering. Prior to an on-site visit to each state, the country involved is required to respond to a questionnaire drafted by the Council of Europe. Selected experts then visit the country for discussions with government officials, agencies, ministries and institutions concerned with the issue, in order to describe findings and possible improvements in their reports.<sup>22</sup>

The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (opened for signature on 8 November 1990) came into effect on 1 September 1993.

By 1 September 1997 the Convention had been ratified and was in force in sixteen countries: Austria, Australia, Bulgaria, Cyprus, the Czech Republic, Denmark, Finland, France, Ireland, Italy, Lithuania, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom. The convention has also been signed by Belgium, Croatia, Germany, Greece, Iceland, Liechtenstein, Luxembourg, Moldova, Portugal, Romania, San Marino, Slovenia, Spain and Ukraine. Several countries (Germany, Poland, Russia and Slovenia) are preparing their legislation for ratification.

Moreover, two Committees of experts have been created to conduct constant analysis of organised crime. The results of this analysis will be shared among member states to facilitate the development of a comprehensive European strategy to harmonise legal systems. Accordingly, a new *Committee of experts on criminal law and criminological aspects of organised crime* (PC-CO)<sup>23</sup> was established on 1 April 1997, and given the brief to examine the features of organised crime, to identify loopholes in international co-operational instruments, and to propose new strategies. For this purpose, in June 1997 a questionnaire was drafted to collect statistics on the nature, structure and activities of organised crime groups in each country. As the next step, the committee will focus on special means of investigation of criminal activities, and on international co-operation and ways to improve it.

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21 P. Leuprecht, "Council of Europe's Fight against Corruption and Organised Crime", speech delivered at the 21<sup>st</sup> *Conference of European Ministers of Justice*, Prague, 10-11 June 1997.

22 Council of Europe, "Green Light: Plan to Fight Money Laundering in Eastern and Central Europe".

23 The Committee is comprised of one expert by the Government of each of the following member States: Albania, Austria, Belgium, Bulgaria, Czech Republic, Estonia, France, Hungary, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Slovenia, Spain, "the former Yugoslav Republic of Macedonia", as well as two scientific experts appointed by the Secretariat.

It is evident from analysis of recent trends in organised crime that criminals are making more frequent use of telecommunications, computers and the Internet. With a view to studying this new trend, a *Committee of experts on crime in the Cyberspace (PC-CY)* has been established and is already in operation.

Finally, in June 1997, the Council of Europe adopted a draft recommendation on the protection of witnesses which seeks to strike a balance between the needs of an efficient criminal justice system and the rights of the defence.<sup>24</sup> The recommendation deals in particular with ensuring the safety of witnesses giving testimony against organised crime.

Organised crime is often linked with corruption. As Peter Leuprecht stated in his speech at the 21st Conference of European Ministers of Justice,<sup>25</sup> “*taken separately, organised crime and corruption already constitute major threats to our fundamental values. The combination of the two, whenever it occurs, can only have a devastating effect on democracy, rule of law and human rights*”.

At the 19th Conference of European Ministers of Justice (Valletta, 1994), the Ministers recommended the establishment of a multi-disciplinary group on corruption, in the belief that the effective fight against corruption requires improves international co-operation among countries and international institutions. Following these recommendations, the *Multidisciplinary Group on Corruption (GMC)* was set up in September 1994. In the following year it prepared a draft Programme of Action against Corruption which was adopted by the Committee of Ministers in November 1996 in the form of an action programme for 1996-2000 which covers the following key points:

- definition of corruption;
- criminalisation of corruption offences and proceeds;
- development of codes of conduct;
- introduction of civil liability for corruption;
- definition of roles and responsibilities of institutions and individuals; and
- measures to prevent and fight corruption.<sup>26</sup>

The GMC has begun drafting two international conventions against corruption: one is a “classical” convention dealing with criminal law, the other is a “framework” convention to be supplemented with protocols or other legal instruments on specific topics. At the time of writing, June 1997, the draft criminal law convention on corruption is in its second reading. The text

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24 P. Leuprecht, *op. cit.*

25 “Links between Corruption and Organised Crime”, 21<sup>st</sup> Conference of European Ministers of Justice, 10-11 June 1997.

26 Council of Europe, “The Fight against Organised Crime: Corruption and Money Laundering”, *Second Summit of the Council of Europe*, Strasbourg, 10-11 October 1997,

provides for the co-ordinated criminalisation of a large number of corruption offences as well as international co-operation to combat them.<sup>27</sup>

The draft framework convention - which covers subjects ranging from the criminalisation of corrupt behaviour and the prohibition of the tax-deductibility of bribes to public tendering and the responsibility of the public administration - has three main purposes. The first is to set out the principles underpinning the fight against corruption. The second is to establish a process for the identification and subsequent application of the international measures necessary to combat corruption. Finally, the convention seeks to provide a follow-up mechanism which will reinforce the parties' undertakings.<sup>28</sup> This is intended to be an "open" convention, which means that non-member states may accede to it. The link between the convention and the additional instruments may be a monitoring system which provides an overview of the steps taken by governments and ensures a minimum degree of harmonisation among measures.

In the field of civil law the GMC undertook, in October 1996, a study on the feasibility of drafting a convention on civil remedies for the compensation of damage caused by corruption.

As finally regards drug trafficking, on 31 January 1995, the Council of Europe opened for signature an Agreement on Illicit Traffic by Sea, implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The member states of the Council of Europe, having expressed their consent to be bound by the 1988 UN Convention, agreed on "co-operation to the fullest extent possible to suppress illicit traffic in narcotic drugs and psychotropic substances by sea" (article 2, n. 1). According to this Agreement, should a Party suspect on reasonable grounds that a vessel flying its flag or without nationality is engaged in or being used for the commission of a relevant offence, it may request the assistance of other Parties to suppress its use for that purpose.

This Agreement is open for signature by the member-states of the Council of Europe that have already expressed their consent to be bound by the 1988 UN Convention. By 30 May 1997, five member-states had signed the Agreement (Greece, Italy, Norway, Sweden and the United Kingdom). The Agreement will come into effect "*on the first day of the month following the expiry of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Agreement*" (article 27, n. 3).

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27 Progress Report on the work of the Multidisciplinary Group on Corruption (GMC) for the attention of the 21<sup>st</sup> Conference of European Ministers of Justice, Prague, 10-11 June 1997.

28 Progress Report on the work of the GMC, *op. cit.*



### 3.2.3 G7/P8

Since its institution, the G7 - the group comprising the major industrialised countries (the United States, Japan, Germany, France, the United Kingdom, Italy and Canada) - has been constantly involved in the prevention and repression of organised crime. The most significant actions undertaken by the G7 have been, first, establishment of the FATF and (together with Russia,<sup>29</sup> formation of the so-called 'P8' - Political 8) the creation of a Senior Experts Group on Transnational Organised Crime which has enacted forty recommendations to combat international organised crime.

The FATF was created at the July 1989 Paris Economic Summit by the leaders of the G7 countries and the President of the European Commission in order to develop an international strategy against money laundering. The first concrete action taken by this international body was the issue, on 19 April 1990, of a report setting out forty recommendations for national action. According to this report, countries should also move to criminalise money laundering related to drug offences and extend this offence to the laundering of assets deriving from other crimes; they should require financial institutions to verify the identity of customers and of the persons on whose behalf they are acting; they should keep records of transactions, including currency transactions; they should develop adequate money-laundering programmes; they should co-operate with each other, especially by providing mutual legal assistance in the suppression of drug trafficking, money laundering and related financial crimes.

Since issuing the report, the FATF has continued to monitor application of its forty recommendations, which have been updated to reflect the evolution of problems. By means of meetings, special expert groups and contacts with other nations (especially Russia, Czech Republic, Asian countries) FATF has been collecting information on money-laundering problems and strategies world-wide in order to develop a policy for the future. Several important tasks were accomplished in 1996-1997, in particular a broad-ranging review of money-laundering trends and techniques which also examined the threat posed by the development of new technologies in payment methods. The FATF currently comprises 26 members: Austria, Australia, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, UK, United States, the European Union (represented by the European Commission) and the Gulf Co-operation Council.

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29 Starting with the 1994 Naples Summit, the G7 and Russia have met as the P8 ("Political 8"), following each G7 Summit. The Denver Summit of the Eight in 1997 marks full Russian participation in all but financial and certain economic discussions.

Linked to FATF is the Caribbean Financial Action Task Force (CFATF). This organisation - which involves most of the countries of the region and which met for the first time on 5-6 November 1992 - is supported by five FATF Members (the USA, the UK, France, the Netherlands and Canada). Its principal task is to implement the FATF's 40 recommendations, as well as nineteen other points which relate specifically to the Caribbean's regional problems. Caribbean Basin Government ministers endorsed these recommendations in Jamaica in November 1992, on the advice of the Caribbean Drug Money Laundering Conference held in Aruba on June 8-10. Participating Governments include Antigua and Barbuda, Aruba, the Bahamas, Brazil, British Virgin Islands, Canada, Cayman Islands, Colombia, Dominican Republic, France, Grenada, Jamaica, Mexico, Netherlands, Netherland Antilles, Panama, St. Vincent and the Grenadines, Turks and Caicos, Trinidad and Tobago, United Kingdom, United States and Venezuela. The importance of the Caribbean Financial Action Task Force in regional anti-money laundering initiatives continues to increase. In October 1996, the CFATF adopted a Memorandum of Understanding which formalises the organisation by stating its mission, objectives and membership requirements. A total of 21 members, including several Central American countries new to the CFATF, signed the Memorandum, while others are expected to sign it in the near future.

On 15-17 June 1995, in Halifax, Canada, with the purpose of combating transnational organised crime more efficiently, the P8 established "*a group of senior experts with a temporary mandate to look at existing arrangements for co-operation both bilateral and multilateral, to identify significant gaps and options for improved co-ordination and to propose practical action to fill such gaps.*"<sup>30</sup> The first action taken by the Senior Expert Group on Transnational Organised Crime was to issue, on 12 April 1996 in Paris, forty recommendations for the combating of transnational organised crime. During the G7 Summit held in Lyon, on 29 June 1996, the P8 countries adopted a political declaration in which they acknowledged the findings of the Senior Experts Group on Transnational Organised Crime and endorsed the forty recommendations prepared by the group. They also invited all countries to adopt the recommendations and asked the Senior Experts Group to follow implementation of these recommendations closely, and to report to the next Summit.

The recommendations pursue different goals: to support institutions that deal with organised crime; to encourage countries to sign existing conventions; to counter the enormous threat posed by narcotic traffickers; to share information and expertise to detect, investigate and prosecute criminals; to increase operational co-operation among relevant agencies; to enhance, in

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30 See *Chairman's Statement at Halifax Summit (Political Declaration)*, 17 June 1995.

particular through extradition, the bringing of fugitives to justice; to provide the broadest possible mutual legal assistance; to deprive criminals of their illicit profits by adopting appropriate legislation and by implementing recommendations of the Financial Action Task Force (FATF); and to adopt the necessary legislative and regulatory measures to combat corruption. The recommendations thus cover a vast range of issues. For example, just to cite the most important ones:

- “*in cases where a criminal activity occurs in several countries, States with jurisdiction should co-ordinate their prosecutions and the use of mutual assistance measures in a strategic manner so as to be more efficient in the fight against transnational criminal groups*” (recommendation no. 7);
- States should work together to develop, through treaties, arrangements and legislation, a network to simplify extradition (recommendation no. 8);
- “*States should provide effective protection for individuals who have given or agreed to give information or evidence, or who participate or who have agreed to participate in an investigation or prosecution of an offence, and of the relatives and associates of those individuals who require protection, because of risk to the security of the person*” (recommendation no. 13);
- States should consider setting up reciprocal arrangements to protect witnesses and other endangered persons (recommendation no. 14);
- “*States should consider adopting appropriate measures to ensure the protection of witnesses during criminal proceedings. These might include such methods as testifying by telecommunications or limiting the disclosure of the address and identifying particulars of witnesses. Consideration should be given to the temporary transfer as witnesses of persons in custody, enlargement of the admissibility of written statements, and the use of modern technology, such as video links, to overcome some of the current difficulties with obtaining the testimony of witnesses located outside the prosecuting State*” (recommendation no. 15);
- “*States should review their laws in order to ensure that abuses of modern technology that are deserving of criminal sanctions are criminalised and that problems with respect to jurisdiction, enforcement powers, investigation, training, crime prevention and international co-operation in respect of such abuses are effectively addressed*” (recommendation no. 16);
- all states should criminalise the smuggling of persons, endeavouring to simplify as much as possible the exchange of information on the transnational movement of organised criminals and on forged and stolen documents used by traffickers, considering the most effective means for its communication and improving the quality of travel documents (recommendation no. 24);
- Considering the relevance and effectiveness of techniques like electronic surveillance, undercover operations and controlled deliveries, states should review the domestic arrangements for such techniques, facilitating international co-operation and exchanging experience in their use (recommendation no. 26);
- “*States should consider adopting legislative measures for the confiscation or seizure of illicit proceeds from drug trafficking and other serious*

*offences, asset forfeiture, as required, and the availability of provisional arrangements, such as the freezing or seizing of assets, always with due respect for the interest of bona fide third parties. States should also consider the introduction of arrangements for the equitable sharing of such forfeited assets”* (recommendation no. 30);

- States should enhance, through legislation and regulation, the fight against corruption, establishing standards of good governance and legitimate commercial and financial conduct, and developing co-operation mechanisms to suppress corrupt practices (recommendation no. 32).
- States should take adequate steps to join or to implement existing international Conventions drawn up to fight transnational organised crime; while the G7 countries commit themselves to supplementing existing Conventions and to the adoption of new instruments in response to the changes in the organised criminal activities (recommendations no. 35-36).

As a follow-up to the 1996 G7 Lyon Summit, the Senior Experts Group set out its plans for future action in the sector of alien smuggling and fraudulent documents. The Group decided to take action to improve co-operation and the exchange of information on legal and law enforcement standards, and on security matters relating to national identification documents<sup>31</sup>.

Mention should also be made of the most recent summit meeting of the P8 (Washington DC, 10 December 1997), at which an action plan was drawn up to prevent the infiltration of computer networks by organised criminal rings. The countries concerned undertook to equip themselves with *ad hoc* internal instruments and to improve international co-operation in the sector.<sup>32</sup>

### 3.2.4 The European Union<sup>33</sup>

The European Union provides criminals with a fertile ground for transnational activities. The Treaties that established the European Community and the subsequent Treaty of Maastricht grant total freedom in the movement of capital, goods, services and persons across the borders of the member-states. It is therefore understandable that organised criminal rings should take advantage of the situation, specialising in transnational illegal behaviour and exploiting the opportunities for movement within the Union provided by

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31 G7-P8 - Senior Expert Group on Transnational Organised Crime, *Implementation of Recommendation 35, 36 and 37, Alien Smuggling and Fraudulent Documents, Project Based Action, Follow-up of Lyon Summit, List of Participants*, Lyon, France, 16 October 1996.

32 Agence Europe, *Action plan against crime*, Brussels, 16 December 1997.

33 This paragraph mainly draws on European Commission, Directorate-General X, Task Force on Priority Information Project, *Security Supporting an Area of Freedom in Europe*, Brussels, 1997. B Nascimbene (ed.), *Da Schengen a Maastricht. Apertura delle frontiere, cooperazione giudiziaria e di polizia*, Giuffrè editore, Milano, 1995.

loopholes in national legislation. Consequently, criminal groups tend to organise themselves transnationally, setting up illicit enterprises, moving criminal goods and criminal proceeds from one country to another, establishing bases in the most secure countries, and entering the illegal sectors in which they perceive high opportunities for gain, with low risks.

Drug trafficking, money laundering, fraud (especially against the European Union's interests), corruption, trafficking in aliens and their exploitation are all forms of illicit behaviour that constitute a mounting threat not only to the individual states of the Union, but also to the European Community as a whole. Money laundering in particular is facilitated by new technologies. The institutions of the European Union define the phenomenon as follows: "organised crime is increasingly becoming a threat to society as we know it and want to preserve it. Criminal behaviour is no longer the domain of individuals alone, but also of organisations that pervade the various structures of civil society, and indeed society as a whole. Crime is increasingly being organised across national borders, also taking advantage of the free movement of goods, capital, services and persons. Technological innovations such as Internet and electronic banking turn out to be extremely convenient vehicles either for committing crimes or for transferring the resulting profits into seemingly licit activities. Fraud and corruption take on massive proportions, defrauding citizens and civic institutions alike".<sup>34</sup>

How can the European Union bodies react to this complex situation? Given that the existence of the European Union itself, with its rules and aims, is a push factor that spreads organised crime, are the European institutions equipping themselves with the means necessary to combat organised crime? Unfortunately, despite the overall supra-national power assigned to European institutions within the economic framework of the Union, as far as crime, legal co-operation on criminal matters and immigration are concerned, the situation is highly diversified.

Only since November 1993, in fact, has Title VI of the Maastricht Treaty, the so-called 'third Pillar' of the Union, made specific provisions in the field of justice and home affairs which cover immigration, drug addiction and co-operation in civil, penal, customs and policing matters, creating a special decision process. The member-states do not wholly surrender their sovereignty in these areas to the European Union, because decisions continue to be taken unanimously. Previous informal co-operation has now been transformed into an institutionalised system. That is to say, this particular decision-making standard lies midway between the traditional Community system involving all the European institutions on the one hand, and intergovernmental co-operation at the diplomatic level on the other.<sup>35</sup> While the

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34 *Action Plan to combat organised crime*, adopted by the European Council on 28 April 1997, part I, chapter 1, paragraph 1.

European Parliament and the Commission perform only a minor role in the process, the European Council, again by unanimous vote, may adopt joint actions and decisions (which bind the member-states to the extent that they contain explicit obligations) and establish Conventions. It is mainly within this legal framework that the fight against organised crime at the European Union level is to be conducted.

It is difficult to provide a detailed description of the most recent actions taken against organised crime within the European Union. The criteria adopted here are the illegal activities against which such action is directed, the importance of the instruments adopted, and the methods of prevention and control used.

Since drug trafficking and addiction are problems that afflict all the member-states, efforts have been made to enhance international co-operation and the exchange of information. The action by the European Union in this sector is based on the 1994 Communications from the Commission to the Council and on the conclusions of the Cannes and Dublin European Councils (held in June 1995 and December 1996 respectively). The purpose of these instruments is to combat drug trafficking, to reduce drug demand, and to develop co-operation among countries.

The European Council held in Dublin on 13 and 14 December 1996 stressed the need to harmonise laws, develop further co-operation among law enforcement agencies, pay careful attention to synthetic drugs, and fully implement the EU Directive on money laundering, considering its application outside the classical financial sector.<sup>36</sup> Also emphasised was the role of information, education and training on health matters in reducing drug demand. As regards co-operation among countries, the European Council also gave prominence to the implementation of international agreements, notably the Vienna Convention against Illicit Trafficking in Narcotics Drugs and Psychotropic Substances, and to improve the exchange of information among partners on drugs (especially with countries of Latin America, the Caribbean, Central Asia and Central and Eastern Europe).

Following this advice, a joint action<sup>37</sup> was issued on the approximation of the laws and practices of the police, customs services and judicial authorities, on combating drug addiction, and on the prevention of illegal drug trafficking. This joint action, further to the harmonisation of legal, police and customs systems within the Union in order to suppress illegal drug trafficking, urges the member-states to: combat illicit movements of narcotic drugs

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35 U. Draetta, *Elementi di diritto comunitario*, Giuffrè editore, Milano, 1994, pp. 44-45.

36 This Directive (n. 91/308, 10 June 1991) is aimed at preventing traffickers from laundering their money into European legal financial circuits, asking Member States to criminalise this behaviour and financial institutions to be more strict in controlling the identity of their clients.

37 Joint action 96/750/JHA, adopted on 17 December 1996.

and psychotropic substances within the Community, including “drug tourism”; punish serious drug trafficking offences with the most serious penalties available in their penal systems; endeavour to change their legislation or to close legal loopholes as regards synthetic drugs; take appropriate steps to combat the illicit cultivation of plants containing ingredients with narcotic properties, and make it an offence publicly and intentionally to incite or induce others, by any means, to commit offences involving the illicit use or production of drugs. On 16 December 1996, the Council issued a resolution intended to halt the illicit cultivation and production of drugs within the European Union. On 20 December 1996, the Council passed a resolution on sentencing for serious drug offences, asking member-states to ensure custodial sentences for serious illicit trafficking in drugs. On the same date, the Council adopted a further joint action on participation by member-states in a strategic operation planned by the Customs Co-operation Council to combat drug smuggling on the Balkan route. Recently, on 16 June 1997, the European Council enacted a joint action relating to information exchange, risk assessment and the control of new synthetic drugs.

As far as drug-related police co-operation is concerned, a special unit - the European Drug Unit (EDU) - was created by a ministerial agreement in June 1993. The initial task of this unit was to solicit the exchange of information on narcotics and money laundering. EDU will be examined in more detail later when Europol and police co-operation are discussed.

As regards fraud against the European Union’s financial interests, in 1994 the European Commission established UCLAF (Unité contre la lutte anti fraude), a special unit responsible for the prevention of fraud affecting the budget of the Union. This type of fraud, which seriously damages not only the proper functioning of the Community but also the interests of all member-states, is controlled by organised criminal networks. UCLAF has both legislative and operational functions, being responsible not only for the devising of measures to protect EU funds, but also, more generally, for developing a strategy against economic and financial crime prejudicial to the Community, as well as operational countermeasures against counterfeiting. Another task of UCLAF is that of information-gathering and analysis: it publishes a yearly report on the results of its activities.<sup>38</sup>

The most noteworthy action taken by the European Union in the suppression of fraud consists of the following measures:

- Community regulations aimed at co-ordinating administrative co-operation between member- states and the European Commission in the areas of customs and agriculture;

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<sup>38</sup> See, as an example, European Commission, Protection of Community Financial Interest, *Fight Against Fraud - Annual Report 1996*, Luxembourg, 1997.

- a Directive, issued on 18 December 1995, on protection of the European Community’s financial interests which, amongst other things, defines acts damaging to the Union’s budget;
- the Convention on the Protection of the European Communities’ Financial Interests (adopted by the Council on 26 July 1995), which provides a common definition of fraud and binds the member-states to punishment of such behaviour (and its instigation or abetting) as a criminal offence in their national penal systems.

Bearing in mind that corruption is an extremely common criminal activity practised by organised criminal networks, and in particular considering the prejudicial effects of corrupt practices at both the Community and national level, on 26 May 1997 the European Council drew up the Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union. The aim of this Convention is to strengthen judicial co-operation in the fight against corruption. The Convention gives a legal definition of active and passive corruption, obliging member-states to punish it as a criminal offence if committed either by national officers or by European Union officials. Those committing the offence or instigating it should be punished by effective, proportionate and dissuasive criminal penalties, including, in the most serious cases, imprisonment, which may lead to extradition. Other rules envisage the jurisdiction of the member-states and their total co-operation in the investigation, prosecution and punishment of such offences when they involve more than one country.

A criminal activity provoking increasing alarm within the European Union is the trafficking in migrants. The trade is largely controlled by powerful criminal organisations able to operate internationally, to corrupt officials, to counterfeit documents, and to control black labour markets. Women and children are particularly vulnerable because they are easy commodities for sexual exploitation in the host countries. The European Union institutions have recently grown increasingly aware of this burgeoning criminal activity.

A Communication setting out immediate steps to be taken against child pornography on the Internet, and a Green Paper on the Protection of Minors and Human Dignity were adopted by the European Commission on 16 October 1996. A Communication was issued one month later by Commissioner Anita Gradin on Trafficking in Women for the Purpose of Sexual Exploitation, the aim of which was “to stimulate a broad policy debate and to promote a coherent European approach to this issue....such an approach should include measures to improve both international and European co-operation, whilst putting more effective measures in place at national level”.<sup>39</sup>

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<sup>39</sup> A. Gradin, *Communication on Trafficking in Women for the Purpose of Sexual Exploitation*, Brussels, November 1996.



The European Council, for its part, has adopted:

- a joint action which extends the Europol Drug Unit’s mandate to include trafficking in human beings<sup>40</sup>;
- a joint action to establish a programme for information-sharing among member-states on the trade in human beings and the sexual exploitation of children (the so-called STOP programme).<sup>41</sup> The STOP programme will develop co-ordinated initiatives to combat the trade in human beings and the sexual exploitation of children, the abduction of minors, and the use of telecommunications to trade in human beings and sexually exploit children. The specific aim of the programme is to provide training, exchange programmes, meetings and seminars, studies and research and the dissemination of information to judges, public prosecutors, law enforcement agencies, civil servants, or the public services dealing with the phenomenon;
- a joint action introducing a programme of training, exchanges and co-operation in the field of identity documents<sup>42</sup> (the so-called SHERLOCK programme), run by the European Commission, with a view to reinforcing action against the false papers used by clandestine immigration networks.

Another method to fight organised crime within the European Union is to strengthen legal co-operation among all member-states. For example, facilitating and simplifying the extradition procedures for criminals accused of particular offences should accelerate the prosecution of persons involved in organised criminal rings operating transnationally. The Convention on Simplified Extradition Procedure between the Member States of the European Union, adopted by the European Council on 10 March 1995, aims to abolish a number of bureaucratic formalities when the person in question agrees to extradition. The Convention on Extradition between the Member States of the European Union, adopted by the European Council of Dublin on 27 September 1996, seeks to facilitate extradition. The requested state may not refuse a demand for extradition if the offence is punishable under the law of the requesting States by a maximum period of at least 12 months’ imprisonment and by the law of the requested Member State with a penalty of a maximum period of at least 6 months’ imprisonment. Should the offence be classified in the requesting state as conspiracy or association to commit an offence, the requested state cannot refuse extradition by claiming that its penal law does not provide for the offence if the purpose of the conspiracy or association is to commit crimes related to terrorism and drug trafficking or other forms of illicit behaviour deleterious to individual freedom or which create a collective danger. It is in any case necessary for these acts to be punishable by the requesting member-state with a penalty amounting to at

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40 Joint action 96/748/JHA, adopted on 16 December 1996.

41 Joint action 96/700/JHA, adopted on 29 November 1996.

42 Joint action 96/637/JAI, adopted on 28 October 1996

least 12 months' imprisonment. Extradition may not be refused on the grounds that the person requested is a national of the requested member-state. These two Conventions are currently being ratified by the EU member-states.

Furthermore, an important European Union Convention on Mutual Assistance in Criminal Matters is currently being drafted. The aim of the Convention is to reduce the difficulties deriving from cross-border searches for evidence and to simplify and accelerate procedures by making it easier to obtain evidence from other countries, by improving and intensifying cross-border investigations, and by enabling contact and information exchange among investigators and judges in different member-states.

In view of the fact that criminal groups are able to prosper because of discrepancies among the legal systems of the member-states of the European Union, it is evident that a key instrument in combating organised crime is the inter-state harmonisation of penal legislation. A good example is provided by the Council Resolution on Individuals who Co-operate with the Judicial Process in the Fight against International Organised Crime, adopted on 20 December 1996. In this case the Council calls on all member-states to take appropriate measures to encourage persons participating or having participated in a criminal organisation of any kind to co-operate with the judicial process. By 'co-operation' is meant the disclosure of essential information to the investigation authorities, or collaboration with the authorities in depriving criminal groups of their illegal resources or their criminal proceeds. Information may concern the composition or the activities of the criminal network, its links with other illegal groups, or offences committed or about to be committed by it. Following the advice of the Council, member-states are required to introduce rules granting benefits to individuals who break away from criminal organisations and help the authorities in the gathering of evidence essential for identification of the perpetrators of crimes and their arrest. Close protection is to be granted to these collaborators and to their families or other individuals who, as a consequence of their revelations, are likely to be exposed to serious and immediate danger. The Council also stresses the need for judicial assistance among states as regards trials involving individuals co-operating in the fight against international organised crime. Also, keeping clearly in mind that the instrument of the resolution is not binding for Member States, the relevance of the Council's act must be stressed, for it represents a moral imperative and a well-defined way to be followed in addressing criminal organised networks operating in Europe.

The elaboration of an efficient strategy against international criminal syndicates should result in combating it on an international scale, and it should allow for the circulation of police information and knowledge among the law enforcement agencies of the Member States at least as fast as organised crime gangs cross national borders. The European Union institutions have always felt the need for police co-operation in the fight against organised crime and have acted accordingly by formally establishing Europol and its first step - the European Drug Unit (EDU).

In June 1991 in Luxembourg, Heads of Government or State of all Member States stressed, upon an initiative of the German Chancellor Helmut Kohl, the urgency for creating a force called Europol. Pending the drafting of the Convention establishing Europol, in June 1993 an embryonic form of Europol, the European Drug Unit (EDU), was set up through a ministerial agreement. The initial task of EDU was the exchange of information among law enforcement agencies on narcotics and money laundering. With a joint action adopted by the European Council on 10 March 1995<sup>43</sup>, the role of EDU was better defined and this unit was put in charge of the exchange of information and intelligence in relation to illegal organised criminal activities affecting two or more States and of helping police and relevant national agencies to combat them. The criminal activities to be covered by EDU were illegal drug trafficking, illicit trafficking in radioactive and nuclear substances, crimes involving clandestine immigration networks and illicit vehicle trafficking. With another joint action, on 16 December 1996<sup>44</sup>, the Council extended the mandate of EDU also to the trafficking in human beings. The creation of EDU was principally caused by the bureaucratic slowness linked to the birth of Europol.

The Convention on the Establishing of a European Police Office (Europol Convention), in fact, was drawn up by the European Council on 26 July 1995, but as of this writing (December 1997) it has not yet been ratified by all Member States. On the basis of this Convention, and with the aim of improving the effectiveness of the competent authorities in the Member States and co-operation among them in preventing and combating terrorism, unlawful drug trafficking and all other forms of serious transnational crime, Europol has been endowed with different tasks: to facilitate the exchange of information among Member States; to obtain, collate and analyse information; to notify the competent authorities of Member States without delay of any information and connections detected among criminal offences; to aid investigation within the Member States and to maintain a computerised system for collecting information. In each Member State a national unit should be established or designed and should serve as a liaison body between Europol and national authorities.

At the Dublin European Council of 13 and 14 December 1996, conscious of the need for a serious and co-ordinated approach by the Union to organised crime problems, the Council expressed the hope of rapid ratification of the Europol Convention by Member States. In this Council further decisions have been taken, the most important of which was the establishing of a High Level Group to draw up an action plan with specific recommendations covering all the aspects of organised crime.

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43 Joint action 95/73/JHA, adopted on 10 March 1995.

44 Joint action 96/748/JHA, adopted on 16 December 1996.

This action plan, drafted by the High Level Group, was adopted by the Council on 28 April 1997 and can be considered the most serious planning of the activities of the Union against organised crime. The remainder of this chapter will deal at greater length with this action plan because of its relevance, its recent adoption, its broad and detailed range of proposals and its long-term programme, which involves all European Union institutions and Member States in active future collaboration. The guidelines, expressed in recommendations, that the European Union and Member States should follow in enhancing their struggle against organised crime are very clear.

In the field of police co-operation, each Member State should ensure a high level of co-ordination among all its law enforcement agencies, providing a single central contact law enforcement agency to exchange information and maintain contact with the authorities of other Member States (recommendations no. 1-2). The action plan also asks for rapid ratification and implementation of the Europol Convention, stressing that the powers of Europol should be broadened to include the following: “(a) *Europol should be enabled to facilitate and support the preparation, co-ordination and carrying out of specific investigative actions by the competent authorities of the Member States...*; (b) *Europol should be allowed to ask Member States to conduct investigations in specific cases...*; (c) *Europol should develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organised cross-border crime...*; (d) *Full use should be made of possibilities of Europol in fields of operational techniques and support, analysis and data analyses files (for instance registers on stolen cars or other property)...*; (e) *Access by Europol may be sought to the Schengen Information System or its European successor*” (recommendation no. 25). The possibility for Europol to collaborate with third countries and international organisations should also be taken into account (recommendation no. 24).

The Commission, the Council and Member States should develop a comprehensive policy against corruption, trying to enhance the transparency in public administration. This object should be achieved primarily through prevention elements, “*addressing such issues as the impact of defective legislation, public-private relationships, transparency of financial management, rules on participation in public procurement, and criteria for appointments to positions of public responsibility...*”, but also not forgetting “*the area of sanctions, be they of a penal, administrative or civil character, as well as the impact of the Union’s policy on relations with third States*” (recommendation no. 6). The Commission, the Council and Member States, together with professional organisations concerned, should always study and diffuse methods for reducing the susceptibility of liberal professions and other professions to organised crime, for example through the adoption of codes of conduct (recommendation no. 12). “*The Member States and the European Commission should ensure that the applicable legislation provides for the possibility for an applicant in a public tender procedure who has committed*

*offences connected with organised crime to be excluded from participation in tender procedures conducted by Member States and by the Community. In this context it should be studied whether and under what conditions persons who are currently under investigation or prosecution for involvement in organised crime could also be excluded. Specific attention should be paid to the illicit origin of funds as a possible reason for exclusion” (recommendation no. 7).*

As far as fraud against the financial interests of the European Union is concerned, recommendation no. 10 of the action plan states that: *“the Member States should consult regularly the competent services of the Commission with a view to analysing cases of fraud affecting the financial interests of the Community, and deepening the knowledge and understanding of the complexities of these phenomena within existing mechanisms and frameworks. If necessary, additional mechanisms shall be put in place with a view to arranging such consultations on a regular basis. In this context, future relations between Europol and the Commission’s anti-fraud unit (UCLAF) should be taken into account.”*

The action plan also considers the necessity for countries to harmonise national legal systems by adopting the same offences all over the European Union. Thus, on the basis of recommendation no. 17, *“the Council is requested rapidly to adopt a joint action aiming at making it an offence under the laws of each Member State for a person, present in its territory, to participate in a criminal organisation, irrespective of the location in the Union where the organisation is concentrated or is carrying out its criminal activity.”*

On the basis of recommendation no. 9, the structural funds of the Union should be employed to avoid large cities of the Union from becoming grounds for organised criminal groups. *“Particular attention should be given to groups not fully integrated in society, since these may be vulnerable targets for criminal organisations.”*

In the field of money laundering and confiscation of the proceeds of crime, the action plan (recommendation no. 26) suggests that the Council, the Commission and Europol endeavour to:

- improve the international exchange of data;
- make as general as possible the criminalisation of the laundering of the proceeds of crime, considering the opportunity of extending this offence to negligent behaviour;
- introduce in the legal systems of the Member States confiscation rules that allow confiscation regardless of the presence of the offender, who could have deceased or absconded;
- extend the obligation posed by article 6 of the European Directive on Money Laundering to all offences linked with serious crimes and to persons and professions different from financial institutions;
- address the issue of money laundering committed via the Internet and other electronic means of payment (it should be remembered that recom-

- mendation no. 5 calls for a cross-pillar study in the field of high-technology crime);
- try to reduce the use of cash payments and cash exchanges by natural and legal persons from serving to cover up the conversion of the proceeds of crime into other property;
  - consider common strategies to be undertaken in the fields of economic and commercial counterfeiting and in the falsification of banknote and coins, also in view of the introduction of a single currency.

The action plan (recommendations no. 13-14) also calls for the rapid ratification of the most relevant international Conventions concerning criminal matters, such as (to cite some examples) the European Convention on Extradition (Paris 1957), the Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg 1978); the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg 1990), the Agreement on Illicit Traffic by Sea, implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Strasbourg 1995), the Convention on the Fight against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna 1988). It also warmly invites Member States to ratify all the relevant European Union Conventions: the Convention on Simplified Extradition Procedure between the Member States of the European Union; the Europol Convention, the Convention on the Protection of the European Communities' Financial Interests, the Convention on the Use of Information Technology for Customs Purposes; the Convention relating to Extradition between the Member States of the European Union; and the Protocols to the Convention on the Protection of the European Communities' Financial Interests.

In conclusion, the Amsterdam Treaty should also be mentioned which, modifying yet again the essential structure of the Union, could also be considered a first attempt to follow some of the recommendations of the action plan. Although signed on 21 September 1997, this Treaty has not yet come into force, for it is waiting for ratification by all Member States. In many of its points the Amsterdam Treaty focuses on criminal problems, requiring different levels of co-operation among law enforcement and judicial authorities of Member States, and between them and Europol, and calling for the creation of a European research, documentation and statistical network on cross-border crime within five years. On the basis of the articles of the Amsterdam Treaty, Europol can ask Member States to conduct joint investigations in specific cases; Member States are invited to set up joint crime-fighting teams that can be supported by Europol; easier extradition of criminals among Member States should be made possible, and all over the Union a common minimum standard for rules and penalties in the field of organised crime should be adopted.

### 3.2.5 The Organisation for Economic Co-operation and Development (OECD)

The OECD, established on 30 September, 1961, replaced the Organisation for European Economic Co-operation.<sup>45</sup> The twenty founding members of the OECD were: Austria, Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Japan joined in 1964, Finland in 1969, Australia in 1971, and New Zealand in 1973. Yugoslavia was granted special status in 1961, although its changing political status has not yet been addressed by the OECD. INTERPOL, the Bank of International Settlements and the Customs Co-operation Council all participate as observers.<sup>46</sup>

The supreme body of the Organisation, the Council, includes one representative from each member country which also maintains a permanent delegation and the functions of which is that of a normal diplomatic mission, headed by an ambassador. The ambassador represents his or her country at the meetings of the Council. Once a year, the Council meets at the Ministerial level, under the chairmanship of one or more Ministers from the member countries elected annually to this function. The Council produces Decisions (legally binding on member countries) and Recommendations (expressions of political will).<sup>47</sup>

Numerous international organisations that are not part of OECD, participate in OECD activities. The Commission of the European Communities usually participates in the work of the OECD under a protocol signed at the same time as the OECD Convention. The European Free Trade Association may also send representatives to OECD meetings. In addition, the OECD maintains official relations with the International Labour Organisation, the Food and Agriculture Organisation, the International Monetary Fund, the World Bank, the General Agreement on Tariffs and Trade, the International Atomic Energy Agency and a large number of United Nations organisations. In 1962, the OECD concluded special arrangements establishing close links with the Council of Europe.<sup>48</sup>

The OECD entertains close relationships with other international organisations; the twenty-four OECD members were among the first to join the FATF, which is physically hosted by OECD. Despite the apparent willingness

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45 For a discussion of the OECD recommendations, see OECD, "International Investment and Multinational Enterprises Minimizing Conflicting Requirements Approaches" of *Moderation and Restraint*. (1987).

46 The 1992 INCSR, p. 414.

47 The OECD in brief, pp. 1-17.

48 Ibidem.

of individual OECD countries to combat money laundering, the OECD has not published anything on the topics of money laundering, drug trafficking, or asset forfeiture. The OECD has, however, held meetings on these topics during the 1990-91 period.<sup>49</sup>

On 20 November 1997, OECD Member countries and five non-member countries, Argentina, Brazil, Bulgaria, Chile and the Slovak Republic, adopted a Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. This Convention<sup>50</sup> is the culmination of two years of OECD work on the problem of making bribery of foreign officials a crime. The Convention sets forth a standard for effective national laws to criminalise bribery of foreign public officials in international business transactions and a basis for effective international judicial co-operation.

The Convention deals with what, in the law of some countries, is called “active corruption” or “active bribery”, meaning the offence committed by the person who promises or gives the bribe, as contrasted with passive bribery, the offence committed by the official who receives the bribe. The Convention seeks to assure a functional equivalence among the measures taken by the Parties to sanction bribery of foreign public officials, without requiring uniformity or changes in fundamental principles of a Party’s legal system.

Article 1, “*the offence of bribery of foreign public officials*”, “*establishes a standard to be met by Parties, but does not require them to utilise its precise terms in defining the offence under their domestic laws. It is an offence within the meaning of article 1 to bribe to obtain or retain business or other improper advantage through bribery whether or not the company concerned was the best qualified bidder or was otherwise a company which could properly have been awarded the business. The conduct prescribed by article 1 is an offence whether the offer or promise is made or the pecuniary or other advantage is given on that person’s own behalf or on behalf of any other natural person or legal entity. It is also an offence irrespective of, inter alia, the value of the advantage, its results, perceptions of local custom, the tolerance of such payments by local authorities, or the necessity of the payment in order to obtain or retain business or other improper advantage*”.

As regards the sanctions, article 3 prescribes that “*the bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. The range of penalties shall be comparable to that applicable to the bribery of the Party’s own public official and shall, in the case of natural persons, include deprivation of liberty sufficient to enable effective mutual legal assistance and extradition. In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal*

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49 Ibidem.

50 This part is mainly based on the information provided by the web site [www.oecd.org](http://www.oecd.org)



*persons, that Party shall ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for bribery of foreign public officials”.*

Article 4 prescribes that, as regards the jurisdiction, “*each Party shall take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory. Each Party which has jurisdiction to prosecute its nationals for offences committed abroad shall take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official, according to the same principles*”.

In article 7, “*bribery of its own public official*” “*is intended broadly, so that bribery of a foreign public official is to be made a predicate offence for money laundering legislation on the same terms, when a Party has made either active or passive bribery of its own public official such an offence. When a Party has made only passive bribery of its own public officials a predicate offence for money laundering purposes, article 7 requires that the laundering of the bribe payment be subject to money laundering legislation*”.

Article 9 states that “*each Party shall, to the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance to another Party for the purpose of criminal investigations and proceedings brought by a Party concerning offences within the scope of the Convention and for non-criminal proceedings within the scope of the Convention brought by a Party against a legal person*”.

Article 10 states that “*a Party may consider the Convention to be a legal basis for extradition if, for one or more category of case falling within this Convention, it requires an extradition treaty. For example, a country may consider it a basis for extradition of its nationals if it requires an extradition treaty for that category but does not require one for extradition of non-nationals*”.

### 3.2.6 The Organisation of American States (OAS)

The Organisation of American States (OAS) was founded in 1890, and it is a multinational organisation dedicated to the process of peace and development in the Americas. The OAS is headquartered in Washington DC. It currently has 35 Member States; in addition, the Organisation has granted Permanent Observer status to 37 states as well as the European Union. The Organisation operates through agencies and institutions throughout the Western hemisphere. The OAS has made a significant effort in the area of the development and codification of international law, with its organs adopting over one hundred conventions regulating numerous aspects of public and private law. Over the last few years, especially through the Plan of Action of the Miami Summit held in December 1994, the OAS has also placed greater focus on the problem of illicit drugs and related crimes.

In the face of the growing drug problem, the OAS General Assembly established in 1986 the Inter-American Drug Abuse Control Commission (CICAD), charging it with a mandate to promote and facilitate close co-operation among member states in controlling illegal drug use, production and drug trafficking.

The work of the CICAD is guided by the principles and objectives set out in the Inter-American Program of Action of Rio de Janeiro Against the Illicit Use and Production of Narcotic Drugs and Psychotropic Substances and Traffic Therein, as well as in the provisions of the Anti-drug Strategy in the Hemisphere, approved in 1996. Its primary objectives are to expand and strengthen the member states' capacity to lower the demand for illegal drugs and prevent their use, to effectively combat illicit production and traffic therein, and to promote a suitable inter-American response by increasing regional activities involving research, information sharing, training of specialised personnel and reciprocal assistance.

In 1996, the CICAD comprised 29 member states: Argentina, the Bahamas, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Suriname, Trinidad and Tobago, the United States, Uruguay and Venezuela. At its twentieth regular session, the General Assembly added the membership of Barbados and Grenada to CICAD, effective as per 1 January 1997.

In 1991, the Inter-American Drug Abuse Control Commission created a Group of Experts which prepared model anti-money laundering laws for adoption by its members in order to harmonise differences in the legal systems of the region. "Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses," were approved by the CICAD in March 1992 and by the entire membership of the OAS in May 1992, and recommended for adoption by its members. The framework of the recommendations follows the Vienna Convention, and incorporates, whenever possible, the recommendations tendered by the Financial Action Task Force (FATF).

Also, since the Summit of the Americas Process began at the end of 1994, the Executive Secretariat has been active in the Summit Initiative to Combat the Problem of Illegal Drugs and Related Offences. Throughout 1995, the Executive Secretariat participated with the member states in the process of developing a draft Action Plan on Anti-Money Laundering Measures to be agreed upon by Ministers responsible for combating money laundering in all the countries of the hemisphere.

On 2 December, 1995 the Ministers met in Buenos Aires, Argentina, and agreed to recommend the Action Plan to their respective governments in furtherance of a co-ordinated hemispheric response to combat money laundering including specific items for consideration by the OAS, CICAD and its Expert Group in particular.

In June 1996, the Group of Experts was reconvened to that end and reached the following recommendations which were approved by the twentieth regular session of CICAD held in Buenos Aires, Argentina, in October 1996<sup>51</sup>, to the following effect:

- *“to institute on-going assessment procedures;*
- *to carry out an initial analysis of the information provided in the replies to the questionnaire. The analysis by the Group of Experts will first be provided to individual member states to ensure accuracy and then be published for distribution among member states of the Organisation;*
- *to consider in detail the desirability of countries establishing financial investigation units and, if so agreed, to make a recommendation to amend CICAD’s Model Regulations on Money Laundering accordingly;*
- *to develop a typologies exercise, including the collation and analysis of money laundering methods, patterns and trends. This information can be used to gain and exchange knowledge of the current money laundering situation and to suggest future counter-measures”.*

As regards the drug trafficking problem, at its sixteenth semi-annual session in October 1994 the OAS/CICAD issued the “Declaration of Santiago” which renewed the political commitment of the member states to support CICAD and strengthen hemispheric co-operation against drug trafficking and abuse. Meeting in Buenos Aires on its tenth anniversary, CICAD also approved a new Hemispheric Anti-Drug Strategy as a platform for enhanced drug control efforts in the twenty-first century. The new Anti-drug Strategy in the Hemisphere<sup>52</sup> (the Strategy), approved at CICAD’s twentieth regular session held in October 1996, represents a commitment to international co-operation to combat the drug problem, based on the principle of shared responsibility and the need for a policy that balances preventive and law-enforcement measures. CICAD’s action programme supports drug control activities region-wide in five priority areas and, among these, the “Legal Development” regards the measures to improve the capacity of member governments to prosecute drug-related crimes, and in particular, the development of legislation for the control of money laundering, arms trafficking, and the illegal diversion of precursor chemicals.

The Strategy was signed by representatives of some member states at the ministerial-level meeting held in Montevideo, Uruguay, in December 1996. Following the CICAD’s recommendations, the Hemispheric Anti-drug Strategy shall be applied in accordance with the following terms:

- *“the problem of drugs, which has become increasingly important in the world, manifests itself as a complex, shifting and global phenomenon;*

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51 CICAD/doc.816/96.

52 Anti Drug Strategy in the Hemisphere, resolution adopted by the OAS General Assembly at the sixth plenary session, held on 4 June 1997, AG/RES. 1458 (XXVII-O/97).

- *the problem of drug abuse and the demand for drugs, and the illicit production, distribution and trafficking of drugs, including synthetic or “designer” drugs, continue to be grave and interrelated. Sources of special concern are the negative consequences of illicit drugs and other controlled substances, and related offenses, which pose a serious threat to the health and integrity of the individual and the normal development of society (...);*
- *in view of the complexity and the global nature of the problem, the countries of the hemisphere recognise the need to strengthen international co-operation and for constant review and improvement of national policies, taking into account the particular circumstances of the phenomenon as it appears in each country;*
- *the Hemispheric Anti-drug Strategy addresses the drug problem from a global and multidisciplinary perspective. All countries of the hemisphere recognise that they share a responsibility for ensuring that a comprehensive and balanced approach is taken on all aspects of the phenomenon, taking into account their available capabilities and resources (...)*”.

The Anti-drug Strategy in the Hemisphere states that:

- *“dismantling criminal organisations and their support networks should be another of the key objectives of initiatives taken by the countries of the hemisphere against illegal drug trafficking and related crimes. Enforcing the law with respect to perpetrators, instrumentalities and proceeds from criminal activities is an effective deterrent to participation in these unlawful activities;*
- *the countries of the hemisphere will intensify their efforts to exchange information and gather evidence to enable them to bring to trial and sentence the leaders and other members of criminal organisations and their support networks, within the framework of full respect for due process of the law.*
- *the countries of the hemisphere recognise the importance of having modern legal systems for an effective strategy against the problem of illegal drug trafficking and related crimes and the need to have adequate extradition procedures;*
- *the countries of the hemisphere recognise that the smuggling of drugs, chemicals, weapons and explosives, and the cross-border movement of illicitly acquired assets by any means or method to avoid detection is a grave problem (...);*
- *the countries of the hemisphere also recognise that implementation of national programs and effective international co-operation in the area of information exchange, training and the conduct of operations to detect, track and confiscate these illicit shipments are important aspects of a comprehensive strategy to be developed with due respect for the sovereignty and territorial integrity of each country”.*

On 29 March 1996, 23 member states of the OAS, recognising that “*corruption is often a tool used by organised crime for the accomplishment of its purposes*”, signed the Inter-American Convention against Corruption.<sup>53</sup> This Convention is the first international instrument of its kind designed to promote and strengthen the development by each state party of the mechanisms needed to prevent, detect, punish and eliminate corruption; and to promote, facilitate and regulate co-operation among the states parties to ensure the effectiveness of the measures and actions to prevent, detect, punish and eliminate acts of corruption in the performance of public duties and acts of corruption specifically connected with those duties.

The purposes of the Convention are:

- *“to promote and strengthen the development by each of the States Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption and*
- *to promote, facilitate and regulate co-operation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance”.*

The States Parties have agreed to consider the applicability of measures within their own institutional systems to create, maintain and strengthen, among others:

- *“standards of conduct for the correct, honourable, and proper fulfilment of public functions”;*
- *“systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registration public”;*
- *“government revenue collection and control systems that deter corruption”;*
- *“laws that deny favourable tax treatment for any individual or corporation for expenditures made in violation of the anti-corruption laws of the States Parties”;*
- *“systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal systems”;*
- *“oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts”;*
- *“deterrents to the bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and*

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53 Inter-American Convention against Corruption, resolution adopted by the OAS General Assembly at the eighth plenary session, held on 7 June 1996, AG/RES. 1398 (XXVI-O96).

- have sufficient internal accounting controls to enable their officers to detect corrupt acts”;*
- *“mechanisms to encourage participation by civil society and non-governmental organisations in efforts to prevent corruption”.*

### 3.2.7 Other international initiatives in the fight against organised crime

This section aims to illustrate further steps taken by the international community against illegal criminal activities of organised crime, giving some more examples of international organisations (both governmental and non-governmental) and co-operational processes active in this context. In particular, attention focuses on: Interpol, the intergovernmental processes concerning migrant trafficking within Europe, the International Organisation for Migration (IOM), the Secretariat of the Inter-Governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC), the End Child Prostitution in Asian Tourism (ECPAT) and Transparency International (TI).

Interpol is an international police force, the task of which is to assist police authorities of the Member States (now almost all the nations of the world) in collecting and sharing information on criminality. In the last years the attention of Interpol had concentrated mainly on organised crime and on collateral criminal activities, such as money laundering, and on developing different forms of technical assistance for those states more at risk of criminal infiltration, such as the Eastern European states.

At the 64th session of Interpol’s General Assembly, held in October 1995, a resolution was unanimously adopted establishing the first major anti-money laundering declaration in the organisation’s history. The adoption of this major money laundering resolution by the member countries illustrates Interpol’s commitment to thwarting international financial crimes and their desire to strengthen international co-operation. The resolution recommends that Interpol member countries consider adopting national legislation that would:

- provide for the criminal prosecution of persons who knowingly participate in the laundering of proceeds derived from serious criminal activity;
- allow for the seizure of property, with sufficient legal investigative authority for law enforcement officials to identify, trace and freeze assets derived from illicit activities;
- allow for the reporting of unusual or suspect currency or other transactions by banks and other financial institutions, to appropriate officials who would have authority to conduct further investigative inquiries.
- require financial institutions to maintain, at least for five years after the conclusion of the transaction, all necessary records on transactions, both domestic and international, in order to enable member countries to properly investigate money laundering and to enhance international co-operation.

- tion, by enabling member states to respond to requests from authorities in other countries for such records;
- allow for the expeditious extradition of individuals charged with money laundering offences.

In the field of migrant trafficking, from the beginning of the 1990s, some international conferences have been held in Europe. They represent the beginning of an important process of co-operation among Western and Central-Eastern European countries on this matter. The Vienna Conference (24-25 January 1991) and the Berlin Conference (30-31 October 1991) were the first to address the phenomenon of alien smuggling in the European region. Following these two conferences, a third one, held in Budapest on 15-16 February 1993, made specific recommendations related to migrant smuggling in the European region and, most important, established a Working Group, the so-called Budapest Group, to follow the implementation of these recommendations. Some recommendations of the Budapest Conference are related to re-admission agreements and declare the responsibility principle of transit countries and the forced transportation of illegal aliens to their countries of origin. Others are about the exchange of information. Others again try to target traffickers through the criminalisation of their activities, foreseeing specific offences and the confiscation of their proceeds and means of transport.<sup>54</sup> The Budapest Group, consisting of the Presidents of the EU, of the 'Schengen Group' and of EFTA, together with four European countries, is charged with the task of overseeing the follow-up of these recommendations. The Group has already met several times. The first meeting, in December 1993, was aimed at setting up the mandate and the work method of the Group itself. In the second meeting, in Prague on 1-2 December 1994, the European Union States underlined the need to fully co-operate with their Central and Eastern European partners. To reach this aim an Expert Group was set up, the members of which are Austria, the Czech Republic, Croatia, Hungary, Switzerland, the Presidencies of the European Union and the Schengen Group, together with three supporting technical organisations: the IOM, the IGC and the International Centre for Migration Policy Development (ICMPD). This Expert Group met three times between December 1994 and July 1995, before presenting a report on the results of its work, which was approved by the Budapest Group at its third session, on 14-25 September 1995, in Zurich. In the Zurich session attention was focused on the harmonisation of legislation to combat migrant trafficking; the Group stressed the need for broadening the geographical scope of national laws, for

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54 M. Matzka, "Recent International Legal Instruments and Measures Relating to Illicit Trafficking in Migrants: Trends and Efficiency", paper presented at the *Eleventh IOM Seminar on International Response to Trafficking in Migrants and the Safeguarding of Migrant Rights*, Geneva, 26-28 October 1994, p. 2.

strengthening the existing penalties for human traffickers and harmonising anti-trafficking legislation of Central-Eastern and Western European countries. Furthermore in Zurich, the Budapest Group prolonged the mandate of the Expert Group in preparation for the Oslo session. The experts were asked to study four themes: the enhancing of previous decisions; anti-trafficking model legislation; methods for exchanging information; and ways of technical and financial support among countries. During the Oslo meeting, held on 3-4 September 1996, the Budapest Group approved the report presented by the Expert Group and, particularly, concentrated its attention on the need for a minimum legislative standard against human trafficking all over Europe (in trying to harmonise penal systems of Western and Central-Eastern European nations).

The IOM and the IGC, which are also supporting bodies of the Budapest Group consultation process (as already noted), are two intergovernmental organisations heavily involved in the world-wide study of migration dynamics, with special attention to the alien trafficking phenomenon and the harmonisation of legislation and law enforcement practices to disrupt it.

Among the many non-governmental organisations that contribute to curbing organised crime in the alien smuggling sector, the End Child Prostitution in Asian Tourism (ECPAT) should also be mentioned. This organism was established in August 1990 by a community of individuals and organisations who work together to end the spreading phenomenon of child prostitution in Asian tourism, with particular attention to the trafficking of children and women in the Asian continent. Its central office is located in Bangkok, Thailand. At the April 1996 Executive Meeting, a new mandate was given to ECPAT, that will continue its work through the campaign “End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes” extended to a wider geographical area, including most countries in the world. The main activities in which ECPAT is involved are: building a network of contacts among countries, establishing links among organisations, monitoring existing legislation (identifying loopholes and suggesting legislative innovations), studying practical cases, adopting publicity campaigns and developing national and international standards to protect children. The main goals already achieved by the organisation can be synthesised as follows:

- the reality of the commercial exploitation of children and of their traffic has been recognised world-wide;
- Asian countries have changed their legislation to make possible the prosecution of foreign sex abusers and to better protect minors (the Philippines in 1992, Sri Lanka in 1995, Taiwan in 1995, Thailand in 1996);
- laws promoted by ECPAT that enable industrialised countries to punish their own nationals for offences committed against children in other states have been passed in Germany (1993), France (1994); Australia (1994); USA (1994), Belgium (1995) and New Zealand (1995);



- ECPAT is working closely with Interpol to monitor the activities of sex offenders and of criminal organisations trafficking in children, bringing many criminals before the courts of Asian countries. ECPAT enhanced the strengthening of bilateral law enforcement, training of officers and the enacting of special police programmes;
- the tourism industry has been made aware of its great responsibility in protecting children in the context of sex tourism.

In the struggle against corruption, Transparency International (TI) has to be mentioned. TI is a non-profit, non-governmental organisation, the aim of which is to counter corruption both in international business transactions and, through national Chapters, at national levels. The action of TI, through studies, research, conferences and contacts with governments and individuals, has the declared purpose of pushing governments to set up and implement effective anti-corruption legislation, policies and programmes; strengthening public support and understanding for anti-corruption programmes; enhancing public transparency in international business transactions and in the public administration in general; and encouraging all parties to international business transactions to operate at the highest levels of integrity, guided in particular by TI's Standards of Conduct. All this should be achieved by establishing coalitions of individuals and governments; participating in public *fora*; using publicity as a means for letting people understand the damages caused by corruptive practices; and building national chapters, that are more closely linked to the country situation and that consequently are more capable of addressing local corruption problems.

Among the principal instruments that up to now have sustained Transparency International in constructing its network with governments and other international organisations, educational programmes should be mentioned, as well as conferences and contacts established through the national Chapters. A recent ambitious project of TI consists in creating "Islands of Integrity", that is to say entire geographical areas totally without corruption, like the one that is under construction in Ecuador.<sup>55</sup> The instrument utilised to concretise the idea of the "Integrity Islands" is represented by the Anti-Bribery Pact, a declaration that the parties involved in a transaction have to subscribe in order to stipulate a contract or to participate in a public procurement. The Anti-Bribery Pact consists of two declarations that have to be signed both by the government that binds itself to TI in adopting the anti-corruption programme and by all the firms that are going to respond to the public procurement. The prospective of large money penalties in case of violation of the agreement gives it a special deterrent force.

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<sup>55</sup> V. Merino Dirani, "Building Islands of Integrity - The Ecuador Model After One Year", in *TI Newsletter*, March 1995, p. 3.

### 3.3 Bilateral agreements as a means to combat organised crime

In this context the role of bilateral agreements and, in particular, of mutual legal assistance treaties (MLAT) as an instrument to curb organised crime cannot be bypassed and minimised. This kind of agreement is signed by two countries. In it, the two countries consent to improve and intensify cross-border co-operation, to increase the level of investigations by sharing information and know-how and to ease judicial co-operation by speeding up the exchange of criminal proceeds and, among others, making the extradition of criminals easier. The essential feature of these agreements is that they can be tailor-made and they are adaptable to the different requirements and urgencies which arise in a specific geographical context. Consequently, they can more easily counter the peculiar threats coming from well-defined criminal groups or criminal activities. Unfortunately, they also have some disadvantages; in particular, it is very difficult for small states to get involved in the negotiations needed to give life to such agreements, since such states often lack the resources, competence and expertise required to finalise them.

It is not difficult to understand why bilateral and multilateral agreements have spread all over the world, particularly in the areas where the presence of organised criminal activities which can cross the borders with great ease represents an alarming menace to the national stability. Building up special law enforcement and legal assistance networks among countries can, therefore, be seen as a comprehensive response to the way in which criminal organisations exploit particular countries and particular trafficking routes.

The United States, in particular, has always been very active in constructing this web of agreements with other countries in order to counteract organised criminality. Here reference should be made to the mutual agreement which was signed in November 1982 between the United States and Italy and which gave a powerful tool to magistrates and public prosecutors in dismantling the organised criminal connections between the two nations. More recently the United States has adopted other instruments of this kind. On 23 May 1997 a mutual legal assistance Treaty between the United States and Korea entered into force, extending to Southeast Asia the ability of United States agencies to pursue money laundering cases and representing a United States commitment to block international money laundering escape routes. The United States - Korea treaty is the seventh MLAT that America has put in force since the beginning of 1996. These agreements enhance bilateral co-operation in criminal cases in Europe, South America, Southeast Asia and the Caribbean<sup>56</sup>. On 30 April 1997, the United States and Australia

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56 “U.S. Mutual Legal Assistance Treaties continue proliferating”, in *Money Laundering Alert*, vol. 8, n. 9, May 1997, p. 2.

signed a MLAT, with the aim of strengthening law enforcement investigations in criminal cases. This MLAT includes taking testimony or statements; providing documents, records and other evidence; transferring persons in custody for testimony and other purposes; locating and identifying persons; serving documents; and executing requests for searches and seizures and freezing assets. In the Asia-Pacific region, the United States has a MLAT with Thailand and recently concluded one with Hong Kong.<sup>57</sup>

A Mutual Legal Assistance Treaty signed by the United States usually contains one or more of the following provisions:

- assistance in the investigation and prosecution of a range of crimes, including money laundering;
- assistance in legal procedures such as taking testimony, locating persons, and freezing forfeitable assets;
- availability of MLAT mutual assistance for offences that both countries consider felonies, such as drug trafficking, theft and fraud, as well as currency transaction violations;
- establishment of a “central authority” in each country to follow processing and the executing of the assistance requests;
- permission to conduct searches and seizures relating to offences committed in the other signatory country;
- the commitment of the requested nations to promptly give assistance<sup>58</sup>.

As far as Europe is concerned, through a process of co-operation, contacts have recently been established, especially among Western European nations and with Central/Eastern European countries. It is therefore important to mention that, as a consequence of the serious criminal problems inherent to the relation between Italy and Albania, these two countries have signed a bilateral agreement on 28 October 1997, aimed at stepping up the fight against organised crime. On 13 December 1996, another agreement of the same kind had been signed by Albania and Austria. Hungary signed bilateral agreements with Moldova (June 1997), Latvia (March 1997), Poland (May 1996) and Bosnia-Herzegovina (April 1996). Poland concluded agreements on the fight against organised crime with Slovenia (August 96) and the United Kingdom (June 1997). On 6 October 1997, the United Kingdom and Russia signed a joint plan for the fight against organised crime. On 4 April 1995, Germany and Belarus signed an agreement for tightening their co-operation in the fight against organised crime and nuclear smuggling. Many others could be mentioned as examples of the strengthening network for mutual co-operation.

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57 R. Schmertz Jr. and Mike Meier, “U.S. and Australia conclude MLAT” in *International Law Update*, vol. 3, n. 6, June, 1997.

58 “New MLATs extend U.S. laundering effort”, in *Money Laundering Alert*, vol. 8, n. 9, June, 1997, p. 2.

Turning to other regions, on 7 January 1997 the Israeli Government approved mutual legal assistance legislation and sent it to the Knesset. This legislation allows for comprehensive reciprocal legal assistance with competent foreign authorities regarding asset forfeiture investigations, the provision of material evidence and witnesses for forfeiture proceedings and the implementation of forfeiture orders.<sup>59</sup> Turkey has signed several bilateral agreements to enhance co-operation in international narcotics interdiction. Turkey also signed an agreement with the former Soviet Union in December 1990. India has extradition treaties with Bhutan, Belgium, Canada, Nepal, The Netherlands, Uganda, Britain and the USA. In September 1992, India and Great Britain signed an extradition treaty and an agreement on the confiscation of terrorists' property and assets. This agreement might inhibit the illegal movement or laundering of money, particularly through the *hawala* system which is widely used in the UK. At present, efforts are being made to conclude extradition treaties with Hong Kong, Germany, the United Arab Emirates, France and a new extradition treaty with the US. India has also entered into mutual legal assistance agreements with Turkey, Switzerland, the UK and Canada. At present efforts are being made to conclude mutual legal assistance agreements with France. In addition to standard features, the agreements with the UK and Canada, which are the most recent ones, also provide for the confiscation of the proceeds of crime. Furthermore, the Ministry of Home Affairs has concluded agreements with some countries for combating terrorism and organised crime. On 5 May 1994, Pakistan signed an agreement with Iran and the United Nations Drug Control Programme to co-operate on controlling drug transit trade from Afghanistan. On 1 June 1995, Pakistan also signed two agreements with Kazakhstan on co-operation in the fight against organised crime, drug trafficking and other dangerous crimes. During 1994, it also agreed with the United Arab Emirates to expand co-operation against "narco-terrorists". Myanmar has modest anti-drug co-operation with neighbouring countries. In late 1994, Myanmar and Bangladesh formally signed a drug co-operation agreement calling for information-sharing and co-ordination of enforcement activities along the two countries' mutual border.

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59 The 1997 INCSR, p. 588.

# 4 National Responses to Organised Crime – Recent trends

## 4.1 Introduction

Previous chapters have analysed organised crime trends and countermeasures at the international or regional levels. The aim of this chapter is to describe the manner in which countries have tackled the problem of organised criminal groups and their activity at the national level. Different countries have in fact responded according to the specific local threats raised by the criminal groups they have to deal with. Despite the fact that different policies to counteract organised crime can be formulated according to the purpose such policies pursue (prevention or crime control), attention will be focused only on the ways in which criminal law and law enforcement have been adjusted to national legal systems. Three issues characterising the modern approach to the matter will be analysed :

- the offence of belonging to a criminal association;
- the forfeiture and confiscation of illicitly acquired assets;
- law enforcement agencies and special means of investigation, including witness protection programmes.

Reconstructing the legislation of different countries in these three areas is virtually impossible, given that change takes place extremely rapidly, so that information may be outdated and contradictory. For this reason, the information set out in the present report should be considered as solely indicative of country-specific situations. The data are derived from various sources: the United Nations, the P-8 Group, the European Union, the OECD, the Council of Europe and other major organisations, as well as from reports prepared by experts on individual countries.

In keeping with the same structure of the second chapter of this report, countries (those for which information is available) will be aggregated into regional areas: North America, Central/South America, Western Europe, Eastern Europe, Africa, Asia and Oceania. If a country is not mentioned, this signifies either that information on this country was irrelevant to this report or that it was not made available.

## 4.2 Criminalising organised crime

Previous chapters have emphasised that the distinctive feature of organised crime is its organisational structure, which denotes some characteristic features, rather than any particular criminal activity. The following components represent the common denominator of organised criminal groups; a structured organisation (either hierarchical or flexible) consisting of persons who co-operate for a prolonged or indefinite length of time, the pursuit of profit making, and the use of violence, intimidation and corruption.

The more complex organised crime becomes, the more difficult it is to find a definition which is agreed upon by the law enforcement community, academics, the media, and “supergrasses”, who have often improved our understanding of organised crime, though only from a specific and partial perspective. Moreover, since organised crime today is simultaneously a domestic and an international problem, one which often raises similar threats in different regions, it is important for each country to seek its own solutions for its own problems while co-operating with other countries in tackling the more general problem of the transnational dimension of organised crime.

Substantive criminal law has adapted to the changes brought about by organised crime in different ways. The countries most seriously threatened by organised crime have reacted by refining their legislation. In recent decades, the main innovations in criminal legislation against organised crime have concerned participation in the activities of criminal organisations and the confiscation of assets acquired by means of criminal activity.

A recent trend that has substantially modified criminal legislation is “Participation in Organised Criminal Associations”, which in many countries corresponds to the crime of “conspiracy”. A conspiracy is the formation of a combination of two or more persons on a continuing basis for the purpose of committing an indefinite number of unlawful or criminal acts through the common use of all necessary means to pursue a criminal course of action. To be found guilty of criminal conspiracy, a defendant must be permanently aware of his/her membership of that conspiracy, and s/he must be constantly ready to implement its pre-established plans. Owing to the characteristics of mafia culture, conspiracy has always been difficult to prove at trial. In view of these difficulties, in 1982 Italy enacted a law providing for a new offence.

Three kinds of association crime are envisaged in Italy, and they are used to counteract organised crime and its entrepreneurial dimension. Two of them are closely interrelated: *common* association crime and *drug-trafficking* association crime. The third offence is more specific and is known as *mafia-type* association crime. An association is *mafia-type* when its members systematically exploit a situation of environmental intimidation and the widespread condition of duress deriving therefrom, not only in order to commit crimes but also to acquire control of economic activities, or at any

rate to gain unlawful advantages.<sup>1</sup> Penalties are harsh: a minimum of four years' imprisonment, which in particularly aggravating circumstances is increased to fifteen years for ordinary members and twenty-two years for bosses and managers. Moreover, each specific crime committed within the association is to be punished separately. A mafia-type association may be simultaneously a drug-trafficking one, in which case, under the Italian law, the two association incriminations may occur and be applied together, and an increased penalty is applied.<sup>2</sup>

Born of an emergency situation, this law has proved highly effective in combatting organised crime in Italy. Given the previous difficulty of gathering sufficient evidence of crimes committed by members of a criminal organisation, the new offence enables the court to convict a person upon sole proof of his/her membership of a certain type of organisation. The crime of "membership of an organised crime association" is based on the assumption that members of criminal organisations commit crimes; an assumption that has made it possible to prosecute top bosses for this crime alone, on the basis

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- 1 Italian criminal code, article 416bis (Mafia-type unlawful association):  
*"Any person participating in a Mafia-type unlawful association including three or more persons shall be liable to imprisonment for 3 to 6 years.  
Those persons promoting, directing or organising the said association shall be liable, for this sole offence, to imprisonment for 4 to 9 years.  
Mafia-type unlawful association is said to exist when the participants take advantage of the intimidating power of the association and of the resulting condition of submission and silence to commit criminal offences, to manage, at all levels, control, either directly or indirectly, of economic activities, concessions, authorisations, public contracts and services, or to obtain unlawful profits or advantages for themselves or for others, or with a view to preventing or limiting the freedom to vote, or to get votes for themselves or for others on the occasion of an election.  
Should the association be of the armed type, the punishment shall be imprisonment for 4 to 10 years pursuant to paragraph 1 and imprisonment for 5 to 15 years pursuant to paragraph 2.  
An association is said to be of the armed type when the participants have firearms or explosives at their disposal, even if hidden or deposited elsewhere, to achieve the objectives of the said association.  
If the economic activities of which the participants in the said association aim to achieve or maintain the control are funded, totally or partially, by the price, the product or the proceeds of criminal offences, the punishments referred to in the above paragraphs shall be increased by one-third to one-half.  
The offender shall always be liable to confiscation of the items that were used or meant to be used to commit the offence and of the items that represent the price, the product or the proceeds of such offence or the use thereof.  
The provisions of this article shall also apply to the Camorra and to any other association, whatever its local title, seeking to achieve objectives that correspond to those of Mafia-type unlawful association by taking advantage of the intimidating power of the association."*
- 2 G. Turone, "Mafia-type criminality: The special features of Italian criminal law and procedure to combat it", paper presented at the *Council of Europe Multilateral Seminar on Organised Crime*, Minsk, Belarus, 16-18 September 1996.

of evidence provided by turncoats. The law has proved its potential in a long series of trials which have concluded with the conviction and sentencing of top-ranking mafia leaders.

The Italian example of 1982 follows, albeit with numerous differences, the American law set out in the legislation of the 1970s. Although judicial interpretations of the United States Constitution have prevented the Congress from prohibiting mere membership of an organised crime group, the Racketeer Influenced and Corrupt Organisations Statute, commonly known as RICO (18 USCA § 1961), makes it an offence for a person to participate in the affairs of an enterprise involved in racketeering.

“Racketeering activity” is defined in § 1961 (1) as:

- (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion or dealing in narcotic or other dangerous drugs, which is chargeable under state law and punishable by imprisonment for more than one year;
- (B) any act which is indictable under any of the following provisions of title 18 United States Code:
  - section 201 (relating to bribery),
  - section 224 (relating to sports bribery),
  - sections 471, 472 and 473 (relating to counterfeiting),
  - section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious,
  - section 664 (relating to embezzlement from pension and welfare funds),
  - sections 891-894 (relating to extortion of credit transactions),
  - section 1084 (relating to the transmission of gambling information),
  - section 1341 (relating to mail fraud),
  - section 1343 (relating to wire fraud),
  - section 1503 (relating to obstruction of justice),
  - section 1510 (relating to obstruction of criminal investigations),
  - section 1511 (relating to the obstruction of State or local law enforcement),
  - section 1951 (relating to interference with commerce, robbery, or extortion),
  - section 1952 (relating to racketeering),
  - section 1953 (relating to interstate transportation of wagering paraphernalia),
  - section 1994 (relating to unlawful welfare fund payments),
  - section 1955 (relating to the prohibition of illegal gambling businesses),
  - sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles),
  - sections 2314 and 2315 (relating to interstate transportation of stolen property),
  - section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts),
  - sections 2341-46 (relating to trafficking in contraband cigarettes),



- sections 2421-24 (relating to white slave trafficking);
- (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labour organisations) or section 5012 (c) (relating to embezzlement from union funds) or
- (D) any offence involving bankruptcy fraud, fraud in the sale of security, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States.

The RICO statute allows prosecutors to link separate offences together, enabling successful indictment with the imposition of triple damages, as well as long terms of imprisonment. The RICO Act, part of the 1970 Organised Crime Control Act, created the most important substantive and procedural legal instrument in the history of organised crime control. It was explicitly targeted at organised crime, and especially designed to counter its infiltration of legitimate business. Introducing the concept of enterprise racketeering changed the way in which organised crime investigations were conceived and conducted, since RICO made it a crime to infiltrate, participate in, or conduct the affairs of an enterprise engaged in racketeering. An enterprise is defined as any “association in fact” comprised of two or more people. In *US versus Turkette*,<sup>3</sup> the US Supreme Court ruled that an enterprise could be a wholly illegitimate group. This prompted a wave of prosecutions against individuals for participating in criminal syndicates like Cosa Nostra. Since they have only to prove an “association in fact” in an organised crime case, prosecutors are provided with an excellent opportunity to introduce extensive evidence, complete with charts and tables of organisations which depict the structure of an organised crime family.

RICO requires the government to prove that a defendant has conducted or participated in the affairs of an enterprise through “a pattern of racketeering activity”, which is defined as at least two racketeering acts committed within ten years of each other. The term “racketeering activity” (also called a “RICO predicate”) is given detailed definition in the RICO statute, and it encompasses virtually all serious criminal activity prohibited by either state or federal law, such as murder, robbery, drug dealing, fraud, and other serious crimes listed in the statute. Thus, in a RICO trial, the defendant may find himself charged with a variety of different crimes allegedly committed at different times and places. The prosecution need only prove that the

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3 452 United States 576 (1981). Prior to *Turkette*, it was plausible to argue that RICO required proof of racketeer infiltration of a legitimate business, union, or governmental organisation. After *Turkette*, RICO could be used to prosecute any ongoing criminal group.

defendant committed all these crimes in furtherance of his/her participation in the affairs of the enterprise.

RICO also provides for extremely severe sentences: twenty years on each RICO violation and twenty further years for a RICO conspiracy. In addition, RICO provides for large fines and the forfeiture of property (broadly defined to include businesses, offices, jobs, personal property, cars, boats, planes and real estate) acquired out of the proceeds of racketeering activity.

Another RICO criminal provision has proved of great importance, since it gives the federal government the right to sue civilly for wide-ranging injunctions to prevent a RICO offence from continuing. RICO's civil focus is future-oriented and preventive, rather than punitive. In fact, a judge may issue whatever injunction or other remedial order necessary to prevent further racketeering by the defendants. This topic will be analysed in greater detail below.

Moreover, the Continuing Criminal Enterprise statute (CCE) is directed only against persons engaged in large-scale drug dealing and requires, *inter alia*, that the defendant commit at least three violations of the drug laws while acting as a manager or organiser of five or more people. The United States also has a statute which prohibits general criminal conspiracies and a separate statute which prohibits drug-related ones.

The USA have taken another important step forward in the fight against organised crime by introducing the Violent Crime Control and Law Enforcement Act of 1994. This act introduces new and stiffer provisions for violent drug-trafficking crimes committed by street gangs, increasing the maximum prison sentence by up to ten years, under certain circumstances, for federal drug or violent offences committed by members of a street gang. The Act defines a "criminal street gang" as an "ongoing" group or association of five or more persons which has as one of its primary purposes either:

- the commission of a federal drug offence, punishable by at least five years in jail, or
- the commission of a federal violent offence.

In addition, members must have engaged within the previous five years in a "continuing series" of such offences, and the gang's activities must affect interstate or foreign commerce.

Other countries without experience of the extensive organised crime groups active in Italy and the USA for so many years have hesitated to follow the Italian and American example, convinced that the category of 'conspiracy crime' suffices to deal with the new types of organised crime. Moreover, many countries punish organised crime according to their own particular perception of the problem.

According to the definition used by the German Bundeskriminalamt (BKA), for example, "*organised crime is the planned commission of criminal offences, determined by the pursuit of profit and power, which individually or as a whole, are of considerable importance, whenever more than two*

*persons involved collaborate for a prolonged or indefinite period of time, each with own appointed tasks*

- *by using commercial or business-like structures, or*
- *by using violence or other means suitable for intimidation, or*
- *by exerting influence on politics, the media, public administration, judicial authorities or the economy”.*<sup>4</sup>

This BKA definition provides a benchmark for determination of whether a criminal group ranks as “organised crime”. The definition has both its advantages and disadvantages. While it has the advantage of focusing on various forms of organised business crime, it does not specify what is to be deemed “of considerable importance”, nor does it differentiate between various categories of organised crime.

With some exceptions, one notes emerging consensus among different legislations with regard to organised crime activities. A review of the legislation of a number of countries with different cultural backgrounds shows that certain offences are repeatedly cited as exemplifying organised crime activities: illicit narcotics trafficking, gang robbery, receiving stolen goods, trading in illicit firearms, blackmail, management and procuring of prostitution and illicit gaming (Germany); distribution of illegal drugs, kidnapping for profit, extortion, fraud, loan sharking and counterfeiting of public money or securities (Italy); dangerous drugs, offences against the person, larceny, forgery and corruption (Jamaica). Statutory law in England and Wales considers the following to be criminal activities: various forms of fraud, false accounting, handling of stolen property, drug trafficking, forgery, living off the earnings of prostitution, and various forms of assault, while according to English and Welsh Common Law the following are criminal activities: murder, manslaughter, kidnapping and false imprisonment.<sup>5</sup>

#### *North America*

**Canada** has long debated the introduction of organised crime as a criminal offence. The country consequently does not envisage the specific offence of

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4 Arbeitsgruppe Justiz/Polizei des BKA, May 1990: “*Organisierte Kriminalität ist die von Gewinn- oder Machtstreben bestimmte planmäßige Begehung von Straftaten, die einzeln, oder in ihrer Gesamtheit von erheblicher Bedeutung sind, wenn mehr als zwei Beteiligte auf längere oder unbestimmte Dauer arbeitstailig unter Verwendung gewerblicher oder geschäftsähnlicher Strukturen, a. unter Anwendung von Gewalt oder anderer zur Einschüchterung geeigneter Mittel, oder b. unter Einflußnahme auf Politik, Medien, öffentliche Verwaltung, Justiz und Wirtschaftzusammenwirken.*”

5 E.U. Savona, “Enhancing national capabilities”, in E.U. Savona and P. Williams, *Five Papers prepared for the Crime Prevention and Criminal Justice Branch*, United Nations, Vienna, July 1994.

membership of a criminal organisation, although art. 462.3 of the criminal code introduces the concept of “enterprise crime offence”, which covers a series of crimes, such as bribery, fraud, corruption, betting, murder, theft, robbery, extortion, forgery, counterfeiting, money laundering, as well as possession of property obtained as a result of drug offences.

As already mentioned, the **USA** has legal provisions covering numerous instances of conspiracy, as well as crimes committed in furtherance of a criminal enterprise.

### *Central/South America*

Article 210 of the criminal code of **Argentina** criminalises organised crime as follows: the members of a criminal association comprising three or more persons and created for the commission of crimes will be sentenced to 3 to 10 years’ imprisonment merely for membership of the association. The minimum penalty prescribed for the organisers and chiefs of a criminal organisation is 5 years.

Legislation in **Chile** does not define the concept of ‘mafia’ but - in articles 292 and following of the criminal code - it does sanction the crime of illicit association.

### *Western Europe*

The **Danish** penal code contains a provision (art. 114) which makes mere membership of or participation in certain illegal organisations punishable. This legislation, however, only applies in the case of crimes against the constitution and against the highest authorities of the state.

There are several legal provisions in **France** which allow for the suppression of criminal organisations. Articles 265 to 268 of the penal code criminalise associations established or planned with a view to the commission of crimes against persons or assets, as well as any of the following offences: aggravated theft, destruction by means of explosive substances, extortion with force, violence or intimidation. The penalty is imprisonment for up to ten years, plus a fine. The commission of certain crimes by an organised group is an aggravating circumstance which incurs a stiffer penalty. Theft by an organised criminal group (art. 384 of the penal code), for example, is considered an aggravating circumstance. ‘Organised criminal group’ is defined by article 385 of the penal code as any criminal group established with a view to committing one or more aggravated thefts characterised by the preparation and the possession of material means to be used in the theft. The penalty provided for the crime is imprisonment for ten to twenty years.

**Germany** punishes the same crime, although the law does not cover passive membership. The offence is defined as the formation of a group whose goals are the commission of offences, participation in the group, soliciting for it, or providing it with support.

Article 287 of the criminal code of **Portugal** criminalises “associações criminosas”. A person founding a group, an organisation or an association for the purpose of committing crimes is subject to punishment by imprisonment amounting to between six months and six years. The same penalty applies to the persons who become members of such groups, organisations or associations, or to those who provide them with help, particularly in the form of weapons or ammunition, or who seek to recruit further members. The organisers and leaders of such groups, organisations and associations are subject to penalties consisting of two to eight years’ imprisonment. Should the perpetrator of a crime prevent the continuance of the group, organisation or association, or co-operate with the law enforcement agencies to prevent the commission of further crimes, the above penalties may be reduced or waived.

The **United Kingdom**, by contrast, does not envisage organised crime, with the exception of certain terrorist groups. However, other legal provisions in the country cover conspiracy, incitement, aiding, abetting, counselling or procuring.

#### *Eastern Europe*

The countries of Central and Eastern Europe have begun to address the issue of organised crime within the context of an overall re-examination of the law of property, banking regulations and procedural law. The most apparent trend is towards the criminalisation of organised crime, and sometimes also of the mere existence of a criminal organisation.<sup>6</sup>

**Albania** and **Bulgaria** are currently amending their criminal codes in order to introduce a specific offence which covers organised crime.

The criminal code of the **Czech Republic** contains a provision which punishes criminal conspiracy (section 89, para. 20 CC). A ‘criminal group’ is identified in terms of its organisational structure, the roles and activities of its members, and its pursuit of profit through the continuous and knowing commission of crimes. Moreover, section 163a CC sets out a legal definition of “criminal collusion” which makes it possible to prosecute a person who “works for the benefit of a criminal organisation” even if this organisation “has not yet specified its intentions”.

The criminal code of **Croatia** does not define organised crime directly, but it does so indirectly in terms of various offences and crimes defined by other parts of the legislation, and specifically articles 24, 19-23 of the Fundamental Criminal Law. The features defining a criminal organisation

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6 E.U. Savona and M. DeFeo, *Money Trails: International Money Laundering Trends and Prevention/Control Policies*, HEUNI Report prepared for the International Conference on “Preventing and Controlling Money Laundering and the Use of Proceeds of Crime: A Global Approach” Courmayeur, June 1994 p. 97.

are the following: the number of persons involved, the nature of the crimes committed, the methods used, the extent to which the group is structured.

On 6 February 1996, the **Estonian** government approved amendments to the code of criminal procedure, the criminal code and other laws in order to equip the fight against organised crime with more effective instruments. As well as the sentencing of persons for the commission of crimes, these amendments make it possible to punish persons for membership of a criminal group, and for forming a group of this kind. The confiscation of vehicles used to transport contraband across borders is also envisaged. These amendments to the laws will introduce the bail system as well as implementing the principles of anti-terrorism legislation. Henceforth, wilful damage to power lines will be treated as terrorism, while the provision also covers communications cables on railways or in the mines.<sup>7</sup>

In **Hungary** there is no definition of organised crime set out in the criminal code, but the fact that a crime is committed in an organised manner is an aggravating circumstance.

The **Latvian** definition of a criminal organisation, contained in art. 17 of the country's criminal code, reads as follows: "stable association of more than 2 persons, created with the aim of committing criminal acts and in which members of the group have distributed tasks by way of prior arrangement".

**Lithuania** law defines organised crime as an association consisting of three or more persons who have reached prior agreement to commit criminal acts and serious crimes. The mere existence of such an organisation is punishable.

**Moldova** similarly criminalises organised crime in art. 17 of its criminal code. The criteria used to identify such an organisation are: permanence, its organisation into a hierarchy, the commission of crimes.

In 1997 **Poland** enacted a new criminal code which, although it does not contain any legal definition of a criminal organisation, makes two important provisions with regard to organised crime relating to offences committed by a criminal organisation, and organisations set up to commit crimes. A criminal organisation differs from a series of illegal activities committed by individuals or groups in terms of its greater level of organisation and fixed hierarchical order. The mere existence of a criminal organisation is in itself an offence.

Article 35, para. 4 of the criminal code of the **Russian Federation** defines the concepts of conspiracy, organised groups and criminal societies (criminal organisations), and article 210 specifically criminalises establishment of, or participation in the activities of a criminal community (criminal organisation). Organised crime is defined as an offence committed by a unified

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7 "Government approves amendments to legislation on crime", in *BBC Summary of World Broadcasts*, 7 February 1996.

organised group created with the aim of committing serious or particularly serious offences, or by an association of organised crime groups created for the same purpose. The mere existence of the organisation is not punishable.

**Slovakia** does not have an offence of organised crime in its criminal code, but organised crime is sanctioned according to Act n. 249/1994.

The same is true of **Slovenia**, where organised crime is defined by the following criteria: seriousness of the offences committed, and involvement of at least three persons.

In “**the former Yugoslav republic of Macedonia**”, according to art. 394 para. 1 of its criminal code, a sentence of between 6 months’ and 5 years’ imprisonment may be inflicted on persons who create a group for the purpose of committing crimes punishable with three years’ imprisonment or more.

### *Asia*

On 6 March, 1997, **China**’s legislative assembly, the National People’s Congress, started to review amendments to the nation’s criminal code which dates from 1979. The amendments introduce into the statute book new crimes described as “mafia, organised terrorism, crimes of instigating ethnic hatred or discrimination, money laundering, computer crimes, securities frauds and intruding on commercial secrets”.<sup>8</sup>

**Japan** does not envisage membership of a criminal organisation as constituting an offence, but other legal provisions cover activity as a co-principal, an instigator or an accessory of a group. A conspirator usually falls into one of these categories. For certain serious offences preparatory acts and attempts are punishable.

On 4 August, 1997 a new law designed to prevent hand control organised crime more vigorously came into effect in **Macau**, following a wave of violence in the country. Passed in July by the Macao legislative assembly after several weeks of consultation with local communities and government departments, the law is reported to have given the security forces and the judiciary greater powers in combating crime. The new law comprises 42 articles, which give detailed descriptions of 21 types of activity constituting “organised crimes,” including homicide, abduction, the smuggling of people, forcing others into prostitution, aiding illegal immigration, illegally trading in, manufacturing, using, carrying, and smuggling arms. The law states that those found to have set up a triad will be sentenced to between five and twelve years’ imprisonment, and leading members of underground groups will also receive up to 12 years behind bars. The new law is based on a previous anti-organised crime act which had failed to curb such activities. The new

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8 “NPC to Work on Updating Criminal Law, New Crimes Defined”, in *the British Broadcasting Corporation*, 7 March 1997.

legislation is said to “show the determination of the government to combat activities of criminal gangs.”<sup>9</sup>

### *Oceania*

In **New Zealand** the legislation set out in the Crimes Act 1961 describes an “organised criminal enterprise” as a “continuing association of six or more persons having as its object or as one of its objects the acquisition of substantial income or assets by means of a continuing course of criminal conduct” (art. 312A).

## 4.3 Asset seizure and confiscation

One of the most efficient means to dismantle criminal enterprises is to attack their capital assets, as emphasised by the recommendations of the 1994 United Nations Ministerial Conference in Naples. Some countries, principally those that first experienced problems with organised crime, introduced measures for this purpose many years ago. Their example has been followed, and should continue to be so in the future, by other nations now lagging behind in the fight against organised crime.

Given the numerous and substantial differences among national country legislations, it is difficult to draw comparisons among them as regards the confiscation of criminal assets. However, in order to furnish a picture of the situation world-wide, an attempt will be made to find a common denominator in these diverse national systems. Generally speaking, terms such as “freezing” and “seizure” refer to judicial preventive measures in which the competent authority, in order to guarantee the prosecution of the “criminal trail” (i.e. to furnish proof for subsequent confiscation), deprive the owner of the right to freely dispose of his/her goods. Terms such as “forfeiture” and “confiscation” refer to decisions taken by a judicial authority to deprive a convicted person of the ownership of goods related to a criminal offence, goods which are transferred to the state.

At this stage it is also important to stress the variety that can be found in different domestic systems:

- according to the rules applied in different countries, confiscation may be ordered in a civil or criminal trial;
- confiscation may be ordered particularly in respect of specific properties/items proved to be the proceeds or instrumentalities of crime (property

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9 “New anti-Triad law comes into effect in Macao”, in *Xinhua News Agency*, 4 August 1997.



- confiscation, as in Spain and Italy); as regards the value of the criminal proceeds (value confiscation, as in the common-law countries and the Netherlands and Austria); or the two together (property/value confiscation, as in Switzerland and Australia);
- the standard and the onus of proof required before a confiscation order can be issued may vary greatly among countries. In some countries a criminal standard of proof is necessary, in others, a less strict civil standard may suffice for confiscation. Moreover, some domestic systems envisage reversal of the onus of proof;
  - conviction is not always necessary for the confiscation of assets. Although most countries consider confiscation to be part of the sentencing procedure (and consequently presuppose conviction), in some countries property can be confiscated without conviction. There are two main methods available to achieve this; first, through confiscation within the context of criminal proceedings but without the need for a conviction or a guilty finding (for example, in England and Wales a confiscation order may be issued if the defendant has absconded for at least two years, if there is proof to the civil standard that he has benefited from drug trafficking, and if reasonable steps have been taken to find him; in Austria a confiscation order may be issued in independent penal proceedings when there is no formal finding as to the person's guilt). Second, through a confiscation order issued entirely independently of the criminal trial in administrative or civil proceedings (examples can be found in the USA, Germany and Ireland).<sup>10</sup>

Another preliminary statement is in order. The aim of the present analysis is merely to provide a general overview of an extremely complex and profound issue. Only the legislations of certain countries will be touched upon and used as examples, since the overall intent is to highlight trends in attitudes towards confiscation, and consequently to show the way forward for countries without specific rules on the forfeiture of the proceeds from organised crime. General tables - see the end of this section - will provide further details.

Some nations enacted confiscation laws in the distant past and have never changed them since. Others have recently passed new confiscation legislation or made important amendments, such as Switzerland in 1994, Greece in 1995, Ireland in 1994 and 1996, the United Kingdom, Portugal and Hong Kong in 1995, Spain, Cyprus and South Africa in 1996, Austria in 1997.

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10 This part draws on FATF, *Evaluation of laws and systems in FATF Members Dealing with Asset Confiscation and Provisional Measures*, 21 July 1997. A clearer picture of these differences is perhaps forthcoming from table 1.

## North America

Confiscation was introduced into the legal system of the **United States**<sup>11</sup> in 1970 by RICO. Under this statute, the property acquired by or used to further an illegal gambling business is forfeitable to the United States. In other words, the legislation mandates the criminal forfeiture of property acquired or maintained by the defendant in connection with the RICO violation. The property is also forfeitable if it has been transferred to a third person, unless the purchaser is able to demonstrate that he/she was *in bona fide* and that the value paid for the goods did not give rise to the belief that the property was subject to forfeiture. The US court may also issue seizure and freezing orders to prevent the destruction of the property, its removal from the jurisdiction of the court or, more generally, its unavailability for subsequent forfeiture.

Confiscation allowed by RICO is a penal action *in personam*. However, the American legal system also envisages a civil action *in rem*. An action of this kind is directed against property alleged to have been involved in, or to be the proceeds from, criminal activity, so that the owner of the assets under civil forfeiture does not necessarily have to be charged with, or convicted of, a criminal offence. Generally, the Government will seize property that it deems likely to be subject to forfeiture. Once the Government has seized the assets and demonstrated probable cause for seizure, the property is subject to forfeiture unless the owner can prove otherwise.

In 1978, the US Congress amended the Controlled Substance Act to state that all assets acquired from the illicit drug trade belong to the United States Government and are subject to civil seizure under the power of forfeiture. This law was further amended in 1984, when Congress altered it to allow the confiscation of real property used to facilitate drug violations.

In **Canada**<sup>12</sup> substantive legislation in the area of proceeds of crime falls exclusively within the jurisdiction of the federal Government and is set out in the Criminal Code (as revised in 1985), the Food and Drugs Act (1985), the Narcotic Control Act (1985) and the Proceeds of Crime Act enacted on 1 January 1989. The aim of the Proceeds of Crime Act, besides the definition of two classes of offences associated with money laundering (drug offences and enterprise crime offences), is to state specific provisions for the detection, seizure and detention of the proceeds of crime and their subsequent forfeiture. In Canada, criminal forfeiture is consequent solely on only a criminal conviction for designated drug offences and enterprise crime offences. The

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11 G.P. Rutledge, "Criminal and Regulatory Law", in *International Tracing of Assets*, volume 1 of 2, FT Law & Tax, London, 1997.

12 Economic and Social Council, *Control of proceeds of crime, Report of the Secretary General, op. cit.*; L.D. Smith, K. Munroe, "Canada", in *International Tracing of Assets*, Volume 1 of 2, FT Law & Tax, London, 1997.

expression “proceeds of crime”, in fact, refers to any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly from: (a) the commission in Canada of an enterprise crime offence or a designated drug offence; or (b) an act or omission undertaken elsewhere but which, if it had occurred in Canada, would have constituted an enterprise crime offence or a designated drug offence.

The court takes the decision to confiscate the proceeds at the sentencing stage of the accused, and orders confiscation only if it is convinced beyond any reasonable doubt that the property consists of the proceeds of crime. There is no general civil forfeiture of property in Canada. However, an action *in rem* against property, as in the USA, may be brought if the accused dies or absconds.

The Seized Property Management Act, which came into force in Canada in September 1994, created a government unit which co-operates with local and international law enforcement agencies in the location, seizure and disposal of forfeited property of criminal origin. This Act also permits forfeited assets to be shared among the Canadian law enforcement agencies and the foreign governments whose law enforcement agencies have participated in the joint investigations leading to the forfeiture.

#### *Central/South America*

In **Mexico**,<sup>13</sup> the application of the juridical concept of confiscation of property is prohibited by the Constitution. Nevertheless, the Penal Code (which applies to the Federal District in matters of ordinary jurisdiction and to the entire country in matters of federal jurisdiction) states the juridical concept of seizure of the instrumentalities, objects and proceeds of crime. For this purpose, the Federal Code of Criminal Procedure empowers the Federal Department of Public Prosecution to take custody of any instrumentalities of, or property deriving from or constituting the proceeds or bearing signs of, or having a possible connection with, an offence, with a view to a subsequent request that the competent judicial authority issue an order for the confiscation of such property.

Although **Colombia**<sup>14</sup> has one of the most severe organised crime problems in the world, until 1997 it lacked a law permitting the confiscation of criminal proceeds.<sup>15</sup> In 1997, the Constitutional Court approved legislation on confiscation; legislation that the Parliament had approved in December

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13 Economic and Social Council, *Control of proceeds of crime, Report of the Secretary General, op. cit.*

14 “Court approves confiscation law”, in *Latin American Newsletters*, 26 August 1997.

15 This was one of the reasons why the USA declared at the time that the Colombian authorities had done too little to halt drug-trafficking.

1996 and which made it possible to confiscate any goods obtained through drug-trafficking activities.

### *Western Europe*

In **Italy**,<sup>16</sup> confiscation is regulated by art. 240 of the criminal code. The state, in connection with a conviction, can or must (according to the individual case) acquire the property or assets of convicted persons if they have been instrumental in the commission of crime or if they represent the proceeds of crime. Confiscation is ordered through a criminal procedure on the basis of the rule of evidence required in criminal procedures (beyond reasonable doubt).

Art. 416-bis of the criminal code (included in the criminal code as law no. 726 of 1982 - the so-called ‘Rognoni-La Torre’ law) states that unlawful association to commit a crime (‘mafia type’ unlawful association) is an offence, and contains more specific rules on the confiscation of goods owned by organised criminals. The person convicted of belonging to a ‘mafia-type’ organisation “...shall always be liable to confiscation of the items used or intended to be used to commit the offence and of the items that represent the price, the product or the proceeds of such an offence or the use thereof”.

More recently, with law-decree no. 306/1992 (art. 12-*sexies*) with subsequent amendments has introduced a particular form of confiscation (“confiscation of unjustified valuables”), the main characteristics of which are:

- its applicability in connection with convictions for particularly dangerous criminal behaviour;
- its partial reversal of the burden of proof;
- its very broad definition of forfeitable property. The law, in fact, permits confiscation of all assets not commensurate with the income and the economic activity of the person convicted, regardless of whether or not the property can be associated with a particular predicate offence.

In the case of convictions for such crimes as ‘mafia-type’ association, extortion, kidnapping for the purpose of extortion, receiving of stolen goods, usury, money laundering, etc., “*confiscation shall be made of money, goods, or assets whose origin cannot be accounted for by the offender and which the latter, with or without the agency of natural or legal persons, appears to own or to have at his/her own disposal for any purpose whatsoever out of all proportion to his/her own income, as reported in his/her income tax declaration, or to his/her economic activity*”.

The Italian legal system envisages a further special form of confiscation, as provided by articles 2-bis and 2-ter of law no. 575 of 1965 subsequently

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16 G. Fiandaca, E. Musco, *Diritto penale. Parte generale*, Zanichelli editore, Bologna, September 1995, pp. 790-793 and 821-823; see also G. Turone, *op. cit.*, pp. 6-7.

amended by laws no. 646 of 1982 and no. 55 of 1990. In the case of mafia crimes and drug-related crimes, a special administrative procedure (regulated by law and controlled by a judge) may be adopted to seize and confiscate illegally acquired property. In particular circumstances, seizure (as a security measure) is permitted of an asset within a special administrative procedure if the asset is disproportionate to the income tax declaration and the legal activity of the person concerned. Subsequently, a confiscation order may be issued if the person concerned fails to prove that the asset has derived from a legal source.

In the legal system of **Belgium**<sup>17</sup> seizure is a preliminary coercive measure in which the competent authority, in order to secure criminal prosecution, usually prevents the owners, or others, from disposing of specific goods by taking such goods into its custody.

The most recent changes were made to the Belgian rules on confiscation on 17 July 1990. Confiscation is a decision taken by a court whereby specific goods relating to crimes are removed from a convicted person. This type of confiscation is an accessory sentence, which cannot be issued separately but must be combined with a principal sentence. If the goods in question cannot be retrieved, the court may estimate their monetary value and consequently issue an order for value confiscation.

The **German**<sup>18</sup> Criminal Code contains rules on forfeiture and extended forfeiture. Forfeiture may be ordered as regards any pecuniary gain or property resulting from commission of a crime. If the forfeiture is not possible, the court may estimate the value of the assets and issue a compensation order for its equivalent value.

The 1992 Prevention of Drug Trafficking and other Forms of Organised Crime Act (OrgKG) introduced new provisions to combat organised crime into the German legal system. This new law makes it an offence to undertake action with the purpose of preventing or obstructing access by the criminal prosecution authorities to assets deriving from certain criminal offences. It is also considered as a criminal offence the prevention or placing in jeopardy of the location, forfeiture, confiscation or seizure of incriminating property, or detection of its origin. This legislation also provides special measures which go beyond confiscation (the seizure of assets or extended forfeiture) and are intended to deprive the offender of property acquired unlawfully. In particular, as far as the extended forfeiture for certain types of crimes is concerned (this form has been included in the Criminal Code), the court may order forfeiture when, according to circumstances, there is reasonable sus-

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17 See G. Vermeulen, B. De Ruyver and T. Vander Beken, "Belgium", in *International Tracing of Assets*, volume 1 of 2, FT Law & Tax, London, 1997.

18 See P. Mennicke, "Germany", in *International Tracing of Assets*, Volume 1 of 2, FT Law & Tax, London, 1997; Economic and Social Council, *Control of proceeds of crime, Report of the Secretary General, op. cit.*

picion that goods have been acquired in order to commit criminal offences, or that they are the result of the perpetration of such criminal offences. In this case the burden of proof is reversed and rests on the defendant.

The **Swiss**<sup>19</sup> criminal code permits the seizure and confiscation of assets. More specifically, there are two types of seizure:

- probatory seizure, the purpose of which is to conserve the means of proof;
- conservatory seizure, the purpose of which is to restore property to its rightful owner, or to enable its subsequent confiscation.

Under Swiss law, articles 58 and 59 of the criminal code govern the forfeiture of assets resulting from a criminal offence, or assets which are the reward for committing an offence, or which are presumed to be controlled by criminal organisations. An amendment regarding provision in the case of organised crime activities in the confiscation provision was made to article 58 of the criminal code in 1994. This amendment empowers the courts to order the confiscation of all assets found to be under the beneficial ownership of a criminal organisation. Furthermore, if assets are found in the possession of a person proved to be a member of a criminal organisation, or who has assisted such an organisation in the execution of its criminal activities, the criminal organisation concerned is assumed to be the beneficial owner of such assets. In practice, Swiss law allows the confiscation of the property of criminal organisations only on the basis of evidence that the organisation itself controls the property. That is to say that it is not necessary to prove the illegal origin of the property.

The **United Kingdom**<sup>20</sup> has for some time had legislation on the tracing, freezing and confiscation of proceeds from drug trafficking, and all other serious crime, legislation which was strengthened by the Proceeds of Crime Act of 1995. A confiscation order may be issued without conviction if the defendant absconds or dies before the conviction itself. Confiscation of the proceeds of crime may also occur through a special civil procedure within criminal proceedings. This special procedure is applicable in the case of the forfeiture of cash representing the proceeds or the instrumentalities of drug trafficking, if they have been imported or exported. The United Kingdom has also enacted laws to assist other jurisdictions in the tracing, freezing and confiscating of the proceeds of all serious crimes (on a reciprocal basis).

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19 C.M. Ringgenberg, C. Schweizer, J.-E. Combe and Y. Kleine, “Switzerland”, in *International Tracing of Assets*, volume 1 of 2, FT Law & Tax, London, 1997; Deloitte and Touche, “Seizure And Confiscation Of The Proceeds Of Money Laundering”, in *Business Monitor*, Business Briefing Publishing Ltd., 23 February, 1996; “Sharing-back-deal” between Swiss and US authorities”, in *Financial Regulation Report*, The Financial Times Limited, June 1995.

20 Economic and Social Council, *Control of proceeds of crime, Report of the Secretary General, op. cit.*

In April 1996, **Cyprus**<sup>21</sup> enacted legislation on confiscation, namely the “Law that Provides for the Concealment, Investigation and Confiscation of Proceeds Resulting From Certain Criminal Actions”, the aim of which is to deprive criminals of the proceeds from such serious offences as organised crime, terrorism and prostitution.

In **Ireland**<sup>22</sup> the first step towards introduction of a framework for confiscation of the proceeds of crime was the Criminal Justice Act in 1994, recently followed by the Proceeds of Crime Act 1996 (no. 30 of 1996), which came into force on 4 August 1996. This statute introduces measures that, through civil proceedings, permit the High Court to freeze and eventually confiscate assets with a minimum value of IR£ 10,000 should it be proved that these assets are the proceeds of crime, or that they have been acquired, in whole or in part, with the proceeds of crime. The aim of this act is to provide legal means in addition to those already established by the 1994 Criminal Justice Act for the seizure and confiscation of the proceeds of crime.

### *Eastern Europe*

After the fundamental legal, economic and social changes in Central and Eastern Europe, many countries in this region have taken steps towards introducing legislation targeted against organised crime and in which confiscation of criminal proceeds plays a crucial role.

In **Russian Federation**<sup>23</sup> confiscation was first introduced in 1995 as a sanction complementary to the penalties foreseen for the creation or running of an organised criminal group or criminal organisation and for participation in an organised criminal group. Today, confiscation in Russia is possible for all types of crime.

A new law amending the penal code was passed in **Poland**<sup>24</sup> on 6 June 1997 (signed by the President of the Republic on 27 June 1997) and came into force on 1 June 1998. Among its many innovations are provisions for combating organised crime which allow the confiscation of earnings from activities committed within a criminal organisation.

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21 Economic and Social Council, *Control of proceeds of crime, Report of the Secretary General, op. cit.*; A. Neocleous & Co, “Cyprus - A Window To Russia - Andreas Neocleous & Co.”, in *Business Monitor*, 7 June, 1997; “Cyprus applies stringent measures to curb money laundering: spokesman”, in *Xinhua News Agency*, Nicosia, 3 March 1997.

22 P. Reid, “Ireland”, in *International Tracing of Assets*, Volume 1 of 2, FT Law & Tax, London, 1997.

23 “Parliamentary Affairs”, in *ITAR-TASS news agency (World Service)*, Moscow, 12 July 95.

24 A. Barker, “Polish MPs scrap death penalty in new penal code”, in *Reuters North American Wire*, Warsaw, 6 June 1997.

In **Albania** confiscation is possible under the penal procedure code, and in **Bulgaria** confiscation is permitted under the criminal code. In **Lithuania**, for instance, confiscation is an additional sanction which the judge must apply for certain offences. In **Moldova** confiscation is envisaged by art. 33, part I, of the Criminal Procedure Code and applies to all proceeds from any kind of crime. In the **Slovak Republic**, confiscation is possible for all criminal offences. In **Romania** art. 118 of Criminal Code and arts. 163-167 of the Code of Criminal Procedure deal specifically with confiscation.

### *Africa*

**South Africa**<sup>25</sup> enacted legislation in 1996 which, besides criminalising the laundering of proceeds from any form of criminal activity, provides for the confiscation of criminal proceeds (Proceeds of Crime Act 76, 1996). According to this legislation, the ‘proceeds of crime’ are defined as any payment or other reward received or held by the defendant at any time in relation with any criminal activity controlled by him or any other person. ‘Proceeds’ are any property or part thereof which results directly or indirectly from the commission of an offence. ‘Property’ is money and any other movable, immovable, material or non-material thing.

The Proceeds of Crime Act does not allow the court to confiscate specific property; that is to say, the court can only issue a payment order for an amount of money equal to the value of the proceeds of a crime. The Parliamentary Committee on Justice examined this problem in 1997 and asked Parliament to introduce measures enabling the courts to confiscate specific property.

### *Asia*

The **Japanese**<sup>26</sup> Penal Code provides for the confiscation and “collection of equivalent value” (forfeiture) in regard to all crimes, with the exception of only very minor ones. The Anti-Drug Special Law, which came into effect in 1992, targets the illicit proceeds from drug offences.

The legal system of **Thailand**<sup>27</sup> envisages confiscation only in relation to drug offences. In fact, Thailand has enacted an ‘Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics’ which gives

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25 J. Henning, L. de Koker, “South Africa”, In *International Tracing of Assets*, Volume 1 of 2, FT Law & Tax, London, 1997.

26 Economic and Social Council, *Control of proceeds of crime, Report of the Secretary General, op. cit.*; Y. Tajima, S. Hamada, “Japan”, in *International Tracing of Assets*, Volume 1 of 2, FT Law & Tax, London, 1997.

27 Economic and Social Council, *Control of proceeds of crime, Report of the Secretary General, op. cit.*



the authorities the power to trace, seize and confiscate the property of offenders.

### *Oceania*

In **Australia**<sup>28</sup> the legislation that deals with criminal confiscation of assets at the federal level is the Proceeds of Crime Act (enacted in 1987). This highly effective measure in combating organised crime allows a court to issue a confiscation order if a person is convicted of an indictable offence against Commonwealth or territory law. The confiscation order may take two forms: a forfeiture issued irrespectively of the ownership of the property or a pecuniary penalty based on the value of the benefit derived from perpetration of the offence. On the basis of this law, it is also possible to freeze assets in order to prevent the dispersal or removal of assets, and to issue confiscation orders in relation to property used in, or derived directly or indirectly from, the commission of an indictable offence against Commonwealth law.

Under Australian law, a statutory forfeiture of a defendant's assets is possible in drug-trafficking or money-laundering cases six months following conviction if the defendant fails to prove that these assets were legitimately acquired, i.e. if the defendant does not react to the property being confiscated.

In December 1991, Australia also set up a Confiscated Assets Trust Fund. All assets recovered since then have been paid into this Trust Fund, the aim of which is to collect all earnings from the instruments, profits and proceeds of crime and use them to finance a wide range of projects.

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28 Economic and Social Council, *Control of proceeds of crime, Report of the Secretary General*, Vienna, 3 April 1996. UN doc. E/CN.15/1996/3, D. Chaikin, "Australia", in *International Tracing of Assets*, Volume 1 of 2, FT Law & Tax, London, 1997.

**Table 1. OECD countries.**  
**Characteristics of National Legal Systems of Confiscation.**

**Explanation**

**Year:** The year of enactment of the confiscation legislation or its last major amendment.

**Drugs or Serious Crime:** Does the legislation apply only to drugs or to all serious crimes?

**Property or value:** Does the confiscation law relate principally to items of property (Property) or does it provide for payment of a sum of money (Value)? [Principal and most frequently used method in bold type]

**Conviction required:** Is conviction required before confiscation can be sought, or is it possible to confiscate without conviction (either in a wide or limited range of cases)?

**Reverse burden of proof:** Is it mandatory or discretionary for the court to reverse the burden of proof, so that the defendant or owner of the property to be confiscated must prove that the property (or the alleged benefit from the crime in a value system) has not acquired from crime?

**Proceeds must be linked to conviction:** Does the confiscation law allow a person to be deprived only of the proceeds of crimes for which s/he has been convicted?

**Third party property:** Although many countries prosecute the accomplice(s) or associate(s) of the defendant who commits the predicate offence, criminal defendants are not included as "third parties" in this table. This column sets out three types of situation (this is not an exhaustive list) in which property which is owned or held by third parties may be confiscated or made subject to the confiscation order:

- (i) **gift:** the property is given to a third party by the defendant for little or no real consideration;
- (ii) **knowledge:** whether the third party knew, believed, suspected, could not be unaware, etc., that the property was the proceeds of crime;
- (iii) **effective control:** the defendant was still effectively in control of the property at the time of the confiscation proceedings, whoever the nominee owner was.

Country	Year	Drugs (D) or serious crimes (SC)	Property or value confiscation	Conviction required?	Criminal or civil (or other easier) standard or proof	Reverse burden of proof?	Proceed must be linked to conviction	Third party property
<b>Australia</b> Customs Act	1979	D	PV	no	civil	no	no	eff. control
POCA	1987	SC	<b>PV</b>	yes <sup>1</sup>	civil	yes	no	eff. control
<b>Austria</b>	1997	SC	PV	no	criminal	yes <sup>2</sup>	no	gift
<b>Belgium</b>	1990	SC	<b>PV</b>	yes	criminal	no <sup>3</sup>	yes	yes
<b>Canada</b>	1989	SC	<b>PV</b>	yes	both possible	no	no	yes
<b>Denmark</b>	1930s	SC	<b>PV</b>	yes <sup>4</sup>	criminal	no <sup>5</sup>	yes	all categories
<b>Finland</b>	1994	SC	<b>PV</b>	yes	criminal	no	yes	yes
<b>France</b>		SC	<b>PV</b>	yes	criminal	yes (drugs) <sup>6</sup>	no (drugs)	knowledge
<b>Germany</b>	1975	SC	<b>PV</b>	no	criminal	no <sup>7</sup>	yes	yes
<b>Greece</b>	1995	SC	<b>PV</b>	no	criminal	yes	no	gift
<b>Hong Kong</b>	1995	SC	<b>PV</b>	yes <sup>8</sup>	civil	yes	no <sup>8</sup>	gift/eff. control
<b>Iceland</b>	1940s	SC	<b>PV</b>	no	criminal	no <sup>5</sup>	yes	knowledge
<b>Ireland</b>	1994	SC	<b>PV</b>	yes	civil	yes	no	gift
	1996	SC	<b>P</b>	no	civil	yes	no	yes
<b>Italy</b>	1950	SC	<b>P</b>	yes <sup>9</sup>	criminal	yes <sup>10</sup>	no <sup>9</sup>	eff. control
<b>Japan</b> Penal Code	1908	SC	<b>PV</b>	yes	criminal	no	yes <sup>11</sup>	knowledge
Anti Drug Law	1992	D	<b>PV</b>	yes	criminal	yes	yes	knowledge

<b>Luxembourg</b>	1989	SC	<b>PV</b>	no	criminal	no	yes	yes
<b>Netherlands</b>	1993	SC	<b>PV</b>	yes	other <sup>12</sup>	no	no	yes
<b>Neths. Antilles</b>		SC	<b>PV</b>	yes	criminal	no	yes	yes
<b>Aruba</b>		SC	<b>PV</b>	yes	criminal	no	no	yes
<b>New Zealand</b>	1992	SC	<b>PV</b>	yes <sup>1</sup>	civil	yes <sup>11</sup>	yes	eff. control
<b>Norway</b>	1985	SC	<b>PV</b>	no	criminal/civil	no	yes	gift/ knowledge
<b>Portugal</b>	1995	SC	<b>PV</b>	yes	criminal	no	yes	knowledge
<b>Singapore</b>	1993	D	<b>PV</b>	yes	civil	yes	no	gift/eff. control
<b>Spain</b>	1996	SC	P	yes	criminal	no	yes	yes <sup>13</sup>
<b>Sweden</b>	1940s	SC	<b>PV</b>	yes	criminal	no	yes	yes
<b>Switzerland</b>	1994	SC	<b>PV</b>	no	criminal	yes	no	yes
<b>Turkey</b>	1920s	SC	<b>PV</b>	yes	criminal	no	yes	no
<b>United Kingdom</b>	1995	SC	<b>PV</b>	yes <sup>8</sup>	civil	yes	no <sup>8</sup>	gift
<b>United States</b> civil forfeiture	1986	SC	P	no	civil	yes <sup>15</sup>	no	know/eff. control
criminal forfeiture	1984	SC	<b>PV</b>	yes	criminal <sup>14</sup>	no	yes	gift/eff. control
<b>TOTALS</b>		<b>D: 1</b> <b>SC: 25</b>	<b>P: 16</b> <b>V: 6</b> <b>PV: 4</b>	<b>Yes: 17</b> <b>NO: 7</b> <b>Both: 2</b>	<b>Criminal: 16</b> <b>Civil: 6</b> <b>Both: 3</b>	<b>Yes: 11</b> <b>No: 13</b> <b>Both: 2</b>	<b>Yes: 13</b> <b>NO: 12</b> <b>Both: 1</b>	<b>Yes: 25</b> <b>No: 1</b>

Source: FATF VIII, *Evaluation of laws and systems in FATF Members Dealing with Asset Confiscation and Provisional Measures*, Appendix I to Annex B, 21 July, 1997.

**Footnotes**

<sup>1</sup> Australia and New Zealand - except for persons who die or abscond prior to conviction, who may be deemed convicted for confiscation purposes.

<sup>2</sup> Austria - the onus of proof may be partially reversed in cases where there has been repeated commission of crimes over a period, or when the defendant is a member of a criminal organisation.

<sup>3</sup> Belgium is considering whether to reverse the burden of proof as part of a packet of measures against organised crime.

<sup>4</sup> Denmark - an order can be made without conviction if there is no prosecution because the limitation period for the offence has expired.

<sup>5</sup> Denmark has introduced a bill, and Iceland is considering whether to introduce one, which requires the defendant to show on probable grounds that his property was legitimately acquired and not through serious offences.

<sup>6</sup> France - a court may order the confiscation of a defendant's property (whether acquired before or after the crime and whether legitimate or not) if the defendant is convicted of a drug-trafficking or drug money-laundering offence. The property is confiscated without the prosecution having to do more than obtain a conviction.

<sup>7</sup> Germany - if the defendant is convicted of certain offences the court may assume that his/her assets of the defendant have acquired from illegal activity, if the circumstances warrant it, and confiscate them.

<sup>8</sup> Hong Kong and the United Kingdom - a confiscation order may be issued without a conviction if the defendant absconds or dies prior to conviction. In addition, cash imported or exported and constituting the proceeds or instrumentality of drug trafficking may be forfeit without a conviction.

<sup>9</sup> Italy - in certain cases, confiscation may occur without conviction.

<sup>10</sup> Italy - for drug trafficking and organised crime, the onus of proving that assets are legitimate may be placed on the defendant if his/her assets are not commensurate with his/her income. In such cases the provision can apply to any assets, and not just to those constituting the proceeds of the offence of which the person is convicted.

<sup>11</sup> Japan and New Zealand - for drug offences, if the property was obtained during the period of the offences and the value of the property is not commensurate with the defendant's legitimate income.

<sup>12</sup> Netherlands - the standard of proof is slightly easier than the full criminal standard.

<sup>13</sup> Spain - property may be confiscated if it is a gift and the third party knew or suspected that it was the proceeds of crime. Similarly, a confiscation order may be executed against property subject to the effective control of the defendant if the third party is a bare nominee titleholder acting in bad faith.

<sup>14</sup> United States - in criminal cases, the standard of proof is that appropriate to a sentence hearing, namely the preponderance of the evidence.

<sup>15</sup> United States - in civil cases, if the government shows that there is probably cause to bring the proceedings, the burden shifts to the defendant, who must show that s/he was unaware that the property was acquired illegally or did not consent to the use of the property in an illegal manner.

## 4.4 Law enforcement and special means of investigation

In the last few years, in most countries of the world, one notes a shift in the behaviour of organised criminal groups. Today, more stable and enduring organisations operate simultaneously in multiple criminal markets, and their vulnerability to traditional law enforcement methods and policing appears to have diminished. As a consequence traditional street-level police strategies have proved too limited in their power and scope and, in reaction to the evolution of organised crime, the law enforcement agencies are trying to change as well.

Counteracting criminal organisations demands methods quite different from traditional ones, and the experience of many countries has suggested that, in order to boost the abilities of investigators and to reduce the time taken to conduct investigations or prepare cases for courts, it may be advantageous to use information obtained by means of electronic monitoring, undercover agents, controlled delivery of drugs, the testimony of accomplices, and other methods of preliminary investigation or evidence.

Although there is a general agreement among countries on the need to equip law enforcement agencies with strategic investigative capacities, and to establish clear directives in programming for specific goals, differences are evident in the application of special means of investigation, especially as regards undercover agents, controlled delivery and electronic surveillance. Undercover policing frequently combines a variety of methods: gathering intelligence, considering criminal policy goals (e.g. not intervening in a controlled crime scene), and protecting information sources and the secret identity of agents. However, characteristic of the definition and implementation of these technologies and methods is striking the difficult balance between the right to privacy and the needs of the law enforcement agencies. Many of the countries that have successfully used these methods against organised criminal groups have also been able to establish this balance.

Some countries do not allow the use of undercover agents, others impose some restrictions in terms of the crimes regarding which these methods can be used (e.g. only for drug trafficking), and yet others prohibit incitement to commit a crime, and on this basis do not approve the use of undercover agents.. Some countries allow the controlled delivery and the sale of drugs to an undercover officer, and in some limited cases allow an undercover officer to deliver drugs to another person. The United States and many European countries, for example, have recently seen a significant expansion in the use of undercover police tactics and technological means of surveillance. In the USA, the growing use of undercover methods has been accompanied by an increase in other special means of investigation including computer files, video and audio surveillance, and electronic location monitoring. In recent years, certain new forms of surveillance and covert activities

for the prevention and control of organised crime have also been introduced in Europe, but not to the same extent as in the United States. Controlled deliveries of drugs, for example, are now regarded as legal in most European countries, although their changed status has yet to be ratified by the codes of criminal procedure.

#### 4.4.1 Law enforcement agencies

Organised crime may be investigated by a variety of law enforcement agencies with different jurisdictions. Although many countries do not have specialised units to investigate organised crime cases, when resources permit there may be greater value in the creation of one or more specialised units dedicated to the investigation of organised criminal groups, particularly in the areas of money laundering, drug trafficking and corruption. Close co-ordination and communication within and between agencies and units is essential if action against organised crime is to be successful.

##### *North America*

In **Canada** - with reference to the organisational aspects of law enforcement - criminal investigators do not belong to a separate corps as they do in certain European countries. In Canada there are three kinds of police forces: a federal police force (the Royal Canadian Mounted Police, RCMP), three provincial police forces, and the municipal police forces of the country's cities. Except for the smaller ones, all Canadian police forces act on essentially the same mandate, which comprises, in addition to the maintenance of order, criminal investigations as well.

The RCMP has specialised in the investigation of certain kinds of crime, like drug trafficking and corporate crime. In addition it also provides technical assistance to all the other Canadian forces. For example, the Canadian Police Information Centre, which is the central data bank on Canadian offenders, is managed by the RCMP, which collects and processes data from all other police forces and from courts and corrections.<sup>29</sup>

In 1992, Canada launched a pilot initiative called the Integrated Anti-Drug Profiteering (IADP) unit. These units are located in Vancouver, Toronto and Montreal, and they co-ordinate a linked system of enforcement-related resources. Their primary responsibility is to provide legal advice and to address the legal issues that arise at the various investigative stages of a proceeds of crime case. All units are housed in RCMP facilities under the management and direction of the RCMP. The objective of the IADP unit

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29 J.P. Brodeur, "Undercover Policing in Canada: A Study of its Consequences", in C. Fijnaut and G.T. Marx (eds), *Undercover Police Surveillance in Comparative Perspective*, 1995, Kluwer Law International, p. 73.

initiative is to test the integrated concept of investigating and prosecuting the upper echelons of money laundering and organised drug trafficking through the seizure and forfeiture of their illicit proceeds.

In the **United States** the FBI is the primary agency responsible for investigating organised crime activities, but other investigative agencies, such as the Drug Enforcement Administration (DEA), the Internal Revenue Service (IRS), the United States Customs Service, the office of the Immigration and Naturalisation Service, the Bureau of Alcohol and Tobacco Firearms, the United States Secret Service, and other federal, state and local investigative agencies, also play important roles in responding to organised crime. In 1981, on the basis of analysis of investigative and prospected successes, the FBI developed and initiated the Enterprise Approach to Investigations. Under this strategy, organised crime itself became the investigative focus, rather than the members of an organisation who commit particular violations. The RICO statute is an integral component of the enterprise approach. One reason for the success of the FBI's organised crime programme was its ability to develop an intelligence base on the structure, make-up and activities of Cosa Nostra over many years and to transfer intelligence from one field division to another. This was facilitated by the development and implementation of the Organised Crime Information System (OCIS), a computer network (set up in 1980) designed to collect, evaluate, store and disseminate organised crime intelligence information.

One of the principal features of US enforcement measures is the use of task forces, which are run by the Organised Crime Drug Enforcement Task Force (OCDETF) Program. This programme draws on the expertise of nine federal agencies<sup>30</sup> as well as a number of state and local law enforcement offices in the co-ordination of the investigation and prosecution of sophisticated and diversified criminal drug-related and money-laundering enterprises.

The Organised Crime Narcotics (OCN) Trafficking Enforcement Program (begun in 1986) provides back-up for US law enforcement agencies developing regional projects to investigate and prosecute major organised crime and narcotics trafficking offences. OCN projects undertake cases against criminal conspiracies and offenders which require time-consuming investigative techniques and for which co-ordination among agencies is essential. The primary goal of the OCN Program is to enhance - through the shared management of resources and joint operational decision-making - the ability of local, state and federal law enforcement agencies to remove specifically targeted major narcotics trafficking conspiracies and offenders through investigation, arrest, prosecution, and conviction. A variation on the standard

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30 The nine federal agencies are the DEA, Customs, ATF, Coast Guard, US Marshals Service, IRS, FBI, the Justice Department's Tax and Criminal divisions and the Immigration and Naturalisation Service.

OCN project is constituted by OCN Gang Violence Enforcement projects, which identify gangs or criminal groups responsible for committing major acts of violence and a disproportionate share of the violence occurring within a jurisdiction. Once the violent group has been identified, the OCN Gang Violence Enforcement project develops comprehensive investigative strategies to remove the identified members, elements and layers of the gang from the jurisdiction and to neutralise their ability to commit major acts of violence.

### *Central and South America*

In **Brazil** law enforcement is divided among the Military Police, the Federal Police, and the Civil Police. One of the responsibilities of the Federal Police is to monitor the Amazon region, which is the gateway for drugs entering Brazil. In **Cuba** the National Drugs Commission, an interagency body under the Ministry of Justice, co-ordinates narcotics investigations and law enforcement. In **Haiti** the responsibility for counter-narcotics law enforcement currently attaches to the Ministry of Defence. Two drug units, subordinate to the Haitian military, co-ordinate intelligence gathering and interdiction activities. The National Narcotics Bureau (NNB) directs law enforcement activities; subordinate to the military Chief of Staff, it is comprised of 40 officers and enlisted men. The Centre for Information and Co-ordination (CIC) is responsible for the collection, analysis and dissemination of intelligence for narcotics law enforcement and employs about 30 security service personnel.

In **Mexico**, in 1993, the government created the National Institute for the Fight against Drugs, which has overall responsibility for counter-narcotics activities and targets drug trafficking, money laundering and arms smuggling. In **Panama** the Judicial Technical Police (PTJ) is the law enforcement agency responsible for the struggle against the still prevalent narcotics traffic in the country. The PTJ is composed of former Panamanian Defence Force members. In **Uruguay**, in March 1994, the Interior Minister set up an Anti-Mafia Unit to combat Uruguayan criminal organisations through intelligence work. This Unit has begun to process information from various sources and has launched an investigation into the origin of capital which permits individuals to enjoy lifestyles not commensurate with their “official” incomes.

### *Western Europe*

With regard to law enforcement measures in **Belgium**, intelligence activities are handled by the Department of Serious Financial and Commercial Crime (Department SFCC), which has prime responsibility in the field of organised crime, financial matters and money laundering. It is the only central service with such responsibility and can co-ordinate police investigations as well as

carrying them out in its own right. In addition to operational case analysis, this service also conducts strategic crime analysis.

In **Denmark**, the National Criminal Intelligence Service was established in 1992 at the Office of the National Commissioner in Copenhagen. The Service collects and provides information, particularly drug-related, and assists the police nation-wide.

The most important of **Finnish** law enforcement agencies in combating organised crime and money laundering is the National Bureau of Investigation (NBI) which operates directly under the supervision of the Ministry of the Interior. This agency has jurisdiction over the entire country and acts as Interpol's National Central Bureau (NCB) in Finland. In order to conduct its investigations, the NBI clearing house has two full-time intelligence officers and one other officer. It was established in 1993 and has expanded to its present form since the beginning of 1994. The clearing house is located within the Intelligence Unit of the NBI. Hence, if necessary, it is able to utilise all the intelligence capabilities of the agency. Criminal investigation work is dealt with by the NBI investigators or by local police officers, alone or together, on a case-by-case basis.

In **France**, police and customs officers are responsible for the identification and investigation of organised crime and money laundering offences. They conduct their enquiries in accordance with their respective powers under the Code of Criminal Procedure and the Customs Code. Legislation has, however, equipped them with specific means to fight drug trafficking and money laundering by authorising, in an Act of 19 December 1991, the practices of controlled delivery and the infiltration of networks. The law provides that, in order to record offences of drug trafficking and the laundering of its proceeds, police inspectors and, under their authority, police officers may, after informing the Public Prosecutor, conduct the controlled transport of narcotics or their proceeds. The law contains identical provisions for customs officers. Worth mentioning is the fact that undercover work by police and customs officers is permitted in money-laundering cases, but it is used very selectively. Some law-enforcement techniques such as sting operations are legal but they have not been widely accepted or employed.

In 1990, the French Ministry of the Interior created a new central unit, the Central Office for the Prosecution of Serious Fraud (*Office Central de Repression de la Grande Délinquance Financière* - OCRGDF). Established by an inter-ministerial order of 9 May, 1990, this unit investigates offences of an economic, commercial and financial nature connected with organised crime, and especially those relating to large-scale aggravated theft, terrorism or drug trafficking. The OCRGDF is responsible for: (a) promoting, organising and co-ordinating action by the police and the *gendarmerie* targeted against persons committing offences related to serious fraud, and their accomplices; and (b) participating, with the ministries and the public and private bodies and international bodies concerned, in the study of preventive



and repressive means to be used in order to combat serious fraud committed in conjunction with organised crime.

The OCRGDF intervenes on its own initiative or on request from the local and regional police and *gendarmerie* services or judicial authorities. It is empowered to establish relations and to correspond directly, for the purpose of co-operation and the exchange of information, with the central services of other states with similar functions, and with any other body responsible for the prosecution of serious fraud. The main characteristic of the office is that it has extremely broad powers which are invoked when offences of a financial character are connected with organised crime.

In **Germany**,<sup>31</sup> since 1984 there has been a significant expansion of specialised organised crime units within the criminal police force. This has resulted from agreement on a proposal by a subcommittee of the Conference of the Ministers of Interior to link the various police forces of the Federal Government and of each *Land* into an integrated system through recommendations and binding decisions. As a consequence of this agreement, special units and divisions to fight organised crime have been established with the additional task of both co-ordinating and implementing the use of covert operations. Units or Divisions of this nature have been set up (1) at the *Bundeskriminalamt* (Federal Bureau of Criminal Investigation) for special interstate cases and international organised crime; (2) at the *Landeskriminalämter* (State Bureau of Criminal Investigation) for interstate crime; and (3) in major cities for regional organised crime to the extent that focal points of organised crime are located in these regions.

In the meantime, all *Länder* have created units of this kind in the state criminal investigation bureau, while the *Bundeskriminalamt* has simultaneously expanded its corresponding departments. The general features of these units can be summarised as follows: (a) they constitute a new field of specialisation in the criminal investigation departments, with sophisticated technology, increased financial resources and a higher strength and professionalisation of personnel, integrating police intelligence, crime investigation and undercover methods; (b) these units build their own information systems, inaccessible to the rest of the criminal investigation department. In addition to the regional data-banks maintained by the State Bureau of Criminal Investigation, they also run a national "PIOS" data-bank at the *Bundeskriminalamt* (PIOS denotes Persons, Institutions, Objects - like buildings - and Things - items of potential material evidence) where all information of potentially interstate interest is collected; (c) the data stored in these data-banks are only partially the product of the investigations and covert operations performed by these units themselves. For the most part they are

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31 This part is mainly based on: H. Busch and A. Funk, "Undercover Tactics as an Element of Preventive Crime Fighting in the Federal Republic of Germany", in C. Fijnaut and G.T. Marx (eds), *op. cit.*

extracted from information gathered in the day-to-day activities of the police and the ordinary detective superintendents' offices.

Legally, these units do not possess special police powers directly linked to organised crime. The so-called Organised Crime Law (OrgKG) of 1992 (an amendment to the code of criminal procedure), avoids any definition of the term 'organised crime', which serves only to mark out different areas of responsibility in the criminal investigation division. However, the assignment of cases to an organised crime unit makes a real difference. It opens up the use of methods of "preliminary investigations" (*Vorfelddermittlungen*) codified in the criminal procedure and police statutes. The use of electronic surveillance, wire tapping and covert registration is authorised for a wide range of crimes, although techniques and methods of proactive, covert investigation are available only to the highly professional units dealing with organised crime and drugs, terrorism and political crime<sup>32</sup>.

In **Ireland**, in 1995, the Government approved the establishment of a new National Bureau of Fraud Investigation within the law enforcement forces. The National Bureau of Fraud Investigation has also assumed a central role in the fight against money-laundering offences and other irregular financial activities by organised criminals. As well as this Bureau of Investigation, in July 1995, and in order to stop the growing threat of drug trafficking within the country, the Irish police set up two specialised units to investigate the financial affairs of these criminals. One of the units traces their assets and the other investigates the laundering of drugs proceeds.

Like other countries, **Italy** suffers from the problem of several law enforcement agencies with overlapping powers. The difficulty of co-ordinating the three main law enforcement agencies (*Polizia*, *Carabinieri* and *Guardia di Finanza*) has always existed, and only in 1990 - with decree law n. 321 - were judicial police services envisaged which would co-ordinate investigations of organised crime set up at the central and inter-provincial level in each of the three law enforcement agencies.

Law n. 203/91 completed the legislative process begun by decree law n. 321 of 1990 and led to the creation of the central and inter-provincial services of the three police forces: (1) the Central Operational Office (*Servizio Centrale Operativo* - SCO) and Inter-provincial Centres of Criminal Police (*Centri Interprovinciali Criminalpol*) for the Italian National Police; (2) the Special Operational Unit (*Raggruppamento Operativo Speciale* - ROS) and the Crime-Fighting Provincial Offices within the *Carabinieri* Corps (*Servizi Provinciali Anticrimine dei Carabinieri*); and (3) the Central Organised Crime Investigating Office (*Servizio Centrale di Investigazione sulla Criminalità Organizzata* - SCICO) and Inter-provincial Units within the *Guardia di Finanza* (*Gruppi Interprovinciali della Guardia di Finanza* - GICO).

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32 H. Busch and A. Funk, *op. cit.*, pp. 61-63.

By law, a public prosecutor investigating organised crime must draw on all three of these services, which in turn must co-operate with each other in their information-gathering and investigative activities, with the other branches of the judicial police, and with any foreign police force that may be involved. The government has also stipulated that the central and inter-provincial services must assume the character of “inter-forces” in particular regions of the country. In 1991, emphasis was once again placed the need for the co-ordination of investigations, with the proposal that Central and Inter-provincial Offices could become, in certain regions and for specific needs, combined forced units.

The need to create new structures and new organisational models gave rise to law 410/91, which allocated the functions previously performed by the High Commissioner for the Fight Against Mafia (*Alto Commissario Antimafia*) among various bodies: co-ordination was assigned to the General Council for the Fight Against Organised Crime (*Consiglio Generale per la lotta alla criminalità organizzata*); information gathering to the security services; and policing in its twofold guise as preventive and judicial investigation to the *Antimafia* Investigating office (*Direzione Investigativa Antimafia - DIA*), an inter-force body operating under the aegis of the Department of Public Security of the Ministry of the Interior. The General Council for the Fight Against Organised Crime, presided over by the Minister of the Interior and consisting of the heads of the police forces and the information services, is responsible for planning overall strategy.

This piece of legislation pursues two main objectives, therefore. It has sought to specialise the powers and functions of the various police forces, allocating specific tasks and primary competence in its sector to each of them and creating an integrated investigative system in which specialised agencies interact with the supervisory investigative structures. The second objective has been to involve the Security and Information services more directly in this sector.

Repressive action against organised crime has also been enhanced by enabling investigating bodies to undertake initiatives with a broader scope and backed by an updated criminal procedure code introduced in 1992 which gives the Criminal Police greater autonomy in gathering information about crimes.

Still to be fully developed is legislation relating to the protection of co-operating witnesses (*pentiti*) and their family members. Law 82/91 established, for the first time and systematically, the basis for the entire witness protection system, setting out procedural aspects and providing for the creation of the *Servizio Centrale Protezione* under the direction of the Department of Public Security, a body appointed to implement a special “programme” drawn up by a special Central Committee at the Ministry of the Interior presided over by an Under-Secretary of State. In 1993, 90 protection programmes were set up, and in 1994 a further 280 were added.

In the **Netherlands**, the police increasingly rely on methods and techniques labelled “proactive policing” (relating to the collection and analysis of tactical and strategic intelligence) to deal with serious and organised crime.<sup>33</sup> As regards the organisational aspect of national law enforcement forces, the country has a regulated system of collecting and analysing criminal information and exchanging this information with other police agencies: a Central Police Intelligence Agency (CRI), local CID-information units and the special CID-Departments of the fiscal police, the General Inspectorate of the Ministry of Agriculture, the Economic Control Service and the CID-units of the Branch Associations. Legally, information can only be used for investigative purposes. The registration system of the competent police departments is regulated by Dutch and international law, for example the European Convention on Human Rights and Fundamental Freedoms. Intelligence is collected by the Fiscal Police, the General Inspection Service of the Ministry of Agriculture (especially for EC fraud), the Economic Control Service and the investigation departments of the Executing Authorities for social benefit. Banks also have intelligence units which analyse criminal information.

In **Norway**, the National Bureau of Crime Investigation (NBCI), a new unit created in 1991, is responsible for national and international criminal intelligence. The Criminal Intelligence Division at the NBCI has one intelligence contact officer and one deputy at each of the 54 police districts in Norway. These contact persons keep themselves updated on information of interest within their police district and report back to the central unit. The information is recorded on-line in a national central data base. In general, criminal intelligence is based on information already in the possession of the police or of which it gains knowledge. However, information is also obtained from data which are available to the public, researchers, tax authorities, etc.

The fight against organised crime in **Portugal** is led by several law enforcement forces, primarily the *Policia Judiciaria*, which depends on the Ministry of Justice, while all the other Portuguese police forces depend on the Ministry of Internal Affairs. The Judicial Police is headed by a General Director (*Direcção General*) appointed by the Minister of Justice. There are, moreover, three special government departments engaged in the fight against organised crime, each of them headed by an Assistant General Director, who, like the General Director, usually belongs to the judiciary. The General Director therefore supervises the DCITE (*Direcção Central de Investigacao do Trafico de Estupefacientes*, which combats drug trafficking and money laundering), the DCCCFIEF (*Direcção Central de Combate a Corrupção e Criminalidade Economica Financeira*, which investigates economic crime

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33 P.Klerks, “Covert Policing in the Netherlands”, in C. Fijnaut and G.T. Marx (eds), *op. cit.*, p. 104.

and corruption), and the DCCB (*Direcção Central de Combate ao Banditismo*, which fights terrorism, racketeering and kidnapping).

In **Sweden**, the National Police Board is the central administrative authority for the Swedish police, which is divided into local and regional police forces. In each county there are divisions dealing with frauds drug trafficking or economic crime, while the National Criminal Investigation Department handles serious offences at the national or international level.

Other law enforcement authorities are the National Unit Against Economic Crime and the Public Prosecution for Special Cases. The Public Prosecution Authority holds overall responsibility for all criminal investigations involving coercive or provisional measures, as well as prosecutions, and it also directs investigations and conducts prosecutions. The Public Prosecution for Special Cases is part of the National Unit Against Economic Crime established in June 1995 as part of the Public Prosecution Authority and consists of prosecutors, police and experts from the tax and recovery authorities. It performs a specialised role in the investigation and prosecution of more complex economic crimes connected with business, trade and industry.

In **Switzerland** the Swiss Federal Office of Police (*Office fédéral de la Police - OFP*) co-ordinates measures to combat illegal drug trafficking and supervises inter-cantonal investigations into the financing of drug trafficking, while also undertaking inquiries on its own account. The OFP also provides training for cantonal police forces by circulating information on the latest laundering techniques. Through a centralised unit, it is also responsible for intermediation between foreign and cantonal authorities and for the provision of judicial assistance.

Proposals made in the past to amend the Swiss Criminal Code in order to institute a Central Office for Combating Organised Crime (*Office central de lutte contre le crime organisé - OCCO*) led to the enactment of a Federal Law adopted by Parliament on 7 October 1994 which came into force on 15 March 1995. This Office advises, informs and co-ordinates action in this specific field and handles contacts concerning international co-operation with foreign police authorities, its specific task being to analyse the tendencies and types of money-laundering activities.

The **United Kingdom** has nine regional crime squads comprising officers seconded from the 43 metropolitan police forces for a three-year turn of duty. The responsibility of these units is to (1) identify and arrest those responsible for serious criminal offences which transcend the jurisdiction of individual police forces; (2) co-operate with the Regional Criminal Intelligence Offices in gathering intelligence; and (3) on request by the Chief of one of the 43 police forces, to assist in the investigation of serious crime. All operations conducted in relation to organised crime are recorded within the intelligence system and then cross-referenced on the individuals under investigation.

In 1991, the **Bulgarian** parliament passed a law which regulates the structure and activity of the Central Service for Organised Crime Control (CSOCC), a specialised body set up within the Interior Ministry to combat organised crime in the country. The new law covers anti-terrorism investigations and intelligence, and the fight against trafficking in drugs, arms and cultural artefacts. The CSOCC (alone or in co-operation with other specialised bodies) carries out investigative, tracing, intelligence-gathering, organisational and other operations targeted at acts of terrorism against government institutions, as well as against the representatives and institutions of other countries and international organisations. The tasks of the service also include the prevention and control of the illegal production of, trade in, and trafficking of drugs, illegal dealing and trafficking in arms, automobiles, cultural and historical valuables. Blackmailing, kidnapping and hostage-taking also fall within the CSOCC's remit. A special provision in the law concerns the struggle against corruption in the government administration and organised crime in the economic and financial sectors. The act further authorises the CSOCC to maintain surveillance, within the country's borders, on individuals suspected of involvement in criminal activity. The various agencies belonging to this service have the power to demand information pertaining to organised crime from traders, banks and government bodies. The act makes provision for co-operation with the services of other countries and international organisations on the basis of effective accords.<sup>34</sup>

In **Hungary** the Central Criminal Investigating Directorate is a police force responsible for investigating organised crime. In **Lithuania** the special investigation units of the Office of the Prosecutor General and the Services of Organised Crime in the Ministry of Interior conduct investigations into organised crime. The **Russian Federation** has established a system to combat organised criminal groups which comprises a national-level special department concentrating on dangerous crime, organised crime, narco-business and corruption, and units of the same type, subordinate to the Ministry of Internal Affairs, at the interregional and regional levels. Investigations into organised criminal groups may be carried out by internal affairs or state security organs, or by the procurator, depending on the nature of the activity. The role of the procurator is to uphold the laws providing sanctions against criminal acts, and to supervise and guide the investigation of organised crime cases. The procurators are entitled to remove any criminal cases from the investigative agencies and to pursue them themselves. As a rule, this power is exercised in cases of great significance or in those with major societal

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34 Bulgaria, Internal Affairs: "Parliament passes law on fighting organised crime", in *Bulgarian Telegraph Agency News Agency*, Sofia, 21 July 1995.

impact. In **Slovakia** the General Prosecutor's Office has an independent working unit specialised in organised crime.

### *Oceania*

Investigations by **Australian** law enforcement agencies are restricted to matters which lie within their respective jurisdictions, State or Commonwealth. Although most criminal law is the responsibility of the individual state (each state has agencies responsible for financial fraud and drug trafficking, including prosecution), co-ordinated strategies to target major organised crime groups, including ones engaged in money laundering, are implemented via the NCA (National Crime Agency) and involve co-ordination of all relevant state and federal law-enforcement and regulatory agencies. The NCA is an investigative agency which deploys multi-disciplinary teams of police, financial investigators, lawyers, intelligence analysts and support staff to investigate organised crime. The NCA Act of 1984 assigns a number of coercive powers to the NCA, including the ability to compel people to produce documents and to give sworn evidence before the Authority. These powers are not available to traditional police forces. The NCA may also use facilities such as telephone interception and listening devices, although these are only available after a judicial warrant has been obtained under the relevant Federal and State or Territory legislation.

The Australian Securities Commission has extensive powers to investigate contraventions of the Corporations Law and associated legislation dealing with corporate crime. The Australian Office of Strategic Crime Assessments (OSCA) is a new body set up to provide the Australian Government with a policy-relevant, system-wide overview of significant crime trends and criminal threats to Australia likely to emerge within three to five years; the aim is to enhance law enforcement policy development.

#### 4.4.2 Undercover agents

The use of police agents operating in secret - for which the Anglo-American term "undercover" is generally used - appears to have become standard practice in modern police work. In recent years undercover policing has become a matter of public debate, especially in North America and in Western Europe. Much of the discussion concerns the fact that although the method is increasingly seen as an efficient and even necessary strategy to combat major organised crime, it is a risky undertaking which involves the invasion of privacy, the exploitation of trust, danger to third parties, and the risk of police corruption and a compromised judicial system.<sup>35</sup>

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35 H. Busch and A. Funk, *op. cit.*, p. 55.

Sophisticated organised crime cases demand sophisticated undercover work. Although the police and the other law enforcement agencies still engage in the more traditional undercover work involving for example casual bar contacts, they are now increasingly required to set up elaborate money-laundering storefront operations which not only appear to be a viable money-exchange operations but may in fact carry out transactions. Although the use of undercover agents and of sting operations may help law enforcement agencies to build cases against criminal organisations, these methods do not usually provide in-depth knowledge on the functioning and membership of larger organisations.

In **Canada**, the most publicly known cases of undercover policing fall, among others, within the sectors of drug offence crime, corporate crime, low clearance-rate crime (e.g. organised burglary and theft of motor vehicles) and low visibility crime (e.g. tax evasion).<sup>36</sup>

In the **United States** the use is permitted of undercover agents who secretly record conversations with the subject under investigation. Unlike electronic surveillance, this type of recording does not require a search warrant or a court order,<sup>37</sup> given that the Fourth Amendment does not extend to encounters voluntarily undertaken by the target of the investigation.

The DEA (Drug Enforcement Administration), like most other US law enforcement agencies, occasionally runs deep undercover operations. The vast majority of undercover operations involving DEA agents are part-time affairs in which the agent returns to his office or home after meeting a contact in his/her undercover capacity. Few DEA operations require agents to remain undercover for more than a few days at a time.<sup>38</sup>

In **Argentina**, in December 1994, the Argentine Congress passed legislation which permits members of the law enforcement agencies (police and security forces), to operate as undercover agents in drug-related cases. The law also permits internationally controlled deliveries and allows judges to reduce sentences or to drop charges against suspects who co-operate in drug investigations.

In **Macao**, a law enacted on 4 August 1997<sup>39</sup> gives the police broader power of investigation and evidence-gathering. Under this new law, the courts will be able to deal with suspected crimes, and the police forces will be able to use undercover agents.

In the **Russian Federation** a law on the operational activity of the police was passed in 1992 which empowers the police to engage in surveillance

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36 J.P. Brodeur, in *op. cit.* p. 81.

37 18 USC § 2511(c).

38 E.A. Nadelmann, "The DEA in Europe", in C. Fijnaut and G.T. Marx (eds), *op. cit.* p. 276.

39 *Xinua News Agency*, 4 August 1997.



activity, to monitor mail, and to eavesdrop on telephone conversations and other forms of communication. Non-life-threatening technical devices may be used to monitor citizens. The circumstances under which police personnel can initiate such undercover activities are indicated, and undercover methods may not be employed without approval of the courts or the procuracy. The section of the law on the use of informants states that informants are entitled to protection, if necessary, as well as to pension benefits for their term of service.<sup>40</sup>

Greater use is being made of undercover agents in Germany as a result of the general and complex transformation of organisational structures, crime and policing strategies in the country. Today, undercover operations are staged more systematically and on a broader scale than was the case prior to the 1980s. They are now combined with techniques of electronic surveillance and investigation that, in the 1970s, were restricted to the anti-terrorist activities of the political police. This expanded pattern of undercover operations centres on special areas of investigation, referred to as organised crime.<sup>41</sup>

In **Sweden** the use of *agent provocateurs* is a matter of controversy. More passive crime provocation, such as buying drugs, is regarded as permissible, whereas more active crime provocation, like selling drugs, is not allowed.<sup>42</sup> In **Italy** the legal system does not specifically provide for undercover agents. It does, however, allow undercover investigations with regard to drug-trafficking and money-laundering crimes.

#### 4.4.3 Electronic surveillance

Electronic surveillance is one of the most powerful technologies employed to collect evidence. Organised criminal groups make extensive use of wire and oral communications, and the interception of these communications to obtain evidence of the commission of crimes, or to prevent their commission, is an indispensable aid to law enforcement and the administration of justice.

Electronic eavesdropping has figured prominently in almost every organised crime prosecution of recent times. Indeed, the American FBI and state and local agencies have utilised both telephone interceptions and microphones secreted in cars, homes, restaurants and social clubs for some of their most important investigations into organised crime. In some cases, the FBI has also been able to pick up conversations on the streets using high-power surveillance microphones.

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40 L. Shelley, "Soviet Undercover Work", in C. Fijnaut and G.T. Marx (eds), *op. cit.* p. 171.

41 H. Busch and A. Funk, *op. cit.* p. 56.

42 D. Töllborg, "Undercover in Sweden: The Swedish Security Police and Their Modi Operandi", in C. Fijnaut and G.T. Marx (eds), *op. cit.* p. 264.

The effectiveness of the electronic surveillance technologies is, from some points of view, limited and works only in the short term. Criminals are adapting to this technology by using encrypted telephones and faxes which render interception impossible. The development of crypto-technology is creating major problems for law-enforcement agencies, neutralising their powerful instruments of electronic surveillance. The debate centres on striking the right balance between individual rights to privacy and the needs of crime control. At issue is whether only one standardised crypto-technology should be available, giving the law enforcement agencies the ability to intercept it, or whether, due to market pressures, different crypto-technologies should be used, making interception more difficult.

### *North America*

In 1993 Bill C-109 amended the **Canadian** Criminal Code and introduced a scheme for the protection and interception of private oral communications and telecommunications pursuant to a judicial authorisation. For investigative purposes, the courts can now authorise electronic video surveillance, the interception of cellular phone communications and the use of dialled-number recorders and electronic tracking devices.<sup>43</sup> Bill C-109<sup>44</sup> allows the police to intercept a private communication if: (a) either the originator of the private communication or the intended recipient gives consent to the interception; (b) there are reasonable grounds to believe that there is a risk of bodily harm to the person consenting to the interception; and (c) the purpose of the interception is to prevent bodily harm. The contents of the interception are inadmissible as evidence except for the purposes of proceedings in which actual, attempted, or threatened bodily harm is alleged. The Act requires the police to destroy any recordings and any transcript of the recording or notes. It also extends the category of individuals entitled to apply for judicial authorisation and the number of judges who may authorise the interceptions, while also allowing for exceptional or emergency interception by the police without consent or prior authorisation.

The **United States** allow the use of court-authorized electronic surveillance to gather evidence on serious criminal activity. This evidence-gathering technique is subject to stringent safeguards designed to protect privacy rights. The Fourth Amendment to the United States Constitution prohibits unlawful searches and seizures. In the conduct of most searches the Constitution of the USA requires law enforcement authorities to obtain a search warrant from a judge constitutionally and organisationally independent of

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43 Economic and Social Council, *Control of proceeds of crime, Report of the Secretary General*, Vienna, 3 April 1996, UN doc. E/CN.15/1996/3

44 M.E. Beare, "Criminal Conspiracies, Organized Crime in Canada", Nelson Canada, 1996.

the police and the prosecutor. In order for the police to obtain a search warrant, a police officer must normally execute an affidavit which states specific facts demonstrating good grounds to believe that evidence of a crime will be discovered. The judge before whom the affidavit is executed will decide whether the facts set out in the affidavit establish probable cause justifying the issuance of a warrant permitting the police to conduct the search. If the police search a location without a warrant (except in emergency situations), the evidence acquired during the search cannot be used against any defendant who had a reasonable expectation of privacy at the location of the search. This law is called the exclusionary rule of evidence, and it is strictly enforced by courts. No court authorisation is needed for an undercover agent or consenting witness to voluntarily record a meeting with the subject of an investigation.

Even more stringent procedures are followed to obtain court orders for the electronic interception of conversations in which no participant consents to the surveillance. Such surveillance requires permission from a senior official of the Department of Justice, and probable cause that evidence of a crime will be intercepted and that other investigative procedures have failed or appear unlikely to succeed, or appear to be excessively dangerous.<sup>45</sup>

In 1997, the **European Union**, in co-operation with the FBI, launched a system of global surveillance communications in order to combat serious crime and to protect national security. The Council of the EU and the FBI in Washington have co-operated for the past five years on a plan to introduce a global telecommunication tapping system.<sup>46</sup> The draft Resolution on the “lawful interception of communications”, an initiative by the Netherlands, was discussed by the K4 Committee in March, April, November and December 1994. The JHA Council discussed the draft Resolution in March 1994, but it was only formally adopted by “written procedure” on 17 January 1995. The decision was not published in any form for almost two years - on 4 November 1996 it finally appeared in the Official Journal. The Resolution divides into three parts. The first states that “the legally authorised interception of telecommunications is an important tool for the protection of national interest, in particular national security and the investigation of serious crime”. The second part (the Requirements) imposes an entire series of obligations on network providers (for example satellite communications

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45 18 USC § 2518(3).

46 The first reference to this initiative was at a Trevi Ministers meeting in December 1991. At the meeting of the new Council of Justice and Home Affairs Ministers in Brussels on 29-30 November 1993 agreement was reached on the text of a “questionnaire on phone tapping” which was sent to each Member State in July 1993 and to the new members (Finland, Sweden and Austria) in September 1993. At the first meeting of the new Council of Justice and Home Affairs Ministers in Brussels on 29-30 November 1993, the Resolution on “the Interception of telecommunications” was adopted.

networks) and on service providers, who furnish the equipment for national Telecom centres, business, groups and individuals. The third part of the Resolution consists of a glossary of definitions.

The Requirements are based on the needs of “law enforcement agencies” (defined as services “authorised by law to carry out telecommunication interceptions”) who “require access to the entire telecommunication transmitted by the interception subject” (defined as “person or persons identified in the lawful authorisation and whose incoming and outgoing communications are to be intercepted”) who is the subject of an “interception order” (defined as “an order on a network operator/service provider for assisting a law enforcement agency with a lawfully authorised telecommunications interception”).

Law enforcement agencies must also be given access, not just to the content of a communication, in whatever form, but also to “associated data”, “post-connection” signals (for example conference calling or call transfer), all numbers called, all numbers called from - in both cases even if a connection is not made - plus “real-time, full-time monitoring capability”, the location of mobile subscribers, simultaneous and multiple interceptions “by more than one law enforcement agency”, and “roaming” by mobile phone users “outside their designated home serving area”.

The network operators and service providers are expected to provide “one or several ‘permanent’ interfaces from which the intercepted communications can be transmitted to the law enforcement monitoring facility”. And, if they provide “encoding, compression or encryption” to the customer they must provide it *en clair* (decrypted) to the law enforcement agencies. Finally, they are obliged to ensure that “neither the interception target nor any other authorised person is aware of any changes made to fulfil the interception order (...) and to protect information on which and how many interceptions are being or have been performed, and not to disclose information on how interceptions are carried out”.

#### *Central and South America*

In **Jamaica**, the law does not allow the use of electronic surveillance for the collection of evidence. **Brazilian** law allows electronic surveillance after the officials making the request have received judicial authorisation.

#### *Western Europe*

**Belgium** forbids the use of wire-taps on telephone, listening devices (“bugs”) in homes, offices and cars, although information obtained abroad from legal wire-taps is admissible in Belgian courts.<sup>47</sup>

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47 E.A. Nadelmann, *op. cit.* p. 287.

In **France**, until the 1991 law, only court-ordered wire-taps were legal, but there were also parallel “administrative wire-taps” which were avowedly illegal but officially accepted. The Law of July 1991 stipulated the juridical conditions for judicial wire-taps and legalised administrative ones, which it placed under the control of an independent commission. The law also defined the legal motives for installing non-judicial wire-taps: telephones could be tapped only for reasons of “national security”, organised crime, terrorism or the “protection of national economic and scientific interests”.<sup>48</sup>

In **Germany**, electronic surveillance, along with the other forms of investigation falls within the responsibility of the investigators. Legislation specifically addresses electronic surveillance and other forms of sophisticated criminal investigations, and allows such forms with some limitations. Under current legislation, the admissibility of these methods is limited by strict interpretation of the constitutional law on proportionality with respect to criminal investigations, and also by other principles of constitutional law, together with basic principles of law and justice. Investigative methods affecting the domain of individual personality to any considerable extent, or methods employed in secrecy, are only admissible in connection with serious offences. In addition, the government must establish that other investigative procedures less injurious to the persons concerned, have been considered.

In **Italy**, in cases concerning serious offences, telephone wiretapping and the interception of telephone communications are allowed. The order for such surveillance is issued by a preliminary investigations judge at the request of the prosecutor. In urgent cases, the prosecutor may order the interception by issuing a decree stating all the reasons for the measure. However, the prosecutor must submit within 24 hours a written application to the preliminary investigations judge for the wiretap authorisation. The judge must confirm or deny the request within 48 hours. In addition, Italian law provides for preventive telephone tapping in accordance with the anti-Mafia law. Such tapping must be authorised by the public prosecutor and carried out in compliance with the relevant statutory provisions governing such surveillance. Information obtained under this law may be used to develop evidence, but may not itself be offered as proof at trial.

In **Norway** electronic surveillance is allowed as long as the fact is publicly announced; hidden surveillance is illegal.

In **Sweden**<sup>49</sup> wire-tapping is technically performed by the Telecom Administration on directions from the police. According to the Swedish Constitution, wire-tapping is only permissible when it is supported by law. Police have the legal right to perform wire-tapping for the purpose of disclosing and

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48 D. Monjardet, R. Lévi, “Undercover Policing in France: Elements for Description and Analysis”, in C. Fijnaut and G.T. Marx (eds), *op. cit.* p. 48.

49 This part is mainly based on: D. Töllborg, *op. cit.*

preventing crime. The basic regulations regarding wire-tapping are set out in the Code of Judicial Procedure (*Rättegångsbalken*)<sup>50</sup>. These rules allow the use of wire-tapping in preliminary investigations by the police, and they concern the investigation of already-committed crimes in order to secure evidence. The rules provide various forms of protection against the undue use of wire-tapping: the measure shall be decided upon by a court of law, it can only be used against a person suspected on reasonable grounds of having committed certain serious crimes, permission can only be granted for a month at a time and must only relate to the telephone of the suspect him/herself or a telephone that is believed on reasonable grounds to be used by this person. It is not illegal for a policeman to record a conversation in which s/he himself participates with the help of a microphone concealed on his/her person; whereas it is considered illegal if s/he uses the technique to record a conversation in which s/he takes no part, despite the fact that the purpose in both cases is to secure evidence of crime on tape. A milder version is so-called secret 'tele-surveillance', a recently-introduced measure whereby the Telecom Administration can be asked to give information about calls to or from a certain telephone. This measure need not be based on crimes as serious as those for which wire-tapping is envisaged, but the suspicion must still be reasonable and the measure must be decided by a court of law. 'Bugging' signifies the surreptitious technical interception of oral communications carried out in ways other than telephonically. In Sweden bugging is a criminal offence, and there is no exception for the Security Police. The crime is called 'illegal listening' and is punishable with a fine or imprisonment up to two years.<sup>51</sup>

The **United Kingdom** allows electronic surveillance evidence to be admitted under the Police and Criminal Evidence Act of 1984. The decision to use electronic means in an investigation is contained in non-statutory guidelines which require investigators to obtain approval from the appropriate authorities before beginning the surveillance. The Intrusive Surveillance Code of Practice applies to any authorisation for intrusive surveillance (under Part III of the Police Act 1997) by the police, Her Majesty's Customs & Excise, the National Criminal Intelligence Service (NCIS) or the National Crime Squad.

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50 Apart from the rules of the Code of Judicial Procedure, wire-tapping is authorised by another four statutes: the Institutional Correction Act (*Lagen om kriminalvård i anstalt*), the Act on Treatment of Arrested and Detained Persons (*Lagen om behandling av häktade och anhållna*), the Terrorist Act (*Terroristlagen*) and the Act on Special Rules for Coercitive Measures in Certain Criminal Cases (*Lagen med särskilda bestämmelser om tvångsmedel i vissa brottmål*). In contrast to the Code of Judicial Procedure, these statutes radically extend police authorisation to use wire-taps.

51 D. Töllborg, *op. cit.* p. 255.

### *Eastern Europe*

In **Bulgaria**, under current criminal law, although telephone tapping, electronic surveillance and other forms of interception are allowed, the information obtained cannot be admitted as evidence in court cases.<sup>52</sup> In **Hungary, Lithuania, Poland, Romania, Slovakia** and **Slovenia**, the law authorises the use of special means of investigation in criminal cases, in particular electronic monitoring, telephone tapping and other means to intercept communications.

The **Russian Federation** allows the use of electronic surveillance in criminal investigations and requires the police or other investigative officials to obtain authorisation from either the procurator or the court. Electronic surveillance includes the monitoring of telephone conversations involving a suspect or other means of communications. Any fact learned as a result of the electronic surveillance may be submitted as evidence in criminal cases.

### *Asia*

**China** allows investigators access to covert electronic surveillance conducted by the government. As regards the **Japanese** system, although the law is silent on the issue of electronic surveillance, certain forms of interception are allowed if a warrant of inspection has been issued.

#### 4.4.4 Controlled delivery of drugs

The technique of controlled delivery - where drug enforcement agents allow an already-detected consignment of illicit drugs “to go forward under their control and surveillance, in order to secure evidence against the organisers of such illicit drug traffic” - is regarded as particularly effective by many drug enforcement agents.<sup>53</sup>

In **France** controlled deliveries from Spain to the Netherlands are not unusual. In **Denmark**, controlled deliveries are regarded as entirely legal; the Dutch and Danish police frequently co-operate, particularly on shipments passing through Denmark *en route* to Sweden.<sup>54</sup> In **Italy**, controlled deliveries of drugs are allowed by the law. In the **United Kingdom** undercover agents can be used to investigate organised crime, but they are prohibited by internal regulations to incite or to procure the commission of a crime. The controlled delivery of drugs to establish a defendant’s guilt is allowed.

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52 “Bulgaria Needs New Law to Fight Organised Crime”, in *Limited Reuters World Service*, 25 March 1997.

53 E.A. Nadelmann, *op. cit.* p. 284.

54 E.A. Nadelmann, *op. cit.* p. 286.

Because<sup>55</sup> so many controlled deliveries cross national borders, the legal status of this investigative technique have been addressed, not just within the confines of individual European states, but also by the Council of Europe and various international associations and conferences of drug enforcement agents. One particularly influential development has been the inclusion in the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of provisions encouraging the use of controlled deliveries.<sup>56</sup>

In the **United States**, controlled deliveries of drugs are permitted under law, and may form the sole basis for criminal liability. A controlled delivery of drugs generally takes two forms: (1) drugs which have been discovered as a result of a search are delivered to the person for whom they were originally intended, who is then usually arrested following the delivery; (2) a co-operating witness arranges for the sale of a large quantity of drugs to a person who intends to resell them to others. The target of the investigation is arrested upon the completion of the sale.

#### 4.4.5 Witness protection programmes

The use of the testimony of accomplices has proved extremely helpful in prosecutions involving organised crime cases, because the use of such testimony may enable the law enforcement agencies to penetrate organised criminal organisations. In the past, the unwillingness of victims and other witnesses to testify raised a major impediment against successful organised crime prosecutions in many countries. Fear of retribution was well founded since there were many examples of potential witnesses being murdered or beaten. In response to this problem, some countries have found it advantageous to enact legislation to protect witnesses and/or oblige witnesses to testify truthfully, and provide sanctions if they refuse to do so.

Providing physical protection for witnesses is only one aspect in securing their co-operation. The principle behind the concept of immunity is that not all offenders will be prosecuted in order to secure the conviction of others. If the potential witness/informant is involved in the criminal activity, and is therefore vulnerable to conviction and imprisonment, some “agreement” may be necessary whereby the threat of further prosecution is exchanged for information. The ability to offer immunity in exchange for information may make it possible to advance a particular case that otherwise would go unprosecuted, and to gather information about particular crimes.<sup>57</sup>

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55 E.A. Nadelmann, *op. cit.* p. 284.

56 Art. 11 of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

57 M.E. Beare, *op. cit.*



## *North America*

As regards **Canada**, in March 1995 the federal Government tabled a bill to formally create Canada's first national witness protection programme, which came into effect on 20 July, 1996. Prior to this entry into force, there had been no "national" witness protection programme to meet the needs of all police forces across Canada. The 1984 RCMP Source Witness Protection Program (SWPP) was originally designed to meet the requirements of the RCMP alone. It has since been expanded to provide services to all Canadian police departments and other enforcement agencies; services which include immediate temporary protection, relocation, change of identity (including new documentation) and subsistence or maintenance funding.<sup>58</sup> At present, there is no formal system in Canada for granting immunity to police informants; rather than immunity in the sense of an absence of charges, the "exchange" more often takes the form of plea bargaining. Serious charges are exchanged for lesser ones (plus the information).<sup>59</sup>

In the **United States** the Witness Security Program (the Program), authorised in the Organised Crime Control Act of 1970, sought to guarantee the safety of witnesses who agreed to testify for the government in organised crime cases. Run by the United States Marshalls Service, the Witness Security Program applies to witnesses before, during and after trial. It protects them during their prison terms, and if they are released, provides them with new identities, jobs and homes in new locations.<sup>60</sup> The Program is governed by numerous rules and procedures relating to the type of person admitted into the program. Before a person is accepted, a detailed review is conducted concerning the possible threat to the witness posed by potential criminal defendants and their associates. The Witness Security Program is available to accomplices who agree to testify against a defendant.<sup>61</sup>

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58 Ibid.

59 Ibid.

60 The Witness Security Program authorises the Department of Justice to perform the following services in addition to physical guarding: (1) issuing documents to enable the witness to establish a new identity or otherwise protect the witness; (2) providing temporary housing for the witness; (3) providing for the transportation of household furniture and other personal goods to the new location; (4) providing subsistence payments to the witness; (5) assisting the witness in obtaining employment; (6) providing other necessary services to assist the witness in becoming self-sustaining. These services are also available for immediate family members or close associates of the witness. The legislation authorises the disclosure of the identity of the protected witness if s/he is under investigation or has been arrested for a serious criminal offence. 18 USC § 3521 (b)(1).

61 18 USC §§ 3521-3528.

### *Central and South America*

In **Brazil** the law permits the testimony of accomplice witnesses, but prohibits the use of anonymous testimony in judicial proceedings. The country has no procedure for compelled testimony and has no legislation authorising witness protection.

### *Western Europe*

**Italy** has enacted legislation which specifically provides for witness protection and relocation. This programme is administered through a special central protection service within the Department of Public Security of the Ministry of Interior. Informal measures exist for the protection of informants by the police; such forms of protection typically involve the payment of money to the informant or confidential source.

In the **United Kingdom** the law admits the testimony of accomplice witnesses but prohibits the use of anonymous testimony in judicial proceedings. Witnesses can be compelled to attend court, but they generally cannot be obliged to make a statement in advance. There is no legislation covering witness protection, but the police have the capability to provide for the protection, relocation and change of identity for witnesses who have given evidence in criminal trials and are known to be in danger. In certain cases, courts have the power to order that witness addresses should not to be made available in court, or to the defence, to impose reporting restrictions, and to allow witnesses to appear behind a screen.

### *Eastern Europe*

The criminal code of **Bulgaria** contains a provision whereby special investigative means can be used to collect evidence, but the results cannot be used as evidence in court. In July 1997 an amendment which will enable the prosecutor to use the result of the investigation in court was being considered in Parliament. Moreover, although all special investigative means are used, special programmes for the protection of witnesses are still under preparation, and no special arrangements/privileges can legally be offered to those who collaborate with the authorities. In the **Czech Republic** the law allow the concealment of the identity and personal data of witnesses. In **Lithuania** the law provide for the physical protection of witnesses, or the change of identity or place of residence or work.

In the **Russian Federation**, in 1995 the Federation Council approved the laws entitled “On the Fight against Corruption” and “On the Fight against Organised Crime” which were subsequently accepted by the State Duma after being finalised by a bilateral conciliatory commission. The new version of the law contains additional measures for supervision by the prosecutor and the courts and the means whereby this can be put into effect. It also

contains measures to protect witnesses. The number of bodies responsible for combatting organised crime has been substantially reduced.<sup>62</sup>

Criminals are taking full advantage of the complexities of the international financial system, and today it is almost impossible to investigate any form of organised criminal activity without first tracing its proceeds overseas, through multiple jurisdictions and bank accounts. Law enforcement agencies are slowly shifting their attention from individual criminals to the financial gains from criminal operations, and legislation providing for the forfeiture of proceeds of criminal activity should be combined with an array of prosecutorial and other instruments in the fight against organised transnational crime. These instruments should comprise computerised information systems, witness protection schemes, electronic monitoring, financial and business co-operation, funding for forensic expertise, asset-management/asset-sharing mechanisms and international agreements. The acceptability of many of these methods, such as electronic surveillance, should be bound by strict observance of legal requirements and the principles of criminal procedure.

Since in each country the structures, techniques, methods and participants used in combating organised crime are in some cases radically different, the key element in regulating their interaction at the national and international level is co-operation<sup>63</sup> among law enforcement agencies in investigating, apprehending, and prosecuting international criminals. It is important to establish lines of co-operation and communication and shared understanding of common goals throughout the world. Effective help in tracing organised criminal groups is provided by investigative co-operation between law enforcement agencies and special units, since this permits exchange of information so essential to neutralise the activities and movements of criminal groups.

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62 “Federation Council approves laws on combating corruption, organised crime”, in *ITAR-TASS News Agency (World Service)*, 9 December 1995.

63 The formal means by which one nation may request the assistance of another in obtaining evidence for use in an investigation or prosecution are: Mutual Legal Assistance Treaties (MLATs), case-specific Mutual Legal Assistance Agreements (MLAAs) and Letters Rogatory. In addition to these formal means, law enforcement officials often use informal channels of co-operation developed through personal relationships among prosecutors, criminal investigators and others engaged in investigating organised crime cases. While the information provided through informal channels is not usually evidence admissible at a trial or other formal proceeding, formal evidence may be developed from this type of information.