Divergent Mind-sets, Convergent Policies.

Policing models against organised crime in Italy and in England within International Frameworks.

Abstract

The fight against organised crime is a very fertile ground for policy making at various levels. On one side, because of the perceived transnationality of the phenomenon, national states are inclined to develop harmonised responses within the European or international law frameworks. On the other side, national conceptualisations and manifestations of organised crime often make these harmonisations quite challenging.

This paper shares the findings of a socio-legal investigation carried out in England and in Italy through interviews and document analysis, comparing the two national models against organised crime. The paper shall present these two models - the Italian Structure Model and the English Activity Model – very different in many ways, in order to identify divergences and convergences of policies and practices. Such comparative exercise does not only improve our understanding of national approaches, beyond cultural, linguistic and legal boundaries, but also improves the dialogue towards concerted efforts at the international level.

Nevertheless, globalisation of criminal markets and internationalisation of policies have influenced perceptions of organised crime and related policing tactics also at national levels. This paper will briefly look at international perspectives to assess to what extent divergent and convergent areas between the two models are also areas of interest and focus at the international level, in order to conclude with an enhanced understanding of both models before drawing conclusions.

1. Introduction

The fight against organised crime is today a very fertile ground for policy making. On one side, manifestations of organised crime have historically shaped social and institutional perceptions of local and national threats, while on the other side - because of the transnationality of the phenomenon - national states have been inclined to develop harmonised and coordinated responses, struggling towards agreed definitions. This study shall propose the analysis of the two policing systems by presenting two models - named for the purposes of this project the Italian Structure Model and the English Activity Model (Sergi, 2014a). The overarching hypothesis at the basis of the study is that even though organised crime is perceived differently in the two countries – historically and socially – policing responses and control policies are often not that distant in objectives and implementation also, but not only, because of the influence of international instruments.

A research into organised crime and its policing strategies needs to consider first and foremost the challenges of defining the term 'organised crime' itself. Being aware of the many definitions of organised crime produced by international scholarship (Galeotti 2005; Obokata 2010; Wright 2006; European Parliament 2012, Finckenauer 2005), this research has looked at organised crime as a policy label – an institutional frame - which guides policing approaches and legislation choices. For the purposes of this research, criticisms of the label of 'organised crime' as a unique or collective category have not been assumed but instead have been assessed in both countries throughout the research process.

Comparing Italy and the UK (England and Wales more specifically) in relation to strategies to combat organised crime is not intuitively done because the two countries do not share the same experience of organised crime and certainly do not share the same policing responses, especially in terms of legislative evolution. Indeed, comparing the two countries and their very diverse legal systems for what concerns the fight against organised crime might seem a tremendously far-fetched task especially in consideration of the fact that the two systems not only differ in their original legislative frameworks, but have necessarily approached manifestations of organised crime very differently. If we consider that there was no institutional use of the term organised crime in the UK before the early 1990s (Levi, 2004; Hobbs, 2004; Wright, 2006; Hobbs & Hobbs 2012; Hobbs, 2013) which in Italy were instead the years of the 'excellent murders' (demonstrative murders of high profile people) by Sicilian Cosa Nostra mafia famlies, it is justifiable to have concerns about the suitability of a comparison between these two countries who clearly have historically given to organised crime very different meanings.

However, the world we live in fears globalised or transnational organised crime among other fashionable concepts (Dammer, Reichel & He, 2005; Hardie-Bick, Sheptycki & Wardak, 2005; Paoli & Fijnaut, 2006; van Duyne, 2011). Therefore, before enquiring whether or not it is appropriate to compare the systems of two very different countries, one might actually wonder whether or not the very definition of organised crime has undergone a certain degree of mutation in the last decades, both in Italy and in the UK (England), and if so, whether or not this mutation could imply a certain degree of convergence in policing styles determining the way organised crime is approached by the two countries in practice. In this context, 'policing' should refer to the set of institutional responses, from investigation to prosecution and trial, set up within a criminal justice system to counteract a specific threat.

Investigating the current institutional perceptions of the term 'organised crime' in England and in Italy means distinguishing first and foremost the political and legal discourses around the threat commonly *indicated* as organised crime, from discourses around, for example, terrorism as national security threat, which in the UK seems to have been prominent in the recent years. Moreover, international actors still promote concerted choices and shared notions of what works and what must be done against organised crime, for the sake of exchanges of information and mutual legal assistance that comes with the universality of the concept of organised crime (UNODC, 2012). The convergence of some strategies - alongside constantly mutating perceptions of the threat and consequent and progressive abandon of stereotypes - bring closer two countries, like Italy and England, that historically have never shared much in terms of law and order. In the analysis of such convergences lies the relevance of this research.

Lastly, this study needs to be intended as a comparative exercise in policing approaches against organised crime and therefore, regrettably, cannot indulge in descriptions of historical processes and legal evolution of these strategies in Italy and in the UK for reasons of space and focus. Even though this is a limit of the current paper, events and policing mentalities in both countries are known to the author and have been necessarily subsumed into the research findings of which they are a crucial component.

2. Approach and Methodology

This study is in line with aims and methods of comparative research in criminal justice, primarily seeking to understand the differences and the reasons for

legal choices in national systems (Pakes, 2004; Nelken, 2000; Brants, 2011). Studies in comparative criminal justice are essentially aimed at intertwining crime, justice and culture (Nelken, 1994) to go beyond stereotypes and to improve reflexivity on a given aspect of the criminal justice process (Nelken, 2000).

This paper originates from a broader comparative and socio-legal research project carried out in England and in Italy through in-depth interviews and analysis of institutional and official documents. As documents are the sedimentation of social practices, both legal and non-strictly legal documents can represent a very rich source of data (May, 2001; Webley, 2010). After constructing the *corpus iuris* as relevant for both countries, I have used online engines of research such as Westlaw UK and Lexis Nexis (for England) and DeIure (for Italy) to access relevant documents, such as institutional debates, case-law, preparatory works, via keyword search (organised crime, conspiracy, crimine organizzato, mafia). Open source engines and databases have been also used for case laws and sentences examples. In particular, TheLawPages.com and Altalex.com have been used respectively for England and Italy, with different keywords including criminal offences such as 'drug trafficking', 'human trafficking', 'conspiracy', in both languages. This work has been done prior and in between interviews, after preliminary categorisations. The purpose of the document data collection was to gather and analyse adequate content from a wide range of official or semi-official sources containing *'traces'* of the investigated phenomenon and relevant events (Sofaer 1999:1109), therefore their quantification is neither applicable nor appropriate.

On the other side, interviews have been conducted with experts in Italy and in England, who had law enforcement, academic and/or political experiences and involvement in the fight against organised crime. Twenty-four interviews have been carried out, 12 in each country, to grasp the *institutional/official* evolution of the concept of organised crime in Italy and in England, in law enforcement and politics. Given the different organisation of the legal systems in the two countries of interest, the institutions identified as relevant were obviously different, whilst some functions are clearly similar. In particular, for Italy, experts have been contacted in the following fields: Direzione Nazionale Anti-mafia, National Anti-mafia Prosecution Agency; Direzione Distrettuale Anti-mafia, District Anti-mafia Prosecution Agency ; Direzione Investigativa Anti-mafia, Anti-mafia Investigation Agency ; Commissione Parlamentare Anti-mafia, Parliamentary Anti-mafia Commission; Judiciary; Academic and private sector expertise.

The sample population was therefore constituted by anti-mafia/organised crime experts and privileged observers, either at law enforcement level or having

other types of specialism in the same field or in more than one of these fields. The sampling frame, intended as the operational side of the sample population (Maxfield & Babbie 2012), has been identified through those who are in managerial positions or, alternatively, those who perform a specific role in an institution/organisation or can produce a specialist knowledge on a peculiar aspect of the research. The process for the English sampling has followed the same rationale, even though the data sources identified are necessarily different from the Italian ones. However, even though the law enforcement agencies and institutions are different, some functions are similar to the one identified for the Italian part: Crown Prosecution Service, Special Division: Organised Crime Division; Metropolitan Police, London, Serious and Organised Crime Teams; Serious Organised Crime Agency (SOCA) – (whilst moving towards the National Crime Agency); Home Office, Organised Crime Strategy Team; Academic and private sector expertise; Barristers.

Interviews have been analysed through thematic coding and merged with document data for a second level coding. Research findings have been aligned with the theoretical framework of comparative research in criminal justice, with a first stage analysis of the systems under scrutiny and a second stage analysis of the convergences and divergences between the two systems (Nelken, 2000; Rogowski, 1996; Hodgson, 2000; Puchalska-Tych and Salter, 1996). At the first level will therefore be the two national models - the Italian Structure Model and the English Activity Model – (de)constructed on the basis of legislation and institutional perceptions gathered from interviews and documents. At the second level is the proper comparative effort to identify divergences and convergences of policies and practices between the two states. Divergences and convergences between the two national models shall be presented in a semiotic square. The semiotic square was introduced by Algirdas Greimas to better analyse paired concepts (Greimas 1987:49). The basic idea of the semiotic square is providing a mapping of semantic characteristics of a text in terms of their convergences and divergences, in a way that allows overcoming binary logic without losing frames for meanings (Greimas, 1987:xiv). In this research, the application of a semiotic square to the research findings allows to organise the concepts as they objectively emerge from interviews and documents in the form of keywords, which can fall into fields of meaning - areas of conjunction or disjunction between the models. The elements presented in the semiotic square also provide for a starting point to look into European and international documents to track influences of international requirements and trends over national models.

3. Different mind-sets. Activity Model vs. Structure Model in the conceptualisation and policing of organised crime

The national approaches against organised crime scrutinised in this paper derive from two very complex legal traditions. Their current formulations are obviously the results of historical influences and evolution. The English (Activity) model and the Italian (Structure) model diverge in their conceptualisations of organised crime and in the principal policing approaches to fight organised crime. This article refers to other publications (Sergi, 2014a) for a more specific analysis of the national models in this research project. This section shall first present the two national models from the point of view of the differences between them, before drawing more specifically upon their divergences.

a. Conceptualisations of Organised Crime: the Activity Model in England and Wales

Currently functioning through a multiagency approach, organised crime policing in England and Wales is lead by the National Crime Agency (NCA), which replaced the Serious Organised Crime Agency (SOCA) in October 2013. The NCA, as SOCA before, is an intelligence-led agency but also a policing entity for both serious and organised crimes, as it leads investigations at national and international level. Traditions of policing in the country, as well as the legacy of common law, clearly affect the way English law enforcement act against organised crime - intended as organised *crimes* instead – based on individual – rather than collective – responsibility.

The fulcrum of the Activity Model – the policing model against organised crime in England and Wales - is the fact that the definition of organised crime is not single but multiple, being organised crime defined as set of activities, set of *crimes*. The focus on the activities is what causes all the other features of the model. The activities linked to the definition of organised crime are serious unlawful activities of different nature committed by groups of criminals. The roots of the Activity Model are to be found in literature on organised crime both as ‘enterprise’ crime and as gang-related crime, local or international (Sheptycki, 2003). Hobbs (1995a; 1998; 2004; 2013) asserts the importance of crime firms, urban and highly local criminal groups willing to fulfil the needs of the pleasure-seeking public in times of prohibition and control of vice. As noticed, most of the imagery on organised crime in England is linked to certain individuals, “entrepreneurs of trust…underwritten with violence”

(Hobbs, 2013:86), who dominated the underworld through their personal charisma. Moreover, since the 1990s professional criminals have moved towards an 'entrepreneurial trading culture driven by highly localized interpretations of global markets' (Hobbs, 1995b:115). The specific characterisation of organised crime in England, therefore, does not fully mirror the enterprise model of organised crime in literature (among others, Cressey, 1969; Smith, 1978; Arlacchi, 1986; Gambetta, 1996; Albanese, 2008), which understands organised crime through the same drives of legal markets, with hierarchical structures and rational economic behaviours. In the English tradition, next to the enterprises, are also local manifestations of violence, in the form of gangs (Morton, 2002; Hobbs, 2013). Wright (2006) claims that, despite the evidence regarding the evolution of gangs and the many conflicts for hegemony among them, it does not seem legitimate to say that gangs in Great Britain have ever been organised in the way organised crime is (supposed to be) in American or Italian traditions. At times, elements of alien conspiracy theories (Lyman and Potter, 2011; Woodiwiss, 2001; Lynch, 1987) penetrated in the perceptions of organised crime in the UK, linking the growing threat of organised crime to geopolitical changes and migration routes (Woodiwiss and Hobbs, 2009; Hobbs and Hobbs, 2012). This, however, did not overruled the English conceptualisation of organised crime groups as local gang-style enterprises involved in illicit activities.

One of the interviewees, while discussing the evolution of the Crown Prosecution Service Organised Crime Division, said:

> "I don't think we have really sat down to analyse for ourselves what we meant by the term organised crime, what we really meant was serious crime, serious crime activity and often, almost invariably, if you have very serious sophisticated criminal activity it's going to be organised, premeditated and planned by groups of people who come together for that purpose, in other words, if you are looking at very serious complex crime, you area likely to be looking at people, gangs, committing it and so, in a sense, I used to think of it in terms of being gang crime as much as organised crime".

The overlapping of the terminologies of gangs and organised crime is not unusual in the Activity Model. The conceptualisation of organised crime remains linked to criminal acts committed by more or less successful criminal groups, rooted in their local territories, often associated with ideas of gang crime, drugs and violence in street-level manifestations. In particular, the difference between gang crimes and organised crime lies in the 'seriousness' of the offences. The adjective 'Serious' is paired with 'Organised Crime' in policies to underline that seriousness and organisation go together in this crime typology (Home Office, 2011a; 2011b; 2013;

2014). The necessity to consider organised crime that is 'serious' has often disregarded corruption or unethical behaviours, which might facilitate criminal activities, even though there seems to be a shared notion of the interaction between organised crime and corruption: As shared by a Senior Manager at SOCA (and today at the NCA):

> Unless it [organised crime] can corrupt it can't get anywhere, it cannot exist in isolation, it has to get in there [the legal sector] also to defend itself...if you look at what constitutes organised crime, corruption is always going to be there.

However, the legislation and the official strategies address corruption, sleaze, malpractices and unethical behaviours, not as *symptoms* of organised criminal activities but as distinctive crimes (Pyman, Hughes and Muravska, 2011). This is also linked to the fact that, in recent years organised crime has been classified as a national security threat (Home Office, 2010; Home Office, 2011b; Home Office 2014). Once again, national security echoes 'seriousness' of the offences. The choice to shift to national security can be justified with the necessity to support the establishment of a large-scale national strategy (with SOCA first and now with the NCA) able, if necessary, to coordinate local police forces. Because organised crime is characterised as a unique type of national security threat – affecting national economies but also impacting local communities – the latest institutional approach aims at having national reach but also at being able to police criminal activities locally through policing partnerships and local profiling of the threats (Home Office, 2013; Home Office, 2014).

b. Conceptualisations of Organised Crime: the Structure Model in Italy

The Italian Structure Model is based on the preliminary and essential consideration that organised crime in the country almost entirely overlaps with mafias, at least in common use of the terminology (Lavorgna and Sergi, 2014). The Structure Model responds to the necessity of targeting the various dimensions of mafias, first of all its social dimensions. The Anti-mafia legislation, which involves a specialist response to organised crime for investigation to prosecution, is older than English strategies against organised crime and works through decentralised district offices and a centralised coordinating fulcrum. Because of mafia and Anti-mafia histories and events in the country, and traditions of civil law models, the Italian strategy against organised crime is generally focused on associations and networks,

ontologically criminal and characterised through the commission of certain typologies of crimes.

The traditional characteristics of mafia-like organised crime are essential for the identification of the Structure Model, where the terminology of organised crime is often overlapping with the one of mafias. Because of the diversity and historical relevance of Italian mafias, academia has focused more on the study of networks and criminal organisations and less on their criminal activities (Paoli and Fijnaut, 2006). Talking about 'mafia' rather than 'organised crime' makes sense in Italy not only for legal purposes, but most of all for identification of a specific criminal method that organised crime in Italy has historically employed. It can also be argued that where organised crime is the genus, mafia is a specification (Varese, 2011). In fact, as Fulvetti (2004:48) notices, mafia is "a type of organised crime with something extra". The 'extra' factor, as Pezzino (1997:10) had already envisaged, consists of a particular 'political skill'. As noticed mafias are the highest manifestations of both power syndicate and enterprise syndicate, maintaining both the control over the territories through their social power and the control over the illicit markets (Block, 1980; Sciarrone, 2011). Finally, it has been argued that mafias are alternative ways of being of institutions of certain territories that, by allowing the mafia method – made of recruitment and perpetuation through family ties, intimidation, clientelism, *omertà* (conspiracy of silence), control over politics and illicit markets and violence - determine politics by gaining a social dimension. (Santino, 1994). Considering the historical events that brought Cosa Nostra, 'Ndrangheta and Camorra (the main Italian mafias as known today) in the spotlight, for violence, terror, crime-related scandals (Paoli, 2003), it is not surprising that Italy has always looked at organised crime through the lenses of mafia. However, systemic problems in understanding and defining the characteristics of the multifaceted criminal panorama in Italy emerge both from interviews and from document analysis. Italian participants have tended to differentiate mafias groups/members from other types of organised crime groups/members only when referring to legal definitions, with reference to articles 416 (simple criminal association) and 416-bis (mafia criminal association) of the Criminal Code. However, among practitioners and experts there is a prevalent opinion that the nature of organised crime in the country is much more varied than the one encapsulated in criminal law. Alongside the simple criminal association and the mafia-like association interviewees talk about migrated mafia groups and mixed organised crime groups as different categories of criminality (Lavorgna and Sergi, 2014), still registering the primacy of mafia-groups nevertheless. This is in line with official documents. Indeed, as declared by the DIA (2012:319), Anti-mafia Investigative Agency:

> (…) some partnerships based on ethnic ties tend to associate in para-mafia forms for the control of their own compatriots and/or they act in connection with our national organisations.

The DIA (2012:322) still affirms the supremacy of the national mafias on all the other forms of criminal associations present in the country, by declaring that

> (…) in all the other ethnic groups seems anyhow absent the ability to infiltrate the hosting social fabric and, most of all, the capacity to establish efficient interactions with the legal sphere of political and administrative powers.

Similarly, as shared by one of the interviewees, Chief Anti-mafia Prosecutor in Calabria:

> There is in our nation, beyond Sicily and Calabria, a criminal system, heterogeneous and integrated, which we have called in various ways…a system, which could be named as associative delinquent pluralism where the mafia – at the ideal table of this system – sits in a very specific place but with others too.

In conclusion, the Structure Model is strongly based on the idea that organised criminal groups, and especially mafia groups, are strong and dangerous essentially because they are organised, they have a structure, whether hierarchical (the model of Sicilian Cosa Nostra) or horizontal (the model of the Calabrian 'Ndrangheta). The existence of a structure makes it more difficult for authorities to eradicate the phenomenon, because with structure also come methods to perpetuate that structure, especially through fortification of recruitment strategies. Tight affiliation ties – in successful cases, such as the one of the Calabrian 'Ndrangheta still based on family ties (Paoli, 2003) - guarantee positions of social prestige, especially in their original communities, and also represent the source of political influence. In fact, in a conceptualisation of organised crime and mafias in Italy, the social dimension of this phenomenon - the social and political power in the territory - permeates institutional and civil society's responses.

c. Focus and Aims of Policing Strategies: The Activity Model

In order to be effective both at the national and at the local levels, the Activity Model has to focus on the criminal acts. The strategy highly relies on intelligence tools as the best way to map criminality on a large scale and to understand where and how to intervene. Through intelligence the NCA detains the national picture of the

threats, which then shapes the way policing strategies are coordinated in partnerships at the local level (Home Office, 2014). The Activity Model pivots around the intelligence phase and this appears to be in line with the idea that "a crime becomes relevant for the legal system only when it is visible and, therefore, detectable by the police" (Interview with a London-based Barrister). The central role that police forces enjoy in England - with investigations and intelligence being at the centre of strategies from local to international levels - is the so-called "golden thread" of policing (Home Office, 2010:23). The focus on intelligence, especially for organised crime purposes, has been established with the National Intelligence Model (NCIS, 2000) and differentiates criminality on three levels of seriousness with organised crime being at the third level. The focus on intelligence, from the NCIS and the NCS, to SOCA and the NCA, has been enriched with new targets, such as harm reduction or prevention, aimed at disruption and crime cutting even though arguably one of the characteristics of organised crime groups is the ability to "survive and reform after disruption" (NCIS, 2000:8). Of these strategic targets, in particular the focus on harm reduction was the central mission of SOCA and created a number of definitional problems. Not only harm did not have a clear definition, but also has always appeared too difficult to measure. The importance of focusing on harm, through an intelligence-led approach that looks at the substance of target, has been pointed out in one of the interviews with one of the highest raking managers at SOCA:

> "The focus in the past has been on arresting people, prosecuting people, seizing money, seizing drugs, but what we weren't doing was really thinking beyond that to how we stop the harm that they are causing. Are we structured in the right way to deal with the harm? ... Law enforcement has been busy chasing targets, but actually were they targets that were high-value or were they simply targets of opportunity? There's danger that if you are not intelligence-led, you will focus on targets of opportunity".

The NCA has abandoned the rhetoric of harm reduction to go back to prevention and disruption targets within a more generalised national reform of policing aimed at cutting crime. This change in focus - from harm reduction to crime cutting – exemplifies the need to move from a secretive intelligence-led national security approach to a more proactive and localised policing approach. The reason for this change is the perceived failure of SOCA in delivering guidance to the police and in demonstrating its achievements to the public. Focusing on local policing and cutting crime does not dismiss the national security dimension. Indeed, the 4Ps (Prevent, Protect, Pursue, Prepare) model directing the work of the NCA is inspired to the CONTEST approach in counter terrorism (Home Office, 2013). The need to focus

more on the local side of policing of organised crime is encapsulated in an extract from an interview at the Metropolitan Police in London:

> …the new National Crime Agency…hopefully they will become more… law enforcement, on the policing side of things instead of only the national intelligence side. I think that forces are becoming more and more community-based.

Beyond intelligence agencies, prosecution does not seem to be at the forefront in the strategy against organised crime in the UK. This is linked to the prominent role of police forces in the country as charging authorities and the fact that an evolution into a national prosecution mentality happened only with the establishment of Crown Prosecution Service established in 1984. The Organised Crime Division, born in 2005 within the CPS, was purposefully not merged into SOCA, to avoid creating an ad-hoc prosecuting agency for organised crime, as shared in the interviews at the CPS. Even though the relationship between prosecutors and intelligence agencies is not considered problematic, the content of prosecution cases reproduces the same difficulties in understanding and conceptualising the threat of organised crime. This is not to say that the judicial dimension of organised crime in England is entirely dismissed. However, as the label of 'organised crime' does not exist *per se* as a criminal offence, the system loses the connotation of 'organised crime' when it comes to prosecution or trial where different typologies of serious crimes (under the umbrella of the organised crime concept) will be charged. For example, when it comes to financial provisions, the Proceeds of Crime Act 2002 has its own sphere of application not necessarily or directly linked to organised crime cases. Because the Activity Model sees organised crime as a multiple category grouping various criminal activities, it follows that the prosecution stage will be about single offences (when completed) and/or conspiracy charges should the criminal activity result unfinished or the single offences too difficult to prove. The Activity Model has, so far, necessarily rejected a unique offence for organised crime, because organised crime is not perceived as a unique criminal category and the main aim are disruption and cutting of visible manifestations of crime. This is due to change when the new Serious Crime Bill becomes law in late 2015. This new bill, containing a section 44 participation in organised crime group's activities, will affect the overall strategy and specifically the connotation of organised crime in prosecutions and trials. Until today, conspiracy charges are both cause and effect of the Activity Model. As noticed by a CPS lawyer:

> "There is no case in organised crime I cannot frame within conspiracy. If you have a drug trafficking scheme, there is conspiracy. If it is arms or humans

that they are trafficking, there is a criminal agreement. How else could you prosecute someone if not because they have committed or planning to commit something illegal?"

d. Focus and Aims of Policing Strategies: The Structure Model

The Structure Model recognises the social dimension of organised crime, especially in certain areas of the country, where mafias detain political and territorial power (Paoli, 2003). As a consequence the law recognises that for every criminal activity carried out by a mafia-like group, there is the need to intervene beyond the means of criminal law. Criminal law tries to capture the real nature of the offending of organised crime groups by reaffirming the focus on the structure of criminal networks. Such criminal structures are responsible for more or less serious crimes (from extortion to drug trafficking, from murder to intimidation) that differently impact society. Article 416-bis of the Criminal Code for mafia membership and article 416 for a simple unlawful association offence are two of the main tools against organised crime in the country. The strategy against organised crime in Italy starts from the criminal code. Furthermore, the case-law offence of external participation in mafia affairs, attempts to target those individuals in the grey areas around mafia groups, working as support network for criminal activities in the legal sectors. The social dimension of mafias and organised crime in Italy, in essence, does affect the way the law reacts to the nature of the offending. In order to make the most of criminal law, the criminal justice system, with the specialist Anti-mafia investigators and prosecutors, has adapted to the necessities of a fight against a threat, which for a long time has been identified as territorial, but that now represents a national and transnational problem as well.

The Structure Model acknowledges that, in order to be effective against organised crime, it is necessary to recognise that the existence of the structure of the criminal group is what guarantees prolonged power and influence to the organisation. In fact, mafia-type associations do not cease to exist when members are arrested, convicted, imprisoned, or dead. Mafia-type organisations are able to endure institutional attacks through a perpetuating structure, they represent a threat against democracy and public order; "even when the mafia group or mafia individual is identified, the organisation still endures, the threat is not over", said one of the interviewees, Anti-mafia Prosecutor in Calabria. By reaction, the Structure Model chooses to focus on prosecution by targeting those structures through specialist teams, both at the local and at the national level. As shared by one of the interviewees, National Anti-mafia Prosecutor:

> The fact that you can target the association gives you the idea of the strength, the power of these individuals, it's something more, even if sometimes you can have the same results, in trials, even by prosecuting and charging the single activity.

Prosecutors' work is obviously supported by a strong investigative work. Through intelligence, the DIA focuses on collecting data on structural connotations of criminal organisations as well as articulations, domestic and international links of the organisations and their modus operandi. The DIA has also a law enforcement function and therefore privileges the analysis of organised crime networks within the boundaries of criminal law and justice to identify those individuals who can eventually be charged of participation in organised crime activities by defining their responsibilities, their roles, their criminal abilities and their links. The focus, once again, goes back to strong prosecution cases and results.

The focus on prosecution of structures serves a number of objectives. First, the necessity in the Italian system to have prosecutors who guide the action of the judiciary police: a specialist Anti-mafia team has the ability to direct investigations effectively. As noticed by one of the Judges interviewed, the existence of specialised Anti-mafia teams ensures: 'coordination, knowledge, possibility to act in a synchronised way in the territory, together with that set of regulations that consent intervention with particular investigative tools. Second, prosecution first and trials afterwards, assume a symbolic meaning, especially if followed by convictions and custodial sentences: an effective prosecution means a higher likelihood of convictions. This is emblematic in relation to the social dimension attached to mafia-like organised crime. The fight against mafias needs to be first and foremost visible to the wider public in order to stigmatise publicly certain practices that the State cannot approve. Last but not least, the fight against organised crime also assumes symbolic means when it targets the financial empires of mafia organisations. Because of the power that proceeds of crime assure to criminal groups, it is essential to be able to confiscate these proceeds. Additionally, through a policy for the social use of confiscated assets, the Anti-mafia apparatus sends yet another message: society, as a whole, recognises the sources of mafia power, rebels against them and attempts to eradicate them in various ways. As noticed by a Chief Anti-mafia Prosecutor in Calabria:

> "Years ago, at the entrance or exit of every village, mafia families used to build their own palaces. Today, thanks to the Anti-mafia legislations and the

possibility, for example, to confiscate assets also to the relatives of a dead mafia member, this arrogance, this hubris, does not happen anymore".

e. Rethinking the divergent mind-sets

This work has found that the two systems diverge at their very core in the conceptualisation and policing strategies against organised crime. Such divergence in approaches can be explained first and foremost by looking at the differences in the legal systems and legacies of legal traditions of common law (where conspiracy offences are, for example, traditionally based on individual responsibility) and civil law (where conspiracies can also be based on group responsibility, if the law allows), as well as in the conceptualisation of the phenomenon of organised crime. In summary, as found in interviews and documents, peculiar to the Structure Model are: the conceptualisation of organised crime as mafia and threat to public order and democracy, the centrality of prosecution-led investigations, the endemic participation of mafias into the social world, the symbolic use of sentences and punishment, the use of membership offences for unlawful associations. On the other side, specific to the Activity Model are: the conceptualisation of organised crime as set of crimes and threat to national security, the use of conspiracy offences, the centrality of intelligence-led investigations, the use of a counter-terrorism model to define the serious and organised crime strategy and the consequent focus on risk management, harm reduction and seriousness of the offences.

In terms of conceptualisation of organised crime, the main difference is in the role that 'mafia-type' organised crime has historically played in Italy that still permeates the way the Structure Model approaches the phenomenon by operating an overlapping of concepts. On the other side, the 'local plus global' entrepreneurial character of organised crime groups in England, is the reason why the Activity Model focuses on the risk of criminal activities to assess the reach and dangerousness of such groups.

In terms of policing, first and foremost, there are differences in the policing systems of the two countries in general, at glance the existence of 43 local police forces in England and Wales compared to the 3 national police forces in Italy (plus specialist anti-mafia squads). Specific differences instead relate to the starting point of policing strategies for organised crime: the UK distinctly privileges a national security approach (Home Office, 2010; 2011b) – through centralised intelligence agencies -

while Italy acts against a social threat to public order – through Anti-mafia squads (article 416 and 416-bis of the Penal code).

Unsurprisingly, criminal law is the area where the divergences between the two models are more visible. Justice systems are required to administer and apply the law as it is given; therefore if the law is different the whole model shall differ. The criminal law approach to organised crime in England represents an example of *is-ought fallacy* of Hume's Law[1]. In fact, to a threat which is perceived as a list of activities, is assigned a label, 'organised crime', which instead refers to a monolithic threat of the type of American mafias (Hobbs, 2013; Campbell, 2013; Lynch, 1987), changing the 'to be' into the 'ought to be'. The fallacy is mirrored in the way criminal law work in England against organised crime (Sergi, 2014b). However, while criminal law rejects the focus on unlawful associations, the criminal justice process begins in a national intelligence agency, built around an undefined threat of organised crime. Criminal law targets the 'to be', the manifestations of organised crime – the criminal activities - while criminal justice has started looking at organised crime as a unique threat - the 'ought to be' - making it a matter of national security policed by a national agency (now the NCA). As previously said, this might change if the Serious Crime Bill (and the new offence of participation in organised crime groups' activities) becomes law. Conversely, this fallacy in institutional language does not belong to the Italian Model, which, conversely, to a vision of mafias as cohesive structured organisations pairs a criminal justice system capable to deal with those structures. The existence of a membership offence in Italy, and most of all, of a mafia membership offence (article 416-bis of the Penal Code), confirms the perceptions of organised crime as criminal structure. On the other side, in England, the difficulty to translate into law the concept of organised crime and the reliance on conspiracy offences, demonstrate how criminal law still remains solidly anchored to a system of single criminal activities, typical of common law contexts.

[1] David Hume (1711-1776) was a Scottish philosopher, economist and historian. Amongst other things, he opposed moral rationalism by observing that systems of moral philosophy make an unjustified transition from premises whose parts are linked only by "is" to conclusions whose parts are linked by "ought" (expressing a new relation). This deduction has been referred to as Hume's Law or Hume's Fallacy (Stanford Encyclopaedia of Philosophy Online) and has been used in a number of fields and discussions about religion, law and political science.

4. Convergent Policies between the Models

At the other side of the spectrum from the divergences between the models, this research found that there are more convergences than expected. The local and cultural characteristics of organised crime clearly influence the way the phenomenon is perceived. Whereas there is a strong focus on the globalisation of crime in both countries, the way criminals behave in a national/local environment can play a huge role in the way crimes are organised and carried out in practice and, therefore, in the way they are policed.

Even though these divergences are crucial, it is also interesting to notice the existing convergences also at the level of policing, in relation to nationalisation of the strategies, specific approaches to certain typologies of crimes - deemed more harmful and disruptive (drugs and human trafficking for example) - and the focus on financial investigations. Convergent policies touch both conceptual and procedural. Conceptual convergences are found in the character of transnationality of organised crime groups, in the increased focus on corruption, in the direct proportionality between sophistication and dangerousness of the criminal group, in the centrality of money laundering offences and in the 'follow the money' strategies. Procedural convergences are instead found in the use of confiscation measures, in the focus on prevention and crime reduction, in the nationalisation of the approach against organised crime, in the criminal lifestyle offences (which targets inconsistencies between earnings and lifestyle), in the use of informants.

More specifically, both Italian and English authorities consider the level of sophistication of the organisations and the complexity of criminal plans directly proportional to the power that these organisations can acquire within society and therefore, to their level of dangerousness. The perception among the interviewees is that the most sophisticated and globalised networks must carry out the most complex illicit traffics. In this sense, Italian interviewees appear alarmed about the possible dangers of mafia migration beyond Italy, and well aware of the transnational capacity of Italian mafias (DIA, 2012; DNA, 2012). As shared by an Anti-mafia prosecutor: "Europe is a large meadow; there is no real restrain for whichever mafia group to graze around". Whereas in Italy transnationality is one of the characteristics of the national mafias, on the other side, in England (and the UK in general), transnational are only certain types of groups, which have the capability to cross the borders; the others are only 'gangs'. One of the interviewees at the Metropolitan Police in London, characterised this shift in level of dangerousness by saying: "as the gang problem got

worse, two-three years ago we chose to bring them together and we now have gangs being dealt with other criminal networks, but it started off because [of] the manifestations of different problems".

Moreover, if Italian authorities worry about the impossibility to track mafia members, assets and activities around the globe, British institutions are essentially concerned about activities of 'trafficking' - drugs, goods, firearms, human beings – passing through England. In Italy the perception is reverse: the more powerful a mafia group is in the local the more they are guaranteed to succeed if they move abroad. In both cases, the globalised world seems to have affected the way organised crime groups operate at every level. Clearly, the main convergence of Italian and English perceptions lies in the knowledge and perception of the globalised criminal markets; the dangers of organised crime are growingly linked to the international repercussions of transnational criminal activities.

Furthermore, still in terms of conceptualisation, even though in England there is no definition of organised crime in the law yet, a definition of 'criminal lifestyle' (section 75 of the Proceeds of Crime Act 2002) features notions of 'continuity of criminal acts' and 'patterns of criminal activities', which are very close to criminal law offences of organised crime and confiscation procedures in Italy (Goldstock, 1994). In fact, in POCA section 75 organised crime appears more clearly than anywhere else in the English legislation. The two national models – at least in terms of results – converge here as well. Both countries in fact act upon the inconsistencies between earnings and lifestyle, to target proceeds of crime invested in luxurious lifestyle choice. However, whereas in England and Wales it is up to the prosecution to prove the criminal lifestyle, in Italy there is a reverse burden of proof whereby the suspect has to prove the licit origin of his assets. Once, again, this procedural difference marks the idea of organised crime investigations as special route in Italy through advantages for investigators and harsher treatment of suspicious behaviours.

This leads to another area of convergence between the two models, which is the emphasis on o economic investigations and most of all, on the idea that the best way to dismantle organised crime groups is by targeting their assets. Whereas there still are divergences - for example in confiscation procedures - this is the area where the two systems converge the most. The focus on the assets follows the conceptualisation of organised crime as a business, linked to well-established connotations of organised crime groups as enterprises. Arguably, in England and Wales this perception is embodied in the Proceeds of Crime Act 2002 (POCA) and the new focus on Economic Crimes (Home Office, 2011a; 2013), while in Italy, the Anti-mafia resources count several types of interventions at the financial level in

various pieces of legislation. In particular, convergent are financial preventative measures, confiscation of proceeds of crime and anti-money laundering regulations. As noticed in the interviews: “by having stringent anti money laundering requirements (…), every criminal activity comes into that” (English Barrister) as well as “the presence of the mafias is mainly economic, therefore, a good legislation has to recognise the all-encompassing phenomenology of money laundering, within and beyond national boundaries” (Italian Politician).

Convergence in the area of financial prevention is facilitated once again because of (changing) institutional perceptions of the phenomenon of organised crime. There is in fact a link between preventative measures and perception of organised crime. Considering organised crime groups as (rational) business enterprises, whose first goal is the accumulation of money, is a well-established perception in Italy as well as across the UK and necessarily implies considerations on how to target illicit patrimonies and how to safeguard economies and markets from organised crime contaminations. Considering organised crime as a street-level problem rather than a concern for intelligence would imply the application of prevention measures solely related to social issues, but that would be ineffective.

Conceptual convergences between Italy and England run, therefore, in the area of globalisation and business-oriented organised crime groups. These convergences are easily justified through an increasingly similar use of the language around organised crime, thanks to shared information and knowledge across states and harmonisation at the European and international levels. On the other hand, procedural convergences are more difficult to achieve because of differences in legal systems and traditions. It can, however, be concluded that procedural convergences need conceptual ones to become fully operational and mirror convergent intentions in the two systems.

5. Placing the convergences between national models within international frameworks

When it comes to assessing the interaction between national models and international frameworks in the fight against organised crime, the field of reference is considerably large. For reasons of length and complexity, only materials published by the United Nations Office on Drugs and Crime (UNODC) and by the European

Legislation portal have been consulted. The UN and the EU, for the geopolitical placement of Italy and the UK, represent two of the main contributors for the international frameworks of the two models.

First, in line with the conceptual convergences in the national models, international actors have been concerned with the policing of organised crime *transnationally*. Because state sovereignty remains essentially untouched for what concerns trial, sentencing and punishing, the space for concerted actions above states is necessarily confined to the sharing of intelligence and investigation stages.

Indeed, policing of organised crime cross-borders first requires efforts towards common knowledge, awareness and prevention of phenomena of organised crime. The two models discussed in this work have presented organised crime as either a national security threat or a public order/social phenomenon. This dichotomy – or rather the difficulty in handling this dichotomy - is present also in international approaches to this matter. For example, even though the United Nations Convention against Transnational Organized Crime in 2000 (The Palermo Convention) did not define organised crime *per se*, the UNODC (2013) uses 'organised crime' in the broadest way, where security and social dimensions go together:

> Organised crime threatens peace and human security, violates human rights and undermines economic, social, cultural, political and civil development of societies around the world.

Roughly the same opening - with reference to both national security and society - can be found in the European Commission's webpage dedicated to organised crime and human trafficking (2013): "organised crime is a threat to European citizens, businesses, state institutions as well as the economy as a whole". This approach reflects the EU strategy's against transnational organised crime, which - as observed by Didier Bigo (quoted in Andreas and Nadelmann, 2006:178) looking at Western Europe - is placed in an "internal security field" together with terrorism and illegal migration policies, and therefore, necessarily combines profiles of security, human rights, social and economic impact. In this sense, the English model mirrors EU's securitisation more than the Italian one.

The conceptualisation of organised crime as either a national security threat or a democracy/public order issue, however, does not necessarily affect policing approaches at the international level, where the label of 'organised crime' without further specifications, seems to suffice. Cooperation and intelligence are the main concerns at the international level, as expressed by article 27 of the UN Convention

against Transnational Organised Crime, which encourages State parties to achieve a high level of cooperation between their law enforcement authorities. Article 30(1)(b) of the EU Treaty, as well, provides guidelines for police cooperation, highlights the special role of Europol in carrying out investigations cross borders with specific actions and through joint investigation teams and encourages exchange of liaison officers for prosecutions and investigations in the Union in close contact with Europol and Eurojust. In addition, a number of other provisions address the issue of cooperation for specific areas of intervention, such as anti money laundering or confiscation. In this regard, the UNODC aims at drafting model legislations to provide examples of best practices on anti-money laundering, while the EU, currently through the Third Anti-Money Laundering Directive, adopted in 2005, has progressed towards an internal response to the threat by requiring states to implement suspicious transaction reporting and, at the same time, to engage with the revised Forty Recommendations of the Financial Action Task Force (FATF), which is the international standard in the fight against money laundering and terrorist financing. By looking at both Italian and English models, it is clear how the fight against money laundering has been subsumed into the strategies against organised crime as suggested and requested in European and international platforms.

Conversely, the area where convergences are less likely to be found between the Italian and the English models is criminal law, because it is the area where national legacies play a more substantial role. The Structure Model and the Activity Model fully represent two of the main legal traditions. These two traditions are the criminalisation of organised crime as a unique offence (in the Structure Model) and the criminalisation of those offences linked to organised crime committed in individual agreements (in the Activity Model). As seen, the former comes with the criminalisation of participation in, belonging to, or membership in an organisation with a perpetuated criminal plan. The latter focuses on the severity of the single offences and punishes the engagement of more people in the commission of these offences, in the form of complicity and conspiracy provisions. The Legislative Guide for the UN Convention on Organized Crime suggests implementing either or both conspiracy and criminal association offences, in accordance to their legal traditions (UNODC, 2004; UNODC, 2012). Similarly, article 2 of the Council of Europe Framework Decision 2008/841/JHA on the fight against organised crime calls upon each member state to take “the necessary measures to ensure that one or both of the following types of conduct related to a criminal organisation are regarded as offences” (art.2), where the offences are ‘participation in a criminal organisation’ or ‘agreements to commit offences (conspiracy)’.

Lastly, financial aspects of the fight against organised crime in terms of recovery criminal proceeds and confiscation of assets have a prominent role in both models as well as in international frameworks. Internationalisation of financial controls and confiscation procedures, in the long run, could enable states to follow and recover proceeds of crime beyond national borders. Article 12 of the UN Palermo Convention encourages State parties to adopt legislation to carry out confiscation of proceeds of crime "to the greatest possible extent" (paragraph 1) and to enable measures to identify, trace, freeze or seize these proceeds. Similarly, at the EU level, the aim is to create a common approach to confiscation. Five EU legal instruments aim at improving confiscation and asset recovery (Framework Decisions 2001/500/JHA, 2003/577/JHA, 2005/212/JHA, 2006/783/JHA and 2007/854/JHA. For their implementation the European Commission has published a communication in November 2008 titled "Proceeds of Organised Crime: Ensuring that "crime does not pay". This communication contains ten strategic recommendations calling upon Member States for the establishment of EU Asset Recovery Offices operating on best practices, storing and sharing information on assets and promoting common training on confiscation procedures. The national models largely share these priorities as the 'follow the money' line is used both in Italy and in England.

With the European Union willing to create a common zone for security and harmonised criminal law and justice, the role of national models is to translate supranational trends into domestic provisions. When looking at harmonisation of legislation and policing strategies in the field of organised crime, looking at supranational dimensions helps to understand how to interpret strategic choices and at the same time, how to develop a common language for policy makers of various national backgrounds for the sake of international cooperation.

6. The Semiotic Square of Interaction between the Models: the present situation between divergences and convergences

Below is presented a semiotic square with all the elements characterising the two models and their interactions, in the form of keywords. The semiotic square works by placing together areas in *contradiction* with each other (in this case, elements that only belong to the Italian or the English models and are not shared) or areas in *proximity* of one another (in this case, elements that are found in both

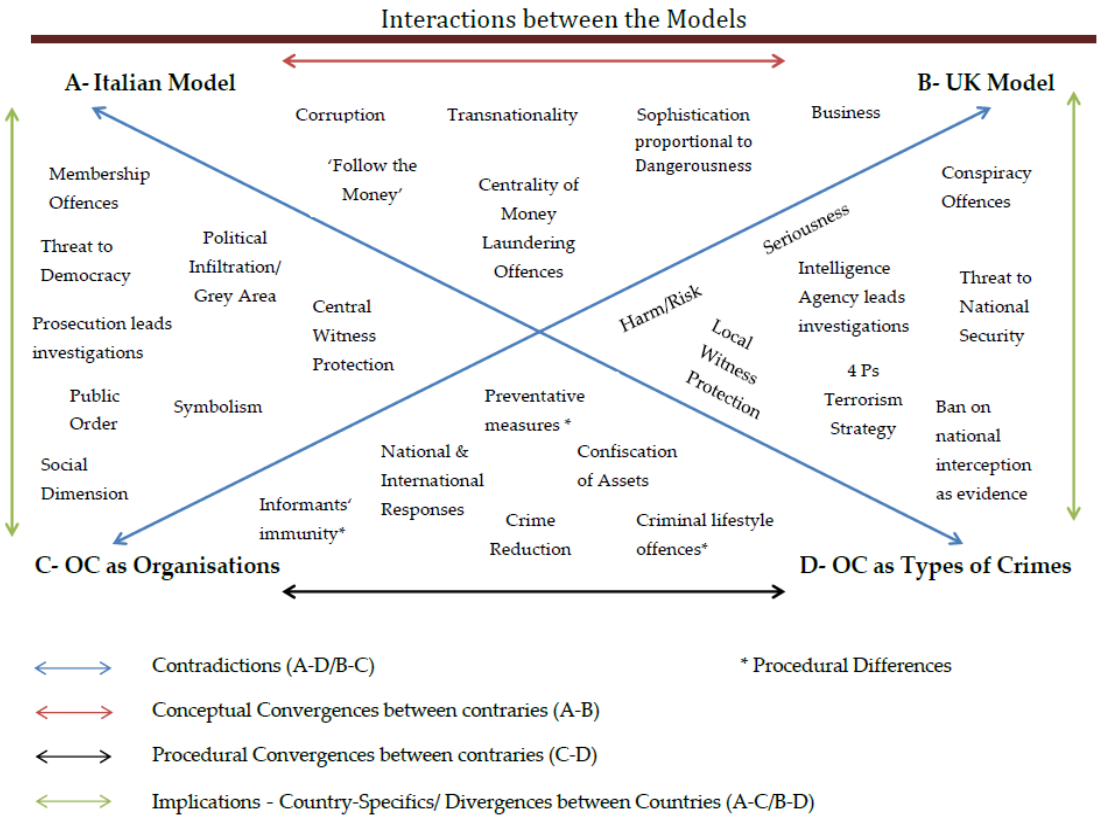
models). The keywords represent the objective findings of this research, after analysis of interviews and documents.

The **area A-C** represents specific characteristics of the Italian Structure Model exclusively, where perceptions of organised crime focus on the criminal organisations. This is an area of *divergence*, whose elements are peculiarities of this Model and are not shared with the English one.

Conversely, the **area B-D** represents the characteristics of the English Activity Model exclusively, where perceptions of organised crime focus instead on the activities committed by organised criminals. This is also an area of *divergence*, whose elements are typical of the Activity Model only and are not present instead in the Italian Structure Model.

The **area between A and B** is a *shared* space between the Italian and the English Models from a *conceptual* point of view. This is an area of theoretical *convergence* between the two models. The concepts shared in this area belong to perceptions of organised crime that both countries have developed and share, notwithstanding different manifestations and understandings of the phenomenon.

The **area between C and D,** direct implications respectively of A and B, is a *shared* space between the strategies against organised crime in the two countries in terms of *procedures*. This is an area of procedural *convergence* that includes the main ideas related to the best ways to police organised crime, in terms of tactics, strategies, and law enforcement approaches



Across the four areas presented in this square, two are areas of national specialism and therefore of divergence, and two are areas of convergence at conceptual and procedural levels. It can be noticed how divergences derive from legal traditions and historical legacies while, areas of convergence can be linked to more or less recent attempts internationalisations of policies and conceptualisations across national borders for purposes of harmonisation and alignment of policies across states.

7. Conclusion

This work found that for convergences in policing and criminal justice to exist between two national models, there is no need for shared conceptualisations of organised crime and shared policing approaches. However, different conceptualisations of organised crime highly affect the way the law is administered.

Findings on this work, which the semiotic square presents, can be summarised as follows:

1. National policy frameworks are profoundly influenced by the conceptualisations of organised crime in both countries. Discourses around seriousness of multiple criminal typologies in England and Wales and the unique mafia offence in Italy mirror these divergences.
2. The legal frameworks, mainly in terms of criminal law and criminal justice systems, follow, encapsulate and respond to these conceptualisations. In this sense, different conceptualisations of organised crime in the law - like conspiracy or membership offences - are the direct product of the conceptualisations of organised crime in both countries.
3. Divergences between the two models are mainly due to legal traditions and historical evolution of the threats considered and classified as 'organised crime' in both countries. The local and cultural characteristics of organised crime clearly influence the way phenomena are perceived.
4. Notwithstanding the divergences, there are unexpected convergences, both conceptual and procedural between the two national frameworks that are strictly linked to international influences.
5. The existence of such convergences can be addressed and employed by policy makers to support more incisive forms of cooperation without 'hiding' behind the claimed difficulties posed by divergent legal traditions.

Both the interviews and the document analysis have shown correspondence between institutional conceptualisations of organised crime and strategic choices in policing and law enforcement. The knowledge and comparison between two systems, each departing from different legal traditions, different manifestations of organised crime and different histories in terms of policing strategies is crucial to understand these differences. Whereas it is obvious that there will always be areas of law and criminal justice that diverge from one system to the other, the existence of areas of convergence, in terms of perception of the phenomenon and in terms of policing strategies, represents an important step for dialogues among states.

In comparing the two models, the intent is not to create a third – better and integrated – model as a result of the best practices in both countries, or at least not directly. Comparing policies to identify divergences and convergences has a value in

itself: it allows, in fact, using the same lexicon and improving dialogues and awareness of different systems on a level that goes beyond mere descriptions. Moreover, even without advocating a need to adopt similar strategies within a third integrated model, the research findings represent recommendations by pointing at areas of improvement and convergences. The fact that convergences are already naturally occurring should lead policy makers towards intensified forms of cooperation that, on one side, take into consideration local legal and social traditions, but on the other side, overcome divergences for what concerns cross-border aspects. This benefits the dialogue and the understanding of matters of transnational safety and global justice at both national and international levels. One thing that could not be denied at any stage of this project is, in fact, the transnational nature of certain types of organised crimes. This consideration has justified a reading of convergent and divergent national policies within international frameworks supporting the hypothesis that convergent policies are very similar also beyond national borders. If two countries conceptualise the same label differently there is the need, for policy makers, to identify innovative ways to translate such differences beyond national borders and for the various objectives of policing strategies.

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