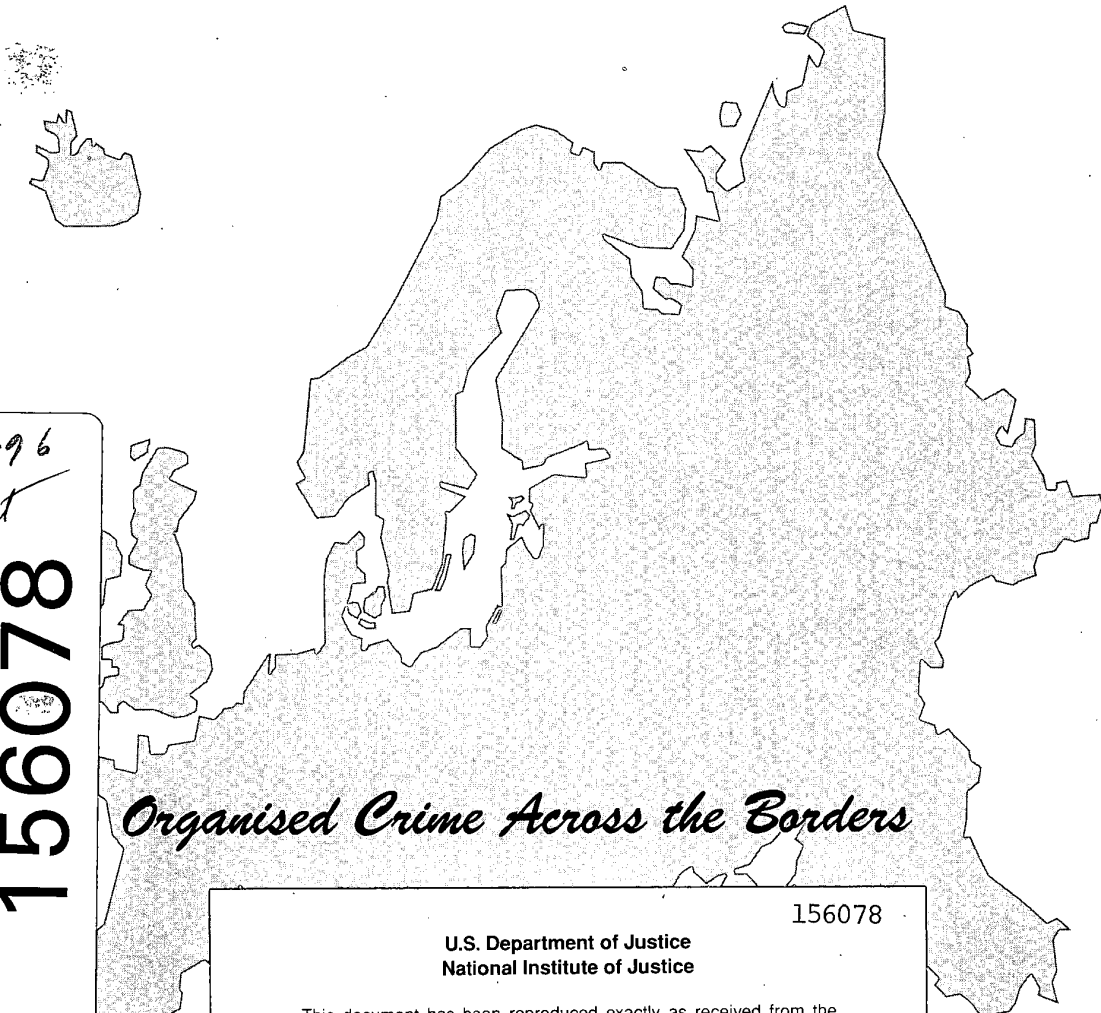


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## *Organised Crime Across the Borders*

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# ***ORGANISED CRIME ACROSS THE BORDERS***

*Preliminary Results*

by

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with the assistance of

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**The European Institute of Crime Prevention and Control,  
affiliated with the United Nations  
Helsinki, 1995**

## FOREWORD

Only a few years ago, many countries in the world could be complacent about organized crime. The phenomenon was popularly associated with only a few groups and countries, such as the Italian mafia and the La Cosa Nostra in the United States. However, law enforcement officers were already then well aware of the growing threat of the cocaine cartels in Latin America, the Chinese Triads, the Japanese Yakuza and other groups around the world.

There is far less complacency today, especially in Europe. The rapid emergence and demonstrated strength of organized crime groups in Eastern European countries as well as the evident links being forged in Europe as well as elsewhere among the world's different criminal organisations have forced countries to reassess the effectiveness of their legislation and practice. With this comes a new realization of the importance of international cooperation, both when dealing with the investigation, prosecution and adjudication of individual cases, and when acting together to strengthen the infrastructure of the criminal justice systems.

The World Ministerial Conference on Organized Transnational Crime, held at Naples from 21 to 23 November 1994, formulated the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, subsequently adopted by the General Assembly of the United Nations. Much of the Global Action Plan calls for States to draw on the experience of other States in developing legislation, practice and international cooperation.

At the end of the 1980s, the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) undertook on its part the direct promotion of international cooperation in this field. In October 1991, HEUNI organized an International Seminar on Organized Crime at Suzdal, Russian Federation. The meeting was attended by law enforcement officials and experts from 15 countries around the world, and by ICPO/Interpol.

In preparation for this meeting, HEUNI sent a questionnaire to ten countries on the manifestation and the control of organized crime. Following the meeting, the questionnaire was translated into a number of languages and sent to 160 countries, with

the cooperation of Interpol. The responsibility for the analysis of the responses was given to Professor Ernesto Savona (Trento University, Italy), an internationally recognized expert on organized crime. Working closely together with Mr. Michael DeFeo, Senior Counsel for International Law Enforcement, US Department of Justice, and with the aid of research assistants Sabrina Adamoli and Paola Zoffi (Transcrime), he has prepared the present report.

Since the responses came over a number of years (1991 through 1994), time and the rapid developments have already changed the situation reflected in them. An expanded and updated report is being prepared by Professor Savona and Mr. DeFeo for publication by HEUNI later in 1995. However, given the importance of this issue for example at the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Cairo, 29 April - 8 May 1995) and the fourth session of the United Nations Commission on Crime Prevention and Control (Vienna, 20 May - 9 June 1995), HEUNI takes pleasure in publishing the report already at this time.

As noted in the introduction to the report, it is based primarily on the responses from some 50 member States, supplemented by documentation gathered by Transcrime. The information covers most of those countries that have long experience with the prevention and control of organized crime, and thus will be of considerable benefit world-wide. Law enforcement agencies and researchers in countries not covered by this report are kindly requested to contact Professor Savona in order for inclusion of their countries in the final report. (Contact address: Transcrime, Research Group on Transnational Crime, School of Law, University of Trento, Via Inama 5, 38100 Trento, Italy; tel. +39 - 461 - 882304, fax +39 - 461 - 882303, e-mail [transcri@riscl.gelso.unitn.it](mailto:transcri@riscl.gelso.unitn.it))

We would like to thank the responding countries for having provided us with the benefit of their experience. Our special thanks go to the authors for their insightful analysis of trends in transnational organized crime, information which has so far been available only in scattered documents.

Helsinki, 28 March 1995

Matti Joutsen  
Director, HEUNI

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## INTRODUCTION AND ORGANISATION OF THIS REPORT

This report provides a preliminary analysis of the data resulting from an international survey commissioned for the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), which is based in Helsinki. The first part of the research consisted in the preparation of a questionnaire by a small number of experts, circulation of the questionnaire to ten countries, the discussion of the results at a seminar in Suzdal (Russian Federation), and finally the translation of the questionnaire into various languages and its distribution to 160 countries with the collaboration of Interpol. So far around 50 responses have been received. Since the elaboration of a single general definition of organised crime proved to be impossible, the individual respondent countries were left free to indicate what it considers as organised crime.

This report analyses the relations between organised crime and legislative and investigative strategies which aim at its control. Together with the analysis of the aspects referred to above, this report will concentrate on the contrasting policies the countries have at present or are putting into place, and on the international co-operation in this field.

The main assumption is that there is a reciprocal influence between the paths of change in the organisational structures of organised crime and those of the policies enacted by the different countries at a domestic and international level. This is what we call a "mirror-effect". Analysis of this continuous influence and reciprocal adaptation between criminal groups and legislation would require a careful monitoring of the present situation and its evolution.

Unfortunately, the lack of knowledge of this reciprocal influence on the one side, and the necessity of giving the public a clear picture (albeit an alarming one) of organised crime, on the other, have produced stereotypes which have influenced the investigative structures. This could explain the great attention and the consequent investigative pressure posed on the well-known organised crime groups, and the lack of attention which have characterised investigative authorities in dealing with less known and more recent organised crime groups, such as the Eastern

ones. It is necessary to carefully monitor the development of these groups in order to understand how to adjust contrasting strategies. As is often the case, comparative surveys point out that looking at the experience of one country can be useful for others in helping them to avoid repeating the same mistakes and to improve their strategies. These are complex policies, based on different levels which range from the preventive to the criminal strategies, aiming at a series of objectives and goals. They need to be introduced with great flexibility, in order to avoid a rigidity which often proves harmful in the long term. Strategies and policies need to be assessed in relation to the goals they have achieved.

Although it is premature to infer types of criminal groups operating all over the world, Part One of this report gives a tentative definition of Transnational Organised Crime, outlining the major groups and the activities in which they are engaged. This is followed by an excursus on international co-operation among states. Recent trends in development are considered in both cases.

On the basis of the responses to the HEUNI questionnaire, which are explained at the beginning of the Second Part, and with the enrichment of further documentation gathered by TRANSCRIME of the University of Trento (Italy), a preliminary assessment of the current situation in each country has been prepared in regards to the following sectors: organised crime groups, substantive and procedural legislation, law enforcement methods and structures, and international co-operation. Each sector is followed by a short analysis of convergences and divergencies and by some hypotheses on future trends.

A possible answer to the problem of the relationship between criminal groups and legislation could lie in the thinking and rationalising of the existing legislation and in the creation of new legislation where and when needed. Law enforcement agencies should be given strategic investigative capacities and clear directives in programming specific goals. In doing this it will be possible to improve the quality of the institutional answers to the challenges posed by organised crime in the world.

## Part One

### INTERNATIONAL TRENDS AND POLICIES

#### 1. Transnational Criminal Organisations<sup>1</sup>

Traditionally much controversy and contention have arisen over attempts to define **organised crime**. It is possible, however, to determine several conditions required before the term "organised crime" can be applied. To begin with, the persons involved in organised crime associate for the purpose of engaging in criminal activity on a more or less sustained basis. Moreover, they engage in enterprise crime, i.e. in the provision of illicit goods and services or licit goods that have been acquired through illicit means such as theft or fraud. A significant degree of co-operation and organisation is usually required.

Finally, criminals tend to use violence and corruption to facilitate the conduct of their economic activities. In doing so, they sometimes need to pay bribes to law enforcement officials and political authorities and to infiltrate strategic power positions.

The consensus on these essential elements may in fact be broad. However, issues about the size, structure and cohesion of criminal organisations have been more controversial. On the one side are those who see organised crime in terms of large hierarchical organisations that are structured rather like traditional corporations. On the other are those who contend that for the most part, organised crime groups tend to be loosely structured, flexible, and highly adaptable.

A further characteristic feature of organised crime is that it is becoming predominantly transnational. This means that, although there remains only one decision-making centre, the activities they are engaged in are increasingly crossing national borders. The term "transnational" is generally used to refer to the movement of information, money, physical objects, people, or other tangible or intangible items across state boundaries, when at least one of the actors involved in this movement is non-governmental.<sup>2</sup> It can also be used to refer to movements, ideologies, or organisations that are not confined in their scope by national borders.

Since crime industry is about the criminal exploitation of business opportunities and is dominated by supply organisations, it is not surprising that we have seen the development of organisations that transport illicit commodities across national jurisdictions.<sup>3</sup> The globalisation of trade and of consumer demand for leisure products has led criminal organisations to move from the level of national activity to that of transnational operations.

Criminal organisations tend to have a home base in areas where the risks posed by criminal justice and law enforcement capabilities are low and to engage in providing illicit goods and services to markets where the profits are very high. They subsequently channel the proceeds from such illicit activities through the global financial system, often using tax havens and relatively unregulated banking centres as major points of access.

The emergence of organised crime groups that have a home base in one state but that operate in one or more host states where there are favourable market opportunities<sup>4</sup> has suggested that the analysts term them **Transnational Criminal Organisations** (TCOs). TCOs have become major players in global economic activity, and are the key players in industries such as drug production and trafficking that are global in scope and that yield profits higher than the gross national products of some developing and developed states. Their common feature is that they engage in unregulated forms of capitalist enterprise involving illicit products, illicit smuggling of licit products and the theft of licit products, or all three kinds of activity. In trying to understand these organisations, a useful starting point is to view them as blending the corporate and the criminal and, in certain respects at least, as a mirror of transnational corporations.

Substantial differences, however, can be noted in the means whereby the two kinds of organization gain market access. Licit corporations negotiate with governments for permission to conduct operations on sovereign territory; TCOs obtain access through circumvention rather than consent, and systematically evade efforts to detect, monitor, intercept and disrupt their activities.<sup>5</sup>

Criminal organisations use both violence and corruption as a matter of course. Corruption is used to provide a congenial environment in which the criminal organisations can carry out their activities with impunity. Violence is used both to intimidate or eliminate business rivals or even government and law enforcement authorities that attempt to inhibit the activities of TCOs and also as a means of maintaining internal order and discipline.<sup>6</sup>

The widespread use of theft is another factor differentiating transnational criminal organisations from licit transnational corporations. As a matter of fact, many criminal organisations not only supply illicit products but also steal licit products.

The conclusion which can be inferred from this short analysis is that the major concern of transnational criminal organisations is the pursuit of profit (as is the case with transnational corporations). In so doing, they engage in extensive economic activities that readily cross national borders, trying both to maximise their freedom of action and to reduce external control over their activities.

## 2. The Activities

Transnational criminal organisations typically engage in several activities that deserve further attention.

The **drug trafficking industry** is a major source of income for most transnational criminal organisations. It is also a very lucrative industry largely because there is limited competition among the firms, little threat from substitute products and both the supplier of the raw materials and the consumers of the final product have very limited power.<sup>7</sup> The money from the drug trafficking industry goes predominantly to the trafficking organisations. The emergence of the drug trafficking industry has led to the emergence of money laundering as a high profile activity. There are also increasing signs of a growing linkage with other kinds of trafficking - especially in arms. Furthermore, drug money has been a major source of the government corruption that helps to provide secure home bases for transnational criminal organisations.

As far as **arms trafficking** is concerned, the

difference between the licit and the illicit supply of armaments is not always clearly defined. The issue often has more to do with who is the end user than with the product itself. Whoever the end user, however, arms trafficking in the black market has three characteristics: it is covert in nature; a large part of the cost is related to the surreptitious nature of the transaction, and the return flow of money is laundered.<sup>8</sup> It seems to be the case that the drug trafficking and the arms trafficking businesses are becoming increasingly intertwined, with cases of ethnic involvement in the drug trade in order to purchase weapons.

In the former Soviet Union considerable alarm has been provoked by **trafficking in nuclear materials**. The spectre that nuclear weapons -grade material might be passed to terrorist groups or pariah states attempting to acquire strategic nuclear capability is of considerable concern to the global community.

This issue has placed Germany in the front line. According to testimony given by Hans-Ludwig Zachert, President of the German Federal Police, to the United States Senate Permanent Subcommittee on Investigations, in 1992 there were 59 fraudulent offers of radioactive material, 99 cases of illicit trade and 18 seizures of actual material. In 1993, the number of cases increased to 241, including 118 fraudulent offers, 123 cases of illicit trade and 21 seizures (3 of these 21 seizures actually involved material from the FRG itself and not from the former Soviet Union). During 1993, 545 suspects were identified, 47 per cent of whom were non-German, predominantly Czech, Polish and Russian nationals.<sup>9</sup>

It is clear that this trade has considerable potential for extortion as well as for significant environmental damage if only as a result of improper handling of the materials. Although the question may arise over whether there actually is an illicit end user market, at least in Germany there is a danger that the organisation responsible may change track: if purchasers cannot be found and the material is in hand then extortion can appear particularly attractive. The fact that nuclear materials are often procured from government controlled installations in the Russian Federation suggests the involvement of criminal organisations seeking profit. If they cannot obtain these profits in one way then it is only a small step to an attempt to obtain them through nuclear

blackmail. Moreover, as nuclear disarmament continues, the availability of material is likely to increase rather than decrease.

**Automobile theft and smuggling** has emerged as a problem in Hong Kong, where luxury cars are stolen and rapidly transported to China on extremely fast power boats. It has also become an extensive problem in Europe where the number of motor vehicle thefts almost tripled between 1989 and 1993. Since the political opening, Eastern Europe has become a main area for the movement of stolen vehicles, with Poland as the central point of the illegal transport route. From there the vehicles are taken to the Baltic republics, or Ukraine, to Russia, the Caucasus region or Kazakhstan. Bulgarian and Russian criminal groups have become a major force in this particular area of transnational crime. The same problem also exists in the United States. The results are evident in the consumer states. While less serious than some of the other activities of organised crime, this is an additional source of revenue and something that can help these groups consolidate their position in certain countries.

Transnational criminal organisations are getting more and more involved in **trafficking in people**. There are several dimensions to this, the first of which concerns the illegal alien issue. According to one informed estimate, criminal organisations are now attempting to smuggle as many as 1 million people a year from poor to wealthier countries. Not only does this once again threaten a basic ingredient of national sovereignty, it also places the immigrants themselves in jeopardy. Such immigrants sometimes end up in the poorer countries of Eastern Europe, Latin America and Asia rather than their desired destinations in Western Europe and the United States.<sup>10</sup> Moreover, the would-be immigrants are highly vulnerable. Women in particular are often forced into sexual slavery. Even those who arrive at their destination often owe money and are forced to engage in criminal activities to pay off the debt. Although illegal immigration from the People's Republic of China has received a great deal of attention in Washington, the problem is not limited to the United States, or to Chinese immigrants. According to some estimates immigrants from China form only 20 per cent of those in a pipeline that encompasses India, Iran, Iraq, Pakistan, Romania, Sri Lanka, and Sudan.

**Trafficking in women and children** is an activity which both the Triads and the Yakuza are particularly involved in. They have held women as slaves in the tourist sex industry in South Korea, Philippines and Thailand. Also adoption is something that needs more careful scrutiny and regulation. According to several reports, international adoption has become a million dollar business. Concern over trafficking in babies has created a climate of suspicion and hysteria in some countries and led to attacks on foreigners wrongly suspected of kidnapping.

Moreover, considerable concern has been caused by the suspicion that kidnapping might cover **trafficking in body parts**. Although there is little evidence that kidnapping for this purpose has taken place, it is clear that there are lucrative black markets in body parts especially in Argentina and Russia. In Argentina, for example, serious transplant abuses have been reported, involving the removal of corneas from patients who had been declared brain dead after fabricated brain scans.<sup>11</sup> There have also been cases of the export of organs using false documents and of confirmed trafficking in body parts in Brazil, Argentina, Peru, Honduras and Mexico, largely with Swiss, German, and Italian buyers. It is clear that this is an era where the potential for corruption in medical communities is enormous and will remain so until rules governing the purchase or sale of organs are systematically developed and implemented.

**Money laundering** is one of the major activities the criminal organisations are developing as a means to conceal their illegal proceeds. Although much of the money comes from drug trafficking, other forms of transnational crime may account for around 25 per cent of all the illegal proceeds that enter the global financial system. The problem these groups face is that the money derived from illicit proceeds has somehow to be made legitimate. The laundering process designed to achieve this involves three major stages. The first stage is the placement of cash proceeds into the financial system through banks or other financial institutions. In countries where there are reporting requirements for large cash transactions this tends to be done through a larger number of small transactions ("smurfing"). An alternative approach is to physically smuggle large amounts of cash out of the country and deposit it where the reporting requirements are less stringent. The second stage in money laundering involves what is generally

termed "layering," which separates the funds from their source and is designed to disguise the audit trail. The third stage is integration which involves "the introduction of criminally derived wealth into the legitimate economy without arousing suspicion and with some apparent legitimacy for its source".<sup>12</sup> This third stage can involve such actions as the purchase of real estate or simply the complicity of banks in countries which lack money laundering legislation.

Inevitably an overview of this kind cannot include all the activities undertaken by transnational criminal organisations. No attention has been given, for example, to the illegal animal trade, the theft and trafficking of cultural artefacts or pieces of art, or smuggling in precious metals, to such activities as protection racketeering, the kidnapping of businessmen, or the theft of intellectual property through large-scale software piracy. This is not to denigrate the importance of these activities. The intent has been to provide a flavour of the range of activities that fall under the rubric of transnational crime and that are undertaken by transnational criminal organisations.

### 3. Trends in Transnational Criminal Organisations<sup>13</sup>

National authorities of Germany, the United Kingdom, Netherlands, and the United States of America (with some differences in perception of the relative importance of these groups) find that groups which deserve international attention are, in alphabetical order: Chinese Triads, Colombian cartels, Jamaican posses, Japanese Yakuza, Sicilian Mafia, Russian criminal organisations and West African groups such as Nigerian organised crime groups. Even if other groups could be added, the seven mentioned are the most widely recognised among practitioners and scholars.

Some of these groups have long traditions, such as the Asian gangs and the Sicilian Mafia. Others are relatively young, such as the Colombian cartels and the Russian criminal organisations, and others have come to global attention only in the last few years, such as the Nigerian groups.

### 3.1. Italian Mafia

The Mafia has been variously defined. In Italy it generally refers to the Sicilian Mafia or "Cosa Nostra", the Neapolitan Camorra (a group of predominantly local organisations), the Calabrian 'Ndrangheta (a federation of families that deal in contraband tobacco, drugs and kidnapping) and the "Sacra Corona Unita" in Apulia (based on breakaway factions from the Camorra and 'Ndrangheta). The most important of these is clearly the Cosa Nostra.

In 1990 the total amount of money produced by Italian criminals was estimated by the Italian Central Institute for Statistics at between approximately 21.5 and 24 billion dollars at that time. At least 50% of this amount can be attributed to organised crime. Considering the relative profitability of the Mafia groups in comparison to other types of organisations, e.g. the Camorra and the 'Ndrangheta, the share of the Sicilian Mafia can be estimated at between one third and one half of this amount. Data for 1991 and 1992 confirm this amount.<sup>14</sup>

Although many of the activities the Cosa Nostra carries out are still regional and its power remains based in Southern Italy, the Cosa Nostra has increasingly become a transnational enterprise. This has been facilitated by migration flows. As was later correspondingly the case in Germany, Sicilian migration to the United States facilitated a Sicilian share of the American heroin market.

During the last two decades, the money laundering activities of the Mafia have become increasingly sophisticated. The recent trends of economic activities carried out by Italian organised groups in legitimate activities can be synthesised as follows. The investment strategies reveal the increasing sophistication of the Mafia. They have been outlined as:<sup>15</sup>

- acquisition of the control of specific economic activities in particular areas of the country;
- intervention in those economic sectors affected by recession;
- intervention in those economic sectors with better prospects of development; and
- investment of illicit money in foreign economic activities.

These operations are carried out at international level, but are often linked to domestic-market operations.

The Sicilian Mafia, however, has suffered some setbacks. In the first place, it has not been able to establish a monopoly in the drug market for Italy, much less for Europe as a whole. In addition, the Mafia assault on the Italian judiciary authorities between 1983 and 1992 ultimately proved counter-productive. The interlinkage with political power and the establishment of a collusive relationship with the state has also come under increasing attack. Although in recent years it has been hurt by the upsurge of popular sentiment in Italy and the related changes in the political situation, the Sicilian Mafia remains an important criminal force and a major challenge to law enforcement authorities.

### *3.2. Russian Organised Crime*<sup>16</sup>

Russian organised crime groups are attracting attention world-wide. Although there has been a major increase in organised crime in Russia and the other parts of the former Soviet Union, Russian criminal organisations are not an entirely new phenomenon. The underground economy in the Soviet Union and the pervasive corruption provided the potential for organised crime, but was kept under control by the dominance of the Communist Party. The reforms initiated by Gorbachev, however, at the same time dismantled the mechanisms of social, political and economic control. The collapse of the Communist Party and with it the Soviet state also weakened the system of criminal justice. The new environment was a very permissive one for organised crime with few laws against criminal associations and with continued inefficiencies in the economic system. The transition to the market economy is also being carried out without a clear regulatory framework. Russia tried to develop a free market without the system of rules and regulations that are necessary to ensure its integrity, efficiency, and effectiveness.<sup>17</sup> At the same time the end of the Cold War made it easier for the groups in the former Soviet Union to engage in transnational criminal activity. The result has been a consolidation of existing criminal groups, the rise of new organisations, and the diversification of criminal activity.

One analysis has identified several major kinds of

criminal enterprise. In addition to old style party officials who misused their position, there are also many ethnic-based groups. These include Georgian organised crime groups which controlled much of the black market under the Communist system and has subsequently extended the range of its activities, the Chechens and Azerbaijani groups, and others who help to account for a major upsurge in illicit trafficking not only in drugs but also in metals, weapons, nuclear materials and even body parts. Moreover, these organisations clearly operate with little regard for national boundaries. In addition to the smuggling of nuclear materials from the former USSR, other metals such as magnesium have also been stolen and sold in Western Europe. Moreover, these groups have infiltrated the Russian banking system and have been unscrupulous in their use of intimidation and violence against bankers and businessmen who were not co-operative. As a result, banking in particular has become a high risk profession in Russia.

The most productive activities of Russian organised crime groups have been described to be the theft of antiques and their smuggling to the West; prostitution; car thefts; the arms trade; and narcotics. Many other activities can be added to this list. Russian organised crime groups belong to the prototype of opportunistic organised crime operating in domestic and international markets. Like the Sicilian Mafia they concentrate at the local level on keeping control over their territory by excluding criminal rivals, and at the transnational level on using their capabilities in smuggling or otherwise illegally dealing in anything which presents the opportunity of a profit, from cars to arms, medicines to raw materials.

Russian organised crime groups have also spread their activities to other countries, including the United States. Among the most important groups are the Odessa organised crime groups (based in Brighton Beach but also active in California), the Chechens who typically specialize in contract murder and extortion, and the Malina/Organizatsiay, a multi-ethnic group in Brighton Beach which maintains extensive international ties and is active in a variety of areas - drug trafficking, credit card fraud, extortion and tax fraud. There is evidence of relationships with Colombians and with Italian mafias.

Much work is under way to help Eastern European countries achieve a transparent process of privatisation and to better organise the resistance to the growth of organised crime in the states of the former U.S.S.R. Nevertheless, the rest of the world community should be prepared to face the reality that some of these states currently experience powerful influences coming from organised crime on all their institutions, given the weakness of other competing social and economic forces. It will require a real concentration of resources and great political motivation to establish regulatory and law enforcement efficiency against such organised criminal activities.

### 3.3. Chinese Triads<sup>18</sup>

Although some Chinese Triads operate from the People's Republic of China, they are based predominantly in Hong Kong (which is the home base for the Sun Yee On, the 14K, and the Wo Group) and Taiwan (the United Bamboo). Although there is a formal structure with a dragon head and specialists such as enforcers and administrators, many of their criminal activities tend to take place amongst members who operate on an *ad hoc* basis and establish fluid network systems that may change from one criminal operation to the next.

Triads are involved in a whole range of criminal activities, including extortion, drug trafficking, prostitution, gambling and sideline businesses in Chinese videos, books, newspapers and entertainment services. They also have extensive overseas networks that allow them to engage in transnational criminal activity with great ease. Chinese Triads are well established in every major Chinese community across the world, including Amsterdam, London, Manchester, New York and San Francisco. International activities include heavy participation in heroin trafficking toward the United States and Europe combined with arms smuggling and other kinds of opportunistic activities, such as theft and smuggling of luxury automobiles, yachts to wealthier markets and consumer goods to the People's Republic of China, and international credit card frauds. The smuggling of illegal aliens to the United States is particularly intensive.

Some observers have concluded that the Triad societies have very close links with both the tongs or

Chambers of Commerce and the youth gangs that exist in many Chinese communities throughout North America. Not surprisingly, therefore, the Triads are the major importers of heroin (from Southeast Asia) into the United States. They have also been active in Western Europe, while a report in the first half of 1994 suggested that the Chinese Triads have been engaged in a variety of activities in Spain where the smuggling of illegal aliens had become evident through the appearance of large numbers of Chinese citizens in Galicia.<sup>19</sup> As elsewhere these aliens are often exploited by the criminals as "slave labour" or are pressed into serving as drug couriers or prostitutes, or forced to engage in other forms of crime. It was suggested that this activity is controlled primarily by the Sun Yee On Triad. Heroin trafficking is largely controlled by the 14K, whereas prostitution and pornography and trafficking in children is controlled predominantly by the Wo On Lok. In addition, there is considerable evidence of loan sharking and extortion, carried out largely by Dai Hoon which is in effect an illegal bank that lends money at very high rates, offers loans for gambling purposes, and provides money for illegal immigrants.

On the other side of the investment of the proceeds coming from such activities, Triad money handling practices are part of their original process of internationalisation. Rather than engaging in elaborate concealment schemes they frequently make direct investments to generate more funds, exhibiting little concern about official inquiries into their sources of funds. All the activities have been recently estimated at a total amount of 210.2 billion dollars per year.<sup>20</sup> Law enforcement officials are concerned about the progressive shift of the Triads to the United States, Canada and Australia in anticipation of the transfer of Hong Kong to the Peoples' Republic of China in 1997.

### 3.4. Japanese Yakuza

The Japanese Yakuza - also known as the Boryokudan (violent ones) - has been much more visible in its home base than most other criminal organisations. There are several major organisations within the Yakuza, of which the most important is the Yamaguchi-gumi. The second largest group is the Inagawa-kai, while the third largest organisation is the Smiyoshi-kai.<sup>21</sup> The Yakuza has been characterised by

considerable internal warfare among its various branches, but this has not prevented it from infiltrating legitimate business and extending corruption into the political system.

Perhaps less ambitious than the Chinese in the transnational scope of their activities, the Japanese Yakuza has nevertheless been involved in significant criminal activities across national borders, including the trafficking of methamphetamine into Hawaii and California as well as the smuggling of guns from the United States into Japan. Moreover, the Yakuza has a significant presence throughout much of Southeast Asia where Japanese criminals have become a major force organising 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, as well as an additional source for hand guns.<sup>22</sup> In addition, the Yakuza has moved into gambling, fraud and money laundering. In Hawaii, Yakuza members have been deeply involved in the sex and drug trades and have also heavily invested in real estate. The police and Yakuza gangs have for many years maintained a *modus vivendi*: as long as the Yakuza kept serious violence within their own ranks and did not threaten civil order, their activities were to some extent tolerated.

Attitudes are beginning to change. In 1992 new legislation allowed the police for the first time to designate Yakuza gangs as criminal organisations. Once designated as criminal organisation, a gang is subject to immediate police constraints and its members can be arrested. So far the law has had limited impact. Some gangs have registered as companies in an attempt to deflect the law. Yakuza have tended to play down activities that risk to cause public comment and force police response.<sup>23</sup>

### 3.5. Colombian Cartels

The Colombian cartels are in many ways unique. Unlike most other transnational criminal organisations which tend to engage in a range of illegal activity, the cartels are first and last in the drug business. Indeed, the cartels - and this is particularly true of the Cali cartel which has now become the predominant group in the cocaine industry - have amalgamated corporate and criminal cultures more than any other group. They have developed an industry that is based on

sound management principles such as specialisation and the division of labour.

During the 1980s the Medellin Cartel led the way in applying industrial style transport to the drug trafficking business, increasing the amounts that were transported into the United States by air. The Cali Cartel has taken this a stage further and has applied successful business management techniques and meticulous accounting procedures to its activities. Although the Medellin Cartel is still active in drug trafficking - and there have been allegations that the Ochoas are still running their drug business from prison - the killing of Pablo Escobar by government forces both highlighted and accentuated the shift in power from the Medellin Cartel to the Cali Cartel.

The Cali Cartel has adopted a strategy of infiltration. The leading members of the cartel present themselves as legitimate businessmen and have increasingly invested in licit businesses. Cali has also attempted to establish a *modus vivendi* with a Colombian government that is prepared to tolerate narco-trafficking but responds vigorously to narco-violence.

In its activities both in Colombia and the United States, the cartel has a very specialised cell structure based around functions such as logistics and marketing. This modular approach has the effect of both preventing contact between members and avoiding the risk of incrimination for conspiracy.

The Cali Cartel acts like any other transnational corporation. In recent years, for example, it has sought to diversify its markets (with particular emphasis on Western Europe and the newly emerging markets in Eastern Europe and the former Soviet Union) as well as its products (through the production of Colombian heroin that is more compact, cheaper to transport and has higher profit margins than cocaine). The expansion of cartels in Europe coincides with the high level of cocaine consumption in this area, second only to that in the United States. There are several points of view regarding the organisational structure of the cartels, the most popular among the different police forces being that the cartels have created joint-ventures with other criminal groups, such as the Italian Mafia for the import and distribution of cocaine. At the same time there has been growing sophistication in the methods of concealment, which reveal a degree of innovation and sophistication that

is intended to circumvent law enforcement and interdiction activities.

A geographical trend has also characterised money laundering schemes related to cartels, initially connected with their drug trafficking operations. Today, through the specialisation and globalisation of money laundering activities, cartels do not need to concentrate on a particular region. They market their dirty money anywhere they are able to avoid the control system and can get the best interest rate or investment.

### **3.6. Nigerian Criminal Organisations.** <sup>24</sup>

The rise of Nigerian organised crime groups is a relatively recent phenomenon that is often traced to the collapse of oil prices in the early 1980s and to the dislocation that this caused to an economy that relied on oil for 95 per cent of its export earnings by the late 1970s. The result of this was that a lot of bright articulate Nigerians - many of them college educated and many of them in other countries - were effectively deprived of their source of income. In some cases they turned to crime, with spectacularly successful results. Indeed, Nigerians have developed large-scale trafficking activities and have been identified as second only to the Chinese in the import of heroin into the United States. Once again this was facilitated by the fact that they were able to operate from a relatively safe home base characterised by unstable government, a high level of corruption, and few resources to devote to the fight against organised crime. They have proved to be very adaptive in terms of finding alternative trafficking routes, methods of concealment, courier profiles and choice of product, and have progressed from simply being couriers for other transnational criminal organisations to becoming major players in their own right. Although there is little evidence of a Nigerian cartel, a loose network of drug barons has been identified and it is clear that even the activities of couriers are carefully orchestrated, with the couriers themselves being trained in methods to avoid detection.

Nigerian criminal activities, however, have not been limited to drug trafficking. Nigerian organisations have also engaged in fraudulent activities related to credit cards, commercial banks and government assistance programs. They have proved adept at

obtaining documentation for false identities that has facilitated check kiting, student loan fraud, social services fraud, insurance fraud, and electronic funds transfer fraud. Although they have not been involved in major schemes, exhibiting a preference for a large number of smaller scale activities, the overall impact has been substantial.

Even so the Nigerian organisations have generally adopted a low profile. The members tend to live modestly and ship money back to Nigeria, where there is an absence of legislation directed against money laundering. Nevertheless, their success has bred imitation, and individuals and groups from Ghana, Benin and Sierra Leone have also become involved in transnational crime, especially drug trafficking.

Although law enforcement has had some success in response to their activities, the Nigerian organisations have several natural defence mechanisms. The use of a variety of different dialects, for example, reduces the usefulness of wire tapping and other electronic surveillance devices. In essence, they have a non-technological way of circumventing hi-tech law enforcement. The fact that the organisations tend to be based on family or tribal ties also makes them very difficult to infiltrate. Although the threat they pose in terms of corruption and violence may be less than some of the other groups, it is certainly not insignificant.

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This survey has obviously not been comprehensive. Turkish drug trafficking organisations that supply heroin to Western Europe from Southwest Asia using the famous Balkans Route and the variations on it that have been made necessary by the conflict in Yugoslavia have not been discussed. Nor have Jamaican Posses, the indigenous American Mafia, Dominican criminal organisations or a variety of other groups. Nevertheless, the analysis is sufficient to highlight some of the strengths of transnational criminal organisations and to show that they are highly adaptable, very fluid, able to take advantage of weaknesses in particular nations or regions, and difficult to penetrate. It also shows the scope of criminal activities that pose a challenge to the rule of law.

#### 4. International Policies in Combating Transnational Organised Crime<sup>25</sup>

The international community is becoming increasingly concerned about the impact that transnational crime produces on national economies, international relations, stability, security and peace. The new responsibilities that Governments have to take on and the demand for global strategies to combat it, draw attention to the need for effective strategies to enforce global action.

Considerable progress has been made in the effort to internationalise and harmonise law enforcement efforts. This co-operation needs to be further developed in response to the increasingly diverse challenges posed by transnational criminal organisations.

One way to achieve this is through the more vigorous pursuit of **bilateral co-operation**. There are many examples of such co-operation already in place, and more agreements are being signed every year. Efforts have also been made to provide assistance to the States in transition in Eastern Europe. Germany has signed treaties with the Czech Republic, Poland and Slovakia on co-operation in the suppression of organised crime. Also Russia has been the recipient of considerable assistance, much of it bilateral, but some of it multilateral. A particularly good example of highly reciprocal bilateral co-operation - and one that has yielded very substantial dividends - is that between the United States and Italy. The United States-Italian Working Group on Organised Crime and Narcotics, formed in 1984 (extended to incorporate terrorism in 1986 and subsequently broadened to include Canada as an observer), is a model example of extensive bilateral co-operation.

It is clear that bilateral co-operation can have very positive consequences in terms of law enforcement co-operation. It is a highly flexible strategy that can be tailored to what the states involved see as their specific needs and objectives. Furthermore, the commitment of states to implementing the accord is likely to be stronger: each state has a very clear obligation to its partner and the obligation is precise rather than diffuse.

At the same time, there are some limitations or shortcomings associated with bilateral extradition and mutual assistance treaties. In the first place, although the web of bilateralism is gradually thickening, major gaps remain. Furthermore, the whole could prove to be less than the sum of its parts: there is an *ad hoc* quality about this form of co-operation that produces inefficiencies, lack of co-ordination and overlapping when looking at it from an overall perspective.

The implication is that, although the web of bilateral co-operation will continue to thicken, it needs to be complemented by multilateral forms of co-operation.

**Multilateral co-operation** should not be seen simply as a compromise between various bilateral efforts. Rather, it is something that has significant benefits in its own right, as many regional arrangements have demonstrated. Regional co-operation in judicial and criminal matters is the natural concomitant to efforts to achieve political and economic union. Regional co-operation is also based on the recognition that, although transnational organised crime is a global problem, it takes different forms in different regions and countries.

There have already been some very positive regional initiatives which have extended the bounds of co-operation beyond the purely bilateral. These include the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. This Convention contains far-reaching provisions allowing the signatories to criminalize laundering of the proceeds of non-drug-related crime. It was also extended beyond Europe to facilitate participation by countries such as the United States and Australia, which are not members of the Council but helped with the drafting of the Convention.

Another, more modest, regional initiative is the Caribbean Financial Action Task Force. As a result of the Caribbean Conference on Drug Money Laundering, held at Aruba from 8 to 10 June 1990, a series of recommendations for taking action against money-laundering was formulated. Some countries, however, have proved reluctant to take further action, not least because of the benefits they receive as tax havens, and progress has generally been slower than was initially anticipated.

More significant is the work of the Inter-American Drug Abuse Commission (CICAD) of the Organisation of American States, which has initiated an action program against the production and use of illicit substances and has adopted model legislation on money-laundering, based largely on the recommendations of the Financial Action Task Force established by the Heads of State or Government of the Group of Seven major industrialised countries and the President of the European Commission of the European Union.

At best, regional initiatives of this kind are relatively easy to formulate and implement, as the states in same region have a broad convergence of interest and relatively homogeneous needs and problems. They are incremental exercises in multilateral co-operation, which in some cases seem to provide a useful framework for effective action against transnational criminal organisations.

Having clarified that the regional level could be the starting point for an effective process of harmonising policies against organised crime among different countries, an agenda for international co-operation in this area could be identified.

The first level should be achieved through crime control legislation, involving the introduction of specific offences for crimes committed by criminal organisations, legislation providing for the possibility of forfeiture and confiscation of assets with a criminal origin, and the increase of the severity of corruption crimes. At the second level, attention should be given to providing law enforcement agencies with the technology for wiretapping and electronic surveillance. Both levels require substantive international co-operation among countries.

**World-wide joint action**, including action by the United Nations, is an important part of such an integrated strategy.

An internationally binding instrument, such as a convention, could express the concern about the threat posed by transnational criminal organisations and the urgent need for international collaboration. Secondly, it could establish the principles underlying co-operation among countries in responding to transnational organised crime, as well as emphasise that the existing instruments would be integrated into

the convention.

One example of such an instrument is the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Model treaties on extradition and mutual assistance in criminal matters have also been prepared by the United Nations.

Another aspect of international co-operation could aim at progressively reducing anonymity in bank transactions and, in the meantime, seeking a minimum of information in respect of major banking and financial transactions and centralising it in national data banks linked in an international information network.

Technical co-operation should be strengthened to share experiences as well as to assist countries. Co-operation in strengthening controls and registering movements through entry points to make them less vulnerable to penetration is indispensable. Appropriate equipment is needed to detect illicit narcotics, illegal arms and counterfeit documents such as passports. Extending national jurisdiction over illegal activities of organised criminal groups on the high seas and in international airspace could be considered. Immigration control systems should be improved. The international community should urge countries that provide passports to foreigners in exchange for investments, to re-examine their legislation and deter abuses. Full implementation of international conventions on the use of mail services by organised crime is also important.

Another valuable service would be the establishment of an international information centre, to disseminate to interested Governments information on laws or measures taken against organised crime. In relation to law enforcement, co-operation between countries can take many forms in relation to intelligence and investigation, the police and the judiciary authorities. One example could be working groups on organised crime, consisting of members of the relevant agencies of States that are parties to a bilateral mutual assistance treaty. Organised crime takes advantage of the fragmentation of governmental effort; sharing information and joint investigation are two essential elements of effective counter action.<sup>26</sup>

Although considerable progress has been made towards the level of collaboration that is necessary to respond to transnational criminal organisations, much remains to be done. Ultimately, however, this depends upon the will of governments to allocate resources to the efforts to control and prevent transnational organised crime.

\* \* \*

In the first section the features of the major Transnational Criminal Organisations and the trends in their development have been highlighted. Subsequently, we have listed and analyzed activities these groups are engaged in, with particular reference both to traditional ones such as drug-trafficking and to recently emerging ones, such as trafficking in nuclear materials. The necessity to reinvest the illicit proceeds coming from their criminal offences has led to more and more sophisticated money laundering techniques.

The new threat posed by the Transnational Criminal Organisations has determined the need to reconsider all the national and international policies to combat them. The groups listed above are those which properly fit under the title of this paper, "Organised Crime Across the Borders".

In the following section, geographical borders will be used as criteria for describing and analysing the ways in which organised crime groups act inside and across regional borders and the policies countries have at present and are developing to combat it. This subject has a long history which must be updated almost on a daily basis and analysed. This paper seeks to be a small contribution in this direction.

The data received in response to the HEUNI Questionnaire have been elaborated in order to be able to describe the trends of organised crime groups at a regional level. The same analysis has been carried out for the other sectors, namely substantive legislation, procedural legislation, law enforcement methods and structures, and international co-operation. This kind of data aggregation has enabled us to elaborate a comparative analysis, which points out convergences and divergencies in the sectors mentioned above.

## Part Two

### COUNTRY ANALYSIS

#### 5. Profiles of Organised Crime Around the World

##### 5.1. Country Profiles

###### A) North America

**Canada** is a drug consuming rather than producing country with significant money laundering activity. The country is a transit point for drugs and money moving between South America, the Middle East, and Southwest and Southeast Asia through Canada to the United States, there being a vast and virtually open land border between the two countries.<sup>27</sup> American cocaine cartels launder drug proceeds from U.S. dollar sales through Canadian financial institutions. There is evidence that ethnic Chinese traffickers in Seattle are using the "hundi" underground banking system in Canada to convert heroin proceeds into US dollars.

There are several highly structured organised criminal groups operating in the **United States**. The American Mafia or La Cosa Nostra has long been the dominant criminal organisation in the United States. Although still dominant in some cities, its power and influence is waning as a result of law enforcement efforts and demographic reasons. American Mafia families are involved in virtually all forms of criminal activity including, but not limited to, drug trafficking, fraud, labour racketeering, money laundering, murder, and corruption of public officials. The Italian Mafia, the 'Ndrangheta, the Camorra, the Colombian cocaine cartels, the Jamaican Posses, Russian organised crime groups and the Chinese Triads all have a strong and growing presence in the USA and are involved in large scale drug trafficking and money laundering. The USA also has a wide variety of structured indigenous groups involved in drug distribution, theft, and fraud.

###### B) South/Central America and Caribbean

**Argentina** has witnessed the presence of both Italian Mafia heroin traffickers and Colombian and Bolivian

cocaine dealers, although it does not have a comparable domestic underworld. It has become a transit point for drug traffic to Europe, and there have been numerous documented cases of money laundering.

**Aruba** is an island country geographically situated in the midst of major drug trafficking routes where strict bank secrecy, corporate confidentiality laws (with bearer shares) and liberal banking regulations serve to attract laundering activity. Significant drug trafficking and money laundering activity has been documented, and Italian and American organised crime proceeds are believed, and in some cases known, to have been sent to Aruba for laundering.

**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. The U.S. dollar is widely used, which facilitates money laundering.

**Brazil** is a major South American economy and a significant cocaine staging and transshipment point, and is therefore thought to attract investments by traffickers doing business there. The Italian Mafia is operating in Brazil, and its presence and influence is rapidly expanding. It is suspected to have connections with the Colombian cocaine cartels, and to co-ordinate a portion of its international criminal activity from Brazil. It also has several indigenous organised crime groups involved in the various criminal activities including drug trafficking, murder and a form of illegal lottery. Various international organised crime groups are involved in drug trafficking and in buying and selling children.

In view of its strategic location, **Costa Rica** has had a substantial presence of Colombian drug traffickers for some time. Not only drugs but bulk shipments of cash are known to transit the country, and significant money laundering activity by an exchange house was revealed in 1993.

**Ecuador's** free currency convertibility policies, and the existence of numerous currency exchange houses near the Colombian and Peruvian borders, where there has long been smuggling activity, created governmental concern over money laundering in the late 1980s. This led to the enactment of

comprehensive anti-drug and seizure legislation in 1990, the same year the Ecuador ratified the Vienna Convention.

Posses or gangs are the principal organised crime group in **Jamaica**, and are involved in drug trafficking, gun smuggling, the counterfeiting of currency and travel documents, robberies and murder. The Posses maintain strong links with their counterparts overseas particularly in the USA, Canada, and the United Kingdom. Members of the National Security Forces are sometimes corrupted by the Posses, and then provide them with protection or supply them with information. Their activity may lead to a reduction in the level of foreign and local investment, employment and productivity levels.

**Mexico** has a variety of criminal organisations operating within its borders. It is a producer and transshipment point for drugs to consumers to the North. It is also an important cash transaction centre and currency transit point, particularly through currency exchange houses along the border, and within the United States but with operating arrangements with counterpart houses in Mexico.

**Panama** has historically been second only to the United States in money laundering activity in the Americas. Strict bank secrecy, anonymous ownership through bearer shares, the dollar economy, a tradition as a tax haven and the involvement in narcotics trafficking by the Noriega government created a breeding ground for money laundering

**Paraguay** has been a source country for marijuana and a transit route for cocaine. There are indications of a Chinese organised crime presence, with its traditional activities of narcotics trafficking and money laundering outside of the traditional bank system. Due to its location, Paraguay has long been a centre for contraband commerce and it has a wide open financial sector with few, if any, restrictions on currency transactions.

### C) Europe

#### *Western Europe*

**Austria** has a growing drug problem. Cocaine and heroin smuggling to markets further west is

increasing, and its location favours the growing activities of organised crime groups from Eastern and Central Europe. Although some domestic money laundering may take place, at present the problem is mainly seen in the use of Austrian financial institutions by Colombian cartels, among others, to launder the proceeds of foreign crime.<sup>28</sup>

Local law enforcement agencies have been sounding the alarm about the operation of Russian organized crime groups in the country. They are said to control activities ranging from prostitution and drug-trafficking to the arms trade and the smuggling of nuclear materials.

**Belgium**, as a trade centre, is a transit country for Southwest and Southeast Asian heroin, South American cocaine, and Moroccan hashish, but there is no evidence of significant levels of money laundering activity. While drug trafficking and drug money laundering do not inevitably travel the same paths, the level of trafficking activity would indicate that Indian, Lebanese, Pakistani, Colombian, Chinese and Thai drug smugglers have established good connections between Antwerp and source locations which could be useful for money laundering. Being an intermediate point on an established air route linking Lagos, Chicago and Toronto with Antwerp, Belgium is frequently used by Nigerian nationals to transport U.S. dollars to Lagos.

**Denmark** is not an important financial centre nor a major narcotics money laundering centre, but there have been several cases of money laundering by Colombian drug smugglers, in which bank accounts were seized. The Penal Code in general prohibits the receipt of assets from burglary, fraud, drug crimes, etc.<sup>29</sup>, and permits asset forfeiture in all criminal cases.

According to the French *police judiciaire* "organised crime" in **France** is badly organised. Only isolated and occasional examples of organised crime exist. There are traces of the Italian Cosa Nostra and Camorra, which are thought to regularly use France for money laundering. The presence of organised crime in France has been detected in the ownership of golf courses, casinos, private clinics and property agencies. It is also in evidence in activities involving waste disposal, public works and the supply and maintenance of slot machines.<sup>30</sup>

In **Germany** there are two major manifestations of organised crime, namely a) independent groups of criminal offenders with a consolidated structure, occasionally consisting of ethnically exclusive groups also operating in Germany from bases abroad, and b) networks of offenders frequently located in densely populated areas.

The activities of many international criminal organisations affect Germany, including the Italian Mafia, the North America La Cosa Nostra, the 'Ndrangheta, the Medellin Cartel and the Cali Cartel.

At present, organised crime is particularly observed in the following areas of crime: narcotics trade and trafficking; arms trade and trafficking; crime related to the sex industry; the running of protection rackets; the manufacture and distribution of counterfeit money; falsification and misuse of means of cashless payment; illegal removal abroad of high-value vehicles; the illegal disposal of special waste; and the illegal transfer of technology.

Structures within the organisations follow from common interests. No absolute leaders along the lines of the Mafia godfathers have yet become evident.

In the past, efforts have been observed to exercise an influence on persons holding public offices, in the judiciary and in public administration, to induce them to participate in or to tolerate criminal offences.

For 1992, organised crime was reported to have resulted in total damage of more than one billion DM. The additional profit was estimated as exceeding 674 million DM. The annual turnover in the illegal narcotics trade is estimated at more than 2 billion DM. A part of the criminal gains is in turn profitably put into legal businesses or investment and/or laundered.

**Greece** is an important financial centre and tax haven for the Eastern Mediterranean region. Given this environment, the proximity of drug source countries and drug routes, it is estimated that several billion U.S. dollars from all types of organised criminality may be in circulation.<sup>31</sup> Russian organised crime groups are rapidly expanding in the country.

In **Italy**, the main criminal organisations of international importance are the "Camorra," the

"'Ndrangheta" and the "Mafia," more properly called "Cosa Nostra". The Mafia is a unitary and hierarchical organisation characterised by a high degree of dangerousness in comparison with the other criminal associations. In contrast to the Mafia or Cosa Nostra, the 'Ndrangheta and the Camorra are organised on a horizontal basis. A full accounting of the economic damage caused by organised crime is not possible. These criminal organisations are principally found in Southern Italy. However, the organisations interact with each other and are operating in partnership with criminal organisations located in other countries. The Italian Mafia, for example, has strong ties with the American La Cosa Nostra; the 'Ndrangheta has privileged relations with the Canadian and Australian underworld, and the Camorra has an intensive relationship with Colombian cartels.

**The Netherlands**, the main clearing-house for drug distribution to Northern Europe, is one of the oldest and most active financial centres and is home to several major financial institutions having world-wide operations. Narcotics money laundering has become a matter of concern. The indications are that the Netherlands is primarily a transit point for money, but in some instances funds are converted by the financial system. Money laundering proceeds are owned by both local groups and organisations located in other countries. The Chinese Triads are believed to be strengthening their hold. Yugoslavian drug syndicates in Amsterdam and in Rotterdam are said to play a dominant role in the financing of the war in the former Yugoslavia. In Rotterdam Russian criminals are also present. Money laundering proceeds come from both local organisations and groups located in other countries.

**Norway** has no domestic organised crime, but its authorities are vigilant against the influence of such groups from Russia and the former states of the U.S.S.R. Large sums deposited in Russian names are causing the authorities concern.

Recently, the cocaine traffic in **Spain** seems to have received a boost from the 1992 Olympic games and Expo '92. Clans are strongest in Galicia, where narcotics-smuggling developed from contraband cigarettes. Turkish organised crime groups have established a base in a triangular region from the Costa del Sol and other areas of Andalusia to Madrid

and Barcelona; heroin-dealing is particularly strong here.<sup>32</sup> There is evidence that Spain is attracting funds from Colombian cartels and Italian criminal organisations.<sup>33</sup> South American, Nigerian and Middle Eastern organisations have joined Europeans in routing money through Spain. This occurs in various ways, including the buying and selling of real estate, currency conversions in exchange houses, and the depositing of funds in gambling establishments.

Spanish law does not permit undercover operations. Since 1988 the Penal Code has provided for seizure of property derived from drug trafficking. Narcotics money laundering, asset forfeiture and dealing in precursor chemicals were the subjects of legislation in 1992, and in 1993 the predicate crimes were expanded to terrorism and organised crime.

**Sweden** is not an important financial centre or a narcotics money laundering centre. There have been cases of Colombian cartel and Bolivian trafficker attempts at money laundering, but Swedish police have been vigilant against such activity and against the possibility of unwitting involvement in money laundering by inexperienced bank employees.<sup>34</sup> Money laundering is a crime and in 1993 a specialised unit of financial police was created to deal exclusively with the problem. Current laws permit seizure of all assets and proceeds from drug dealing.

**Switzerland** has no domestic organised crime and little drug traffic. It is a typical transit country in terms of criminal activities and especially in the layering stage of money laundering. The presence of shell companies, the use of professional privileges, as well as the commingling of legal and illegal funds coming into Switzerland facilitate laundering. Article 35 of the Constitution, which banned gambling, was repealed in 1993, which may produce an additional risk factor.

There are a few principal criminal organisations in **Turkey** with international links. The most important are Turkish organised crime groups, loose collections of criminal gangsters originating from the area east of the Black Sea. Other players are Iranian organised crime groups, which comprise thousands of Iranian immigrants and are linked to the Kurdish Workers' Party. These groups are active in drug pushing, prostitution, protection rackets, traffic in false documents and money laundering.<sup>35</sup>

Although not yet a money laundering centre, Turkey has significant potential for such activities in view of its status as a cross-roads between Europe and Asia for the movement of narcotics and drug trafficking proceeds, and the prominent role of Turkish traffickers in European drug trafficking. Turkish organisations control the bulk of the European heroin trade. Millions of illicit dollars in payment for heroin are smuggled out of Europe into Turkey as payment for heroin by trucks and international buses, through underground banking channels, or deposits into European banks and wire transfers into international accounts, which can then be invested in the legitimate economy. Bulgaria has been a key money and gold transfer point for Turkish traffickers.

The Colombian cocaine cartels have links in the **United Kingdom**; however, these connections are not structured. Some Chinese Triads are operational in the UK and are involved in prostitution, illicit gaming fraud, counterfeiting of documents and extortion. At present in the UK itself, as opposed to Hong Kong, the Chinese Triads are only minimally involved in drug trafficking, although evidence from the continent of Europe suggests that such activity could increase. Authorities in the UK are concerned that the criminal activities of the Triads may be on the increase given their involvement in international criminal activity. With the changes that have occurred in Eastern Europe and the opening of internal borders in 1993 there will be an increased potential for organised criminal activities including terrorism, fraud, illegal immigration and illegal importation of arms.

In addition, the UK has a wide variety of loosely structured indigenous criminal groups which are formed to achieve a specific criminal purpose, e.g., the shipment of a quantity of drugs, and are then dissolved upon completion of the specific criminal objective. It is not possible to accurately estimate the economic consequences of organised crime.

#### *Central/Eastern Europe*

The **Baltic States (Estonia, Latvia and Lithuania)** have become havens for smugglers, and their ports are used to conduct all kinds of contraband, including radioactive materials coming from the former USSR.

The **Czech Republic**, as part of the Czech and Slovak Federal Republic before January 1993, and separately thereafter, has followed an active privatisation program. The news media gave extensive coverage to the alleged presence of organised crime groups from Italy and the former republics of the U.S.S.R. in the Republic, allegedly investing illegal proceeds or conducting drug trafficking and other illegal activities. Organised crime groups in Prague, the capital, include Russians, Italians, Ukrainians, Yugoslavians, Bulgarians and even Chinese. There has been no real rivalry between the clans so far because they have divided spheres of influence and are co-operating: Russian organised crime groups run prostitution in restaurants and hotels; Yugoslav organised crime focuses on heroin trafficking, while organised crime groups from the former Soviet republics smuggle opiates from Central Asia together with Balkan organised crime groups. The Arab groups deal in hashish and the Chinese focus on restaurants.

Police officers in **Poland** are facing the problem of increasingly sophisticated criminals. Criminal activity in the country accounts for the production of 15 to 20 percent of the amphetamines seized in Europe last year. Colombian drug cartels are thought to be looking at Poland as a European base.

Police authorities in **Romania** are concerned with the explosion of crime, particularly organised gangs, since the collapse of the Communist regime. The most dangerous organised crime groups come from Russia and the ex-Soviet republics. Drug trafficking, uranium smuggling, weapons dealing, and the illegal trade in babies are all on the increase. Turks are known to be particularly active in the heroin traffic, while the Chinese Triads are said to concentrate on thefts and robbery.

The response from the **Russian Federation** notes that there are estimated to be 3,500-4,000 active organised criminal groups in the former USSR which are involved in the following criminal activity: racketeering, fraud, theft, robbery, armed assault, drug dealing, trafficking in weapons, prostitution, gambling, profiteering, and embezzling from industries and financial institutions. Each group usually specialises in a particular criminal activity. The groups are geographically divided and are usually named according to the territory they control (e.g. Solontsevo and Lyubertsy in Moscow) or the ethnic

background of the group's members (e.g. Chechen, Assyrian). Russia also classifies persons who conduct business activities for profit in contravention of certain legislation to be part of organised crime. Individuals who participate in this "shadow economy" often amass large sums of money, which enable them to corrupt public officials and conduct large scale business transactions both inside and outside Russia.

One of the earliest signals of criminal proliferation in the Eastern block by organised crime was the unprecedented rise in thefts of antiques and their subsequent smuggling to the West, while prostitution became a significant sphere of organised criminal activity fairly recently.

The Russian Federation, the Baltic states and to a lesser extent Ukraine rank as the most promising markets for stolen cars. 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 further to republics in Central Asia or the Caucasus.

Today the demand in drugs in the ex-USSR is practically fully covered by local production. The main areas of primary production are Central Asia (in addition to Uzbekistan and Tajikistan, one should also mention Kazakhstan and Kyrgyzstan) and growing in southern Siberia, northern Caucasus and southern Ukraine. The narco-business is one of the important, but not the sole area of East-West cooperation among organised crime groups. There are a number of other facts that confirm the existence of business ties between organised criminals from Russia and Western Europe. Warsaw and Prague have on several occasions been meeting places for organisational sessions between Eastern and Western organised crime groups.

#### *D) Northern Africa, Gulf States and Middle East*

At least in part due to the strife in Lebanon during the last decades, **Cyprus** has become an international cross-roads for narcotics negotiations and shipments and the transit of the proceeds of drug and other illegal transactions. Many of these transactions involve currency and bullion which transit Cyprus from and to Lebanon and other nearby source countries. Russian gangs are allegedly infiltrating the

country, using its banks to launder and deposit their proceeds from crime.

**Egypt** has never been considered a major money laundering centre. Some narcotics transactions and payments have always existed, but have never made Egypt a centre of either trafficking or laundering.

Organised crime groups in **Israel** have ties to related groups in the United States and Latin America. Israeli nationals have been identified as participating in major money laundering syndicates which move and invest the proceeds of Colombian cartel cocaine sales. Russian organised crime groups are expanding in the country, and Ukrainian groups are co-operating with Israeli criminals.

**Lebanon** has historically been a source country for opium-based drugs and hashish and once was a money laundering centre for drug activity. Despite government commitment to clamping down on crime, it remains a centre of international organised crime. The sale of stolen cars imported from Europe continues to be one of the most prevalent activities.

**Morocco** has a hashish industry which generates sufficient income to have caused governmental concern, and Spanish officials allegedly are concerned about drug proceeds being laundered through the Spanish enclave of Ceuta. Drug proceeds are believed to have been deposited in domestic banks, introduced in contraband durable goods and electronic equipment, and invested in businesses and real estate. Morocco has also been mentioned as a possible transit point for South American cocaine en route to other markets. The production and transportation of hashish is carried out by Rifian organised crime groups, which are also present in the principal Moroccan cities.

Dubai in the **United Arab Emirates** has a long tradition of gold dealing, an activity which is particularly adaptable to smuggling and money laundering. The Emirates are also strategically located for clearing the proceeds of drug dealings with Southwest Asia, given their open banking practices, free convertibility of currency, and the possibility of physical smuggling of gold or other valuables into the Indian subcontinent.

## *E) Africa*

**Cote d'Ivoire** is a significant West African financial centre. Since at least 1992 it has been believed by American authorities to be a transit and conversion point for narcotics money, which may be laundered in real property transactions and in the banking system. Asset forfeiture laws exist which would permit freezing of accounts, seizure of tangible property, and post-conviction forfeiture of property and businesses involved in illegal drug activity, but there have not yet been any reported seizures or prosecutions nor delineation of clear lines of responsibility to pursue such forfeitures.

Ghanaian nationals have long been active in heroin trafficking, but before 1992 there was considered to be no evidence of significant money laundering activity in **Ghana**. Records seized in Colombia and investigations of the Cali and Medellin Cartel revealed cartel transactions in Ghana.

**Kenya** has long been considered to present the potential for money laundering 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 types of currency flow and the presence of criminal elements which are consistent with money laundering activity. Such activity has also long been thought to be under way by Nigerian drug traffickers moving funds through Kenya, possibly through the South Asian "hawala" informal banking system.

**Nigerian** organisations came to be considered major heroin traffickers on a global scale, as well as highly successful practitioners of credit card misuse and other frauds, such as fraudulent advance fee schemes, and Nigerian banks proliferated. Proceeds of these criminal activities, particularly the drug activity of the five major trafficking organisations, are believed to be laundered through bank and commodity transactions conducted by Nigerian nationals. Although there is occasional evidence of transactions with non-Nigerian sources of criminal proceeds, such as Colombian cartels, money laundering services seem to be furnished primarily to Nigerian nationals or in aid of Nigerian drug traffickers.

**South Africa** is principally considered as an opportunity for traffickers from Zambia and other African traffic points to convert their proceeds through the gold market.

In addition to the previously described activity on the South African gold market, drug traffickers from **Zambia** seem to be engaged in increasing drug money laundering activity in banks and exchange houses and through the import and resale of luxury and manufactured goods, in part motivated by the demand for scarce foreign exchange. In November 1993 new drug legislation provided for seizure and forfeiture of assets obtained through drug trafficking, but it is too early to evaluate the application of this law in practice.

#### *F) Asia*

**Bangladesh** is not a significant drug producer but has become vulnerable to drug trafficking because of its proximity to the "Golden Triangle" drug producing area. The Department of Narcotics Centre (DNC) and the police have in recent years been able to seize substantial quantities of heroin, cocaine and other psychotropic substances which are transiting Bangladesh. The number of drug addicts within the country is also causing serious concern.

Because of its geographic location and absence of natural land boundaries, there is a growing contraband trade in commodities from across the border. This trade is historically financed mainly through the "hundi" system. Recently, gold smuggled from the Middle East and other Southeast Asian countries is also being used to help finance this illegal trade. Customs and other enforcement agencies have in recent years seized huge quantities of smuggled gold, the value of which runs into billions of dollars.

Indian traffickers use Afghan couriers to transport drugs and trafficking proceeds to both Europe and Asia. Indian traffickers are believed to be developing a drug transit route through China.<sup>36</sup> Corruption is also an important issue in **India**, and a recent scandal concerns nearly one billion dollars which may be missing from several Indian banks.<sup>37</sup>

In September 1992 India and the United Kingdom signed an extradition treaty and an agreement on the

confiscation of the property and assets of terrorists. This agreement is aimed at the illegal movement or laundering of money, particularly through the hawala system which is widely used in the UK.

**Pakistan** is a significant money laundering concern, primarily due to its prominence in the production and trafficking of heroin and hashish. Afghan, Iranian and Pakistan narcoclanes are expanding into the territory of the former Soviet Union. Already, it is possible to say that Tajikistan has turned into a transshipment base for narcotics produced in Afghanistan and Pakistan. Moreover, Pakistan and Afghanistan are the two main sources of heroin after the Southeast Asian Golden Triangle

#### *East Asia*

The principal form of organised crime in **China** consists of persons permanently organised together for the purpose of committing criminal acts. The Triads are hierarchical in nature, with continuity in leadership and clear criminal assignments to the members of the organisation. The criminal syndicates are mainly involved in robbery, theft, deception, smuggling, drug trafficking, and forgery. It is not possible to give a precise monetary figure for the economic damage caused by organised crime which, however, is said to be responsible for one third of the crime reported in China.

The drug trade is a source of particular concern to the Chinese authorities. In recent years drug traffickers have used China as a transit route from Northern Burma to Hong Kong.

The "hui kuan" system, a major factor in the heroin trade in Southeast Asia, has its major outlets in **Hong Kong**, and the volume of its transactions could be increasing in tandem with the expansion of the Southeast Asian heroin trade. A network of organised crime groups, known as Triads, is engaged in illegal as well as legal activities. These include loan sharking, prostitution and the black market, extortion and protection rackets. Their legal operations extend from night-clubs and restaurants, to public services and construction. Funds from these activities are invested in import/export businesses, trading companies, the seafood industry and other legitimate outlets, with a preference for cash-intensive

businesses.

There are three main types of Triad societies in Hong Kong: those operating on an unstructured, unilateral basis with no established leadership to oversee their activities; those operating on traditional lines with carefully assigned office bearers; and those operating on new lines. Triads using new methods pose the greatest threat and reflect a new direction in triad-related crime. Members from different societies are coming together to form syndicated groups in which the old triad loyalties take second place to new priorities. Some of these groups include non-triad members.

The "boryokudan," **Japan's** organised crime syndicates are likely to have taken advantage of the open Japanese banking system. With approximately 40 percent of their illicit income estimated to be derived from drug trafficking, it is improbable that they would not exploit a financial environment which has been so unprotected against money laundering. The "boryokudan" traffic primarily in methamphetamine and virtually monopolise that market in Japan.

There have been increasingly frequent but largely unconfirmed reports of collaboration between the "boryokudan" and the cocaine cartels in cocaine trafficking. There is no evidence, however, that suggests that heroin or cannabis proceeds are being laundered in Japan.

Korean methamphetamine manufacturers supply factions within Japan's organised crime syndicates, and it is believed that some significant portion of that multi-billion dollar trade returns to **Korea**, which is also a major supplier to the methamphetamine markets in Hawaii and the West Coast of the United States. In a 1990 American Drug Enforcement Administration case, a shipment of 20 kilos of crystallised methamphetamine or "ice" destined for the U.S. was seized in Korea; money to pay for the shipment was given to Los Angeles associates of a Korean businessman, who in turn paid off the supplier in Korea in Korean won, thus attempting to pay the supplier in Korean currency and at the same time laundering the businessman's money by circumventing Korea's currency laws.

In **Myanmar** traffickers and smugglers rely on the

extensive ethnic Chinese money exchange network. Gold and American dollars are in constant demand. Traffickers also use the black market to convert narcotics proceeds into gold, silver, jade, gems, or real estate, and attempt to obtain payments in foreign currency. Traffickers hold accounts in other currencies in banks outside Myanmar, bringing funds in as needed through China, Macau and Hong Kong. While money laundering primarily involves the drug trade, the black market is institutionalised and there is a vigorous trade in contraband. Also underground banking flourishes, providing the funds to sustain the drug trade and contraband smuggling. The underground economy is estimated to account for a quarter to a third of Myanmar's GNP.

#### *South-East Asia*

**Brunei** Darussalam does not adhere to any particular definition of organised crime. There is no principal crime organisation in the country.

In **Korea**, various types of organised crimes have been on the increase since 1988. With public attention focusing on these crimes, organised violence in particular, control over these have been intensified under special laws. The techniques of the criminals have also become intellectualised, brutalised and mobilised.

Organised crime in Korea is at its infant stage of development. The general trends show that gang member ages are getting lower; according to a recent assessment, 63% of the members are in the 10-20 age bracket. The crimes are gradually becoming more brutal, with an increased use of more deadly weapons. Organised crime groups commit murders to expand their power, protect their interest and carry out reprisals. There is also a trend towards expanding international linkages with other organised criminal groups. Several groups in Korea are linked to or trying to link up with Japanese gangs. These Japanese gangster rings are involved in drug trafficking and smuggling, and they have recently opened clandestine gambling dens in Seoul to attract Japanese tourists, taking advantage of their proximity to Korea, who easily fall prey to the gangsters' fraudulent gambling plots and tricks.

In **Singapore** a 1993 law made drug money laundering a criminal offence, supplementing a 1992 law on asset forfeiture. Also in 1993 Parliament passed legislation increasing bank capital requirements, relaxing banking secrecy, and allowing international agreements to facilitate mutual assistance.<sup>38</sup>

**Thailand** 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). Thailand lacks money laundering laws. Most Thai and Sino-Thai traffickers work through financial syndicates based in Hong Kong and elsewhere and bypass the formal Thai banking system, which has been used mostly for in-country transfers. Even in Thailand, traffickers primarily use Chinese gold shops, finance companies or other businesses connected to the Chinese underground banking system. Thailand has strict controls on currency leaving the country, but not on entry. Nigerian traffickers, apparently increasing in number, are declaring large sums of cash on entry, which may be due to their lack of access to the underground system. West Africans, primarily Nigerians, are involved in 25 percent of heroin seizures in Thailand.

#### *G) Oceania*

**Australia** is coping with a diverse money laundering situation. The Japanese Yakuza and Vietnamese gold smugglers are active in money laundering in Australia, as are Hong Kong Triads and ethnic Chinese from Hong Kong and Singapore.

Several major Chinese heroin smuggling organisations have been supplying the Australian and American markets simultaneously, often using the same couriers and controllers. A Brazilian organisation in Sydney was detected wiring money to a business in New Jersey in the United States, and also wiring what is believed to be drug money to a notorious drug money launderer in New York, with the money then being wired on to Belgium and Switzerland. This organisation was allegedly structuring its transactions in Australia to avoid reporting requirements.

The main criminal activities practised by criminal

groups in the **Philippines** are:<sup>39</sup> kidnapping for ransom, drug trafficking, illegal logging, prostitution, illegal gambling, white collar crimes, fraudulent contracts with government and official corruption. The Philippines is one of the source countries for Japan's very active methamphetamine or "shabu" market, which the Japanese value at more than \$3 billion, but there are no laws or mechanisms that are directed at money laundering. Tax evasion is common, utilizing shell companies, false name dollar accounts, and foreign bank accounts (usually in Hong Kong).

#### *5.2. Convergences and Divergencies in Criminal Organisations and Activities.*

Western Europe produces, exports and imports organised crime. Groups like the Sicilian Mafia are spreading their activity in both Western and Eastern Europe, in addition to maintaining their traditional connections in the Americas. Organised crime from Africa (Nigerian groups); from the East (mainly Chinese, Turkish and Russian organised crime groups); and from the Western hemisphere (Colombians) import drugs into Europe, and may receive payment through European banking channels. Central and Eastern European countries are large exporters of organised crime, and seem to be fields of investment for money laundering by European criminals. North America is a major producer of organised criminality and the largest import market for organised crime and its product lines of drugs, smuggled immigrants, etc. South America, Africa and Asia, with many local differences, are mainly producers and exporters of either organised crime products (cocaine, heroin, methamphetamine), services (Nigerian courier networks) and proceeds (Cali cartel bank accounts in Luxembourg), and/or organisations (Colombian cocaine cartel vertical distribution networks, Chinese Triads).

The great concern is that these organisations, more now than in the past, are internationalizing while maintaining their local strength. More and more they are using the facilities of the global economy and at the same time influencing, when not directly controlling, crime at the local level. This is the tendency which characterises the Sicilian Mafia and other powerful criminal organisations such as the Colombian, Chinese and Japanese groups.

Assuming that the major criminal organisations will engage in transnational criminality when the combination of profit and risk seems appropriate, their options have been rapidly changing due to two interdependent factors: (1) increased opportunities offered in illegal markets, such as the growth of proceeds from the sale of cocaine in Western Europe, the opportunities for fraud and laundering in Eastern Europe, and the ready availability of arms for trafficking; and (2) the introduction of recent laws and effective law enforcement policies against organised crime and specifically money laundering, such as criminal enterprise and conspiracy laws, anti-money laundering criminal and regulatory provisions, assets forfeiture authorisation and procedures, and evidentiary tools such as electronic surveillance, undercover techniques, and protection of collaborators with justice.

Criminal organisations dealing with only one vertically integrated activity, such as the Colombian cocaine cartels which have often managed their own distribution networks in North America, can utilise the cell structure to reduce the risks of more effective conspiracy and enterprise crime legislation, discovery by the police through the increased help of informants and undercover operations, and the technologies of electronic surveillance.

The direction of more flexible and opportunistic criminal organisations, such as the Chinese Triads, is more problematic. Although the cell system is efficient in minimising law enforcement risk, it is less efficient in criminal activities dependent on taking advantage of opportunities concerning which information and communication among members of the organisation and with the public are needed, e.g. extortion, corruption and illegal gambling. In an attempt to minimise risk and optimise opportunities, they will presumably try to be more selective in their recruitment procedures, may reduce communication to the minimal level needed to achieve flexibility in different markets and to gain competitive advantage over other criminal organisations, may curtail their less profitable activities until official interest abates, or may invest more resources in reducing the law enforcement risk. Legislation, law enforcement policies, and competition in the illegal markets will play a significant role in determining the preferred direction.

## 6. Substantive Legislation

### 6.1. Country Profiles

#### A) North America

Judicial interpretations of the Constitution of the **United States** do not allow the national legislature (Congress) to prohibit mere membership in an organised crime group. However, the United States has two statutes which are designed to attack the type of criminal conduct commonly engaged in by organised crime. The Racketeer Influenced and Corrupt Organization Act (RICO; 18 U.S.C., 1961-1968 [1988]) makes it an offence for a person to participate in the affairs of an enterprise through a pattern of racketeering activity. The term "racketeering activity" is defined in the RICO statute with great detail, and 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. The Continuing Criminal Enterprise statute (CCE) is directed only against persons who are 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. In addition to these statutes, the United States has a statute prohibiting general criminal conspiracies and a separate statute prohibiting drug related conspiracies.

The United States has currency control laws which impose criminal sanctions on a person who transports more than \$10,000 into or out of the country without declaring that transportation. The law also requires all persons to disclose any financial account outside the United States; failure to make this disclosure is enforced by criminal sanctions. In addition any bank or business, including a law firm, which engages in a currency transaction of more than \$10,000 is required to report the transaction; failure to report the transaction is a criminal offence. The United States also has two statutes which specifically relate to money laundering. One statute makes it a criminal offence for a person to engage in a financial transaction for the purpose of promoting unlawful activity specified in the statute or hiding the true source of funds derived from specified unlawful activity. A second statute makes it a criminal offence for a person to knowingly engage in a monetary

transaction greater than \$10,000 if the funds are derived from criminal activity specified in the statute. The specified criminal activities cover virtually all forms of serious criminal conduct, and are not limited to drug crimes. From December 1994 new rules, which will take effect in January 1996, force institutions to retain for five years information on the identity of each customer who initiates a wire transfer of \$ 3,000 or more.

US law prohibits a public official of the federal or national government from demanding, seeking or receiving a bribe. The same law prohibits anyone from giving, offering or promising a bribe to such a public official. In addition various laws limit the type of private business and legal relationships a former government official may have with current government officials after the former government official leaves office. Federal law also requires certain public officials to relinquish control of their financial investments to another person so that their actions in public office will not be influenced by even an unconscious desire to increase their own personal wealth. In addition certain individuals are required to file financial disclosure forms indicating all their financial interests. The Federal government also has at its disposal many laws to battle corruption by local officials of the 50 states. For example, the RICO statute discussed above has been used to prosecute public officials who have used their office corruptly. Finally, all the 50 states have statutes designed to battle corruption.

Criminals convicted under the RICO, CCE or drug statutes can be sentenced to life imprisonment without the possibility of parole. The maximum fine for most felony offences is \$250,000 for each offence; in addition to that, the court can order the defendant to pay restitution to the victim.

The RICO statute, the CCE statute, the anti-drug laws and a wide variety of other federal criminal statutes allow the confiscation of assets. The drug law permits the forfeiture of the proceeds and instrumentalities of drug trafficking.

#### *B) South/Central America*

In **Brazil** the conduct typically engaged in by organised crime is prohibited by the Brazilian

Criminal Code. Brazil does not have a specific law prohibiting the laundering of money; however, there are specific laws governing banking and financial transactions. Laws relating to corruption are contained in the Brazilian Criminal Law Code.

In Brazil the length of incarceration is first determined by the nature of the crime committed. In addition to that certain aggravating factors are considered. If, for example, the crime was committed by three or more persons acting together, the persons who committed the crime must be sentenced to at least one to three years in prison. If a criminal defendant was armed when he or she committed an offence, the length of incarceration may be doubled. Confiscation of drug proceeds and instrumentalities is permitted upon a showing of strong evidence.

In **Jamaica** the following acts prohibit the offences commonly committed by organised crime groups: the Dangerous Drugs Act, the Offences against the Person Act, the Larceny Act, the Forgery Act, the Firearms Act, and the Corruption Prevention Act. Jamaica has no legislation specifically directed toward membership in an organised criminal group.

The Exchange Control Act controls activities in foreign currency and provides that Ministerial permission is required for foreign payments, sale of property involving foreign payments, transfers of securities or similar transactions. At present there is no legislation concerning money laundering; however, active consideration is being given to such legislation along with legislation providing for the forfeiture of property generated by, or used to further, criminal conduct.

The Corruption Prevention Act deals with corruption of public officials and covers the soliciting or receiving of bribes, the offering of such bribes or acting as an intermediary to facilitate a bribe. No legislation exists that would cover bribery and corruption in private enterprises.

Criminals convicted under the Dangerous Drug Act for importing, exporting, dealing in or transporting dangerous drugs face imprisonment for 25 years. Murder may be punished by death, armed robbery by 21 years imprisonment, simple larceny by five years imprisonment, forgery of a will or official documents by life imprisonment with hard labour, and violations

of the Exchange Control Act by forfeiture of the currency or securities and a fine of three times the value of the confiscated items. In addition to the forfeiture under the Exchange Control Act, the Dangerous Drugs Act provides for the confiscation of conveyances, e.g. boats, planes and motor vehicles, used in the commission of the offences. Consideration is now being given to legislation providing for the forfeiture of assets acquired from the illicit trafficking of drugs and psychotropic substances.

**Mexico** is a federal system, composed of 18 states, each of which has its own Penal Code and Code of Penal Procedure. The Federal Constitution specifies that the states have the right to legislate on all matters that are not expressly reserved to the federal congress. The states have the principal responsibility for enacting and enforcing penal laws. These laws prohibit the type of activity usually engaged in by organised crime. Federal law, which applies throughout the entire country, is crafted to prohibit corruption among federal officials and also regulates banking and financial institutions along with investments by non-Mexican citizens.

The laws of the 18 states do not contain a specific provision prohibiting organised criminal associations. Federal law prohibits agreements among defendants to commit criminal activities. This applies, however, only to crimes which are prohibited by federal law.

Federal Mexican law establishes the following penal offences: wrongful exercise of public office, abuse of public authority, wrongful use of the powers of public office, extortion by a public official, intimidation by a public official, abusive exercise of a public official's function, selling the influence of a public official, bribery of a public official, embezzlement of public funds, and unlawful enrichment.

Mexican law allows the judicial authority a wide range of discretion in imposing criminal sanctions. It specifies, however, the maximum penalty for offences. For example, the maximum penalty for murder is imprisonment for 50 years. Mexican law permits the forfeiture of the instruments used to commit a criminal offence, but prohibits confiscation, which is understood to be a non-judicial seizure of property.

### *C) Europe*

#### *Western Europe*

In **Germany** organised criminal groups most frequently engage in the following criminal activities which are prohibited under German law: illicit narcotics trafficking, gang robbery, receiving stolen goods, trading in illicit firearms, blackmail, management and procuring of prostitution, and illicit gaming.

German law makes participation in an organised criminal activity to form a criminal association or to attempt to form any such criminal association illegal.

The new "Act on Tracing of the Proceeds from Serious Criminal Offences" 1993, implementing the Council of Europe Directive on the subject, serves the aim of improved clarification of money laundering. The Criminal Code also punishes active and passive bribery of office-holders, judges, arbitrators, soldiers and persons having a special public service, as well as corruption.

Additionally, from the area of economic law, reference must be made to the Act against Unfair Competition: bribery of employees in business transactions for the purposes of competition is punishable by imprisonment or a fine.

Most of the provisions listed above provide for prison sentences of up to five, ten or fifteen years. The maximum fine imposable is 3.6 million DM. With certain serious cases of organised crime, and especially with narcotics-related crimes, the introduction of the property penalty enabled the courts to impose payment of a sum of money, as well as a prison sentence of more than two years.

German criminal law distinguishes between "confiscation" and "forfeiture". Forfeiture merely presupposes an unlawful act without presupposing guilt. Imposition of forfeiture is mandatory. When a thing which would have had to be declared forfeit is no longer there, a sum of money corresponding to its value will be declared forfeit. Confiscation essentially refers to things used or designed in the commission or preparation of a criminal offence committed with intent.

With the introduction of extended forfeiture the German Parliament has passed a provision according to which the court orders the forfeiture of things belonging to the offender or to participants in an illegal act, also in cases where the circumstances justify the assumption that these things have been acquired for illegal acts or as a result of such acts. Criminal offences to which extended forfeiture is applicable include counterfeiting of money, official stamps, blanks for Eurocheques or Eurocheque cards, aggravated slave trafficking, money laundering as well as most narcotics-related criminal offences.

**Italian** law prohibits the following types of criminal activity which are regularly engaged in by organised crime: distribution of illegal drugs, kidnapping for profit, extortion, fraud, loan sharking and counterfeiting of public money or securities. In addition, Italian law provides for various preventive measures designed to limit the adverse effects of organised crime. For example, individuals suspected of being members of mafia associations can be obliged by the police chief acting in concert with the public prosecutor to reside in the area in which they usually live and may be prohibited from leaving without a special permit. This same law also allows the public prosecutor to forbid suspected mafia members from dwelling in specific provinces. These actions may be taken without an adjudication of guilt.

Italian law defines and prohibits a criminal association. An association is the formation of a combination of three or more persons on a continuing basis for the purpose of committing an indefinite number of unlawful or criminal acts. In order to be found guilty of criminal association, a defendant must be permanently aware of his or her membership in the association, and must always be ready to operate with the aim of implementing the pre-established plans of the association. Italian law also has a separate provision prohibiting conspiracies from distributing illegal drugs.

In addition to criminal association and drug conspiracies, the law defines the crime of mafia association. A criminal association referred to above is mafia-type when its members strive to secure the management or at least the control of economic activities, grants, permits, public works, contracts, and public services to make illicit profits or to get other illegal benefits for themselves or others. This crime is

separate and distinct from the crime of general criminal association or the crime of drug conspiracy.

Italy has recently enacted a variety of laws aimed at controlling money laundering. Specifically, Italian law prohibits the crime of laundering money or other things of value which are derived from aggravated robbery, aggravated extortion, kidnapping for profit, or drug trafficking or production. The Italian law specifies that any business or public entity, such as a bank, credit company or post office, that engages in a financial transaction involving 20 million Lire or more, must make and keep a record of the financial transaction. In addition, Italian currency control laws prohibit the use of cash to carry out a financial transaction involving more than 20 million Lire.

Italian law has a wide variety of penal offences calculated to minimise the effect of corruption. Italian law was recently modified to strengthen the provisions against corruption. It is a criminal offence for public officials to embezzle money or illegally enrich themselves. It is also a criminal offence for a public servant to abuse a position of power by soliciting or receiving a bribe in order to perform an act related to his or her official duties. The penal law also punishes a public servant who performs an act contrary to his or her official duties.

Italian law provides for two types of forfeiture. The first type is of a preventive nature. This type allows a court to order the seizure of assets belonging to a person, if that person's lifestyle is inconsistent with the person's apparent or declared income. The second type of forfeiture or confiscation involves assets which have been used to commit a crime or are the products or profits of such crime. Confiscation is mandatory upon a defendant's conviction of a criminal offence related to his or her use or acquisition of the property in question.

In **Norway** there is no specific legislation or other types of regulations which solely or essentially address organised crime. The general regulations of the Penal Code, which cover theft, "fencing", extortion, document forgery, loss of liberty, etc. are used. There is no specific legislation addressing participation in groups which are involved in organised crime.

A new regulation has recently been adopted in the Norwegian legislation on banks, which instructs banks and other financial institutions to inform the police and the prosecuting authorities of suspected money laundering. Moreover, the general regulation on fencing has been altered to cover all types of acquisition of profits gained from criminal activities. There are no penalty clauses to cover corruption in the private sector, but there are clear regulations criminalizing corruption in all public activities.

In the **United Kingdom** the laws of England, Scotland, Wales and Northern Ireland are somewhat different and these differences will be noted when appropriate. The following types of criminal activity are commonly engaged in by organised crime and are prohibited by statutory law in England and Wales: various forms of fraud, false accounting, the handling of stolen property, drug trafficking, forgery, living off the earnings of prostitution, and various forms of assault. The following criminal activity is proscribed in England and Wales by common law, which is law created by the courts as opposed to the legislature: murder, manslaughter, kidnapping, and false imprisonment. In Scotland the statute prohibiting drug trafficking is applicable; however, the other statutory crimes described above do not apply.

The United Kingdom does not have any specific statute addressing membership in an organised crime group. However, it is an offence to conspire or agree with another person to commit an illegal act.

General foreign exchange currency controls do not exist in the United Kingdom. There exist, however, several statutory provisions relating to money laundering in the context of drug trafficking. The laws prohibit the following actions with regard to drug proceeds: disguising their origin, converting or transferring them, removing the funds from the jurisdiction of the court and assisting another person to retain the proceeds of drug trafficking. Some of these provisions were specifically added to implement the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

The United Kingdom has a variety of criminal offences related to official corruption. Some of these offences are crimes created by the common law while others are governed by statutory law. In the UK there are common law offences for misconduct in public

office, bribery or attempted bribery of a public officer, or accepting bribes when in public office either to act in a manner contrary to public duty or to show favour in the discharge of public functions.

Penalties under the Theft Act range up to life imprisonment for robbery. The maximum penalty for money laundering is 14 years in prison and an unlimited fine. The prohibitions against drug trafficking allow for various terms of confinement, including life imprisonment. The crime of murder is punished by mandatory life imprisonment.

Confiscation of drug proceeds is allowed for the entire value of the drug proceeds, including property transferred to third parties as a gift or sold for significantly less than its full value. In addition, instrumentalities of drug trafficking crimes may be forfeited.

#### *Eastern Europe*

In **Poland** the Penal Code does not provide for an offence of corruption in the private sector. Only a public official can be the subject of corruption according to the Code. Seeking, claiming or giving benefits in exchange for the performance of official public function is an offence according to Polish criminal law.

Polish criminal law does not contain the term "organised crime". Therefore, there are no sanctions prescribed for typical offences committed by members of organised crime groups. The court can adjudge forfeiture of instruments of crime as well as of property acquired due to criminal actions, when the offender is the owner. However, according to the law under certain conditions the court may decide on forfeiture of items not owned by the offender or has to decide on forfeiture depending on the case.

In the **Russian Federation** criminal groups are most frequently prosecuted for the following crimes which are prohibited by statutory: possession of contraband, embezzlement of government property, extortion, fraud, black marketing, robbery, armed assault, premeditated murder, causing serious bodily injury, and drug related crimes. (This legislation was adopted at the time of the former USSR, and thus largely continues to apply also to the other former constituent

republics.)

Penal legislation at the time of the response to the HEUNI questionnaire (March 1, 1991) did not provide sanctions for participation in a criminal organisation. However, a draft law entitled "Combating Organised Crime" proposed special articles for organised criminal activity, as well as for organising and leading a criminal group. In addition, several articles of the Criminal Code had recently been amended to provide enhanced punishment for those who commit a criminal offence as part of an organised crime group.

As of March 1, 1991, none of the present CIS countries had a specific law related to the laundering of illegal proceeds. Public corruption manifested itself in three forms: 1) the use of public office to improperly advance the personal interest of the office holder; 2) the bribery of officials who perform some service in exchange for money; and 3) the use of blackmail or threats to induce a public official to act in a manner calculated to give an improper benefit to a particular person or group of people.

Life imprisonment is not provided for by statute. The maximum term of punishment is 15 years, 10 years for juveniles, and 20 years for those who receive a reduced death sentence.

Confiscation of property is permitted only if specifically provided for by statute. In general, confiscation of property is allowed for all types of specified profit-oriented crime. The confiscation law exempts property needed by the defendant or his or her dependents, e.g. a residence, foodstuffs, and money totalling the monthly salary of the offender.

#### *D) Asia*

**China** has laws prohibiting the type of criminal activity engaged in by organised criminal syndicates. It has specific legislation prohibiting "anti-revolutionary syndicates," "loitering syndicates," and offences such as "violations of public order," in addition to offences against theft and robbery. The law of conspiracy, which clearly defines the meaning of "primary offender and accomplice", may be used to prosecute those involved in organised criminal activity. China prohibits the destruction of the

economic stability of the revolutionary economic system; money laundering is encompassed by the definition of this criminal activity.

China imposes the death penalty for the following criminal offences: leaders of a loitering group who threaten national security; anti-revolutionaries who harm national security, kidnappers, and international drug trafficking. It also imposes severe punishment for the following crimes which are deemed heinous under Chinese law: destruction of economic stability, bribery, smuggling and narcotics offences.

In **Korea**, a variety of provisions specified in the Criminal Code, Laws on the Punishment for Violence Related Acts, the Act on the Added Punishment of Specific Crimes, etc. are applied to organised crime activities. For example, art. 114 of the Criminal Code provides that a person who organises a group whose purpose is to commit a crime, or who joins such a group, may be punished for such crime. Art. 4 of the Criminal Code criminalizes the establishment of an organisation or a group for the purpose of committing a crime provided in the law.

After the 1988 Olympic Games, criminal organisations have been on the increase in Korea, making use of the wide-spread liberalisation and expanding the area of their activities. Bosses of some organisations have been seeking close personal relationships with some politicians or celebrities to expand their power. Some bosses are known to run legally some entertainment businesses or game rooms in order to meet the expenses of their organisation, or to take part in various activities related to, for example, liquor supplies, or monopolising the supply of singers and dancers for night clubs, go-go clubs, and so on.

The **Seychelles** do not have legislation against organised crime. In the case of drug trafficking the law allows the proceeds to be seized. Corruption falls under the Penal Code: each person involved would be charged individually.

#### *6.2. Convergences and Divergencies in Substantive Legislation*

Substantive criminal law has adapted to the changes posed by organised crime in different ways. Those

countries which have more threats posed by organised crime have reacted by refining their legislation. Civil law countries have shown in this case a great range of flexibility. Italy, a civil law country with a considerable organised crime problem has been capable of adjusting its laws with great flexibility in the last ten years. The main changes of this second part of the century in the criminal legislation against organised crime relate to the crime of participating in the activity of the criminal organisation and to the confiscation of assets acquired through criminal activity. From the point of view of the criminal law, the commission of organised crime is frequently considered to be an aggravation of the crime committed. Criminal codes of many countries define the commission of a crime by an organised group as a qualifying feature.

For some countries with a strong ideological orientation, not only traditional offences but also typical ideological offences are considered by specific legislation as organised crime activities. Crimes such as "anti-revolutionary syndicates," "loitering syndicates," and offences against "public order" belong to this tradition. Although there are exceptions, there is an emerging consensus in different legislation about organised crime activities. The following list drawn by the legislation of some significant countries with cultural diversities can give an idea of the most recurrent offences considered by the legislation to be organised crime activities: illicit narcotics trafficking, gang robbery, receiving stolen goods, trading in illicit firearms, blackmail, management and procuring of prostitution, illicit gaming, distribution of illegal drugs, kidnapping for profit, extortion, fraud, loan sharking, and counterfeiting of public money or securities.

Countries of the former USSR are going through a process of updating their criminal legislation against organised crime. A process of convergence through known and well established offences is developing in the republics of the former USSR. The perception of organised crime as a serious problem is bringing the legislation of many of these countries into a process of modernisation where old ideological offences traditionally associated with organised anti-revolutionary activities have been deleted.

A recent trend which has substantially modified criminal legislation is the criminalization of

"membership of an organised crime association". In many countries, this coincides with the crime of "conspiracy". Born in an emergency situation, this crime has emerged as a powerful tool against organised crime. The crime of "membership of an organised crime association" is based on the assumption that members of criminal organisations commit crimes. This assumption has made it possible to prosecute top bosses just for this crime based on secure evidence provided by persons who have turned State's evidence. The definition of this crime has shown its potential in a long series of trials where top mafia leaders have been convicted and sentenced.

The Italian example of 1982 follows with many differences the United States example contained in the legislation of the 1970s. Other countries, without the extensive organised crime groups Italy and the United States have experienced for a long time, have been hesitant in following Italian and American examples, considering the category of conspiracy crime sufficient to deal with the emerging organisational typologies of organised crime.

In the last few years many countries have introduced in their criminal laws the crime of money laundering, as a result of the 1988 Vienna Convention. Due to the difficulties in implementation and due to the fact that proceeds from drug trafficking are only part of the proceeds from crime there is today a tendency among many countries in Western Europe, North America and Australia to enlarge the predicate offences from drug offences and other few crimes to virtually all serious crimes. In those Central American, South American and Asian countries where money laundering is criminalised as a separate offence, the application is usually limited to drug instrumentalities and proceeds. Eastern European countries are beginning to address these issues in the context of an overall re-examination of the law of property, banking regulation and procedural law. Few African countries have ratified the Vienna Convention and criminalized money laundering.<sup>40</sup>

Corruption greatly facilitates the activities of organised criminal groups. In view of this, many countries have enacted special anti-corruption legislation. The fight against organised crime would be greatly assisted if all countries were to follow the resolution adopted by the Eighth United Nations Congress on the Prevention of Crime and the

Treatment of Offenders, on "Corruption in Government" (A/CONF.144/28/Rev. 1, pp. 136-138). Corruption is part of the transnational dimensions of organised crime and international corruption is growing. Many countries do not punish businessmen who bribe foreign officials and in some ways have in fact legalised corruption practised outside the borders through a system of financial and tax advantages. The contradiction between domestic morality and international morality is apparent.

A variety of sanctions are imposed for the crimes traditionally committed by organised crime groups. The fact that the crime has been committed in the context of participation in an organised crime activity, when not considered a specific crime, is almost always deemed an aggravation of the basic offence.

There is a marked convergence of national policies on asset forfeiture and confiscation of the proceeds of crime, which appear to be more widely accepted than the criminalization of a money laundering offence. In the numerous countries where there are no specific money laundering provisions it is possible to find confiscations deriving from more generic laws dealing with stolen property or the proceeds of a criminal act. Imprisonment and confiscation of assets coming from crime are the main sanctions applied to organised crime cases. Confiscation has emerged as a necessary complement to anti-money laundering policies. Countries should develop these sanctions in their legislation, considering the experience of those countries which have applied them. Similarly, modifications in property laws are necessary in order to ensure the efficient functioning of legal enterprises that are objects of confiscation.

## **7. Procedural Legislation**

### **7.1. Country Profiles**

#### **A) North America**

In the **United States**, the investigative agencies have discretion over whether or not to investigate or report a criminal offence to a prosecutor or judge. This discretion is frequently used by investigators to develop sources of information regarding criminal activity. The defendant is presumed to be innocent,

and the government is required to prove to a jury that the defendant is guilty beyond a reasonable doubt. The judge presiding over the trial instructs the jury on the law, but he or she does not participate in the deliberations of the jury.

Electronic surveillance is considered a search prohibited by the Constitution, unless the authorities obtain an order allowing surveillance from a federal judge who has lifetime tenure and who is independent from the other branches of government. The requirements for obtaining such an order are governed by statute. If authorised by a judge, a suspect's conversations with other individuals may be monitored without the consent or knowledge of any of the parties to the conversation. Conducting electronic surveillance without a court order is a serious crime. In addition, electronic surveillance conducted in an improper manner will not be admitted into evidence under the exclusionary rule of evidence, in order to deter misconduct by law enforcement officials. However, no court authorisation is needed for an undercover agent or consenting witness to voluntarily record a meeting with a subject of an investigation.

The use of undercover agents is allowed. However, if the defendant was not predisposed to commit the offence then the jury or judge may find him not guilty. This principle is called the "entrapment defence." According to the law, controlled delivery and sale of drugs to an undercover officer are allowed and in some limited cases an undercover officer can deliver drugs to another person. The use of accomplice testimony is allowed; the jury, however, is generally instructed that they should weigh the testimony of an accomplice witness with greater caution and care than that of an ordinary witness, because of the accomplice's motives to falsify his or her testimony.

The Constitution absolutely prohibits the use of anonymous testimony in court. However, confidential informants are used by investigators in conducting investigations into criminal activity, and may provide the probable cause needed to justify a physical search or electronic surveillance, the results of which may be admitted in court.

The Fifth Amendment to the Constitution provides that no person shall be compelled to be a witness against himself or herself. However, a federal prosecutor, with the written finding of a senior official in the Justice Department that it is in the interest of justice to secure the testimony of a reluctant witness, can obtain a compulsion order from a federal judge, who orders the witness to testify. This order must also provide that nothing the person says while testifying can be used against him or her as evidence or to develop evidence against the witness. If a person still refuses to testify, he or she can be incarcerated for refusal to comply with the court's order until he or she testifies, for up to a maximum of 36 months, or prosecuted for any false declaration.

The United States operates a witness protection programme, which has been established by legislation and authorises the relocation of witnesses and the creation of new identities. This programme is governed by numerous rules and procedures relating to the type of person permitted into the programme. The programme authorises the following services in addition to simple guarding of the witness and family: (1) issuing documents to enable the witness to establish a new identity; (2) providing temporary housing for the witness; (3) providing for the transportation of the household furniture and other personal goods to a new location; (4) providing subsistence payments to the witness; (5) assisting the witness in obtaining employment; and (6) providing other necessary services to the witness in becoming self-sustaining. In addition to the formal witness protection programme, the investigative agencies can also provide some assistance in relocation such as cash payments. Finally, some informal procedures exist for the protection of informants who do not give evidence in court.

Federal Constitutional law prohibits detention for investigative purposes beyond the time reasonably necessary to file charges, which is generally considered to be no more than 48 hours. It is possible to detain a person after he or she has been formally charged with a crime, but before he or she has been convicted of that offence. A defendant who has been accused of an offence is to be ordered released unless the government can prove by a preponderance of the evidence that the defendant is likely to flee, or by clear and convincing evidence that the defendant is a danger to the community. In deciding whether to

detain or release a defendant, the court is allowed to consider as evidence the defendant's membership in an organised crime family.

#### *B) South/Central America*

In **Brazil**, the police and investigative authorities are allowed some discretion with regard to whether to arrest or proceed with an investigation of an offence known to them. No discretion is granted to prosecution authorities if there is sufficient evidence to bring charges against a defendant. In order to convict a person of a criminal offence the government is required to produce strong evidence based on documents or expertise. Brazilian law allows electronic surveillance after the requesting officials receive judicial authorisation, but does not allow the use of undercover agents.

Brazilian law permits the testimony of accomplice witnesses, but prohibits the use of anonymous testimony in judicial proceedings. It has no procedure for compelled testimony and has no legislation authorising witness protection. The legislation allows a person to be detained prior to conviction if there is sufficient evidence indicating that he or she has committed a criminal offence and a judge issues a preventive arrest warrant. A person's participation in organised crime can be considered in determining whether he or she should be detained. In addition, the government may impose a lesser restriction on a person's liberty, such as prohibiting the person from leaving the country prior to a determination of his or her guilt or innocence. Release pending appeal is determined by the type of crime for which the defendant was convicted.

Some discretion is allowed in **Jamaica** to enable the police to overlook minor offenders in order to further investigations against major offenders in organised crime. The final authority for prosecution is the Director of Public Prosecution, who is "a constitutionally independent officer, not subject to the directions of anyone". The Director may determine at any time to commence a prosecution. The government must prove the defendant guilty beyond a reasonable doubt.

The law does not allow the use of electronic surveillance evidence. However, consideration is being given to enacting such legislation. Undercover agents may be used within the ambit of British common law legal principles. Controlled delivery of drugs may be carried out within the ambit of common law principles provided it is clear that no entrapment was initiated by the police. Jamaica allows the testimony of accomplice witnesses.

After the person is arrested, bail may be denied in appropriate circumstances. Alternatively the person may be released on bail with special conditions particularly regarding travel. The accused is usually remanded to custody, pending the outcome of an appeal. However, the Court may exercise its discretion and grant bail if it is satisfied that the accused will not abscond. There is no witness protection legislation. The police may, however, take administrative steps to provide protection by providing a hiding place for the witness.

The Constitution and legislation of **Mexico** allow for preventive detention in certain circumstances. Generally, however, the accused may be released through bond or surety pending trial or appeal. Mexico has no special legislation for the protection of witnesses.

### *C) Europe*

#### *Western Europe*

Under **German** law both the police and the Department of Public Prosecutions have the duty to institute criminal proceedings if there is sufficient evidence showing a person guilty of a criminal offence. Thus, Germany follows the principle of mandatory prosecution. Under German law there are no parties in criminal proceedings as such. Consequently the issue concerning the sufficiency of the evidence, as that term is generally understood in German law, is not directly applicable to criminal proceedings. The goal of criminal proceedings is to ascertain the true facts concerning the event or occurrence. However, the law specifies that the defendant has no duty to prove his or her innocence, and further provides that the accused must be judged on the basis of the most favourable undisputed presentation of the facts. Thus, the benefit of the

doubt must be given to the accused.

Electronic surveillance, along with the other forms of investigation, is within the responsibility of the investigatory authorities and can be considered permissible. Legislation specifically addressing electronic surveillance and other forms of sophisticated criminal investigations is under consideration. Under current legislation, the admissibility of these methods is limited by a strict interpretation of the constitutional law relating to proportionality with respect to criminal investigations, and also by other principles of constitutional law together with basic principles of law and justice. Investigative methods which affect the domain of individual personality to any considerable extent, or methods which are 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 had been considered.

Restrictions on the freedom of the accused before the issue of a final judgement are possible, but only under certain conditions which are precisely determined by law. There are no special features applicable to cases involving organised crime. A defendant may be detained only if there exists the strongest possible suspicion of the defendant being guilty of the crime, and where there is a necessary reason for detention. Sufficient reasons for detention will include the danger of flight, the danger the defendant will obstruct justice, and the seriousness of the crime with which the defendant is charged.

German law does not specifically draw a distinction between organised crime and non organised crime offences with respect to pre-trial detention. The principle of mandatory prosecution applies. Criminal prosecution authorities are in principle not permitted to overlook criminal offences in order to further an investigation.

German criminal law has a "provision on State's evidence" for crimes of terrorism and organised crime: it is permissible to discontinue criminal proceedings if the offender or participants in a criminal offence of organised crime make known to the criminal prosecution authorities information which is appropriate to prevent a criminal offence from being committed, to assist in the clearing up of a

criminal offence, or is suited to apprehending an offender who has committed such a criminal offence. The accused may only be sentenced if the court is convinced of his or her guilt beyond doubt.

The Code of Criminal Procedure contains express provisions for the use of undercover investigators, as well as for the use of technical aids for the production of photographs and visual recordings, and for the monitoring and recording of words not spoken in public. The use of these aids in homes or affecting homes is not permissible in the light of Article 13 of the Constitution. Controlled delivery of narcotics is in principle permitted, but only if it does not place the investigations in jeopardy and if there is assurance that action will be taken by the criminal prosecution authorities of the country of destination.

There is no specific legislation permitting the relocation of witnesses and a change in the witness' identity. However, German law provides various other means to protect witnesses. For example, the police authorities may take security measures for the protection of the witness within the framework of their normal duties. There are no similar provisions for protecting criminal informants who do not agree to testify in court. It is permissible for participants in the offence to testify as witnesses if they are not accused in the same proceedings. Otherwise, they cannot testify against one another. Information provided by anonymous informants may be introduced into the proceedings through the reading of documents. If, without statutory grounds, a witness refuses to testify, he or she is to be made liable for the costs incurred by his or her refusal. Detention may be ordered to compel a witness to testify.

If all the measures do not suffice to protect witnesses in criminal proceedings, then in accordance with section 96 of the Code of Criminal Procedure, it is possible to place a complete ban on releasing the address and the identity of a witness, with the consequence that the court is not able to summon that witness. In such cases, only the person who examined the banned witness is available to testify in the court hearing.

**Italy** follows the principle of mandatory prosecution. The police must report to the prosecutor, within 48 hours, any crime that has come to their attention.

Similarly, the prosecutor is required, under the Italian Constitution, to initiate criminal proceedings if the evidence warrants this. Under certain circumstances, however, the prosecution may request from the appropriate judicial authority, a reduction in charges or reduced punishment in exchange for the defendant's co-operation in a criminal investigation.

The Italian constitution specifies that a defendant is not to be considered guilty until he or she has been irrevocably convicted. The new Italian Code of Criminal Procedure emphasises the role of the trial in establishing the guilt or innocence of the defendant. The trial is conducted in public, and evidence is presented by way of oral testimony which is subject to cross-examination by the prosecution and the defence. The fact-finder is a judge or a panel of judges and jurors, depending upon the nature of the case being prosecuted.

In cases concerning serious offences telephone tapping and 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 can order the interception by issuing a decree stating all the reasons for such a measure. However, the prosecutor must submit within 24 hours a written application to the preliminary investigations judge for such wiretap authorisation. The judge must confirm or deny the request within 48 hours. In addition, the law provides for preventive telephone tapping in accordance with the anti-mafia law. Such tapping is undertaken with a view to gathering invaluable information for further inquiries. It must be authorised by the public prosecutor and carried out in compliance with the relevant statutory provisions governing such surveillance. Evidence obtained under this law may be used to develop evidence, but may not itself be offered into evidence.

The Italian legal system does not specifically provide for undercover agents. It does, however, allow undercover investigations with regard to drug trafficking and money laundering crimes. Controlled deliveries of drugs are allowed by the law.

Italian law provides that the testimony of co-defendants charged with the same crime, or the testimony of defendants in a related case, cannot be admitted unless they have been irrevocably cleared of

charges. Anonymous reports cannot be used at trial. Documents containing unsigned statements can neither be admitted as evidence nor otherwise used. However, information supplied by confidential sources can be used by the police for investigative purposes. The witness is required to appear before the judge and comply with the judge's orders relating to proceedings as well as to answer all questions by telling the truth. If the witness who has been summoned in the normal manner fails to appear without a reasonable excuse or justification, the judge can order the witness to be forcibly escorted into court.

Italian law allows numerous restrictions with respect to defendants accused of committing an organised crime related offence. A defendant's membership in a mafia-type organization can be used by that judge to restrict a person's liberty prior to conviction. In determining whether a defendant should be detained, a judge is required to evaluate all the circumstances relating to the particular case. In addition, the law allows various restrictions on an individual's movement if he or she is a member of a mafia-type organisation. Italy provides specific deadlines with respect to the detention of a defendant or other restrictions on his or her liberty at each stage of the criminal proceedings. Therefore, if a defendant is detained in prison he or she must be released when the term provided for each stage has expired (e.g. the expiry of the period of appeal of the case). In the event of such a release, the judge can impose appropriate restrictions on the defendant's liberty other than detention. As with the case of pre-trial detention, a defendant's membership in a mafia group may affect the judge's decision with respect to the need for the defendant's detention.

Italy has recently enacted legislation specifically providing for witness protection. This legislation includes provisions for witness relocation. This programme is administered through a special central protection service within the Department of Public Security of the Ministry of the Interior. Informal measures exist for protection of informants by the police. Such forms of protection typically involve the payment of money to the informant or confidential source.

In **Norway** the police and the prosecuting authority are bound to investigate all cases in which it is fairly certain that a criminal offence has been committed.

The prosecuting authority can, to a certain extent, determine that an offence is not to be prosecuted. This will depend on a consideration of whether there are clear and specific reasons for waiving further prosecution of the case. The penalty is completely in the hands of the court of justice in which the case is prosecuted. The prosecuting authority has the burden of proof, and any reasonable benefit of doubt is given to the accused.

Electronic surveillance of a restricted area is allowed, as long as this fact is publicly posted. Hidden surveillance is illegal. The use of undercover agents is permitted. A number of guidelines concerning the controlled delivery of narcotic drugs has been prepared.

The police may take statements from accomplices. Anonymous sources can be used as evidence. With a few specified exceptions, a witness is under an obligation to give testimony in court.

The vast majority of the offences included in the category "organised crime" can lead to the restriction of individual liberty before conviction. The most common conditions for keeping a person in custody are the risk of loss of evidence, of repetition of the criminal offence and of escape. A request can also be posed for the prohibition/supervision of visitors and correspondence. If a person is kept in detention at the time when the sentence is passed, he or she will be kept in prison until the conviction becomes legally valid (the time for appeal has passed, or the conviction has been upheld by the appellate court). Organised crime is considered an aggravating circumstance, which will result in the use of this type of detention.

In the **United Kingdom**, the decision whether to investigate a report of criminal activity rests entirely within the discretion of the chief officer of the force responsible for conducting the investigation. Crown prosecutors have discretion at all the various stages of prosecution, including the power to terminate proceedings or offer no evidence. This discretion is exercised in light of the Code for Crown Prosecutors which details the manner in which crown prosecutors perform their duties. The defendant is presumed to be innocent and the government is required to prove to a jury that the defendant committed the offence beyond a reasonable doubt. The judge presiding over

the trial instructs the jury on the law and may comment on the evidence, but he or she does not participate in the deliberations of the jury.

The United Kingdom allows evidence obtained through electronic surveillance. The decision to use electronic means in an investigation is contained in non-statutory guidelines, which require investigators to obtain approval from appropriate authorities before beginning the surveillance. It is possible to use undercover agents but they are prohibited by internal regulations to incite or procure the commission of a crime. The controlled delivery of drugs to establish a defendant's guilt is allowed.

The law allows the testimony of accomplice witnesses but prohibits the use of anonymous testimony in judicial proceedings. However, confidential informants are used by the police in conducting investigations into criminal activity. Witnesses can be compelled to attend court, but they generally cannot be obliged to make a statement in advance. There is a requirement for persons with knowledge of terrorism offences to disclose that information to the police. There is no legislation dealing with witness protection, but the police have the ability 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. These measures are available to accomplices who testify against the defendant. There are no provisions for the protection of informants.

#### *Eastern Europe*

In **Poland** the principle of legalism is obligatory : public prosecutor and police are obliged to institute proceedings, on the basis of reasonable suspicion that the crime has been committed. Judges make decisions on the ground of their own assessment, based on evidential knowledge, material knowledge and experience. The Polish Code does not specify the evidence required in order to convict. Presumption of innocence is basic: therefore, the burden of proof is on the public prosecutor.

Witnesses are obliged by law to give evidence (under threat of a fine or compulsory escorting to the court ).

In certain specified cases the personal liberty of the

suspect can be limited through temporary arrest, a financial warranty, a public or personal warranty, and police surveillance. These preventive measures can be imposed when the evidence against a suspect is reasonable enough to indicate his or her guilt. An individual sentenced to imprisonment may remain at liberty until the day when his or her sentence starts, unless he or she has been arrested provisionally.

In the **Russian Federation** current (March 1, 1991) criminal procedural law invests the investigative officials with no discretion regarding investigation. The criminal procedure law calls for the court, the procurator, the investigator, and the police to initiate a criminal case in every instance in which there is an indication of a crime.

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. This electronic surveillance includes the monitoring of telephone conversations of a suspect or other means of communications. Any fact learned as a result of the electronic surveillance may be submitted as evidence. Criminal sanctions are provided for the refusal or avoidance of a witness or victim to give testimony in a court proceeding or during a pre-trial investigation. In the event that a witness should fail to appear without a valid reason, the court has the right to impose a fine.

Under certain circumstances investigative detention is permitted. The police may detain an individual for 48 hours if one of the following conditions obtain: 1) a person is apprehended committing an offence; 2) a person is identified by an eyewitness as having committed the crime; or 3) evidence of the crime is discovered on or around the person. Within 48 hours the police must obtain the approval of the procurator in order to continue to detain the defendant. In extreme circumstances, preventive detention may be used against a person suspected of a crime before he or she is informed of the charge against him or her. In such circumstances, a charge must be submitted no more than ten days from the time of the introduction of the preventive measure.

The law requires police, investigator, procurator, and court to adopt measures to protect the life, health, honour, valuables, and property of victims, witnesses and other participants in the case. In reality the conditions to satisfy these demands have not been created, and existing measures amount to temporary protection. These protective measures are not extended to informants.

#### *D) Asia*

**China** allows investigators access to covert electronic surveillance conducted by the government. The law on criminal procedure permits restrictions on liberty prior to a defendant's conviction. For example, during the investigative phase, governmental authorities may issue a summons to the person under investigation and compel his or her attendance for purposes of questioning. During the course of an investigation individuals having a relationship with the defendant can undertake to guarantee that the defendant will not escape from investigation or trial. This type of restriction is used for minor offences or those defendants who are not detained. In addition, defendants may be ordered by the investigative authorities to live in a designated area or otherwise have their liberty restricted. Defendants may be arrested if they are suspected on clear grounds of having committed a crime that may be punished by imprisonment.

An individual who makes a report concerning a criminal violation has his or her identity protected during the course of the investigation, unless that person consents to have his or her identity disclosed. Informants who cooperate with the police are also protected at all lawful cost. Chinese criminal law is aggressively administered and punishments, including confiscation of property and asset seizure, are enforced. The Criminal Code allows the confiscation of part or all of the property personally owned by a person convicted of a crime. Laws relating to "crimes of undermining the socialist economic order" list confiscation of property as one of the punishments for smuggling. The 1990 drug law lists confiscation of property as a penalty for trafficking in drugs.

According to an agreement between the concerned institutions, criminal justice authorities can request

and receive information from banking institutions.<sup>41</sup> The Chinese police have proposed<sup>42</sup> among other measures to intensify the exchange of police information, to enhance liaison work through joint efforts on the part of police forces in different countries; to strengthen co-enquiries and comply with requests from other police agencies for freezing and detention of misappropriated funds, control, and repatriation of criminal suspects.

The police and investigative authorities in the **Seychelles** can decide whether or not to record, arrest or proceed with investigation of offences. In any criminal case proof beyond any reasonable doubt is required. The testimony of accomplices can be admitted but not as a right. In case of every serious crime, the restriction of individual liberty before conviction is permitted. In such a case, protective or preventative custody is applicable.

Narcotics legislation containing conspiracy and asset forfeiture provisions was adopted in **Thailand** in 1991, containing a presumption of an illegal source for unexplained wealth. Assets can be seized as soon as offenders are apprehended and will go to the state for use in anti-drug operations.

#### *7.2. Convergences and Divergencies in Procedural Legislation*

In many countries, criminal procedures oblige the court, the prosecutor, the investigator and the police, as appropriate, to carry out investigations within their power whenever there are indications of a crime. However, there may be discretionary powers that allow the law enforcement agencies to choose not to investigate a crime or to initiate a prosecution. Where this discretion exists it is often used by investigators when working with informants from criminal circles. Its use requires a high degree of professional responsibility on the part of investigators. Legal systems should be encouraged to recognize the possibility in some cases of granting minor criminals immunity from prosecution for their acts, for the purpose of disclosing the leaders of organised criminal groups.

The criminal laws of many countries specify the elements which must be established to prove an offence. These may include: the act of crime; the defendant's guilt and motives for the crime; any aggravating or extenuating circumstances including the defendant's record; and the nature and amount of damage inflicted by the crime. Evaluation of the evidence is carried out by the official performing the investigation, the prosecutor, and finally by the court. In practice there is no difference in the standard of evidence required in respect of crimes committed by organised crime groups as compared to other crimes.

The experience of many countries suggests that it may be advantageous to use information obtained with the help of electronic surveillance, undercover agents, controlled delivery of drugs, the testimony of accomplices and other methods of preliminary investigation as evidence.

Two points are particularly relevant in the procedural legislation and constitute differences between countries: (a) mandatory or discretionary principles of prosecution which involve the action of investigative and prosecutorial agencies and (b) issues of proof.

There is a general convergence among countries - indeed, it is part of the legal tradition - that the burden of proof lies with the State. The prosecutor should be able to prove guilt with strong evidence (in the United Kingdom and the United States, "beyond reasonable doubt"). The presumption of innocence until conviction is universally recognized as an essential condition of legality.

With relation to evidence gathering, electronic surveillance has been one of the most powerful technologies for collecting evidence. The difficult balance between the right to privacy and the needs of law enforcement to trace criminals characterizes the definition and the implementation of this powerful technology. Domestic laws authorizing or denying such use are influenced by this debate. Systems of balance have been found in many countries which have used this technology successfully against organised crime groups.

The effectiveness of such technology is limited and works only in a short-term perspective. Criminals are adapting to this technology by frequently using crypted phones and faxes, thus making any kind of

interception by law enforcement agencies impossible. The development of crypto-technology is creating serious problems for law enforcement agencies by depriving them of the powerful instruments of electronic surveillance. Again, the discussion is open on the right balance between individual rights to privacy and the needs of crime control. The debate today is oriented toward a discussion of whether only one standardized crypto-technology should be available (which would give law enforcement agencies the capacity to intercept communications), or whether due to the pressures of the market, different crypto-technologies can be used (thus making interception more difficult).

Differences are also evident in the use of undercover agents and controlled delivery, new powerful instruments that have been used successfully against organised crime.

Some countries do not allow the use of undercover agents, others put some restrictions in terms of crimes (e.g., only for drug trafficking), and still others prohibit the incitement to commit a crime. In many countries the court wants to clear evidence that no entrapment was initiated by the police. Some countries allow the controlled delivery and sale of drugs to an undercover officer, and in some limited cases allow an undercover officer to deliver drugs to another person.

Organised crime has contributed to important changes in the criminal procedure law of many countries, particularly those such as the United Kingdom which are sensitive to the political version of this phenomenon (i.e. terrorist activities). The two models of mandatory and discretionary criminal action have both costs and benefits, and it is difficult to make a comparative evaluation without considering the political and social framework within which the criminal justice system operates. Discretionary systems are more efficient but can produce more inequities. In theory, mandatory systems are better guarantees of the parity of rights and minimize discrepancies, but are at the same time less efficient. This inefficiency can ultimately lead to the development of discretion in practice which will be worse than discretion that is clearly established as a principle.

Provisions for the protection of witnesses are of great importance in combating organised crime. It is therefore recommended that national systems of criminal justice pay close attention to provisions, programmes and legislation aimed at providing for the security of a witness. In particular, they should consider adopting measures for the protection of witnesses that allow for the relocation and change of identity of witnesses, along with their physical protection if there is a threat posed by a defendant and the defendant's associates. This can necessitate making arrangements to provide the witnesses with documents enabling them (and any family) to establish a new identity, with temporary housing, providing for the transportation of household furniture and other personal belongings to a new location, subsistence payments, assisting them in obtaining employment, and providing other necessary services to assist the witnesses in leading a full and normal life. In considering the type of protection to be provided, the financial circumstances of a country must be taken into account.

Legislation may also be necessary to deal with the practical problems that may arise in connection with relocated witnesses such as child custody disputes and crimes committed under their new identity. Witness assistance programmes have been key issues in the fight against organised crime for those countries which have experienced this phenomenon on a large scale, and consequently have a large number of cooperating witnesses (persons who have turned state's evidence). The quality of their contribution and the evidence they provide depends also on the quality of their physical, psychological and financial protection. Questions arise about which is the most suitable organization for dealing with these problems. A close relationship between the police or the prosecutor and these witnesses is discussed in those countries where the police and the prosecutor are in charge of their protection. An independent programme may be the best solution for the management of these problems.

## 8. Law Enforcement Methods

### 8.1. Country Profiles

#### A) North America

The Federal Bureau of Investigation is the primary investigative agency in the **United States** responsible for investigating organised crime activities. In addition, other investigative agencies, such as the Drug Enforcement Administration, the Internal Revenue Service, the Customs Service, the Immigration and Naturalization Service, and other federal, state and local investigative agencies play an important part in attacking the problem of organised crime. The intelligence information gathered by these organisations is used in formulating a National Organised Crime Strategy and is developed from a variety of sources.

The United States uses long-term sustained investigations and resulting prosecutions to attack the prominent organised crime groups which pose a significant threat to the country. This is a proactive approach, as opposed to reactive, and is based on intelligence gathering efforts identifying the major criminal conspiracies.

In organised crime cases, the FBI uses the enterprise approach to investigations. Under this approach, the organised crime enterprise itself becomes the focus of the investigation. Individual criminal acts are investigated, however, as the investigation seeks to link the acts into an overall portrait of the organization's criminal activity, and in this manner attack the entire criminal organization as opposed to isolated criminal acts committed by members of that organization. The RICO statute is a critical tool in the successful investigation and prosecution of criminal organisations.

#### B) South/Central America

The Federal Police in **Brazil** use a variety of intelligence collection methods, including computerized methods, to combat organised crime. The intelligence information is gathered from its own sources and from other countries through the use of Interpol. Individuals are targeted for investigation

mainly as a reaction to information received by the police. Brazil uses the following intelligence and evidence techniques: informants, financial investigations, and analysis of the evidence collected.

The police force of **Jamaica** has an organised crime unit whose function is to collect and analyze intelligence information related to organised crime activities. This information is gathered from a variety of sources, including contacts with investigative agencies located in other countries. The information is analyzed to identify subjects who are engaged in criminal activities. Decisions to target individuals or groups are usually based on both reaction to information received and on intelligence reports arising out of pro-active plans.

In **Mexico**, the Public Prosecutor, assisted by the Judicial Police and forensic experts, is responsible for the collection of evidence. The principle of mandatory prosecution is applicable in every case.

### *C) Europe*

#### *Western Europe*

**Denmark** has established an Economic Crime Intelligence Unit which belongs to the Public Prosecutor for Serious Economic Crimes.

Each individual state in **Germany** has a structurally similar command post which collects and coordinates intelligence information related to organised crime. These individual offices are linked together with the Federal Criminal Investigation Department Headquarters.

The coordination of investigations is undertaken by the Federal Criminal Intelligence Division (Bundeskriminalamt, BKA) Headquarters, which informs the public prosecutors' investigative office of its findings if that investigation reveals concrete suspicion of criminal activity. The BKA is charged with acquiring information relating to the fundamental structures of organised crime for use in determining proper investigative strategies with respect to those organisations.

In the first instance information regarding organised crime is gathered within the framework of normal criminal investigations. This, however, has proven to be inadequate given the insidious nature of organised crime. As a result Germany employs various clandestine investigative techniques, the results of which are systematically processed and carefully analyzed.

In order to combat organised crime, organized crime offices with identical structures have been set up in the individual Federal "Lands." Intelligence gathering and analysis is coordinated by means of a data link between the Land organized crime offices, the Land criminal police offices and the Federal Criminal Police Office.

In principle, intelligence is gathered by the police. Information from public prosecution offices and tax authorities which arises out of investigations is also assessed. The criminal prosecution authorities are obligated to initiate investigations if sufficient factual grounds indicate commission of a criminal offence. Such grounds may follow from a criminal information, by other notifications (including anonymous tips), but also along official channels. This means that the criminal prosecution authorities may initiate criminal proceedings both as a reaction to information received and also on their own initiative; however, it is not permitted to initiate investigations without the initial suspicion of a criminal act. The most used intelligence gathering techniques are the examination of witnesses, short-term and long surveillance, search and seizure. Telephone tapping is common; search by screening is a relatively seldom occurrence. There are no statistics on the frequency of the use of undercover agents and on the use of technical means for monitoring spoken words.

Intelligence is collected by the three major police forces in **Italy**, which are the State Police, the Carabinieri and the Customs Police. Each of these police forces has a local office to investigate criminal acts. The intelligence gathered by these organisations is stored in a data processing centre within the Office of Police Coordination and Planning of the Ministry of the Interior. The data processing centre runs the collection, classification, storage and dissemination of the intelligence which has been collected and submitted by the three primary investigative agencies.

The data base mentioned above is used to develop investigative strategies. The directors of the investigative agencies at the local and central level are responsible for the implementation of the investigative strategies developed through the analysis of the information contained in the data base.

The following methods are used for the gathering of intelligence and evidence for criminal prosecution: (1) informants; (2) physical surveillance; (3) electronic surveillance of telephone conversations and other types of telecommunications; (4) undercover operations; and (5) financial investigations, particularly those authorized under the Anti-Mafia Act.

In **Norway**, the International Bureau of Crime Investigation (NBCI) is a new unit that is responsible for national and international criminal intelligence. The targets are decided according to three criteria: type of offence, person and organised criminals.

At present, criminal intelligence gathering in the **United Kingdom** is conducted, processed and analyzed by the National Drug Intelligence Unit, nine Regional Criminal Intelligence Offices, and the Metropolitan Police. A National Criminal Intelligence Service will essentially bring together the functions currently conducted by the aforementioned organisations. Intelligence will be collated using a computerized system. Considerable progress has been made toward this integration.

Targeting strategies are determined at the senior level by using the intelligence collected through the process described below. Targeting may be a reaction to information received, but more likely will entail the detailed evaluation of intelligence gathered and the preparation of a pro-active investigative plan by a police force and intelligence officers for the relevant force or agency to implement. Prior to any targeting, the Operational Plan will ensure that all information is researched as far as is practically possible. The United Kingdom uses the following techniques: (1) informants; (2) operational investigations; (3) electronic and physical surveillance; (4) undercover investigations; (5) debriefing of convicted persons; (6) open sources (e.g., public records, media and articles); (7) liaison officers abroad; (8) embassies and missions; (9) foreign law enforcement intelligence

agents; and (10) accidental discovery developed during routine investigations.

#### *Eastern Europe*

In the **Russian Federation**, special units and various investigative agencies are assigned the responsibility of collecting information on organised crime at the national, interregional, regional, republic, and local levels. In addition to the investigative agencies, information on organised crime is collected from a variety of other sources, including the Ministry of Finance, the State Bank, the Foreign Economic Bank, the Customs Service, and the Ministry of Foreign Economic Relations.

Intelligence information regarding the activities of organised criminal groups is gathered and studied to determine the structure, scope and membership of organised criminal groups. This information is then used in formulating the proper investigative and prosecutorial strategy.

Evidence is collected under the supervision of the procurator in accordance with the provisions of the Code of Criminal Procedure. In general this evidence is secured through the testimony of witnesses, expert testimony and various other technical means. The power and means available to collect evidence concerning criminal groups is extremely limited. The investigative bodies lack the necessary technical equipment and financing, thus significantly limiting their effectiveness.

#### *D) Asia*

The source of most criminal intelligence in **China** comes from neighbourhood watch committees, security enterprises, and the Security Bureau. In order to prevent the spread of organised crime, industrial companies, schools and street organisations closely monitor possible criminal elements and educate them to prevent them from falling into criminal ways.

China uses investigation to detect and control criminals and obtain information regarding the activities of criminal organization through fingerprinting, handwriting comparison, chemical analysis and photographs.

## **8.2. *Convergences and Divergencies in Law Enforcement Methods.***

If effective action is to be taken against organised crime, the law enforcement authorities need to be able to predict and detect organised crime activity. This requires the systematic collection and analysis of all relevant information from all appropriate sources in order to make possible the production and use of intelligence for both strategic and tactical purposes. It is important that the technical facilities and techniques which the law enforcement authorities are allowed to use are always sophisticated enough to enable them to match those employed by organised crime.

Computerized information systems may be of particular benefit in combatting organised crime where resources permit. Computers should be used to store information on the various persons and organisations suspected of being involved in organised criminal activity, as well as information about the crimes committed, and those under preparation. Where there are different law enforcement agencies collecting information on organised crime, appropriate arrangements need to be made to allow an exchange of information e.g. between local and national (or federal) authorities, and between local police forces in different areas. Creation of a centralized data bank may be appropriate in some countries. This information can be shared internationally on the basis of agreements.

Particular attention should be paid to information from confidential police sources, including prisoners. However, other important intelligence will come from other sources including open ones and international liaison sources. In particular, financial and taxation bodies, when permitted to do so, may be of great assistance in the control of organised crime as they frequently find themselves directly in contact with organised groups when these groups seek to utilize the proceeds of criminal activity. Also legislative inquiries as well as official and public records may be of value. An essential resource in the effective investigation of organised crime is the capability to collect, and present in an intelligible manner as evidence, complicated financial and commercial information. Information concerning forfeitable assets should also be collected so that such property can be forfeited and made available for police use.

The infiltration of organised crime into legal enterprises and any contacts it may make in political circles can create a superficial respectability, facilitate corruption and be used by criminals to hinder investigations of their activities. Therefore, law enforcement agencies, when collecting various data on the criminal activity of a particular person or organization should try to obtain the most comprehensive intelligence picture possible. The ways in which law enforcement agencies operate are related to three points: a) the management of intelligence, b) the strategies for targeting the objectives, and c) the techniques for gathering intelligence and evidence.

With reference to the management of intelligence, countries have different forms of organisations according, in part, to their political structure. With reference to intelligence and evidence gathering techniques, countries use a wide range of techniques such as searches, informants, financial investigations, physical surveillance, electronic surveillance of telephone conversations and other types of telecommunications, undercover operations, debriefing of convicted persons, open sources (e.g., public records, the media and articles), liaison officers, embassies and missions, foreign law enforcement intelligence agents, and accidental discovery developed during routine investigations.

## **9. Organisational Structures**

### **9.1. *Country profiles***

#### **A) *North America***

The principal investigative agency responsible for organised crime investigations in the **United States** is the FBI, although many other investigative agencies make crucial contributions to this effort. In areas where organized crime has a major presence there are special units termed "strike force units" composed of experienced federal prosecutors dedicated to the development of organised crime cases. There is also a strategic reserve of prosecutors located in Washington, D.C., who are available to develop organised crime cases in any particular area where organised criminals are conducting their activity. In areas where there is large-scale drug activity there are "drug task force" units devoted to prosecuting drug

offences.

The FBI is the principal agency with regard to organised crime; as previously noted, however, other agencies play a crucial role in investigating and prosecuting organised crime cases. Frequently the FBI will act in concert with another investigative agency. In any event, the investigation and prosecution of organised crime at the policy level is coordinated by the Attorney General's Organised Crime Council, which is composed of the directors of the various investigative agencies and high ranking officials within the Department of Justice.

The prosecutorial agencies and the investigative agencies have forged a close working relationship when it comes to organised crime. For example, the law requires that all electronic surveillance must be applied for and supervised by a prosecutor, who then has the responsibility of reporting the status and progress of the surveillance to the court that authorized it. The United States considers it crucial to have coordination between the prosecutor and the investigative agency at all steps in an organised crime investigation. There are, of course, distinct areas of responsibility, so that the function of the investigator is primarily related to pre-trial preparation of a case, while the primary responsibilities of the prosecutor are the charging decision and the trial of a case before a jury.

#### *B) South/Central America*

There are no specialized units in **Brazil** for the investigation of organised crime cases. Investigation of crime is conducted by the Federal Police. Unlike some other South American countries, Brazil does not use investigating magistrates. Instead, the prosecutor may request the police to conduct further investigations in order to gather evidence regarding the criminal act.

The police are responsible for gathering evidence, which is later presented to the court for its decision. The prosecutor assists the court in developing the evidence during the trial.

The police department in **Jamaica** has an Organised Crime Unit which is headed by a superintendent of police who is accountable to the Deputy

Commissioner of Police. This Unit conducts undercover operations and is specifically charged with the responsibility for investigating various posses and gangs. In addition to the Organised Crime Unit, the following specialized agencies in the police department gather evidence with regard to organised crime prosecutions: the Narcotics Division, the Special Operations Division, the Criminal Intelligence Division, the Flying Squad, and the Monitoring and Analysis Division. The activities of these agencies are coordinated with the Organised Crime Unit by use of regular conferences and meetings among the heads of the various agencies and the Organised Crime Unit and the Deputy Minister of Police.

The Director of Public Prosecutions is in charge of all criminal proceedings on the island and works closely with the police in the investigation of organised crime. The magistrate's role is to adjudicate on matters presented to the court for trial and to issue process, e.g. warrants to ensure the satisfactory conclusion of the trial process.

There are no specialized units in **Mexico** devoted to the investigation or prosecution of organised crime cases. The only principal persons responsible for investigating crime are the public prosecutors. The public prosecutor is the official who bears the ultimate responsibility for both the investigation and prosecution of criminal offences. In performing his function, he is aided by the Federal Police.

#### *C) Europe*

##### *Western Europe*

In **Germany**, there are special offices within the Federal Criminal Investigations Division (BKA) that are responsible for conducting investigations which have a regional impact. When coordination is required at a level above that of the region, this task is undertaken by the Organised Crime Commission, which is composed of the heads of the BKA and the Criminal Investigation Divisions for the individual states (Lands). Special departments can be established at the public prosecution office to fight organised crime. These units will then specialize in clearing up and indicting cases of organised crime only. Special departments have been set up at the Federal Criminal Police Office, at the criminal police offices of the

Lands and also on a local and regional level within the larger Lands. Offence-specific organised crime investigations are conducted by specially established organisational units of the criminal police. Supra-regional coordination is undertaken by the Commission on Organised Crime; in addition, regular annual meetings are held to discuss problems. Co-operation between special departments and special public prosecution offices for the suppression of organised crime can be organised and coordinated by means of guidelines that have uniform application throughout the Lands.

In **Italy** there are three police forces: the State Police, the Carabinieri, and the Customs Police. Each of these three police forces has its own local offices to investigate criminal acts, and also contain special units to investigate organised crime and drug trafficking. In addition to local offices, these three investigative agencies have numerous regional and interprovincial offices to address crime problems that cross local and provincial boundaries. At the national level these three police forces operate through their own appropriate offices and regularly coordinate their investigative activities. The coordination among the investigative offices of the three police forces plays an essential part in the fight against organised crime.

Intelligence information is coordinated by use of the data base which is jointly operated by the three police forces and is located at the Data Processing Centre of the Interior Ministry. With respect to drug investigations, there is specific coordination carried out by an inter-force anti-drug agency. It is also important to note the central role of the investigating magistrate in the coordination of investigations.

The new Criminal Code provides that the prosecutor is the person who bears ultimate responsibility for the investigation of criminal activity. Due to the high degree of complexity, organised crime cases may involve more than one public prosecutor. In that event the code provides that the prosecutors are to share and exchange documents and other relevant information as well as to coordinate with each other all instructions given to the judicial police. The chief prosecutor of a regional court has the responsibility for implementing this automatic co-operation procedure. A national anti-mafia prosecution organisation is also available to assist local prosecutors.

The main task of the criminal intelligence unit at the NBCI in **Norway** is to work on criminal intelligence in the field of crime for profit. A Central Aliens Unit has recently been established with the aim of combatting illegal immigration, forged travel documents, etc. There also exists a unit which investigates financial crimes and a unit dealing with narcotic drug cases.

In the **United Kingdom**, there are nine regional crime squads located in England and Wales which are composed of officers detailed from the 43 metropolitan police forces for three year tours 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) at the request of 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 are cross-referenced to the individuals that are under investigation. Close liaison is maintained between the 43 municipal police forces and the regional crime squads. These organisations frequently conduct joint operations.

The Crown Prosecuting Agency is an independent prosecuting agency, and is generally viewed as standing apart from the investigation of the crime and the operation of the police. The majority of investigations are conducted without reference to the Crown Prosecution Service until such time as there is sufficient evidence available to institute criminal proceedings. An exception to this general principle is in cases involving serious fraud, investigated under the aegis of the Serious Fraud Office.

#### *Eastern Europe*

A system for combatting organised crime has been established on the national and regional levels in the **Russian Federation**. A special department for combatting dangerous crimes, organised crime, narco-business and corruption has been created at the national level. There are interregional and regional units of the same type, subordinated to the Ministry of Internal Affairs. These units are staffed by the

most experienced criminal investigators.

Investigation of organised crime activity 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 in combatting organised crime is to uphold laws providing sanctions for the actions of organised criminals, and supervise and guide the investigation of organised crime cases. The procurators have the right to remove any criminal case from the investigative agencies and pursue it themselves. As a rule this power is exercised in cases of great significance or those which have considerable societal impact.

#### *D) Asia*

There are no special units in **China** to investigate organised crime cases. The Public Security Bureau and the Peoples Court act together to investigate organised crime.

The prosecutions office is responsible to the Peoples Representative Committee, which in turn is responsible to the government. The Peoples Security Bureau is responsible for the investigation and detection of criminal acts and the prosecutions office is responsible for approving the arrest, conducting the prosecution. In some instances, however, the prosecutor's office also directs the investigation.

The trial is conducted only by the court.

### **9.2. Convergences and Divergencies in Organisational Structures**

Organised crime may be investigated by a variety of law enforcement agencies with different jurisdictions. In this connection it is advisable to ensure that close coordination be maintained between central and peripheral structures and that law enforcement authorities also ensure effective liaison between intelligence and operations. In countries with federal structures it is essential that effective mechanisms be established to ensure coordination of jurisdiction, intelligence and operations among federal policing agencies and those of other governmental units. Close coordination within and between agencies and units is essential to successful action against organised crime.

A clear delineation of jurisdiction among agencies and units can contribute to a harmonious and effective working relationship.

When resources permit, there may be great value in the formation of one or more specialized units dedicated to the investigation of organised crime, particularly in the areas of corruption, money laundering and illegal drug trafficking. The danger must be recognized that exclusive jurisdiction over an area of investigation may create susceptibility to corruption, and appropriate safeguards against this must be developed. Experiences on the organisational structure of criminal justice systems and law enforcement are different.

Many countries do not have specialized units to investigate organised crime. Where they do exist, the organisation varies and problems of coordination with other agencies arise. With reference to the relationship among prosecutors and investigators, the situation varies according to the different structures of the criminal justice systems and law enforcement agencies.

## **10. International Co-operation**

### **10.1. Country profiles**

#### *A) North America*

International co-operation in **Canada** on asset seizures has been very good. In 1990, the Royal Canadian Mounted Police seized \$25 million in the course of drug-related criminal investigations in cooperation with the United States alone. Canada has also shared U.S. asset forfeitures.

Canada has general purpose Mutual Legal Assistance Treaties with Australia, the Bahamas, Mexico, France and the United States, and for the purposes only of drug prosecutions and seizure of the proceeds of crime from drug offences, with the United Kingdom and Hong Kong.<sup>43</sup> In November 1991, a protocol to the 1971 extradition treaty between the United States and Canada came into force. Among the features of the protocol are the replacement of the list of extraditable offences with a dual criminality approach, which will allow extradition for a wider variety of

criminal activity, including money laundering and some purely fiscal offences.

The **United States** considers negotiation and ratification of mutual legal assistance and extradition treaties to be essential in the effort against the growing power of the international criminal syndicates. The United States is a party to many such treaties. In addition, informal co-operation among the law enforcement agencies of different nations is essential to the investigation and prosecution of organised crime and drug trafficking. The US attempts to foster this co-operation through the representatives of the Department of Justice and investigative agencies that are located in other countries. For example, the FBI and the DEA have representatives located in embassies and missions in many countries.

#### *B) South/Central America*

Besides being part of INTERPOL, **Brazil** has agreements with some other countries which have liaison officers working in the country, exchanging information regarding organised crime.

**Jamaica** participates in the Commonwealth scheme for Mutual Assistance in Criminal Matters. (The Commonwealth of Nations, originally called the British Commonwealth of Nations, is an association of nations and dependencies loosely joined by a common interest based on having been parts of the former British Empire.) This participation facilitates co-operation between Jamaica and other Commonwealth countries in several areas, including the identification and location of persons, search and seizure, restraint on dealings in property, and the tracing, seizure and forfeiture of the proceeds of drug trafficking. In addition, Jamaica has extradition treaties with many countries and maintains a close working relationship not only with Interpol, but also with for example the United States Federal Bureau of Investigation and the Drug Enforcement Administration.

**Mexico** is a party to a variety of international agreements designed to further co-operation in the investigation and prosecution of organised crime and drug trafficking. In addition, Mexican law enforcement authorities regularly meet with law

enforcement authorities of their neighbouring countries in order to facilitate criminal investigations.

#### *C) Europe*

##### *Western Europe*

**Germany** considers co-operation essential in the effort against organised crime. Germany has acceded to the European extradition treaty of December 13, 1957 and to the European Legal Assistance Convention of April 20, 1959. In addition, Germany has concluded many bilateral and multi-national agreements concerning mutual legal assistance and extradition. In addition to being a member of INTERPOL, Germany is a leading influence in the establishment of EUROPOL, the European Union intelligence unit concerned with drug trafficking and organized crime. In addition, Germany regularly participates in exchange programmes and information sharing with many countries. Transfrontier criminal law on the suppression of organised crime may be pursued especially on the basis of the European Convention on Mutual Assistance in Criminal Matters, the European Convention on Extradition and the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime. Under national law Germany is, moreover, in a position to render international assistance on a non-treaty basis as well; this applies in particular to relations with the states of Central and Eastern Europe so far as they have not acceded to the criminal law conventions of the Council of Europe.

Since the principle of double criminality applies in Germany both to the realm of extradition and to requests for legal assistance for the performance of coercive measures, difficulties might perhaps arise where a requesting state has created criminal offences in the fight against organised crime that go beyond the offences under German criminal law. At present, there is a working party of the member states of the European Union which is going into the question of whether, and how far, a departure might be permitted from the principle of double criminality for the purpose of fighting organised crime.

Furthermore, police co-operation in the fight against organised crime has been arranged via certain national central agencies in the context of bilateral state

agreements, e.g. with Bulgaria, the Czech and Slovak Republics, Poland and Hungary. Negotiations were being conducted with Romania, the Russian Federation, Belarus and the Baltic States.

In the international arena there are also activities of traditional groups like the Mafia, the Camorra, the N'Drangheta and the Sacra Corona Unita as well as the non-traditional groups such as the Medellin Cartel and the Cali Cartel, whose activities also affect Germany. In addition to this, there is new information that Italian criminals have been forming autonomous groups bearing the name of "Stidde", who are marked for their substantial criminal energy as well as for their extremely brutal mode of operation. Mafioso groups primarily composed of nationals are mainly active in the fields of economic crime and extortion. On the whole it may be said that the opening up of Eastern Europe has led to an enormous market in these states for the sale of stolen goods of all kinds, e.g. motor vehicles.

At the moment it is mainly Turkish groups that are dominating illegal drug trafficking in and through Germany. South American criminal groups have predominantly established themselves in the fields of forgery and abuse of non-cash means of payment as well as in drug trafficking. Chinese nationals focus on extorting protection money, smuggling people, illegal employment, drug trafficking and credit card crime. Moreover, a clear trend is emerging towards an increasing amount of illegal dumping of hazardous wastes in third countries (in Eastern Europe and in developing countries).

International co-operation is one of the principal tools used by **Italy** in the fight against drug trafficking and the complex financial transactions related to illicit activities. The main forms of co-operation which have been established at the international level are: (1) regular exchanges of information with regard to organised crime, (2) international co-operation of an operational nature, (3) the use of witnesses in several jurisdictions, (4) mutual legal assistance in order to seize and confiscate the proceeds of illegal activities, and (5) training and assistance to police forces in drug production and transit countries.

With the opening up of the borders with Eastern Europe, **Norway** has experienced a heavy growth in travel from Russia across the borders, which resulted

in an increasing crime rate in the area. Moreover, there are indications that the Chinese Triads may have established a certain influence in Norway.

The Criminal Justice International Co-operation Act of 1990 enables the **United Kingdom** to provide a full range of mutual legal assistance to other countries in criminal proceedings and investigations. The provision of assistance does not depend on the existence of a relevant multilateral agreement. The 1990 Act was designed to satisfy the requirements of the 1988 United Nations Drug Convention (the Vienna Convention) and the European Convention on mutual legal assistance in criminal matters, both of which the UK plans to ratify. In addition, the UK has signed and ratified the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime, and has also concluded bilateral confiscation agreements with 20 countries. The UK is also a party to the 1957 European Convention on Extradition.

#### *Eastern Europe*

**Hungary** and Germany are cooperating in the fight against organised crime, drug trafficking and terrorism. Co-operation between the criminal investigation authorities of the two countries has yielded major results in the anti-drug struggle. In line with a Hungarian proposal, the bilateral agreement on combating organised crime will be extended to co-operation in preventing the smuggling of radioactive materials and of cars.

As a result of recent events, the **Russian Federation** is actively seeking greater co-operation with the world community in addressing the growing menace of international organised crime. The need is seen for more concrete measures with regard to organised crime control. To date the Russian authorities have concluded agreements with the Ministries of the Interior of Austria, Italy and Cyprus with regard to co-operation in combating organised crime. Drafts of similar agreements have been submitted for examination to the law enforcement agencies of several other countries, including Canada, France and Germany. The bureau to coordinate the work of Russian agencies for combatting organised crime began functioning at the Russian Interior Ministry.

*D) Asia*

**China** participates in the work of Interpol and uses that organization to maintain contact with law enforcement agencies in other countries. In addition, China maintains contact with other countries, on a bilateral basis, on law enforcement issues.

**Korea's** international investigative co-operation against crimes is performed by means of diplomatic channels established through the signing of the international criminal investigation and judicial cooperative treaties and agreements, as well as by means of applying to the ICPO/Interpol. Reliance on the ICPO has been increasing since these diplomatic channels take more time than is feasible to effect quick measures in emergency cases. The Republic of Korea joined the ICPO at the 33rd General Conference in Caracas in 1964, and opened Interpol's Korea Office in 1965. The Korea Office of ICPO deals with detective activities relating to international searches for fugitives and criminals involved in such felonies as murder, robbery, kidnapping and arson, and with the exchange of information and reference materials.

## CONCLUSIONS

In the course of this survey a broad diffusion of some organised groups, which for several different reasons (traditions, violence, ability) interest a plurality of countries, has been highlighted. They are the Italo-American Mafia (Cosa Nostra) in the United States, the Sicilian Mafia in Italy, the Colombian Cartels, the Chinese and Japanese organised crime groups in Asia, and Russian organised crime groups. All these groups are undergoing a rapid evolution and are emerging as major threats in the international markets. By means of oligopolistic or monopolistic positions they interact in building collusive or conflicting relations.

In addition to the traditional activities in which they are engaged, including drug and arms trafficking and smuggling, the transnational criminal organisations (and the Russian criminal organisations in particular) are seeking to maximize opportunities and minimize law enforcement risk by increasingly dealing with activities such as the smuggling of nuclear materials. Besides from the fact that it cannot be controlled, this poses serious problems in terms of international security. Moreover, criminals are looking for new markets and, consequently, shifting their attention to regions such as Eastern Europe, where they are profiting from the massive process of privatization that the ex-Soviet bloc is undergoing. They are also expanding crack-trafficking in the United Kingdom and France.<sup>44</sup>

An important element which has emerged from the survey is the fact that most countries, and those which have traditionally had problems of organised crime groups in particular, are working to elaborate effective legislation to combat this phenomenon. In doing so, the countries are faced with the problem that the interaction between organised crime and legislation against it might lead to a "mirror-effect": both organised crime and the legislation against it become increasingly uniform as the result of reciprocal influences. Legislation, coordinated and influenced by international structures such as conventions and bilateral agreements, is becoming increasingly similar. Due to the necessity of avoiding the effects of this legislation, organised crime groups tend to modify their structures in accordance with two principal factors, which are the available opportunities and the increasing competition in the international illegal markets. The two models that will be utilised by

organised crime are the "cell-structure" which is typical of the Colombian Cartels, and decentralisation, which characterises the American Cosa Nostra, the Sicilian Mafia and the Chinese Triads.

Greater attention is being given to the law enforcement methods. Investigative co-operation in this area between law enforcement agencies and special units is essential, as it permits an essential exchange of information on the activities and the movements of the criminal groups.

An effective help in the tracing of criminal organisations comes from strategic anti-money laundering legislation, because the increasing proceeds from crime necessarily need to be reinvested.

Other changes are being carried out in the area of international co-operation. As a consequence not only of the drug problem and its international dimensions, but also of the extensive development of transnational organised crime, law enforcement agencies have developed an increasing number of formal frameworks for developing joint investigations, information and contacts. These frameworks such as conventions, mutual legal assistance treaties and working groups have also been reflected in the domestic legislation. Much more than in the past, today the police forces of many European countries exchange liaison officers and send their representatives to Latin America and to other key places which are considered main trafficking points.

In short, transnational criminal organisations pose serious but still insufficiently acknowledged threats to the security, stability and sovereignty of states, to the proper functioning of financial and commercial institutions at national and global levels and to the order of the international system. As long as they pose different kinds of threat to their home states and to the host countries in which they operate, the failure to deal with them only offers further opportunities for their growth and development.

## NOTES

- <sup>1</sup> . This analysis is primarily based on the paper Threat Assessment by Phil Williams, July 1994.
- <sup>2</sup> . Robert Keohane and Joseph Nye, Transnational Relations and World Politics (Cambridge, Mass.: Harvard University Press, 1971) p. xii.
- <sup>3</sup> . John A. Mack and Hans-Jurgen Kerner, The Crime Industry (Lexington, Mass.: Heath, 1975) p. 6 and p. 13.
- <sup>4</sup> . This term was coined by Phil Williams, "Transnational Criminal Organisation and International Security" Survival Vol. 36 No.1 (Spring 1994) pp. 96-113.
- <sup>5</sup> . The importance of access is emphasised by Samuel Huntington, "Transnational Organisations in World Politics" in World Politics Vol. 25 No. 3 (April 1973) pp. 333-368.
- <sup>6</sup> . This theme is developed in John M. Martin and Anne T. Romano, Multinational Crime (London: Sage Publications, 1992).
- <sup>7</sup> . For a fuller analysis of the industry see Phil Williams, "International Drug Trafficking: An Industry Analysis" in Journal of Low Intensity Conflict and Law Enforcement Vol. No. pp.
- <sup>8</sup> . R. T. Naylor, "Covert Commerce and Underground Financing in the Modern Arms Black Market" Paper presented to the Committee on International Security Studies of the American Academy of Arts and Sciences, February 24, 1994 p.
- <sup>9</sup> . Testimony by Hans-Ludwig Zachert to the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate, May 25, 1994.
- <sup>10</sup> . See Josh Friedman, "Smugglers move 1 million yearly to industrial word" Houston Chronicle June 12, 1994 p. A 31
- <sup>11</sup> . "Organ Trafficking a Reality says Argentine Diplomat" Reuters November 22, 1993.
- <sup>12</sup> . Ernesto Savona and Michael DeFeo, "Money Trails: International Money Laundering Trends and Prevention/ Control Policies" Paper presented in Courmayeur, Italy 18-20 June, 1994 p. 21.
- <sup>13</sup> . This analysis is based on Money Trails: International Money Laundering Trends and Prevention/Control Policies by Ernesto U. Savona and Michael A. DeFeo.
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- <sup>15</sup> . F. Petracca, Intervention in *Economia e Criminalita*, Camera dei Deputati, pp.263-268.
- <sup>16</sup> . This section draws heavily on Carl Johnson, "Russian Organised Crime" to be published in Phil Williams, Carl Florenz, John Deal and Joseph Furloni (eds). Drug Trafficking and National Security (Boulder, Co: Westview Press, 1995 forthcoming). See also the same author's Russian Organized Crime: A Baseline Perspective (Johnstown, Pennsylvania: National Drug Intelligence Centre, November 1993).
- <sup>17</sup> . Stephen Handelman quoted in Seymour M. Hersh, "The Wild East", The Atlantic Monthly Vol. 273 No. 6 (June 1994) pp. 61-86 at p. 79.
- <sup>18</sup> . This discussion draws heavily upon Ko-lin Chin, "Triad Societies in Hong Kong" forthcoming article in Rassegna Italiana di Sociologia.

- <sup>19</sup> . "Heroin Trafficking Among Four Tentacles of Chinese Mafia" El Mundo 27 March, 1994 p.71.
- <sup>20</sup> . W. H. Myers III, Transnational Ethnic Chinese Organized Crime. A Global Challenge to the Security of the United States. Analysis and Recommendations, Testimony at the U.S. Senate Committee on Foreign Affairs, Subcommittee on Terrorism, Narcotics and International Operations, Washington, D.C. April 21, 1994 pp.4-5.
- <sup>21</sup> . 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 June 18 and August 4, 1992 p.125.
- <sup>22</sup> . David E Kaplan and Alec Dubro, Yakuza (New York: Macmillan, 1986) p. 208.
- <sup>23</sup> . Control Risk Group Limited, International trends in organised crime, London, May 1993, p.22.
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- <sup>34</sup> . Sweden, National Report concerning Money Laundering, Council of Europe Conference on Money Laundering, September 1992, p.1
- <sup>35</sup> . Control Risks Group Limited, International trends in organised crime, London, May 1993, p.15.
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- <sup>37</sup> . Money Laundering Alert, January 1993 p.7.
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<sup>44</sup> . La Stampa, March 23, 1994.







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