



## HUMSEC Journal Issue 1



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## Introduction

The HUMSEC Project is a Sixth Framework Programme Coordination Action, whose purpose is to contribute to a better understanding of the link between transnational terrorist groups and criminal organisations in the Western Balkans and their role in the peace-building process in the region. Its main tasks are to establish a network of scientists working in the project field and to enhance the dialogue among scientists from the European Union and the Western Balkan region. A broad dissemination of the research is/shall be guaranteed through:

- the **HUMSEC Journal**, which is published yearly;
- the publication of working papers that have been presented during the annual conferences;
- the organisation of three summer academies - with the aim to present and discuss the results of the Annual Conferences among young professionals and researchers and to provide in this way the basis for capacity building in the field of the project;
- the publication of additional working papers;
- the presentation of a state of the art book to summarize and present the results of the network activities.

In specific, the **HUMSEC Journal** aims to widen the discussion on the issue of human security in general and in particular on the connection between transnational terrorist and criminal organisations in the Western Balkan region, the influence of transnational and criminal organisations on the state and on the society, and the impact of transnational terrorist and criminal organizations on the peace-building process of the Western Balkan region.

The main topic of the first issue of the HUMSEC Journal is “The Connection Between Transnational Terrorist and Criminal Organisations with a Focus on the Western Balkan Region”: Maarten van Dijck focuses on the link between the financing of terrorism and cigarette smuggling, while Andrej Zwitter offers an analysis of the structure of ideology and the mobilisation of terrorists. Gregory Mounier investigates the European Police Missions drawing upon observations of the European Police Mission in Bosnia and Herzegovina. Finally Maarten

van Dijck discusses definitions of organised crime and Věra Stojarová analyses the overall situation of organized crime in the Western Balkans.

**MANY THANKS**

to

the four authors of the first issue of the HUMSEC Journal,  
the members of the Editorial Committee,  
and also to Andreas Jantscher for designing the cover page of our journal.

Sincerely,  
Maddalena Vivona  
Ursula Prinzl

June 2007

# The Link between the Financing of Terrorism and Cigarette Smuggling. What Evidence is there?

Maarten van Dijck<sup>1</sup>

American and European intelligence indicate that, to an increasing extent, terrorist organisations and/or their supporters are engaged in contraband cigarette smuggling in order to raise funds. It is also believed that these groups seek collaboration with organised crime groups. However, the evidence basis for these statements is rather thin. This paper will discuss the (alleged) links between organised crime, money laundering and the finance of terrorism in the field of cigarette smuggling. I will test some of the hypotheses - as implied in the above statements - against the (preliminary) findings of a cigarette case file analysis in the Netherlands. If cigarette smuggling is indeed one of the main vehicles for the financing of terrorism, where is the evidence of this to be found?

## I. The Fight against the Financing of Terrorism

In the Netherlands, like in many other countries, the concern for terrorism has rapidly increased. A national public awareness campaign and the issuing of a public brochure with information about what to do in case of a terrorist attack are only two illustrations of this increased fear for this dreaded phenomenon. Following the example of the U.S.A. and in conformity with the initiatives of the Financial Action Task Force, the Netherlands focuses on the flows of money enabling terrorist to carry out their activities. To that purpose the Dutch legislator has extended the scope of the Anti Money Laundering (AML) regulatory framework to cover financial transactions possibly related to the financing of terrorism.<sup>2</sup> Not because the financing of

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<sup>2</sup> See e.g.: Dijck, M. Van, *Dutch Anti Money Laundering Policy in Global Perspective*, in: Tilburg Foreign Law Review (Volume13, Number 1), Tilburg University - Faculty of Law, 2006. Dijck, M. Van,

terrorism and money laundering are the same thing – they are not – but because the same regulatory body scrutinising financial transaction for potential money laundering threats can be used to prevent and/or detect terrorism related money flows as well.

The widening of the scope of application of the anti-money laundering regulations serves three different purposes. First, the integrity of the financial system is safeguarded against abuse in the form of transactions ultimately supporting terrorism. Second, the scrutiny by the financial institutions of clients and transactions will impede the financing of terrorism and will at least raise its costs, because of the greater risk of detection as a result of increased law enforcement and compliance activity. Third, the financial institutions involved, though not themselves being part of the law enforcement branch, contribute in the gathering of intelligence. The data of thousands of unusual or suspect transactions are passed through the Financial Intelligence Unit and feed a database which, when analysed properly, could produce information of terrorism financing activities. However, singling out those transactions relating to the financing of terrorism is like finding a very tiny needle in a very large haystack. Terrorist activities, as the Twin-tower attack demonstrates, do not require vast amounts of money (about € 500.000) and the transactions involved are of a minor scale. Millions of wire transfers and thousands of money transfers are carried out each day and the transfers involved in the financing of terrorism, in most cases, are not singled out by very distinctive features. How to find the few shaded peas among the bulk of green peas is a question still to be answered.

In a report called *Action plan for security and the containment of terrorism*, which was issued in 2001, the Dutch government emphasizes the importance of police intelligence and financial policing as instruments in the fight against terrorism. It argues for improved cooperation and information exchange between law enforcement agencies, especially those units which investigate financial flows that possibly relate to terrorism. The inclusion of the financing of terrorism in anti-money laundering legislation and the contents of the 2001 report show that terrorism and the financing of terrorism are taken very serious by the Dutch government, whose attitude in this respect reflects a European and a global concern.

In 2003 the ATF, the US Bureau of Alcohol, Tobacco and Firearms, issued a (classified) report in which it stated that cigarette smuggling had become one of the primary means of fund raising for terrorist organisations. In public media reports and judicial verdicts some of the underlying facts were reported: a cigarette bootlegging ring operating from the south of the United States appeared to have had links with Hezbollah and profits from the cigarette smuggling were channelled to this organisation. In Ireland the Gardaí uncovered the involvement of Real IRA affiliates in cross-channel cigarette smuggling. According to the ATF many terrorist organisations use profit opportunities of the cigarette black market to provide for a steady flow of income. A senior police officer in Northern Ireland qualified the Real IRA in this respect as a “*criminal organisation that sometimes carries out acts of terrorism rather than a terrorist group that has to dabble in crime.*”<sup>3</sup> In Europe evidence has been presented of involvement of

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*De Nieuwe Wet MOT. Van een regel-georiënteerd naar een risico-georiënteerd stelsel in de melding van ongebruikelijke transacties* (transl.: „The New Reporting Act. From a Rule-based towards a Risk-based System for Reporting Unusual Transaction”) in: *Delikt en Delinkwent* (Number April), 2006.

<sup>3</sup> McCartan, Desmond, *Ulster Cigarette Smuggling Shock*, in: *Belfast Telegraph*, 21 December 2000. Available online at: <http://www.belfasttelegraph.co.uk/imported/article1013772.ece> (All websites used in this article were last checked on 13 March 2007).

members of the Kurdish Working Party (PKK) in a cigarette smuggling scheme ending in Iraq.<sup>4</sup> Major tobacco companies, such as Philip Morris, RJ Reynolds and Japan Tobacco were allegedly knowingly involved in the smuggling of daily loads of shipments into Iraq since 1990. Despite the U.S. trade embargo against Iraq before the war against Iraq, a continuous flow of cigarettes provided financial support of the political leaders in Iraq. Uday, son of Saddam Hussein was alleged to be one of the key players dominating cigarette smuggling into Iraq.<sup>5</sup>

However, whereas the official reports issued by the national intelligence services remain hidden in secrecy, researchers<sup>6</sup> and the public have to depend on public (media) reports in which occasionally some tip of the veil is lifted. In academic publications references to the link between cigarette smuggling and the financing of terrorism are only mentioned with some prudence.<sup>7</sup> So far the allegations of this link and the financing of terrorism are based on a limited number of cases in which suspects known to have ties with terrorist organisations have been convicted in criminal court for cigarette smuggling and in which allegedly the smuggling was executed in the service of the terrorist organisation. This is a meagre basis for the claim that cigarette smuggling has become *the* primary source of income for terrorist organisations, as claimed by the ATF report. However, this does not imply that such a claim is false. It is a fact that worldwide huge profits are made by illicit cigarette trafficking and it would be more surprising if terrorist groups did not capitalise on the profit opportunities in this market, especially when taking into account the relatively low risks, as compared for example to drug trafficking.

This paper sets out to explore the plausibility of cigarette smuggling as one of the primary fund raising methods for terrorist organisations on the basis of knowledge of the European cigarette black market. This paper primarily draws from empirical investigation into the Dutch illicit cigarette market. Being a neighbour country of England, only separated by the Channel, The Netherlands is one of the main transit countries of contraband cigarettes destined for the UK and North Ireland. However, prior to elaborating on the findings of the Dutch research, the following sections will describe in more detail existing evidence of the links between cigarette smuggling and the financing of terrorism.

## **II. Hezbollah in Virginia and North Carolina: the Charlotte Case**

The link between interstate cigarette bootlegging in the US and the financing of terrorist organisations, in this case Hezbollah, has been proved at least twice in a US court. In 2002 main suspect Hammoud, a 28 year old Shiite Muslim from Lebanon, was convicted for 155 years of imprisonment. The defence denied that the accused had anything to do with the financing of

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<sup>4</sup> Beelman, Maud, *EU Accuses U.S. Tobacco Companies of Trading with Iraq, Terrorists*, The Center for Public Integrity, 2002, Available online at: <http://www.publicintegrity.org/archives.aspx?year=2002>.

<sup>5</sup> Beelman, Maud, *EU Accuses U.S. Tobacco Companies of Trading with Iraq, Terrorists*.

<sup>6</sup> That is, unless the researchers in question get privileged access to additional sources of information.

<sup>7</sup> E.g.: Lampe, Klaus von, *Provisional Situation Report on Trafficking in Contrabande Cigarettes*. Report No. 17 of the research project 'Assessing Organised Crime: Testing the Feasibility of a Common European Approach in a Case Study of the Cigarette Black Market in the EU', 2006. Available online at: <http://www.assessingorganisedcrime.net>.



Hezbollah, claiming that the only thing that could be proved was some money transfers to Lebanon. The defence substantiated this claim by arguing that their clients were allowed to bail – something that is rarely done in case of suspicion of (the financing of) terrorism.<sup>8</sup> The court however, did not agree and convicted Hammoud and his fellow defendants to substantial punishments. The exceptional punishment of 155 years imprisonment for Hammoud was not merely due to the cigarette bootlegging – cigarette smugglers mostly get away with a couple of years imprisonment max – but was justified by subsequent acts of money laundering and transferring funds to Hezbollah.<sup>9</sup>

Despite the involvement in several cases of (documentary) fraud, Hammoud and two fellow country men were allowed to reside in the U.S. since 1992.<sup>10</sup> From 1995 he and his accomplices began smuggling cigarettes from North Carolina and Virginia to the Northern region of Detroit, Michigan, capitalising on the difference in excise duties between the different states. The excise duty to be paid in North Carolina amounted at the time to \$ 0.50 whereas in Michigan \$ 12.50 had to be paid per carton. In Detroit the cigarettes were distributed among fellow Shiite Lebanese living in that area. Each trip, over a distance of about 1300 kilometres they hauled up to 300.000 cigarettes good for a net profit of maximum \$ 3.000. A tobacco shop was opened to acquire unsuspecting access to bulk loads of cigarettes and, according to the court files, a restaurant functioned as a money laundering vehicle. Between 1995 and 1999 when the smuggling ring was busted the total turnover must have been multiple millions. Along with Hammoud 18 other suspects were arrested. Not all of the money went to Hezbollah; much money was spent on fancy cars and equipment, such as global positioning systems and the reckless driving style of the suspects regularly led to fines and confiscation of the cigarettes. Not surprisingly the suspects' behaviour aroused suspicion and the smuggling scheme was uncovered.<sup>11</sup> Evidence of the funnelling of funds was found in a financial investigation into Hammoud's bank account and financial history and in wiretapped telephone conversations with allegedly high ranking Hezbollah officials.<sup>12</sup> Hammoud allegedly funnelled more than 10 million dollars to Lebanon.

In another case a 41 year old Lebanese, named Makki, who like Hammoud lived in the United States, was key suspect in a Michigan state cigarette smuggling ring, most probably linked to the group of Hammoud. Makki was also suspected of providing material support to Hezbollah.<sup>13</sup> In

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<sup>8</sup> Solomon, Jay, *U.S. Targets Hezbollah Funds*, in: Wall Street Journal, 24 April 2006.

<sup>9</sup> Lormel, Dennis, *How Crime Feeds the Flow of Terrorist Funds*, 2005. Available online at: <http://corprisk.timberlakepublishing.com/files/ACAMS.pdf>.

<sup>10</sup> Pipes, Daniel, [*Charlotte's Web and*] *The Hezbollah in America: An Alarming Network*, in: National Review, 28 August 2000. Available online at: <http://www.danielpipes.org/article/349>.

<sup>11</sup> Pipes, *The Hezbollah in America*. Horn, Greg, *Detroit Cigarette Smuggling Ring Aided Terrorism: U.S. Two Seneca Women Arrested*, The Eastern Door (Volume 12), 2003. Available online at: <http://www.easterndoor.com/archives/12-4/12-4-04.htm>. Horn, Greg, *RCMP Report Does Not Link Terrorism to Mohawk Cigarette Trade*, The Eastern Door (Volume 12), 2003. Available online at: <http://www.easterndoor.com/archives/12-31/12-31.htm#sta>. Damask, James A., *Cigarette Smuggling: Financing Terrorism?*, December 2002. Available online at: <http://www.mackinac.org/article.aspx?ID=4461>.

<sup>12</sup> See previous footnote.

<sup>13</sup> Horn, Greg, *Detroit Cigarette Smuggling Ring Aided Terrorism: U.S.* See also, Horwitz, Sara, *Cigarette Smuggling Linked to Terrorism*, in: Washington Post, 8 June 2004.

a third case, put forward by a Los Angeles police officers in a hearing of the U.S. Senate Committee on Homeland Security and Governmental Affairs, a suspect was apprehended who carried over \$230,000 in cash on his body. The suspect, who was found to own a chain of cigarette shops in the United States where he lived, told the customs that he was on his way to Lebanon to spend his holidays. Financial and criminal investigation revealed an additional \$70,000 in cash and several international wire transfers. In addition 1,000 cartons of counterfeit cigarettes were seized.<sup>14</sup>

### III. The IRA Factions

The cigarette smuggling activities of members of the IRA factions, such as the Real IRA, is less well documented compared to the Charlotte case described above. At least one case has been reported in the public media involving two arrested persons out of a group of four, who were suspected to have affiliations with the Real IRA. The group was busted when moving the operational headquarters to a warehouse in Great Britain, after increased law enforcement pressure by the Gardai, who in this case cooperated with the British police. In France a shipment of 9 million cigarettes was seized, and some time ago in Tallinstown, Ireland 3 million cigarettes were confiscated. The two suspects allegedly had connections with Liam Campbell, former second in command of the Real IRA and currently in prison.<sup>15</sup> Another 5.5 million cigarettes related to this case were confiscated half a year before by the Gardia in cooperation with the Dutch fiscal police. The Dutch involvement in this case indeed has been recorded, including the participation of at least some Irish and one British suspect (28 suspects where of Dutch nationality). However, as I will discuss later more extensively, in the Dutch files there is no indication whatsoever that either the Irish or the British suspect was related to any Irish terrorist group or that the profits made were redirected to such groups.

According to the Sunday Independent the IRA not merely smuggles cigarettes into the country, but also hijacks containers filled with cigarettes, thus forcing the victimised tobacco companies, such as Gallahers, to seek for alternative transport routes and means.<sup>16</sup> Senior intelligence analyst of the ATF Billingslea observed that “[i]n keeping with a current trend in terrorist financing, dissident Irish Republicans have joint forces with criminals in Britain to raise millions of dollars through cigarette trafficking and the sale of illegal fuel.”<sup>17</sup>

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<sup>14</sup> *IRA Smugglers 'Use Rest of UK Gangsters'*, 2005. Available online at: <http://news.bbc.co.uk/1/hi/uk/4349473.stm>. *IRA 'Has Bbuilt up Criminal Network'*, Deutsche Presse Agentur, 2005. Available online at: <http://www.smh.com.au/news/World/IRA-has-built-up-criminal-network/2005/03/15/1110649203730.html>.

<sup>15</sup> Brady, Tom, *Real IRA Cigarette Racket Smashed in Swoop*, in: Irish Independent, 6 December 2003.

<sup>16</sup> Cusack, Jim and Alan Murray, *Adams, Ferris and McGuinness 'on IRA Council'*, in: Sunday Independent, 14 March 2004.

<sup>17</sup> Billingslea, William, *Illicit Cigarette Trafficking and the Funding of Terrorism*, The Police Chief, (Volume 71), 2004, Available online at: [http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=print\\_display&article\\_id=226&issue\\_id=22004](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=print_display&article_id=226&issue_id=22004).

The ATF report referred to in the introduction stated that also other IRA factions were involved in cigarette smuggling, though no support for this claim is found in other (open) information sources.

#### IV. The Search for Evidence

Without any doubt the involvement of terrorism affiliated people in cigarette smuggling operations is very plausible and the claim that contraband cigarette profits are funnelled to organisations planning terrorist activities almost naturally follows from this conclusion. Nevertheless there is no abundance of evidence substantiating the claim that cigarette smuggling is a major money source for terrorists. The Charlotte case may count as just one illustration of hard evidence that a link exists, but this case in itself does not justify the claim that cigarette smuggling has become the main fund raising activity for terrorist groups. In 2004 immigration and customs director Michael Dougherty during the senate caucus on international narcotics control argues that *“In the realm of terrorist financing, it has proven difficult to link the profits from the sale of narcotics, counterfeit merchandise or contraband cigarettes directly to a terrorist organization, or that an unlicensed money broker was sending millions of dollars directly to a terrorist organization”*.<sup>18</sup>

On the other hand, the cigarette black market may very well, in Dougherty words, *“represent a system open to exploitation”*.<sup>19</sup> For the cigarette black market this openness stems from a variety of circumstances:

- it has a relatively low law enforcement priority;
- when caught and convicted the punishments are relatively lenient;
- hence the risk involved is generally conceived as low;
- nevertheless the profits are relatively high – one cigarette smuggling ring leader claimed to have made a net profit of over 9,000 British Pounds per week over a longer period of time;<sup>20</sup>
- in addition the cigarette black market has a relatively low threshold and, as a consequence, attracts a wide variety of crooks, from the die-hard drug trafficker seeking his fortune in a less violent market<sup>21</sup> to the elder person living from a social security allowance dealing from his home shed or car boot.<sup>22</sup>

Table 5 shows some figures relating to the consumption of legally obtained cigarettes in Europe in 2002. These figures are not very recent but may provide some indication of the magnitude of tobacco consumption worldwide.

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<sup>18</sup> Dougherty, Michael, *Transcript of the Testimony of Michael T. Dougherty before the Senate Caucus on International Narcotics Control of 4 March 2004*. Available online at: [http://www.ice.gov/doclib/pi/news/testimonies/controltest\\_030404.pdf](http://www.ice.gov/doclib/pi/news/testimonies/controltest_030404.pdf).

<sup>19</sup> Dougherty, *Transcript of the Testimony*.

<sup>20</sup> Hornsby, Rob and Dick Hobbs, *A Zone of Ambiguity: The Political Economy of Cigarette Bootlegging*, in: *British Journal of Criminology*, Oxford University Press, November 2006.

<sup>21</sup> Hobbs, Dick and Rob Hornsby, *A Zone of Ambiguity: The Political Economy of Cigarette Bootlegging*.

<sup>22</sup> Van Duyne, Petrus, *Organising Cigarette Smuggling and Policy Making, Ending up in Smoke*, in: *Crime, Law and Social Change* (Volume 39, Number 3), Springer Netherlands, April 2003, pp. 285-317.

Table 1. Production rates of tobacco products in 2002<sup>23</sup>

	<b>Production of cigarettes (million pieces)</b>	<b>Production of cigars (million pieces)</b>	<b>Production of pipe tobacco (tonnes)</b>	<b>Production of hand rolling tobacco (tonnes)</b>
<b>EU-15</b>	754 602	7 598	7 615	79 687
<b>BE/LU</b>	20 102	726	0	11 622
<b>DK</b>	12 436	339	4 464	0
<b>DE</b>	212 499	1 857	614	21 334
<b>EL</b>	40 049	0	0	12
<b>ES</b>	58 656	837	0	0
<b>FR</b>	39 400	584	659	3 041
<b>IE</b>	6 527	30	0	8 000
<b>IT</b>	37 335	119	36	0
<b>NL</b>	126 292	2 380	350	31 000
<b>AT</b>	36 748	30	0	0
<b>PT</b>	23 875	0	0	0
<b>FI</b>	4 169	:	0	121
<b>SE</b>	3 500	0	300	250
<b>UK</b>	133 014	696	1 193	4 306

*Source: CECCM, most recent figures provided by national manufacturers' associations as of December 2003.*

The actual consumption of cigarettes is much higher because of the black market, in which genuine but untaxed brand cigarettes are traded along counterfeit cigarettes. Recent anti-smoking activities, such as the ban on smoking in public buildings and the raise of excise, in many Western countries have caused a slight decrease in smoking in general, but also led to an increase of the market share of contraband cigarettes. Some people decided to quit smoking, others shifted from the expensive legal to the cheaper illegal cigarettes. As is currently the standard phrase: cigarette smugglers make millions of dollars in a billion dollar trade.

## **V. Cigarette Trafficking in the Netherlands: a Case File Analysis**

### **A. Basic Findings**

In February 2006 a case file analysis of cigarette smuggling cases was started as part of the research project 'Assessing Organised Crime' (AOC), which aimed at the development of a new approach in the assessment of organised crime in the European Union. The case file analysis

<sup>23</sup> Source: <http://epp.eurostat.ec.europa.eu/portal> (This website was last visited on 21 December 2006).

was carried out in four countries representing the ‘Northern trade belt’:<sup>24</sup> Germany, Belgium, the Netherlands and the United Kingdom. This case file analysis is not an independent research project, but serves as a pilot study to test the feasibility of the New European Common Approach for the assessment of organised crime (NECA), which was developed throughout the AOC research project. In this paper only the results of the Dutch research are taken into account.<sup>25</sup>

**Table 2. General data on cases**<sup>26</sup>

	<b>Absolute</b>	<b>Cases*</b>	<b>Mean</b>	<b>Median</b>
<b>Number of cases</b>	43	43	n/a	n/a
<b>Number of cigarettes</b>	355 mln	40	8.8 mln	2.96 mln
<b>Number of suspects</b>	261	43	6,07	3
<b>Fiscal damage</b>	€ 33,56 mln	36	€ 0,93 mln	€ 0,33 mln

**Table 3. Basic data on seizures 2000-2005**<sup>27</sup>

	<b>Absolute</b>	<b>Seizures*</b>	<b>Mean</b>	<b>Median</b>
<b>Number of seizures</b>	314	314	n/a	n/a
<b>Number of cigarettes</b>	880 mln	307	2,87 mln**	1,76 mln

\* records with blank fields are not included.      \*\* one case often involves multiple seizures.

A total number of 43 cases were examined by close reading of the police reports filed by a joint Intelligence Unit (*Kennisgroep Accijnsfraude*) of the Netherlands Customs (*Douane*) and the Dutch Fiscal Police (*FIOD-ECD*) which both resort under the Inland Revenue Service (*Belastingdienst*). In addition, electronic files were obtained containing data on all seizures related to tobacco-excise evasion throughout the period from January 2000 until December 2005. Supplementary to the file analysis interviews were held with law enforcement practitioners, data analysts, a cigarette falsification expert of the Netherlands Customs, the head of the Public Prosecution Unit dealing with excise fraud and a security manager of a cigarette production facility of a major tobacco producer.

<sup>24</sup> Van Duyne, Petrus, *Organising Cigarette Smuggling and Policy Making, Ending up in Smoke*.

<sup>25</sup> See related publications online at: <http://www.assessingorganisedcrime.net>. See more in particular: Dijck, Maarten van and Petrus C. van Duyne, *Trafficking Cigarettes in the European Union*. Report No. 31 of the research project ‘Assessing Organised Crime: Testing the Feasibility of a Common European Approach in a Case Study of the Cigarette Black Market in the EU’, 2007. Available online at: <http://www.assessingorganisedcrime.net>.

<sup>26</sup> Source: case file analysis.

<sup>27</sup> Source: case file analysis.

The 43 cases contained information on 225 suspects ranging in age from 18 to 79, with an average age of almost 40 years old and a median age of almost 38. Of the 216 suspects of whom the gender is recorded 201 (approximately 93%) is male and only 15 (7%) are female. In most cases the females are the life-partner of one of the male main suspects. In 40 cases approximately 355 million cigarettes were either confiscated or known to be smuggled, ranging from a 10,000 cigarettes in one case to almost 80 million cigarettes in another case (3 cases did not contain any information on cigarette amounts). The average amount of cigarettes per case is approximately 8,8 million.

Apart from the close scrutiny of the cases, a second sample of data is obtained, concerning contraband cigarette seizures over the past 6 year (2000-2005). In 307 seizures more than 880 million cigarettes were seized.

**Table 4. Cigarettes and seizures per year**<sup>28</sup>

<b>Year</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>Total</b>
Number of seizures	78	40	29	45	71	44	<b>307</b>
Total cigarettes	331,5 M	122,3 M	69,1 M	72,8 M	185,4 M	99,4 M	<b>880,5 M</b>
Average cigs. seized	4,25 M	3,06 M	2,38 M	1,62 M	2,61 M	2,26 M	<b>2,87 M</b>
Median	2,20 M	2,37 M	2,01 M	0,67 M	1,77 M	0,37 M	<b>1,82 M</b>
Highest extreme	21,52 M	8,03 M	8,00 M	7,31 M	16,88 M	16,00 M	<b>21,52 M</b>
Lowest extreme	5600	800	132.000	9800	17.500	15.920	<b>800</b>

The overall volume of cigarette smuggling can be expressed in various ways. The (estimated) amount of smuggled cigarettes is one way to quantify this volume. Another way is to determine the fiscal damage. The size of the cigarette black market as such can not be determined or only very roughly estimated. What can be determined is the average fiscal damage per case. This is one of the counting units used by the Netherlands Customs and, when it comes to a prosecution, by the Public Prosecutor in front of the Judge. The fiscal damage consists of the unpaid duties and the evaded other taxes, of which the most relevant is evaded VAT. These taxes are determined per case on the basis of the amount of trafficked cigarettes which can be proved beyond reasonable doubt.

<sup>28</sup> Source: Netherlands Customs cigarette seizures sample.

**Table 5. Fiscal damage estimated in a case, intervals<sup>29</sup>**

Fiscal Damage in EUR	No. of Cases (N)	No. of Cases %
5 000 000 - 10 000 000	1	3
1 000 000 - 5 000 000	9	24
500 000 - 1 000 000	4	11
100 000 - 500 000	13	35
10 000 - 100 000	10	27
<b>Total</b>	<b>37</b>	<b>100</b>
Total records with a value	37	
No value	6	

**Table 6. Fiscal damage estimated in a case (amounts in EUR)<sup>30</sup>**

Total Number of Cases	<b>N = 37</b>
Total of Fiscal Damage	<b>33.574.758</b>
<b>Mean</b>	<b>907.425</b>
Median	<b>281.602</b>
Highest Extreme Value (freq = 1)	<b>772.725.000</b>
Lowest Extreme Value (freq = 1)	<b>10.207</b>

Table 5 and 6 show that in 37 cases the total fiscal damage was calculated at more than 33.5 million Euro. For 6 cases the file did not contain any fiscal damage calculation. The 37 cases were spread over 8 years (starting of the investigation), but do not represent the entire set of all cases investigated in this period. There is no information available to estimate the proportion of these 37 cases to all investigated cases; the 37 cases probably constitute less than 33% of the whole. The Excise Fraud Knowledge Unit has estimated the number of excise cases (of which tobacco excise evasion constitutes more than 95%) at 523 over a period of 5 year. Between 40 and 50 cases are prosecuted each year. The average fiscal damage per case is somewhat more than 900.000 Euro. On the basis of an average of (prosecuted) 45 cases per annum the total annual fiscal damage amount to 40.5 million Euros.<sup>31</sup>

In the Netherlands most cigarette investigations concern the shipments of large volumes of cigarettes by freight transport, in which cigarettes are trafficked in bulk shipments ranging

<sup>29</sup> Source: case file analysis.

<sup>30</sup> Source: case file analysis.

<sup>31</sup> Source: Knowledge Group on Excise, EU and Environmental Fraud (Kennisgroep Fraude Accijns, EU-middelen en Milieu)

between 1 and 20 million sticks (table 7). The cigarettes are smuggled by means of a great variety of fraudulent constructions ranging from the hiding of the cigarettes in hidden spaces in the vehicle or vessel, to constructed paper trails to cover the true identity of the cargo (table 8).

**Table 7. Cigarette trafficking operation type**<sup>32</sup>

<b>Smuggling operation type</b>	<b>N</b>	<b>%</b>
Large-scale shipments from abroad	31	70
Bootlegging (by car / van / truck)	3	7
Bootlegging by internet trade	1	2
Bootlegging by import company	2	5
Domestic cargo theft	2	5
Distribution only (mid- and upper level)	2	5
Distribution only (retail)	2	5
Domestic distribution by internet trade	1	2
<b>Total</b>	<b>44</b>	<b>100</b>
Total records with a value	42	
No value	1	

<sup>32</sup> Source: case file analysis.



**Table 8. Modus Operandi**<sup>33</sup>

<b>Modus Operandi</b>	<b>N</b>	<b>%</b>
Appointment by telephone	1	2
Meeting at (semi)public location	1	2
Bribery	1	2
Deception	5	11
Decoy measures	4	9
Document fraud	1	2
Hidden rooms in cover load	1	2
Hiding in hidden rooms	9	19
Smuggled in person cars without any deck load	1	2
Smuggling by hiding goods in trailer	1	2
Use of cover load (collateral)	13	28
Use of cover load (non-collateral)	5	11
Use of cover load (only 'paper' cover)	3	6
Use of cover packaging	1	2
<b>Total identified modus operandi</b>	<b>47</b>	<b>100</b>
Total records wit a value	26	
No value	17	

Despite the relative large size of cigarettes (e.g. when compared to other smuggling goods, such as various drugs) the contraband is smuggled primarily by hiding the cigarettes, either in hidden compartments of the transport vehicle (truck, car) or in hidden compartments within the cargo (e.g. in the open space between the beams of hollow double doors). Another frequently used method is that the cigarettes are not hidden in compartments or products, but are put into blank boxes and stashed in a container or trailer. The front layers or rows of the boxes on a pallet is filled with the genuine products or these boxes are placed on the front two layers of pallets; the pallets in the back contain cigarettes only. On the transport documentation it appears as if the entire load consists of the decoy products in the front. In some cases the cargo represents a real trading value, and sometimes they are for customers who have no clue that their delivery serves as a decoy to hide cigarettes. In the case of prepared products, such as in the case of a pallet construction with hollow beams, the products merely serve as a decoy and are used multiple times by the traffickers and never resold. In some cases the traffickers had some trouble to get rid of the cargo load: in one case this load consisted of an amount of pear which began to rotten.

<sup>33</sup> Source: case file analysis.

**B. Evidence of the Financing of Terrorism?**

The 43 cases contained no explicit reference to any link between cigarette smuggling/counterfeiting and the financing of terrorism. During my stay at the office of the Fiscal Police at least one ongoing international case allegedly involved the financing of terrorism. Whereas the criminal investigation was ‘ongoing’ and no suspects had yet been arrested no further information was provided.

The question to be answered first is how to find the leads indicating the existence of such links. In the absence of direct evidence, we must resort to more circumstantial evidence. Examining the public media reports describing the Charlotte case and the Real IRA’s involvement in cigarette smuggling, a relationship can be observed between the nationality or ethnicity of the suspects involved and the country from which the terrorist organisation originates or where it has its basis. In the Charlotte case the main suspect who was convicted for the material support of Hezbollah originated from Lebanon, which is also one of the countries from which Hezbollah organises its activities. In the case of the Real IRA the suspects were of Irish nationality and birth. Following this line, closer scrutiny of the suspect data on nationality and country of birth may provide us some information about the link we are looking for.

**Table 9. Nationality of the offenders (nominal scaling)<sup>34</sup>**

Nationality	N	%
Dutch	185	75
Polish	13	5
British / Irish	9	4
German	3	1
Belgian	2	1
Middle Eastern	21	9
Central or East European	6	2
South European	3	1
Baltic	2	1
Scandinavian	1	0
Asian	1	0
[ without nationality ]	1	0
<b>Total</b>	<b>247</b>	<b>100</b>
Total records with a value	237	
No value	0	

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<sup>34</sup> Source: case file analysis.

Table 9 shows the nationality of the suspects. 78% of the 237 suspects have the Dutch nationality. This is not surprising, not only because the Netherlands is the country of investigation, but also because cigarette smuggling, being a form of excise fraud, is primarily counteracted by the Netherlands Customs and the Fiscal Police. One of the implications is, that cases are not investigated to dismantle and disrupt cross-border smuggling networks, but to establish the fiscal damage and to find one or more suspects from whom this damage can be recovered. Pragmatic considerations are predominant in the allocation of means and therefore less priority is given to the investigation of foreign suspect residing abroad.

The other nationalities occurring most frequently are Polish (13) and British (9). The runner-up position for the Polish nationality can be explained from the fact that Poland is an important country of origin and transit.

At face value table 9 shows some 'promising' results: 21 suspects (9%) have the nationality of a country in the Middle East, a region (as in the Charlotte Case) easily associated with various form of terrorism and paramilitary actions. As stated 9 suspects are of British or Irish nationality. Table 9 shows what nationalities are involved. In absence of additional information, the nationality of the suspects provides no clue at all for the possible involvement in terrorist (financing) activities. Other, equally or more plausible explanations can be given for the occurrence of these nationalities in the Dutch sample of suspects.

**Table 10. Nationality of the offenders for three regions of 'recent' terrorist activity.**<sup>3536</sup>

Nationality	Middle Eastern	British / Irish	South Europe
Algerian	1		
British		6	
Cyprus			1
Greek			1
Iraqi	1		
Irish		3	
Israeli	6		
Lebanese	2		
Maltezer			1
Moroccan	5		
Palestine	1		
Tunesian	1		
Turkish	4		
<b>Total</b>	<b>21</b>	<b>9</b>	<b>3</b>

The most obvious explanation is that the sample of suspects reflects the cigarette smuggling geography. This would explain, for example, the relative high frequency of British and Irish suspects, since both these countries do have the highest excise rates and therefore provide for maximum profit opportunities (see table 11). It is, therefore, no surprise that the United Kingdom and Ireland frequently show up as country of destination and that many of the cigarettes smuggled (and seized) are brands which have a large market in these countries.

<sup>35</sup> Source: case file analysis.

<sup>36</sup> This, evidently, is a rather arbitrary criterion: why include Spain and Greece and not, for example, the Netherlands. The murder on a Dutch film maker in 2005 is qualified by many as a terrorist assault and the Netherlands does host an alleged terrorist organization (named the so-called Hofstad group), members of which recently have been convicted for the preparation of terrorist attacks. The Netherlands, however, is excluded here from the list of 'terrorism regions' for two reasons: 1) The Dutch nationality of a suspect is not a distinctive category in a sample population of a research conducted in the Netherlands and 2) though being a terrorist organization, the Hofstad group did not actually commit any terrorist assault and, therefore, cannot be compared to the IRA factions, Hezbollah, ETA and the perpetrators of the bombings of the Spanish subway.

**Table 11. Excise rate per country per 100 cigarettes in July 2005<sup>37</sup>**

<b>country</b>	<b>excise rate</b>	<b>country</b>	<b>excise rate</b>
1 Latvia	13,48	14 Cyprus	84,86
2 Lithuania	20,49	15 Austria	88,05
3 Estonia	32,54	16 Belgium	102,58
4 Poland	32,96	17 Netherlands	105,04
5 Czech Republic	35,68	18 Sweden	105,73
6 Slovakia	40,17	19 Malta	109,77
7 Hungary	45,57	20 Denmark	113,90
8 Slovenia	53,96	21 Finland	115,13
9 Spain	63,69	22 Germany	127,85
10 Luxembourg	72,30	23 France	160,00
11 Portugal	73,93	24 Republic of Ireland	190,64
12 Greece	77,63	25 United Kingdom	227,47
13 Italy	81,90		

Another explanation can be found in the composition of the Dutch population. Since the 1970s the Dutch population is composed of one single majority of indigenous people (to some extent comparable with the WASPs in the United States) and several major minority groups consisting respectively of Turkish immigrants, Moroccan immigrants, people from the Netherlands Antilles (part of the Kingdom) and from Surinam (former dominion of the Netherlands) and Chinese immigrants (since 1900). Over the past decades the wealth of the Netherlands has attracted economic and other refugees from all over the world, making the Dutch population a melting pot of many cultures and nationalities. The mixed populations of the suspect sample may well reflect the composition of the Dutch population as a whole. To some extent this can be illustrated by the occurrence of double nationalities. Seven suspects who have a 'Middle-eastern' nationality appear to have the Dutch nationality as well (table 15). Apart from this, many of the 'foreign' suspects appear to have residence in the Netherlands.

<sup>37</sup> Source: Netherlands Customs.

**Table 12. Double nationalities of offenders<sup>38</sup>**

<b>Double nationality</b>	<b>N</b>
Dutch, Turkish	3
Dutch, Polish	2
Dutch, Algerian	1
Dutch, Israeli	1
Dutch, Moroccan	1
Dutch, Tunisian	1
Belgian, Russian	1
British, Maltezer	1
<b>Total</b>	<b>11</b>

**Table 13. concentration of some suspects/offenders with ‘Middle-Eastern’ nationality<sup>39</sup>**

<b>Nationality\Cases</b>	<b>Case I</b>	<b>Case II</b>	<b>Case III</b>	<b>Case IV</b>	<b>Case V</b>	<b>Case VI</b>	<b>Case VII</b>	<b>Totals</b>
Algerian						1		1
Iraqi		1						1
Israeli	1			4			1	6
Lebanese		2						2
Moroccan		1	3				1	5
Palestine		1						1
Tunesian						1		1
Turkish		2			2			4
<b>Total</b>	<b>1</b>	<b>7</b>	<b>3</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>21</b>

The highest number of ‘Middle Eastern’ suspects occur in Case II (see table 14). In many respects this case is representative for Netherlands Customs investigation into cigarette trafficking. A container with contraband cigarettes is detected and serves as the starting point of an investigation in which the container is followed and suspects are apprehended while repacking the cigarettes from the container into other vehicles for further transport. The case description below provides an inconclusive picture of only one part of the cigarette smuggling chain. The customs file does not contain any information with regard to the connection of the main suspects with the Netherlands. Are they immigrants or second generation immigrants? How are they affiliated to one another? Are they just friends or do they share a common cause, such as the people surrounding the American/Lebanese Hammoud in the Charlotte case? Do

<sup>38</sup> Source: case file analysis.

<sup>39</sup> Source: case file analysis.

they merely live in the Netherlands for the sake of making (illegal) money? All we know from the file is that the main suspects had found a source of income from the contraband cigarette trade, that they had plans to continue this trade, but that they had not yet established a smooth running operation. About the suppliers and buyers even less is known.

An amount of 4.400.000 cigarettes have been detected in a container in the Rotterdam Harbour. The cigarettes were hidden behind a cover load of wooden coffee tables. Assumable, the wood would prevent the cigarettes being scanned. Irrespective to whether this is fact or myth, a tobacco sniffer dog detected the cigarettes during a routine check. The Rotterdam Customs decided not to seize the cigarettes immediately, but to observe the container and to follow whatever lead might present itself. The container was picked up by a number of suspects and brought to a The Hague, where the cigarettes were unloaded. During the unloading the first suspects were apprehended and the cigarettes seized. The investigation showed a number of interesting details.

It appeared that the main suspects ran an import- export company. Under the cover of importing (and exporting) legitimate goods, such as the wooden tables, cigarettes were smuggled into the Netherlands, repacked in smaller loads, either to be further distributed in the Netherlands or to be exported to the United Kingdom.

The use of a legal entity in the form of an import-export company is quite common among cigarette traffickers. In this particular case the main suspect not only took over an existing (shell) firm, but also took over the identity of the former owner, who – after some further investigation- appeared to have migrated back to his home country Iraq. The firm had operated (and was still registered) both as a Labour Agency and as a furniture trading company.

Another suspect was apparently involved either as supplier or as spokesman for the actual suppliers, possibly two Turkish Cypriots, who never came in clear sight of the customs. Another suspect, a Greek, acted as his aide, taking orders to meet the buyers (among whom the main suspect) and to assist in all kinds of affairs. According to some suspects this hierarchical relationship was at least partially related to previous and ongoing business relations concerning some real estate deals and the acquisition of a RoRo-boat (roll-on-roll-off-boat). If money requests and payments are considered key factors in determining the actual hierarchical and cooperation structures within a group of offenders, then this case proves a hard nut to crack. Although the Greek suspect executes the tasks requested for by the spokesman, it is this spokesman who repeatedly requested money from the Greek, presumably to cover for the costs made by the main suspects, who have been identified as the buyers. According to wire tap accounts the money, ultimately, should be brought up by the Turkish Cypriot principals, for whom the Greek apparently works as a contact person. In his testimonies the spokesman denies any command over the Greek's activities, claiming the opposite, namely that he is a subordinate of the Greek who acts on behalf of the actual principals. The spokesman depicts his role as that of a commissioner intermediating between the main suspect as buyer and the Greek suspect as supplier.

The main suspect does not entirely trust his Greek partner in smuggling operations nor does he trust the mysterious suppliers in the background. In (tapped) telephone conversations he frequently expresses the fears that the suppliers might use the cigarette shipments to traffic

(other) forbidden substances, such as drugs, something which the main suspect does not want to get involved in. (Contraband cigarettes, covered by licit goods serving, in turn, as a cover for drugs would make an interesting case indeed!).

The main aide of this suspect is caught red-handed during the raid in the storehouse, while he was unloading the cigarettes with two or three fellow suspects. The investigation revealed that this aide was the handyman of the main suspect, helping him with all kinds of practical issues, among which were some telephone conversations (making use of the stolen identity) because of his better knowledge of the Dutch language.

Later, after being caught, the main suspect will confine to the customs investigators that he was unaware that the cigarettes were imported illegally and that to his opinion all taxes and duties had been paid. Not a very credible statement in the light of the hiding of the cigarettes in wooden tables and of use of a stolen identity. However, it might be the case that this main suspect did not even know the cigarettes were hidden in tables, a to him unknown fact which might not only exonerate him to some extent, but also degrades him to a much 'lesser' suspect in terms of criminal cooperation and hierarchy. He was treated by the customs as the key suspect, nevertheless. In the customs hearing the main suspect repeatedly expressed his fears for the spokesman suspect, claiming that he might be a member of the mafia, an allegation which has been firmly refuted by the concerned person. How much money the smugglers operating in the Netherlands made and what they did do with it (funding terrorism...?) is unknown... as goes for many of the investigated cases.

**Table 14. Country of manufacture<sup>40</sup>**

<b>Country</b>	<b>N</b>	<b>%</b>
China	8	24
Netherlands	6	18
United Arab Emirates	6	18
United Kingdom	5	15
Germany	4	12
Belgium	1	3
Latvia	2	6
Eastern Europe, Lithuania, Luxembourg, Malaysia, Netherlands Antilles, Nigeria, Poland, Russia, Vietnam	1	3
<b>Total</b>	<b>40</b>	<b>100</b>
Total records with a value	38	
No value	274	

<sup>40</sup> Source: Netherlands Customs cigarette seizures sample.



**Table 15. Country of origin<sup>41</sup>**

<b>Country</b>	<b>N</b>	<b>%</b>
China	31	18
United Arab Emirates	18	10
Lithuania	16	9
Malaysia	13	8
Belgium	12	7
Germany	10	6
Rumania	9	5
Latvia	8	5
Poland	6	3
Russia	6	3
Austria	4	2
Hungary	4	2
Netherlands	4	2
Egypt	3	2
Spain	3	2
United Kingdom	3	2
Bulgaria	2	1
Greece	2	1
Luxembourg	2	11
Other ( Bosnia and Herzegovina, Czech Republic, Indonesia, Italy, Jordan, Korea, Macedonia, Morocco, Norway, Serbia, Slovenia, South Africa, Sri Lanka, Sweden, Thailand, Turkey, United States, Vietnam, Zimbabwe)	1	18
<b>Total</b>	<b>173</b>	<b>100</b>
Total records with a value	171	
No value	141	

<sup>41</sup> Source: Netherlands Customs cigarette seizures sample.

**Table 16. Source, transit and destination countries per seizure<sup>42</sup>**

<b>Country</b>	<b>N</b>	<b>%</b>
Netherlands	188	34
United Kingdom	77	14
Germany	50	9
Belgium	46	8
China	32	6
United Arab Emirates	26	5
Ireland	18	3
Lithuania	14	3
Poland	10	2
Rumania	8	1
Malaysia	8	1
Spain	7	1
Hungary	7	1
Latvia	7	1
Russia	6	1
Austria	6	1
Turkey	4	1
Egypt, Jordania, Luxembourg, Portugal	3	2
Benin, Bulgaria, Czech Republic, France, Greece, Italy, Zambia	2	3
Antilles, Cyprus, Indonesia, Japan, Korea, Lagos, Morocco, North Ireland, Norway, South Africa, Sri Lanka, Sweden, Thailand, United States, Venezuela, Vietnam, Zimbabwe	1	3
<b>Total</b>	<b>557</b>	<b>100</b>
Total records with a value	187	
No value	125	

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<sup>42</sup> Source: Netherlands Customs Cigarette seizures sample.

**Table 17. Country of destination**<sup>43</sup>

<b>Country</b>	<b>N</b>	<b>%</b>
United Kingdom	104	44
Netherlands	75	32
Ireland	20	9
Belgium	13	5
Germany	7	3
Portugal	3	1
Austria	2	1
Czech Republic	2	1
Hungary	2	1
Spain	2	1
Taiwan	2	1
Turkey	2	1
France	1	0
Poland	1	0
Switzerland	1	0
<b>Totals</b>	<b>236</b>	<b>100</b>
Total records with a value	234	
No value	78	

Cigarettes from Eastern Europe are primarily smuggled over road in trucks with trailers and it is not uncommon that the truck driver is busted either alone *en route* or with the other suspects when unloading the cigarettes in the Netherlands. The high ranking of the British nationality can be explained by the fact that the United Kingdom is the number one destination country for cigarettes smuggled through the Netherlands. This, in turn, can be explained by the excessively high excise rates for cigarettes, which boost both the demand for the much cheaper illegal cigarettes and works as an incentive for suppliers as well because of the larger profit margin.

In the case mentioned above, involving both Irish and Dutch suspects the cigarette smuggling was a well-organised operation and involved more than 30 suspects. The cigarettes were transported from Russia and Lithuania through Poland and Germany to the Netherlands and Belgium. The cover goods, wooden beams, were reported to the Belgium Customs, whereas the cigarettes in shipments of multiple millions were shipped to Ireland. During the transport over land the smugglers took proper precautions. The cigarettes and wooden beams were transported in convoys of multiple trucks. The first and last truck contained only the beams and no cigarettes keeping up the appearance in case of a superficial routine check by the customs. The

<sup>43</sup> Source: Netherlands Customs cigarette seizures sample.

cigarettes were dropped off in a number of warehouses in the Netherlands, and the trucks were (re)loaded with additional wooden beams. With these shipments, the trucks would drive to a customs office in Belgium to clear the cargo. The wood served well as a cover load as it was recycled for an undetermined number of transports, making use of the fact that wood does not have an expiration date. Though many links with Ireland showed up in the case, this only reaffirmed the customs' knowledge that Ireland is a main destination for these contraband cigarettes. In the case file not a single clue is found of any involvement of one of the (two) Irish suspects with paramilitary groups active in Ireland and the United Kingdom. But this might only prove the inconclusiveness of the case files, whereas it might be the cases that these suspects are known to other enforcement agencies without this being mentioned in the cigarette case report at all.

The third group of most frequent nationalities, consisting of the Moroccan, the Turkish and the Israeli nationalities, can be explained by the fact that the Turkish and Moroccan minorities have been two of the largest minorities in the Netherlands for decades. Turkish and Moroccan smugglers are not seldom second or third generation immigrants. This is also shown in table 5 indicating the occurrence of a double nationality. However, this explanation leaves the relative high frequency of Israeli's unaccounted for. Table 6 shows the country of birth of the suspects. The figures in this table are more or less in synchrony with the figures concerning nationality. The top ranking consists of the Netherlands (113), Poland (10), Turkey (7) Morocco and United Kingdom (5), Belgium and Russia (4).

## **VI. Evidence?**

The mentioned figures provide no indication of involvement of terrorist financiers in contraband cigarette smuggling, nor does it prove or support the opposite claim, that such involvement does not exist. On the basis of the geographic base location of known terrorist groups and organisations - such as Hezbollah in Gaza, the Middle East, Al Qaeda in Afghanistan and the Middle East, the IRA factions in North Ireland and the ETA in Spain - no conclusions can be drawn in this respect, since the data only covers involvement of suspects into cigarette trafficking activities, not in terrorist activities nor in terrorism financing activities. For the higher frequencies in the statistics concerning suspect nationality, country of origin of the cigarettes and destination country other explanations can be given which neither rule out nor reiterate the existence of a link between cigarette smuggling and the financing of terrorism. This does not come as a surprise; after all, the information included in cigarette case files is likely to have only bearing on contraband cigarette market specifics. Hence, geographical clues contained in the files tell us more about the routes along which the cigarettes are trafficked and not so much about the underlying motives of the offenders to raise the money with these activities or the flow of money once it has been cashed. Despite the developing practice, in which the importance of financial investigation as a well integrated part of criminal investigation is reiterated over and over again, the customs do not extend their financial investigation beyond the estimation of the fiscal damage.

A closer scrutiny of the Dutch files does not yield more promising results than the statistics presented above. It has appeared that some of the arrested suspects prove more talented in concealing the exact nature and extent of their illegal activities than others, and that some

suspects seemed quite willing to admit their role in the cigarette scam. But none of the suspects did admit any involvement in or showed interest for the activities of paramilitary organisations. In fact, many of the suspects appear to be 'normal' citizens – not the bad hoodlums – who distinguish themselves from ordinary law abiding citizens by 'slightly' crossing the borderline between legal and illegal commercial trade. However, to the extent this can be concluded from the case files, the Netherlands Customs and Fiscal Police do not show much awareness that seeking for information about a possible link with terrorism financing, might have been relevant in any of the investigated cases.

Although the ATF report has been circulated among Dutch law enforcement units there seems to be no sense of urgency in this regard. While the ATF and other, mainly U.S. organisations ring the alarm bell, the Dutch and perhaps European reaction is restrained, at least when it concerns the law enforcement units traditionally tasked to act against excise evasion and/or cigarette smuggling. Cigarette smuggling itself is still seen as one of the many forms of economic crime and not immediately associated with the financing of terrorism. Interviews with a prosecutor and law enforcement officers teach us that these officials, as far as the Netherlands is concerned, actually do not really believe that there are terrorists or terrorism beneficiaries among the suspects they deal with. Reading the minutes of the tapped telephone conversations and the suspect hearing, indeed one does not get the impression of any involvement in the financing of terrorism. But then again, one cannot really tell. All it needs is one member of Hezbollah of Al Qaeda to transfer funds to cells in other countries and this member does not even have to inform his fellow smugglers about the true nature of his involvement in the scam. More or less the same goes for the members of the IRA factions: they do not need to reveal their affiliations in order to participate in the criminal chain of contraband cigarette sale and resale. The Dutch investigation shows that in many facets cigarette smuggling resembles ordinary cross-border trade. Trade partners in the chain often know little more of each other than their relation of supply and demand require: their relationship is based on commercial reciprocity. Perhaps the awareness of cigarette smuggling being a major source of income is more profound within the secret services and intelligence agencies counteracting terrorism and the financing thereof. Our Dutch investigation focused on contraband cigarette trafficking and did not involve any scrutiny of any secret service activities in this regard.

## **VII. Policy Decision**

If the possibility that cigarette smuggling has become one of the major sources of income for terrorist groups cannot be ruled out, there is a policy decision to be made. This policy decision has raised a controversy between two wings, respectively labelled as 'the asset freezers' and 'the trail followers'. Whereas the asset freezers argue for an almost immediate intervention in order to hinder criminal activity where possible, the trail followers argue for a more strategic approach in which the mid-term objective of gathering intelligence prevails above immediate action. A similar decision moment also occurs in the context of anti-cigarette smuggling law enforcement. When a cargo of contraband cigarettes is discovered, e.g. by use of a scan in the Port of Rotterdam, should the container be opened and the contraband be confiscated, or should a bugging device and an observation unit be put in place in order to track down the suspects and their organisation. At the level of anti-excise fraud enforcement this decision is currently made on the basis of pragmatic reasons: the means that are to be allocated to a case is determined on

the basis of the prospects of the case. However, at current this evaluation merely includes the 'usual' arguments central to customs law enforcement. Additional arguments, external to the current scope of work of the customs are not put into the balance.

The final decision whether or not to investigate and with what means, however, may turn out differently when cigarette trafficking cases are not only investigated for the sake of counteracting on excise fraud, but also for the sake of combating terrorism. Given the high priority of anti-terrorism policy on the political and law enforcement agenda, the stakes are much higher when cigarette smuggling cases are viewed as potentially having bearing on the financing of terrorism.

So, *if* one takes the warnings in the ATF report – about the involvement in cigarette smuggling of terrorists or their financiers – seriously, *then* it would seem wise for the Dutch government – and other governments as well – to allocate more means to the investigation of cigarette smuggling. And if that is the case, then one has to decide if one wants to preserve cigarette smuggling investigation as a source of leads which might lead to the detection and dismantling of terrorist cells. The alternative would be a 'quick blow' caused by an immediate intervention, which usually includes (nothing more than) the seizure of a single shipment of cigarettes plus one or two suspects. If the latter becomes standard policy, it may be expected that as soon as the new policy shows result, the financiers of terrorism will quickly find new unknown sources of income and the investigative leads will be lost. In the former case however, one must be careful that the financiers of terrorism will remain unaware of the increased attention of law enforcement agencies now focussing on cigarette smuggling as an important source of income for terrorist financiers.

But then again, our investigation was merely an investigation into files kept by the Netherlands Customs. Who knows what the Dutch and other secret services have been working on recently. Perhaps they already keep a keen eye on cigarette smuggling cases. And if the secret services truly deserve their name, then this will remain a well kept secret, at least for the near future.

# The Anatomy of Ideology: An Analysis of the Structure of Ideology and the Mobilisation of Terrorists

*Andrej Zwitter*<sup>1</sup>

*Terrorism exists by the virtue of the ideologies adhered to by its perpetrators. Nevertheless, this factor, ideology, is still under-researched and therefore an underestimated element of the study of (and fight against) terrorism. This essay attempts to contribute to this field of research by analysing terrorism as an ideology driven phenomenon on the example of the terrorist organisation Al Qaeda from a sociological and philosophical perspective. A cross-cut through crowd mobilization and recruitment of members of terrorist organisations will draw the line to the role of ideology herein.*

## **I. Introduction**

Today's world seems to face a new threat or perhaps an old threat with a new intensity: a permanent danger of sudden terrorist attacks, which take lives at random. Often this threat is called the 'new terrorism'. It is true, many aspects are new: the dimension of 9/11, the international cooperation of terrorist groups<sup>2</sup> and the usage of chemical and biological weapons<sup>3</sup>, and the fear that they could use nuclear weapons. And though this development heavily influenced the modus operandi of terrorist groups the driving motive remained the same. The groups are ideology driven. 'Ideology' is a term that seems anachronistic to the reader. Terry Eagleton wrote that he is surprised about the paradox that people think the term

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<sup>2</sup> Lesser, Ian O. et al., *Countering the New Terrorism*, RAND Corporation, Santa Monica, 1999, at pp. 39-83. Available online at [http://www.rand.org/pubs/monograph\\_reports/MR989/MR989\\_chap3.pdf](http://www.rand.org/pubs/monograph_reports/MR989/MR989_chap3.pdf) (All websites used in this essay were last checked on 10 May 2007).

<sup>3</sup> Tophoven, Rolf et al., *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*, Eichborn Verlag, Frankfurt am Main, 2006, at pp. 244 and 278-287.

‘ideology’ has become obsolete while the world is confronted with Islamic fundamentalism, Neo-Stalinism, Christian Evangelism and many other ideologies.<sup>4</sup>

Ideology still plays a crucial role in the world. Many terrorist organisations try to change the world according to their conception, according to their ideology. Above all *Al Qaeda* is operating in this manner and supports various groups like the Taliban who share the same Jihadi<sup>5</sup> ideology. *Al Qaeda* has already become an umbrella organisation providing assistance, knowledge and weapons to everybody who truly wants to join the worldwide Jihad.<sup>6</sup> According to their perception the fight against the Soviet occupation of Afghanistan beginning in 1979 was successful after ten years of Jihad.<sup>7</sup>

Nevertheless, for any reason the topic ideology is overlooked and therefore underestimated and under-researched. This article attempts to deepen the insight into the structure and the functioning of ideology in regard to mobilisation of followers and supporters of terrorist organisations.

### **A. Methodological Remarks**

The methodological path used to answer the posed questions will follow a social-philosophical approach and political theoretical approach of Hannah Arendt. The social-philosophical method will be rooted in the work of Elias Canetti.

The analysis will be divided into three sections. One will elaborate a theoretical structure of ideology. The next section will compare the theories with reality (an actual example), to test whether the theory describes reality properly. The example for ideology will be the Jihadi ideology of the terrorist group *Al Qaeda*. If the comparison of this ideological structure results in a match with the factual ideology (this means if the Jihadi ideology is subsumable), this will

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<sup>4</sup> Eagleton, Terry, *Ideologie: Eine Einführung*, J.B. Metzler Verlag, Stuttgart and Weimar, 2000, at p. 1.

<sup>5</sup> In this article the term "Jihadi" is used analogue to the *Militant Ideology Atlas* for the ideologically radicalized idea of Jihad for the following reasons: “First, it has wide currency in the Western counterterrorism community. Second, the proposed alternatives are either too imprecise or polemically charged to be analytically useful. Third, "Jihadism" indicates the centrality of religious warfare in the militant Salafi worldview. Fourth, using the label makes Jihadis accountable for giving the term a bad name and for not living up to the high standard of conduct associated with jihad. Finally, the term is used in Arab media and was coined by a devout Saudi Muslim who is hostile to the ideology, so it is not a Western neologism.”

McCants, William (ed), *The Militant Ideology Atlas: Executive Report*, Combating Terrorism Centre at West Point, New York, 2006, at p. 5. Available online at: <http://www.ctc.usma.edu/atlas/Atlas-ExecutiveReport.pdf>. (See Chapter: *Short-Analysis of the Ideology of Al Qaeda*.)

<sup>6</sup> The umbrella organisation’s name is “World Islamic Front for Jihad Against Jews and Crusaders”. Tophoven, Rolf et al., *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*, at p. 166.

<sup>7</sup> “The sons of the land of the two Holy Places had come out to fight against the Russian in Afghanistan [...] and -by the Permission of Allah- they have been made victorious over your partner, the Russians.” Fatwa signed by bin Laden, Osama, “Declaration of War against the Americans Occupying the Land of the Two Holy Places” (translation by PBS), originally published in the newspaper *Al Quds Al Arabi* in August 1996. Available online at: [http://www.pbs.org/newshour/terrorism/international/fatwa\\_1996.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1996.html).



prove functioning of this structure. The last part will explore the mechanisms of ideology and mobilisation.

In this article the term ‘terrorism’ is defined as an act of political violence where the actor is an organization with an ideological objective and the readiness to use violence to achieve it. Violence is their defining characteristic and differentiates them from political activists.<sup>8</sup>

## II. Terrorism in the Framework of Ideology

Meanwhile, it has become a common basis that a successful remedy against terrorism has to preventively address the root causes and the ideology of terrorism. “*The September 2001 attacks in the United States served as a watershed in global awareness of terrorist activities. But from the perspective of five years later, a tragic consequence is that we seem to have been so focused on retribution and addressing the problem through the use of force that we have paid little attention to the obvious need of dealing with the root causes that fuel extremist ideologies.*”<sup>9</sup> Though both elements are important, this essay will only roughly outline the relevance of root causes of terrorism and not deal with the discussions about root causes for it would exceed the articles scope.

It is interesting that the origin of quasi all ideologies lies in root causes. This may be inequality, poverty or refusal of fundamental rights and freedoms etc. Important for the development of ideology is that the root causes changed the protagonist’s perception of believing that a change of the system is necessary. Once an ideology is born its dissemination seems to be more like an *infection* and is not coercively bound to the root causes of the original ideology any more. The *Red Army Fraction (RAF)* or *Baader-Mainhof-Gang* is an excellent example for this finding. This terrorist group developed in the 1970s, a time when the social revolutionary ideologies conquered the world, and arose from the left corner of the Federal Republic of Germany (FRG) in the surrounding of the German socialist student movements, the SDS (*Socialist German Student Union*) and the APO (*Extrparliamentary Opposition*). It was modelled by South-American guerrilla and terrorist groups such as the *Tupamaros* in Uruguay.<sup>10</sup> The FRG was a stable democracy with a large coalition between the CDU/CSU and the SPD<sup>11</sup>. Crucial root causes like inequality were not existent but the left movements criticized the governmental structure for not having a viable opposition. Additionally the Vietnam War created solidarity with the Vietcong guerrilla among the APO. Peaceful student protests were on the weekly agenda. Everything changed when the unarmed student *Benno Ohnesorg* was shot by a

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<sup>8</sup> United Nations Office on Drugs and Crime - Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, 18-25 April 2005, *International Cooperation against Terrorism and Links between Terrorism and other Criminal Activities in the Context of the Work of the United Nations Office on Drugs and Crime - Working paper prepared by the Secretariat*, A/CONF.203/5, 2005, at p. 5. Available online at: [http://www.unodc.org/unodc/crime\\_congress\\_11/documents.html](http://www.unodc.org/unodc/crime_congress_11/documents.html).

<sup>9</sup> Mohamed ElBaradei, *In Search of Human Security*, Statements of the Director General, Speech at the Libera Università Mediterranea, Italy, 2006. Available online at: <http://www.iaea.org/NewsCenter/Statements/2006/ebsp2006n016.html>.

<sup>10</sup> Tophoven, Rolf et al., *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*, at pp. 69-72.

<sup>11</sup> CDU – the Christian Democratic Union; CSU - Christian Social Union of Bavaria; SPD - Social Democratic Party.

policeman during a demonstration against the state visit of the Iranian Emperor *Schah Reza Pahlevi* in Berlin. This was the trigger, which escalated the situation and a crucial experience, which abated the inhibition threshold of violence.<sup>12</sup> (For the role of the first deceased person see chapter 'Methods of Mobilisation'.) Another example where empathy and solidarity contributed to the infection by ideology was the Jihad against the Soviet occupation of Afghanistan beginning in 1979, where ten thousands of Muslims from all over the world joined the fight of the Afghan *Mujahedin* against the oppression of Muslims.<sup>13</sup> Empathy and solidarity seem to be the main reasons for this affinity of groups to be infected by ideologies, reasons that have to be taken into account when assessing the mobilisation for Jihadi terrorism out of Muslim communities from all over the world via internet, television, and other ways of media.

### A. *The Structure of Ideology*

The term ideology usually carries a negative connotation, which derives mainly from the usage of the term in regard to ideologies like National Socialism or Stalinism. This connotation is not only the result of the feelings in regard to the cruelties committed in these systems. The term ideology itself would be neutral, if it described a set of rules, which regulate and determine behaviour.<sup>14</sup> Drake uses a definition of ideology, which describes the set of rules as follows “*An ideology is the beliefs, values, principles, and objectives [...] by which a group defines its distinctive political identity and aims.*”<sup>15</sup> If it is a set of rules, then why is it still different from other normative systems? Ideologies in the sense of their negative connotation claim to be the total world-explanation of what will be, an explanation of what will arise and what will die away.<sup>16</sup> This is its *totalitarian nature*, which claims universality, and it is this nature that enables ideology to infect and spread throughout the world. The totalitarian nature, the definition above, and the historical subtext still do not precisely identify what makes an ideology bad.

The totalitarian element of ideology unveils the structural reason for its negative connotation when we follow its strict logic. Within the system of ideology the set of rules determine

- a) according to the principles of ideology –who is friend and who is enemy, and
- b) according to its totalitarian nature – everybody who is not sharing this ideals is an enemy.

Arendt describes that the logic of racist ideology would, transferred into positive law, result in the commandment: You should kill!<sup>17</sup> Following the inherent logic of the totalitarian nature ideology would, in case it is successful, theoretically end in genocide. Ergo the evilness of an ideology results from its totalitarian character and underlying *theory of violence*. Townshend

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<sup>12</sup> Tophoven, Rolf et al., *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*, at p 71.

<sup>13</sup> Tophoven, Rolf et al., *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*, at pp. 158-159.

<sup>14</sup> Borum, Randy, *Psychology of Terrorism*, Tampa: University of South Florida, 2004, at p. 40. Available online at: [www.ncjrs.gov/pdffiles1/nij/grants/208552.pdf](http://www.ncjrs.gov/pdffiles1/nij/grants/208552.pdf).

<sup>15</sup> Drake, C.J.M., *The Role of Ideology in Terrorists' Target Selection*, in: *Terrorism and Political Violence* (Volume 10, Number 2), Routledge, Summer 1998, at p. 2. Available online at: <http://www.st-andrews.ac.uk/academic/intrel/research/cstpv/pdffiles/The%20Role%20of%20Ideology%20in.pdf>.

<sup>16</sup> Arendt Hannah, *Elemente und Ursprünge totaler Herrschaft*, Piper Verlag, München und Zürich, 2006, at p. 964.

<sup>17</sup> Arendt, Hannah, *Elemente und Ursprünge totaler Herrschaft*, at p. 951.

writes about the leading ideologist of Italian fascism, Sergio Panunzio, who developed a theory of violence, which (contrary to Marx, Engels and Lenin) precisely differentiated between permitted and prohibited violence. The prohibited indirect violence, as Panunzio's theory of violence defines terrorism, would be the arbitrary violence against persons who had no chance to change their attitude towards fascism. Townshend concludes that this system, though it was repressive, in qualitative terms was different from the institutionalized terror like National Socialism. National Socialism was based on the ideology of racism and declaring the political opposition as enemy of the *Third Reich* gave no chance to change their attitude, and the Stalinism acted analogue declaring every opposition as class enemy.<sup>18</sup>

### 1. Ideals and Identity

Speaking about ideology is always speaking about ideals and identities of groups. The ideals can be provided by a religion, an ethnicity, a social, or a political goal. These ideas can be ancient, rooted in the Koran, or new, like the race theory in the National Socialism. It derived from Darwinism, the racial supremacy and the survival of the fittest race. According to Nico Poulantza Althusser, ideology can be divided into different instances: moral, political, legal, religious, aesthetic, and economic. In every ideological formation, one of these instances is dominating and unifying the formation.<sup>19</sup> To be an instance of ideology the ideal has to contain the capacity to provide the primary group identity among those who believe in this ideal.

If so, it simultaneously creates an opposite secondary group identity of those who are against this ideal, threaten it indirectly or are at least not sharing this ideal – the concept of the enemy. “Ideologies that support terrorism, while quite diverse, appear to have three common structural characteristics: they must provide a set of beliefs that guide and justify a series of behavioural mandates; those beliefs must be inviolable and must be neither questionable nor questioned; and the behaviours must be goal directed and seen as serving some cause or meaningful objective.”<sup>20</sup> The primary identity is usually pre-existent and derives from nationality, religion, social or economic as well as political reality because it is much easier to address groups, which already exist.

In addition, ideology in a violent zealous setting provides an initial range of legitimate targets and a means by which terrorists justify their attacks.<sup>21</sup> The strict deductive logic of the totalitarian nature of ideologies does not only justify attacks, it is the direct consequence. This range of targets is different from the distinction between combatants and non-combatants. Depending on the applied ideology it distinguishes between those who are sharing the ideals and those who do not share them. The mechanism of grouping people who are sharing the same ideals under a common identity and radicalizing them through providing them with a concept of the enemy can be called the *politicising effect of ideology*. This phenomenon is observable in every ideologically motivated group, and it is the fundamental concept of the *theory of violence*.

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<sup>18</sup> Townshend, Charles, *Terrorismus: Eine kurze Einführung*, Reclam Verlag, Stuttgart, 2004, at pp. 61-62.

<sup>19</sup> Eagleton, Terry, *Ideologie: Eine Einführung*, at p. 180.

<sup>20</sup> Borum, Randy, *Psychology of Terrorism*, at p. 47.

<sup>21</sup> Drake, C.J.M., *The Role of Ideology in Terrorists' Target Selection*, at p. 1.

The enemy – the secondary group identity – is the reason for the fight. If there was no enemy, there would be no reason to fight. Nevertheless, an aim is necessary. A fight against an enemy without an aim is unthinkable as well. So the reason for the fight is that the secondary identity is preventing the group from achieving its aim. Therefore, it is not necessary that the enemy really prevents the group from achieving its aim, it is enough that the enemy could be blamed for it. The reason can be traced with the question “*why (does the group fight against its enemy)?*” It derives from the instance of the ideology as described above. The aim to be achieved is indicated by the classification of the terrorist group and crystallizes in the question “*what aim (do they want to achieve)?*” Racist ideology wants the purification of a race, separatism aims for separation and liberty of a certain group, communism claims a classless society based on common ownership of the means of production etc. The term religious ideology is slightly misleading in this context because the word religious does not yet describe the ideology’s conception. Religious ideologies most often claim for purification, implementation into the political system (i.e. the claim for the reign of the Sharia) or the conversion of the infidels, which, if the conversion does not promise to be successful, leads to Jihad or crusades. (The line of argumentation of Jihad will be analysed in detail in the chapter 'Short-Analysis of the Ideology of Al Qaeda'.)

### ***B. Classifying Terrorism by the Ideology***

Usually the following categories of ideology are used to classify a terrorist group: separatism, religion, anarchism, communism, conservatism, and fascism.<sup>22</sup> The “-ism” indicates the extreme kind of the pursued direction, which we identified as the totalitarian nature of ideologies. According to the anatomy of ideology, described above, separatism - the fight for secession – has to be expelled from the list of categorisation of ideologies because it does not comprise the totalitarian nature of ideologies: The group’s only enemy is who act directly or indirectly against their separation. The adaptation of this idea is strictly limited to the group concerned and to a certain area to be separated. This should not foreshadow that these terrorist groups are not ideologically motivated. Prevalently such separatist purposes are combined with ideologies i.e. *Hamas*, which has an Islamist ideology, *PLO (Palestine Liberation Organization)*, which has a communist background, the *PKK (Kurdistan Workers Party)*, which is also communist or *ETA (Euskadi Ta Askatasuna)*, again with a Marxist-Leninist ideology.<sup>23</sup> Even if measures would be able to eliminate the Marxist-Leninist ideology of a separatist movement by addressing root causes, the group would still fight for its liberty or autonomy rights etc. because the distinguishing attributes ethnicity or religion would still be in existence.

Sometimes single-issue ideology plays a leading role and sometimes organised criminal groups also use methods of terrorism to achieve a specific result.<sup>24</sup> “*The best examples of this include the terror campaign initiated by the Medellin drug trafficking organizations. The campaign included the assassination of the Minister of Justice of Colombia, the use of the Movimiento 19 de Abril (M-19) to attack the Palace of Justice and to destroy (among many other things) records of drug traffickers, a bomb explosion on an airliner and a variety of other incidents. A*

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<sup>22</sup> Drake, C.J.M., *The Role of Ideology in Terrorists’ Target Selection*, at p. 3.

<sup>23</sup> Tophoven, Rolf et al., *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*.

<sup>24</sup> Drake, C.J.M., *The Role of Ideology in Terrorists’ Target Selection*, at p. 3.

very similar campaign was initiated by the Mafia in Italy in the late 1980s and early 1990s in response to a concerted anti-Mafia programme launched by the Government and the judiciary.”<sup>25</sup> Nevertheless, we still have to differentiate strictly between ideology motivated terrorist acts and those of criminal organisations. Since the driving motive of most organised crime groups (even when deploying terrorist methods) still is to achieve profit or a position that, ultimately, facilitates the making of profits. As there is no ideology involved other than the capitalist venture of self-enrichment, organised crime related terrorism will not be included in this study.

### **C. Structure of Analyse**

To test the applicability of this theoretical structure of ideology on the Jihadi ideology of the terrorist group *Al Qaeda* the thesis above have to be structured into a clear pattern:

- I. Classifying Terrorism into: religion, anarchism, communism, conservatism, and fascism.
- II. Structure of Ideology
  - i. *Totalitarian Nature*,
  - ii. *The Politicising Effect*,
    1. The primary identity of group  $\alpha$ ,
    2. The secondary identity of the enemy group  $\beta$  and,
    3. The reason for the fight against the enemy group  $\beta$ . Point 3 contains:
      - a. “*Why (does the group fight against its enemy)?*”
      - b. “*What aim (do they want to achieve)?*”
- III. *The Theory of Violence* – allowed violence against whom?

### **D. Short-Analysis of the Ideology of Al Qaeda**

#### *1. Classification*

Jihadi ideology is based on the religion Islam and refers to Suras of the Qur’ān, which calls on Muslim to defend their religion. This is one of Islam’s core concepts and means roughly translated “striving”, which denotes any attempt of a Muslim to follow the path of God, which does not necessarily include a violent struggle though the Jihadi ideology interprets it that way.<sup>26</sup> It determines the Jihadi movement clearly as motivated by a religious ideology. Due to a traditional Islamic connection between state and religion and the claim to establish the rule of Sharia, the Islamic normative system based on the passed down legal practice of Mohammed, which covers both, the secular and the religious life, accompanied by the goal to fund a Islamic

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<sup>25</sup> United Nations Office on Drugs and Crime, *International Cooperation against Terrorism and Links between Terrorism and other Criminal Activities in the Context of the Work of the United Nations Office on Drugs and Crime*, at p. 6.

<sup>26</sup> Sageman, Marc, *Understanding Terror Networks*, University of Pennsylvania Press, Philadelphia, 2004, at p. 1.

theocracy the final conclusion is that Jihadi ideology is both, religious and political.<sup>27</sup> This interpretation of the Islam as a political ideology warrants even violence against dissenting Muslims.<sup>28</sup>

Now the concept of Jihad has to be located within Islam: Jihadi ideology is the most radical form of Islamist ideologies and according to the 'Atlas of Militant Ideology' the third stage of ideological radicalism after Salafis.<sup>29</sup> "*The Jihadi ideology is a subset of Salafi ideology: the desire to establish and govern Islamic states based solely on the Qur'an and the Sunna (the words and deeds of Muhammad) as understood by the first generations of Muslims close to Muhammad. Where they differ is over the final form of these states and the proper means of political action for achieving them.*"<sup>30</sup> Hence, Jihadi groups are like a minority within a minority of Islamists.<sup>31</sup>

## 2. The Totalitarian Nature

Osama Bin Laden cites the *Hadith of al-Tirmidhi*, which adds five clandestine obligations to the five pillars of Islam<sup>32</sup>: compliance, obedience, *Jihad*, and emigration.<sup>33</sup> This expands the defensive Jihad (an individual obligation – *the fard ayn*), which is the defence of the land of the Islam (*dar al-Islam*), from invasions of infidels to an offensive Jihad – the attack of the land on the infidels (*dar al-kufr*) to submit it to Sharia.<sup>34</sup> Traditionally, this offensive Jihad was a collective obligation (*fard kifaya*) without a personal participation of individual Muslims. Osama bin Laden did not want to break from this tradition so his argumentation was: Every holy war needs a certain amount of fighters and as long as this amount is not reached, the holy war is a *fard ayn*.<sup>35</sup> "*And ulema have throughout Islamic history unanimously agreed that the Jihad is an individual duty if the enemy destroys the Muslim countries. This was revealed by Imam Bin-Qadamah in "Al- Mughni," Imam al-Kisa'i in "Al-Bada'i," al-Qurtubi in his interpretation, and the shaykh of al-Islam in his books, where he said: "As for the fighting to repulse [an enemy], it is aimed at defending sanctity and religion, and it is a duty as agreed [by the ulema]. Nothing is more sacred than belief except repulsing an enemy who is attacking religion and life.*"<sup>36</sup>

<sup>27</sup> Tophoven, Rolf et al., *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*, at pp. 123-125.

<sup>28</sup> Tophoven, Rolf et al., *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*, at p. 124.

<sup>29</sup> McCants, William (ed), *The Militant Ideology Atlas: Executive Report*, at pp. 5-6.

<sup>30</sup> McCants, William (ed), *The Militant Ideology Atlas: Executive Report*, at p. 10.

<sup>31</sup> Tophoven, Rolf et al., *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*, at p. 124.

<sup>32</sup> The five pillars of Islam are: profession of faith (*shahada*), praying regularly, fasting during Ramadan, being charitable, and performing the *hajj* (the pilgrimage to Mecca).

Sageman, Marc, *Understanding Terror Networks*, at p. 2.

<sup>33</sup> Kepel, Gilles and Jean-Pierre Milelli, *Al-Qaida: Texte des Terrors*, Piper Verlag, München, 2006, at p. 49.

<sup>34</sup> Sageman, Marc, *Understanding Terror Networks*, at p. 2.

<sup>35</sup> Kepel, Gilles and Jean-Pierre Milelli, *Al-Qaida: Texte des Terrors*, at pp. 49-50.

<sup>36</sup> Fatwa signed by bin Laden, Osama and Ayman al-Zawahiri, "*World Islamic Front for Jihad against Jews and Crusaders*" (translation by Public Broadcasting Service (PBS)), originally published on 23 February 1998. Available online at: [http://www.pbs.org/newshour/terrorism/international/fatwa\\_1998.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1998.html).

### 3. Politicising Factors

With the publication of the two main *fatawa*, the so called Bin Laden *fatawa*<sup>37</sup>, Bin Laden and al-Zawahiri left no doubts about the Jihadi ideology. These *fatawa* are the "Declaration of War against the Americans Occupying the Land of the Two Holy Places"<sup>38</sup> (1996) and the declaration of the "World Islamic Front for Jihad Against Jews and Crusaders"<sup>39</sup> (1998).

The *Primary Identity*:

Although the author of these *fatawa* calls every Muslim to join the Jihad, the primary identity is Sunni Islam; because of the aim to establish a theocracy, the caliphate, it separates itself from the Shiites who follow the descendents of Mohamed known as Shi'a Imams. This primary identity constitutes at the same time the target group of mobilisation.

The *Secondary Identity*:

The "coalition of Jews and Crusaders"<sup>40</sup> is identified as the main enemy. But as described above, ideologies define as enemy anybody who is not supporting this ideology and allows attacking them. According to this logic, anybody who is not fighting for this idea is guilty.

The 'Why':

Revenge for suffered injustice and the recovery of the power of ancient times, lost through corruption of the state and its' people through materialism, secularisation and other 'western influences' of the crusaders seem to be the main motivations for the Jihad.

The 'What Aim':

The aim is the purification of Islam from the influence of the 'Western Society', the imposition of the Sharia, and the establishment of the caliphate. This includes the deliverance of the holy places from the occupation of the infidels as a first aim. "[...] *Al-Aqsa Mosque handed over to the Zionists and the wounds of the Ummah still bleeding there. At the time when the Ummah has not regained the first Qiblah and the rout of the journey of the Prophet (Allah's Blessings and Salutations may be on him), and despite of all of the above, the Saudi regime had stunt the Ummah in the remaining sanctities, the Holy city of Makka and the mosque of the Prophet (Al-Masjid An-Nabawy), by calling the Christians army to defend the regime. The crusaders were permitted to be in the land of the two Holy Places. [...] By opening the Arab peninsula to the crusaders the regime disobeyed and acted against what has been enjoined by the messenger of Allah [...], while he was at the bed of his death: (Expel the polytheists out of the Arab*

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<sup>37</sup> A fatwa (plural fatawa) is a considered legal opinion of a mufti concerning a question where the Islamic jurisprudence is unclear.

<sup>38</sup> Fatwa signed by bin Laden, Osama, "Declaration of War against the Americans Occupying the Land of the Two Holy Places".

<sup>39</sup> Fatwa signed by bin Laden, Osama and Ayman al-Zawahiri, "World Islamic Front for Jihad Against Jews and Crusaders".

<sup>40</sup> The crusaders in this terminology are the United States of America and its' allies „under the cover of the iniquitous United Nations“. "Declaration of War against the Americans Occupying the Land of the Two Holy Places", fatwa 1996.

*Peninsula*); (narrated by Al-Bukhari) and: (If I survive, Allah willing, I'll expel the Jews and the Christians out of the Arab Peninsula); saheeh Aljame' As-Sagheer.<sup>41</sup>

And as a result of the totalitarian nature of the Jihadi ideology, the worldwide conversion to the Islam is the second aim. Where this is impossible, a holy war has to be fought.

#### 4. *The Theory of Violence*

We have to turn our attention especially to the argumentation of the allowance to attack Muslims and Muslim leaders. The special necessity of an allowance goes back to the two civil wars within the half century after Mohammed's death. These civil wars caused the Shi'a-Sunni split. Sunni traditions universally condemn the *fitna* (temptation or trial), which means any revolt against the state and refers to the chaos and disunity after the split. Ergo a good Muslim could not revolt against a bad Muslim leader without causing a *fitna*. *Sayyid Qutb* (1906-1966) brought the ideological solution for this dilemma. In his perception the liberalism, materialism and westernisation of the world lead again to a condition of *jahiliyya*, "the state of barbarism and ignorance that prevailed in the Arabic Peninsula before Mohammed's revelation".<sup>42</sup> This argumentation allows the Sunni to bring back the purity of Islam even to Muslims who go astray and leave the right path without causing a *fitna*. It is a new form of Jihad, which is directed towards every modernisation within the Muslim community.

### III. Wag the Crowds

Why is ideology so effective in mobilising crowds? The inner reason for the gathering of people to a crowd is that it promises benefits. Joining crowds to escape and hereby to raise the individual's chance of survival or joining it for the purpose of hunting are the two oldest phenomena of crowd mobilisation, which can be found both in fauna and among humans.<sup>43</sup> Very early in history people found out that as an individual they are not powerful, but when joining a crowd and contributing their own little power to a group it is much more powerful. Nevertheless, power without aim is useless. Here ideology comes into play in two regards:

- 1) It addresses an already predefined crowd.
- 2) It provides the crowd with an aim.

Therefore, ideologies strive for a crowd as crowds strive for a profitable aim. This makes the crowd susceptible to ideologies. Of course the ideology has to be compatible with the crowd, which means that the crowd must be part of the primary identity. This mutual symbiosis of ideology and crowds makes a discussion about ideology excluding crowd dynamics unfeasible.

#### A. *Crowd Crystal and Collective Tendencies*

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<sup>41</sup> Fatwa signed by bin Laden, Osama, "Declaration of War against the Americans Occupying the Land of the Two Holy Places".

<sup>42</sup> Sageman, Marc, *Understanding Terror Networks*, at pp. 7-8. Tophoven, Rolf et al., *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*, at p. 133.

<sup>43</sup> Canetti, Elias, *Masse und Macht*, S. Fischer Verlag, Frankfurt am Main, 2006, at pp. 54-65.



A group is composed of individuals. Often one can distinguish different roles: one or more leaders, a group of sub-leaders (lieutenants) and foot soldiers, the mob that make the crowd. The leaders usually have a fairly specific ideology and are willing to decide on issues open to interpretation and to promote their interpretation as authoritative and binding to the group. This is necessary to convince and indoctrinate sub-leaders and foot soldiers. The good cause, the ideology's aim, must be transported to the underlying command layers otherwise the group would split up easily. For these leaders and the well educated members<sup>44</sup> the ideological objectives are clear and the possible targets of attack are well defined. The more the followers are distant from the providers of ideology, the more the ideology and the inherent theory of violence blur. The supporters, which are not members of the group, most often simply share the visceral dislike of the enemy according to the statement 'my enemy's enemy is my friend'.<sup>45</sup>

Within a terrorist group there is another elite sub-group, the members of which represent the *crystallized ideology*. This ideological elite is composed of leaders, sub-leaders and well educated members of the terrorist group who are united by the same exact perception of the group's ideology. Often this coherence in interpretation of the ideology is tightly orchestrated by the core leaders of the group. This elite group could be called the 'hard core' of the movement. To speak in terms of the theories of Elias Canetti about '*Crowds and Power*' this hard core would be an example of what is called a *crowd crystal*. This group of people is representing and supporting their own ideology in the purest way. "A [crowd] *Crystal consists of probably no more than a hundred people in national systems and often considerably less in social and religious ones; they can be as small as three or four people. From within the Crystal the most talented and charismatic individual emerges as the Master of Masters. This small entity forms the basic structure of the Crowd, writes the organizational script, and has similar properties to actual crystals.*"<sup>46</sup> Even if their followers and supporters among the civilians disappear the historical permanence of a *crowd crystal* is astonishing.<sup>47</sup>

Ideologically motivated groups want to grow by convincing as many people as possible of their ideologies. The *crowd crystal* is the entity who mobilizes the crowd of followers and supporters through transporting and providing the ideology in different ways.<sup>48</sup> The success of the mobilisation process depends on how many people of the population feel represented by the ideology of the crowd crystal. Such a common feeling among the people towards a specific direction is mainly caused by crucial root causes like inequality and refusal of fundamental

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<sup>44</sup> Maleckova and Krueger present the evidence, which indicates that members of Hezbollah and of the Israeli Jewish Underground were "...at least as likely to come from economically advantaged families and have a relatively high level of education as to come from the ranks of the economically disadvantaged and uneducated." In: Krueger, Alan B. and Jitka Maleckova, *Education, Poverty and Terrorism: Is There a Causal Connection*, in: Journal of Economic Perspectives (Volume 17, Number 4), 2003, pp. 119–144, at p. 141. Available online at: <http://www.krueger.princeton.edu/terrorism2.pdf>.

<sup>45</sup> Drake, C.J.M., *The Role of Ideology in Terrorists' Target Selection*, at p. 3.

<sup>46</sup> Jacobs, Alan, *Autocratic Power*, IDEA Journal of Social Issues (Volume 1, Number 1), May 1996. Available online at: <http://www.ideajournal.com/articles.php?id=3>.

<sup>47</sup> Even if a terrorist group has successfully passed the transition to a political party this crowd crystal survives and reactivates the militant and fanatic movements if the political dialogue or created a splinter group during the transition. The crystal of the splinter group is the same as the crystal at the beginning of the origin group. The history of Hamas and IRA are perfect examples.

<sup>48</sup> Canetti, Elias, *Masse und Macht*, at p. 84.

rights and freedoms or suppression. This may be called a *collective tendency*. If the *collective tendency* among the people towards the ideas of the terrorist's ideology is strong enough, the terrorist group is able to mobilize a crowd that is big enough to lead to a revolution. In this case the convinced crowd has to represent the majority. If an absolute majority is not reached, a civil war is the likely consequence. In so far as the crowd crystal is able to mobilize a critical mass, the terrorist tendencies can be seen as preliminary stage of a revolution or a civil war.<sup>49</sup> If the critical mass not reached because of the lack of a *consenting collective tendency*, the terrorist group is not able to achieve its goal, which is to unleash a revolution. The movement remains a terrorist group.

In this regard the work of the Dutch psychologist Geert Hofstede<sup>50</sup> who analysed different societies on basis of a dimensional approach<sup>51</sup> should be mentioned. One of the so called "Hofstede Dimensions" is the factor Individualism (IDV), which "*focuses on the degree the society reinforces individual or collective achievement and interpersonal relationships.*"<sup>52</sup> The probability and intension of a *consenting collective tendency* seems to be higher the more the IDV is located at the opposite of the spectrum – the *collectivist side*. For instance: "*The lowest Hofstede Dimension for the Arab World is the Individualism (IDV) ranking at 38, compared to a world average ranking of 64. This translates into a Collectivist society as compared to Individualist culture and is manifested in a close long-term commitment to the member 'group', that being a family, extended family, or extended relationships. Loyalty in a collectivist culture is paramount, and over-rides most other societal rules.*"<sup>53</sup> Similarities to this outcome can be found especially in communist societies and groups, which tend to the development of radical groups as well. Though this is not an indicator for the development of terrorism, it may be an indicator of how successful the mobilisation process of a terrorist group towards a critical mass would be.<sup>54</sup> To indicate the development of terrorist tendencies and to discover the potential amount of people to be mobilized as followers or supporters I propose a "measurement of the breeding ground": this would consist of an evaluation of different *consenting collective tendencies* (regarding to the relevant root causes) analogue to the IDV of the Hofstede Dimensions and a comparison of this outcome to the people affected. To assess the potential

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<sup>49</sup> Zangl, Bernhard and Michael Zürn, *Frieden und Krieg*, Suhrkamp Verlag, Frankfurt am Main, 2003, at p. 180.

<sup>50</sup> Hofstede, Geert, *Culture's Consequences: Comparing Values, Behaviors, Institutions, and Organizations across Nations*, Sage Publications, Thousand Oaks, 2001.

Hofstede Dimensions Scores. Available online at: <http://www.geert-hofstede.com>.

<sup>51</sup> This dimensional approach is based on five cultural dimensions developed by Geert Hofstede: Power Distance Index (PDI), Individualism (IDV), Masculinity (MAS), Uncertainty Avoidance Index (UAI), Long-Term Orientation (LTO). For further information visit the website [www.geert-hofstede.com](http://www.geert-hofstede.com).

<sup>52</sup> Borum, Randy, *Psychology of Terrorism*, at p. 43.

<sup>53</sup> Hofstede, Geert, *Cultural Dimensions – the Arab World*. Available online at: [http://www.geert-hofstede.com/hofstede\\_arab\\_world.shtml](http://www.geert-hofstede.com/hofstede_arab_world.shtml).

<sup>54</sup> The German terrorist group RAF (Red Army Fraction) developed although Germany has a high IDV. This high IDV indicates why the RAF failed in mobilizing a crowd and support from society and to unleash a revolution, which was their aim according to their agenda. Statement of the Red Army Fraction, *Das Konzept der Stadtguerilla*, published in April 1971. Available online at: [http://www.rafinfo.de/archiv/raf/konzept\\_stadtguerilla.php](http://www.rafinfo.de/archiv/raf/konzept_stadtguerilla.php).

level of threat of certain regions this analysis should cover the use of regional-level and local-level data within a spatial analysis done in a Geographic Information System (GIS).<sup>55</sup>

## ***B. Methods of Mobilisation***

The method to generate followers and supporters of a terrorist group out of a consenting collective tendency consists of different mobilisation techniques. The followers and supporters are of equal importance as the crowd crystal because without them a terrorist group is not able to survive.

The symbiosis of crowds and ideologies results in mobilisation. Every ideologically driven group tries to mobilize followers and supporters for their cause. The main terrorist methods of mobilizing are similar to guerrilla tactics, but in contrast to them, the major territory a terrorist group wants to seize is a psychological one: it aims at the opinion of the population.<sup>56</sup> Two main forms of mobilisation seem to be dominant: the indirect mobilisation (1.) where mobilizing followers or supporters is a side-effect or caused by the enemy's cruelty and direct mobilisation, (2.) which is mainly the recruitment of new members and generating the support of the population through protection or providing social and medical care.

### *1. The Indirect Mobilisation*

The new possibilities and the globalisation of media make information and news accessible in every corner of the world. Terrorists, whose intention it is to seize the minds and not territories<sup>57</sup>, soon found out that assaults, which cause more casualties are more 'attractive' for broadcasting and therefore reach a fairly broad audience. This development corrupted the means and results now in the tendency to increase the drama by increasing the victims.<sup>58</sup> Till now 9/11 was the abominable climax in this development. This attack was broadcasted all over the world and demonstrated the vulnerability of the United States. "*The physical attacks themselves are not necessarily aimed at the psychological target or targets -although they might be - but are intended to make it or them behave in a particular way. It should also be borne in mind that some attacks may not be intended to cause a negative reaction - such as fear - in the psychological target, but may be intended to evoke a positive reaction.*"<sup>59</sup> The incident of 9/11 did both, it caused fear and it was the best "promotion" a terrorist group could ever achieve to mobilize people and to gain support.

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<sup>55</sup> Taylor, Owen, *Challenges and Opportunities for Defining and Measuring Human Security*, in: Disarmament Forum (Number 3), United Nations Institute for Disarmament Research (UNIDIR), Geneva, 2004, pp. 15-24, at pp. 21-22. Available online at: <http://www.unidir.org/pdf/articles/pdf-art2138.pdf>.

<sup>56</sup> Zangl, Bernhard and Michael Zürn, *Frieden und Krieg*, at p. 180.

<sup>57</sup> Zangl, Bernhard and Michael Zürn, *Frieden und Krieg*, at p. 180.

<sup>58</sup> Zangl, Bernhard and Michael Zürn, *Frieden und Krieg*, at p. 181. Tophoven, Rolf et al., *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*, at pp. 21-22.

<sup>59</sup> Drake, C.J.M., *The Role of Ideology in Terrorists' Target Selection*, at p. 1.

Attacking the enemy does not only cause fear and mobilizes new terrorists; the attack is an overall success when it provokes reactions from the enemy too. The idea of this tactic was that a military reaction of the enemy would force the population to fight. This military tactic was developed decades before by *Mao Zedong*.<sup>60</sup> Between 1942 and 1944 *Josip Broz Tito* used the same military strategy for the fights in the mountains of Montenegro and in Bosnia-Herzegovina. *Tito's* intention was that the cruelties of the axis powers would force the people to join his partisans. He was right; his seven offensives provoked the reaction of the Germans. The people had only the choice between being killed by the Germans or fleeing 'into the woods' to join the partisans.<sup>61</sup> Similarities can be found in many cases; for example recently in the Lebanon/Israel conflict provoked by the fired *Katyusha* rockets and mortars at Israeli military positions and border villages and the abduction of two Israeli soldiers.<sup>62</sup> The proclaimed aim of *Hezbollah* was the exchange of prisoners with Israel but the attack by rockets and mortars spoke a different language and was a clear provocation. The excuse of an exchange of prisoners was tactically necessary to ensure the support of the Lebanese people after the reaction of Israel.

Martyrs can also be used as a method of mobilisation. In this regard Canetti writes about the role of the first deceased person for the dynamic of war. The first deceased person infects the crowd with a feeling of menace. In the process of arousing a violent conflict this dead person cannot be overestimated. It does not depend on who this person is or by whom the person was killed. Important is the death of this person and that everybody believes that the enemy is responsible for it. Everybody feels threatened by the same cause – this attitude changes into a rage against the enemy. This effects an ingress of sympathy and support and even the mobilisation of new members to the group, which is fighting the enemy.<sup>63</sup>

## 2. The Direct Mobilisation

In the area of the direct mobilisation we can distinguish two methods:

1. Generating support of the population by positive means like: financing and organizing social, economic, infrastructural, and medical support. For example, it is well known that *Hamas* and *Hezbollah* are financing and organizing social, economic, infrastructural, and medical support for the people. We can observe similar means used by many other terrorist organisations like the IRA (*Irish Republican Army*), the PLO (*Palestine Liberation Organization*) etc. This generates acceptance and support from the people.
2. The recruitment of followers and members: Gerwehr and Daly<sup>64</sup> analysed the recruitment habits of *Al Qaeda* based on the socio-psychological and sociological literature on

<sup>60</sup> Keegan, John, *Die Kultur des Krieges*, Rowohlt Taschenbuch Verlag, Hamburg, 2003, at p. 90.

<sup>61</sup> Keegan, John, *Die Kultur des Krieges*, at pp. 91-94.

<sup>62</sup> New York Times, *Israelis Enter Lebanon after Attacks*, 13 July 2006; CNN, *Israel Authorizes 'Severe' Response to Abductions*, 12 July 2006. Available online at: <http://www.cnn.com/2006/WORLD/meast/07/12/mideast>.

CNN, *Israel Hits Palestinian Foreign Ministry Building*, 12 July 2006. Available online at: <http://www.cnn.com/2006/WORLD/meast/07/12/gaza/index.html>.

<sup>63</sup> Canetti, Elias, *Masse und Macht*, at pp. 162-163.

<sup>64</sup> Gerwehr, Scott and Sara Daly, *Al-Qaida: Terrorist Selection and Recruitment*, National Security Research Division RAND. Available online at: [http://www.rand.org/pubs/reprints/2006/RAND\\_RP1214.pdf](http://www.rand.org/pubs/reprints/2006/RAND_RP1214.pdf).

recruitment. Their conclusion on recruitment techniques of *Al Qaeda* can be taken as example for ideological indoctrination:

- a. The *Net*: A whole population is viewed as primed for recruitment. This approach is often used when there is little serious opposition to the terrorist group. One example would be a mosque headed by a “radical” imam whose radical attitudes are widely known.<sup>65</sup>
- b. The *Funnel*: This is an incremental, or phased, approach, which is used when the population is ripe for recruitment but needs a significant transformation in identity and motivation (implementation of ideology) through identity building exercises or through validation of commitment to the ideology of the group.<sup>66</sup>
- c. The *Infection*: When the target population is insular or difficult to reach, the best method is to recruit from within. Therefore, a trusted agent has to be inserted into the population for recruiting through personal, direct appeal. “*This method leverages the significant persuasive strength of (1) source credibility, (2) social comparison and validation, and (3) specifically tailored appeals.*”<sup>67</sup>
- d. The *Seed Crystal*: When the infiltration of a population with agents is not possible, recruitment is sought through providing a context for self-recruitment. That means, the environment and critical variables are manipulated until the target wants to join the terrorist group. The seed crystal approach is very successful in diasporas, for example with the plotters of 9/11 constituting the Hamburg cell.<sup>68</sup> This method is closely related to the methods of indirect recruitment and the name “Seed Crystal” is no coincidence – it generates a new mass crystal, which just has to be provided with ideology and necessary knowledge<sup>69</sup>. This providing of information is nowadays easily managed with the extensive use of the internet.<sup>70</sup>

### 3. *The Role of Ideology for Mobilisation*

The indirect mobilisation as described above does not yet contain ideology as defined at the beginning. In an ideological perspective the indirect mobilisation can be seen as a preliminary phase for ‘not-yet-supporters’. It roughly demonstrates the ideology of the terrorist group and it identifies the enemy in the sense of the secondary identity. If the assault is successful in terms of the indirect mobilisation, it provokes a military reaction of the enemy, which threatens the whole community in which the terrorist group is hiding. Once the community accepts the enemy of the terrorist group as their own enemy, sympathy towards the enemy’s enemy starts to prevail. To put it into more abstract terms: The path of indoctrination with ideology starts with identity building - the raising of awareness of the own group identity (the primary identity) and

<sup>65</sup> Gerwehr, Scott and Sara Daly, *Al-Qaida: Terrorist Selection and Recruitment*, at pp. 76-77.

<sup>66</sup> Gerwehr, Scott and Sara Daly, *Al-Qaida: Terrorist Selection and Recruitment*, at p. 77.

<sup>67</sup> Gerwehr, Scott and Sara Daly, *Al-Qaida: Terrorist Selection and Recruitment*, at p. 78.

<sup>68</sup> Gerwehr, Scott and Sara Daly, *Al-Qaida: Terrorist Selection and Recruitment*, at pp. 79-80.

<sup>69</sup> I. e. the AlQaeda Manual. Available online at: [http://www.terrorisminfo.mipt.org/pdf/AlQaedaManual1\\_1.pdf](http://www.terrorisminfo.mipt.org/pdf/AlQaedaManual1_1.pdf).

<sup>70</sup> Tophoven, Rolf et al., *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*, at pp. 229-235.

Arquilla, John et al., *Networks, Netwar, and Information-Age Terrorism*, in: Lesser, Ian O. et al., *Countering the New Terrorism*, RAND, 1999, at pp. 39-83. The chapter is also online available at: [http://www.rand.org/pubs/monograph\\_reports/MR989/MR989.chap3.pdf](http://www.rand.org/pubs/monograph_reports/MR989/MR989.chap3.pdf).

the secondary identity. This is done by manipulation of the surrounding and by ‘unmasking’ the real face of the enemy through provoking attacks. Tophoven points this out correctly when he writes that ideology alone is not enough to mobilize sympathizers, the people need to be emotionalized. That the terror cadre has initialized the repressions soon becomes negligible.<sup>71</sup>

This development of the breeding ground is enhanced by the method of mobilisation through positive means. Here we can discover appendages of indoctrination of ideology for the first time. Fluently the positive means shift into the direct mobilisation of point (2) – the recruitment. Especially social and religious infrastructure serves perfectly for this kind of indoctrination. Islamic schools and student organisations founded by organisations, which are close to terrorist organisations, are well known to be a major pool of recruitment.<sup>72</sup> In this surrounding the indoctrination with ideology starts to evolve its full potential. The reasons for the fight against the enemy group, including the ‘why’ and the ‘what aim’, are now (after this preparation of the people) easily absorbed. The transition from nearly neutral people to supporters, and in selected cases to members of the terrorist group, is carried out successfully after this stage. Here the ‘measurement of the breeding ground’ as proposed above would also be applicable.

#### IV. Conclusion

The spread of ideologies can be distinguished into:

1. The original development of ideology out of *consenting collective tendencies*, which is deduced from so called root causes like inequality or the refusal of fundamental rights and freedoms.
2. The infection by ideology where the root causes are not coercive and solidarity and empathy seem to be highly relevant factors.

The structure of ideology consists of a set of rules, guiding the behaviour (*the theory of violence*), the primary and the secondary group identity, the “Why?” and the “What aim?”, and the totalitarian nature of the set of rules. The short-analysis of the Jihadi ideology of *Al Qaeda* approved the accuracy of this structure of ideology.

Separatism, though it is prevalently accompanied by ideologies, is no ideology itself and can not be addressed with methods against ideologies like the abatement of root causes of terrorism.

Crowds strive for an ideology that accords to their *consenting collective tendency* and which addresses the right primary group identity. For the mobilisation of crowds the crowd crystal, which provides the crowd with the ideology, plays a crucial role. Addressing the crowd crystal would affect the ability to mobilize the crowds. But the Jihadi ideology is already so widespread that the significant role of the crowd crystal for crowd mobilisation is already by far outdistanced by the infection, which is independent from the crowd crystal. To target the leaders like *Osama bin Laden* will not show any effect on the dissemination of the ideology any more.

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<sup>71</sup> Tophoven, Rolf et al., *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*, at pp 139-140.

<sup>72</sup> I.e. the history of the Muslim Brotherhood founded by the sufi schoolteacher Hassan al-Banna in 1928. Gerwehr, Scott and Sara Daly, *Al-Qaida: Terrorist Selection and Recruitment*, at pp. 76-77.

The indirect mobilisation, as the establishing of breeding ground for followers and supporters, is a preliminary stage for the direct mobilisation, which prepares the people for the indoctrination of ideology by emotionalizing them. Once the breeding ground is prepared or the infection has reached the community, the recruitment is more an evaluation and a selection of volunteers rather than marketing.<sup>73</sup> A prevention of terrorism is necessary that addresses the breeding ground through abating the root causes and through avoidance of attacks that affect the population and amount to indirect mobilisation.

To be able to assess the real threat and the potential of existing ideologies and to measure the dimension of potential affected areas, the “measurement of the breeding ground” is suggested. Therefore, firstly an evaluation of different *consenting collective tendencies* (regarding to the relevant root causes) analogue to the IDV of the Hofstede Dimensions is necessary. Secondly, the outcome of the first step has to be compared with the amount of people affected. To assess the potential threat level of certain regions this analysis should cover the use of regional-level and local-level data within a spatial analysis done in a Geographic Information System (GIS).

Though the world experienced the power of ideologies in the cruel crimes of National Socialism and Stalinism, the role of ideologies is still an under-researched and therefore underestimated field. As this study has set forth ideologies are about to evolve again, but to win the fight against ideas, weapons are useless. The only way is to tackle ideas with ideas.

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<sup>73</sup> Sageman, Marc, *Understanding Terror Networks*, at pp. 121-124.

# European Police Missions: From Security Sector Reform to Externalization of Internal Security Beyond the Borders

*Gregory Mounier<sup>1</sup>*

*The lack of functioning security institutions is one of the main reasons why organized crime finds a prosperous ground in countries emerging from violent conflicts. When these countries are located in the neighbourhood of the European Union (EU) and that crimes are transnational, the objectives of internal and external security policies tend to converge. In this context, the European Union (EU) civilian crisis management operations in the Balkans, undertaken in the framework of the European Security and Defence Policy (ESDP), can be seen as a means to protect the EU's internal security by preventing illegal migration, trafficking and terrorism to reach the European territory. Drawing upon observations of the European Police Mission in Bosnia and Herzegovina, this article argues that by reforming the security sector of targeted countries, European police missions convey standards of internal security which are similar to the ones defined at European level in the Justice and Home Affairs policy. ESDP police missions should therefore be considered as new instruments to externalize the EU's internal security policy and fight organized crime abroad.*

## **I. Introduction**

The European Union (EU) has identified growing security challenges emerging from outside the territory of the member states. They are mostly referred to as transnational organized crime, drug trafficking, terrorism and illegal immigration. In response to these new security issues, the EU is involved in a process of externalization of its relevant internal policies to tackle the

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threats before they reach its territory. Justice and Home Affairs (JHA) policies are externalized, notably by increasing cooperation with third countries and embedding internal security objectives in foreign policy agreements. Simultaneously, the external dimension of the EU area of freedom security and justice (AFSJ) is being developed with negotiations of readmission agreements in the field of immigration and Europol cooperation agreements for police assistance.<sup>2</sup> The aim of these practices is to protect the EU's "*internal security regime*"<sup>3</sup> by projecting abroad – in particular in areas likely to generate these 'threats' – European standards of internal security.

In parallel to these actions taking place in the JHA sectors belonging to the first<sup>4</sup> and third pillars,<sup>5</sup> the EU is also increasingly engaged in civilian crisis management operations. Initially involved in a variety of peacekeeping and law enforcement tasks, these missions have gradually evolved towards the promotion of good governance in the security sector. They roughly cover three areas: police, justice and borders assistance. The similarities of the aims pursued by both policies<sup>6</sup> lead to the question whether civilian crisis management operations, undertaken in the framework of the European Security and Defence Policy (ESDP) and whose objectives are the reform of the security sector, are not *de facto*, used as instruments to project JHA policies abroad and to include third countries in the pursuit of EU internal policy goals: the fight against organized crime.

To investigate this question, the article will first emphasize the similarities between the externalization of JHA and the objectives pursued by ESDP civilian crisis management missions and especially police missions, in order to demonstrate that these two policies are linked by the same overall objective: protecting the EU's 'safe' internal space from an 'unsafe' external environment (II). Three different theoretical accounts of the process of externalization will then be presented (III). Their associated concepts will serve as analytical tools to study the EU actions in reforming the security sector in Bosnia and Herzegovina (BiH). The role of the European Union Police Mission (EUPM) will then be used as a case study to test the hypothesis according to which, ESDP police missions have become an instrument to externalize EU internal security standards and fight against organized crime abroad (IV).

## **II. ESDP Police Missions and the External Dimension of JHA, Two Policies for a Common Objective: Protecting the EU's 'Safe' Internal Space From an 'Unsafe' External Environment<sup>7</sup>**

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<sup>2</sup> Since the Treaty of Amsterdam, the European Commission is competent to negotiate external agreements in areas of JHA which have been transferred to the Community pillar.

<sup>3</sup> Rees, Wyn, *The External Faces of Internal Security*, in: Hill, Chris and Michael Smith (ed), *International Relations and the European Union*, Oxford University Press, Oxford, 2005, pp. 205-224.

<sup>4</sup> The Community pillar encompasses the following JHA domains: asylum, immigration, border controls and police and judicial cooperation in civil matters (Title IV of the Treaty of the European Community). Decisions are taken according to the qualified majority voting (QMV) procedure and the Commission enjoys a monopoly of initiative.

<sup>5</sup> Police and justice cooperation in criminal matters (Title VI of the Treaty of the European Union).

<sup>6</sup> ESDP civilian crisis management and the externalization of JHA.

<sup>7</sup> Under certain circumstances including post-conflict management, the civilian dimension of ESDP and the external dimension of JHA seek to accomplish similar objective: reforming the security sector of a

### ***A. ESDP Police Missions and Security Sector Reform (SSR)***

ESDP police missions are one of the instruments of the civilian dimension of the European Security and Defence Policy. This aspect was developed at the European Council of Feira in June 2000. Member states agreed on four priority areas where the EU should become an actor in civilian crisis management: police, strengthening the rule of law, civilian administration and civilian protection.<sup>8</sup> Following the adoption of a *Police Action Plan* at the Göteborg European Council in 2001, the EU established a 5000 police officers force for international or autonomous EU police mission in 2003.<sup>9</sup> In the meantime, the Political and Security Committee (PSC) dealing with all Common Foreign and Security Policy (CFSP) and ESDP issues, was given the political control and strategic direction of crisis management operations, including the civilian aspects. A new body, the Committee for Civilian aspects of Crisis Management (CIVCOM) was created in the Council Secretariat as a coordination mechanism, fully interactive with the Commission services.<sup>10</sup>

Police missions are at the forefront of the operationalization of the civilian component of ESDP, not only by the number of personnel on the ground but also by the number of ongoing missions.<sup>11</sup> The first ESDP crisis management operation – the European Union police mission in Bosnia and Herzegovina (EUPM) was established in 2003, quickly followed by a second EU police mission in the Former Yugoslav Republic of Macedonia (PROXIMA), replaced in December 2005 by an EU police advisory team (EUPAT). In April 2005, EUPOL KINSHASA was the first police mission to be deployed outside Europe, in the Democratic Republic of Congo. The experience was renewed in 2006 when EUPOL COPPS was established in the Palestinian territories. In 2007, Kosovo will to be the next destination for the European policemen,<sup>12</sup> while Afghanistan could also be a future option.

The key objective of these civilian ESDP operations is to help reforming the security sector of war torn countries and failed states in order to tackle organized crime and create the right

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targeted country in order to protect the EU's internal space. This point will be demonstrated in this part of the article.

<sup>8</sup> Santa Maria da Feira European Council, *Presidency Conclusions*, 19-20 June 2000. Available online at: [http://europa.eu/european\\_council/conclusions/index\\_en.htm](http://europa.eu/european_council/conclusions/index_en.htm) (all websites in this essay were last checked on 31 January 2007).

<sup>9</sup> Göteborg European Council, *Presidency Conclusions*, 15-16 June 2001, Annex I. Available online at: [http://europa.eu/european\\_council/conclusions/index\\_en.htm](http://europa.eu/european_council/conclusions/index_en.htm).

<sup>10</sup> Council Secretariat, *Progress Report on Civilian Aspects of Crisis Management*, 15625/03, 2 December 2003, pp. 53.

<sup>11</sup> Merlingen, Michael, and Rasa Ostrauskaitė, *ESDP Police Missions: Meaning, Context and Operational Challenges*, in: *European Foreign Affairs Review* (Volume 10), Kluwer Law International, 2005, pp. 215-235.

<sup>12</sup> In 2006 an EU planning team (EUPM Kosovo) was established regarding a possible EU crisis management operation in the field of rule of law. At the time of writing the mission was supposed to start at the end of 2007.

security conditions for sustainable peace.<sup>13</sup> For Tanner and Hänggi, “*security sector encompasses all those state institutions which have a formal mandate to ensure the safety of the state and its citizens (...), such as armed forces, the police, gendarmerie and paramilitary forces, the intelligence and secret services, border guards as well as judicial and penal institutions.*”<sup>14</sup> The challenges of a deficit in the EU’s neighbours security sectors for the EU’s own internal security, were first acknowledged in the *European Security Strategy*: “*The first line of defence will often be abroad (...) and none of the new threats is purely military or manageable through purely military means.*” Therefore, it is “*important to support third countries in ‘security sector reform’ in the context of broader institution building.*”<sup>15</sup> This encouraged the Union to strengthen its neighbours’ security sector, notably by sending ESDP police missions.

### ***B. Reforming the Security Sector by Exporting JHA Standards***

The experience gained within the Union in the field of internal security is used as a yardstick against which other security sectors are evaluated and as a model to be matched in the reform process. The very substance of this ‘experience’ is contained in the JHA part of the *acquis communautaire*. The JHA *acquis* has been developed as a ‘compensatory measure’ after the abolition of internal border controls in the Union. It includes common rules, European norms and principles in police and justice cooperation in criminal and civil matters, border controls, the fight against drugs, organized crime and terrorism, asylum and immigration policy.<sup>16</sup> These norms, rules and principles have been created over the years within the EU to guide the interaction of member states in the field of internal security. Although norm, rule and principle have distinct meanings, in this article they will be regrouped under the generic word ‘standard’. The reason for this semantic simplification is that the substance of what is being exported to third countries by the EU includes aspects of all three terms. For instance, the rule of law is one of the European principles common to all the member states,<sup>17</sup> whereas national police forces tend to cooperate over cross-border crimes because this is a European norm in the constructivist understanding of the term, according to which norms are “*collective expectations about proper behaviour for a given identity.*”<sup>18</sup> Furthermore, the majority of the export is constituted of

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<sup>13</sup> Yusufi, Islam, *Understanding the Process of Security Reform in Southeastern Europe*, in: Journal of Security Sector Management (Volume 2, Issue 2), Centre for Security Sector Management, 2004, pp. 18, at p. 4. Available online at:

[http://www.ssronline.org/jofssm/issues/jofssm\\_0202\\_yusufi.pdf?CFID=1605142&CFTOKEN=65865279](http://www.ssronline.org/jofssm/issues/jofssm_0202_yusufi.pdf?CFID=1605142&CFTOKEN=65865279)

<sup>14</sup> Tanner, Fred, and Heiner Hänggi, *Promoting Security Sector Governance in the EU's Neighbourhood*, Institute for Security Studies (Chaillot Paper, 80), Paris, July 2005, at p. 13. Available online at: <http://www.iss-eu.org/chaillot/chaill80.pdf>.

<sup>15</sup> Solana, Javier, *A Secure Europe in a Better World. European Security Strategy*, Council of Ministers, 15895/03, Brussels, 8 December 2003, at p. 16. Available online at: <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>.

<sup>16</sup> Title VI Treaty of the European Community (TEC) and Title VI Treaty of the European Union (TEU). This is also known as the ‘internal security’ field.

<sup>17</sup> Article 6 TEU.

<sup>18</sup> Jepperson, Ronald, Alexander Wendt, and Peter Katzenstein, *Norms, Identity and Culture in National Security*, in: Katzenstein, Peter (ed), *The Culture of National Security: Norms and Identity in World Politics*, Columbia University Press, New York, 1996, at p. 54.

technical rules of policing such as investigation techniques, border management procedures, information exchange and cooperation methods. 'Standard' is therefore broad enough a term to include all these nuances.

Two different areas of JHA where security sector reform (SSR) activities are taking place can be distinguished: the enlargement process and the external dimension of JHA. Expanding the Union eastwards and southwards, automatically implies importing insecurity factors inherent to post-communist and former war torn regions. Member states have strong incentives to help strengthening the security apparatus of candidate countries so as to reduce the potential threats 'on the spot' before letting them join. This is why adoption of the JHA *acquis* by applicant countries is one of the non-negotiable and most sensitive issues of the enlargement process. All applicants are required to implement chapter 26,<sup>19</sup> containing several SSR-relevant activities. To the threat of importing insecurity, the EU replies by exporting European internal security standards. The second JHA area where SSR activities are observed is the external dimension of JHA, officially recognized by the Tampere European Council in 1999.<sup>20</sup> The EU's priorities include an external dimension of migration policy with the control of external borders and the negotiation of readmission agreements with third countries, but also the fight against all kind of trafficking from human beings to drug. In 2005, the Council adopted a *Strategy for the External Dimension of JHA* identifying five key security threats for EU citizens: terrorism, organized crime, corruption, drugs and managing migration flows. To be effective in tackling them, the EU needs to work with countries outside the EU and make JHA a central priority in its external relations. For the Council, "it is no longer useful to distinguish between the security of citizens inside the European Union and those outside."<sup>21</sup> From now on, the traditional distinction between 'internal' and 'external' security<sup>22</sup> is abandoned and a pro-active and holistic action, including all EU instruments is recommended: the EU should use relationships with third countries as an incentive for them to adopt relevant standards of JHA.<sup>23</sup> Zolberg refers to this externalization process as 'remote control' which consists of shifting the locus of control further from the common territory.<sup>24</sup>

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<sup>19</sup> Chapter 26 is entitled "Cooperation in the field of justice and home affairs".

<sup>20</sup> JHA concerns "should be integrated in the definition and implementation of other Union policies and activities, including external relations". Tampere European Council, *Presidency Conclusions*, 15-16 Octobre 1999. Available online at: [http://europa.eu.int/council/off/conclu/oct99/oct99\\_en.htm](http://europa.eu.int/council/off/conclu/oct99/oct99_en.htm).

<sup>21</sup> Council of the European Union, *A Strategy for the External Dimension of the Area JHA: Global Freedom, Security and Justice*, 15446/05, 6 December 2005, at p. 5. Available online at: <http://register.consilium.europa.eu/pdf/en/05/st14/st14366-re03.en05.pdf>.

<sup>22</sup> Bigo, Didier, *When Two Become One. Internal and External Securitizations in Europe*, in: Kelstrup, Morten and Michael Williams (eds), *International Relations Theory and the Politics of European Integration*, Routledge, London, 2000, pp. 172-198.

<sup>23</sup> Council of the European Union, *A Strategy for the External Dimension of the Area JHA: Global Freedom, Security and Justice*, at p. 5.

<sup>24</sup> Zolberg, Aritside, *The Archeology of "Remote Control"*, in: Fahrmeir, Andreas, Olivier Faron and Patrick Weil (eds), *Migration Control in the North Atlantic World*, Berghahn Books, New York, 2003, pp. 195-222.

### ***C. SSR: Bringing JHA and ESDP Together***

Although European SSR activities are conducted under the external dimensions of JHA and ESDP civilian crisis management operations, the similarity between the objectives pursued is not explicitly acknowledged by the EU. However, operational constraints and needs for results have led the EU to better articulate the two policies. Following the publication of the *European Security Strategy* in 2003, the Irish Presidency of the EU presented an *Action Plan for Civilian Aspects of ESDP*. It recognized the need to do more to link ESDP and JHA instruments and proposed to involve key stakeholders such as the EU's Police Chief Task Force (PCTF) in international police missions and to better coordinate ESDP and JHA work on organized crime in the Western Balkans.<sup>25</sup> Interviews<sup>26</sup> have confirmed that Council's main policy-making working groups in JHA such as the Article 36 Committee or the Police Cooperation Working Party are involved in the decision-making process of the EU crisis management policies. For instance, the Amended Operation Plan (OPLAN) for EUPM, drafted by the Police Unit of the Council in February 2006, was circulated to and discussed with Article 36 Committee several times before it was adopted in April 2006.<sup>27</sup> One of the *rationale* for the rapprochement of the two policies is the need to conduct efficient SSR activities in third countries. The successful completion of crisis management operations is contingent on the reform of the security sector of targeted country. Simultaneously, the objective of the JHA policy to protect the 'internal security regime' is dependent on the reform of the security sector of the countries generating the threats. Therefore, SSR is the very concept bringing JHA and ESDP together and it suggests that the externalization of JHA standards and the role of ESDP police operations in SSR are linked by the same overall objective: protecting the EU's 'safe' internal space from an 'unsafe' external environment.

### ***D. ESDP Police Missions: Expanding the Territorial Scope of JHA Policies?***

This leads us to question the relevance of the distinction made between pillar three<sup>28</sup> and two.<sup>29</sup> A majority of scholars assume that the two pillars are philosophically, institutionally and legally very different from each other, and although there might be some similarities, there is no linkage between them. However, other scholars argue otherwise. Didier Bigo for instance thinks that "*the vision in terms of an external projection of humanitarian operations has concealed the meaning of missions carried out and cleared questions of projections from internal security, whereas they should undoubtedly be linked.*"<sup>30</sup> More recently, Dereck Lutterbeck wrote that "*as places such as Bosnia, Kosovo or Albania are nowadays viewed as major breeding grounds for various illicit cross-border activities directly affecting the internal security of EU countries,*

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<sup>25</sup> European Council, *Action Plan for Civilian Aspects of ESDP*, 10679/2/04, Presidency Conclusions, 17-18 June 2004, 2004, pp. 10. Available online at: <http://www.consilium.europa.eu/uedocs/cmsUpload/Action%20Plan%20for%20Civilian%20Aspects%20of%20ESDP.pdf>.

<sup>26</sup> Confidential interviews, General Secretariat of the Council, Brussels, 12 June 2006.

<sup>27</sup> Council of the European Union, *Draft Operation Plan (OPLAN) for the EU Police Mission (EUPM) in Bosnia and Herzegovina (BiH)*, 4 April 2006, 8025/06.

<sup>28</sup> Police and Justice Cooperation in Criminal Matters.

<sup>29</sup> Common Foreign and Security Policy and European Security and Defence Policy.

<sup>30</sup> Bigo, *When Two Become One. Internal and External Securitisations in Europe*, at p. 188.

(...), the deployment of police forces to these places is often seen as a means not only to combat crime and maintain order ‘on the spot’ but also to prevent these illegal cross-border activities before they reach EU territory.”<sup>31</sup> Hence, one might argue that, originally conceived as crisis management missions, ESDP police missions have drifted towards ‘institution-building missions’ because of the importance of SSR in post-conflict operations. By reforming the security sector of third countries, ESDP police missions seem to be exporting EU internal security standards abroad, expanding their territorial scope and including third countries in the pursuit of EU internal policy goals. Hansen supports this assumption when she writes that “as a central crisis management mechanism, civilian police operations are a means for protecting Europe – by providing instruments to up-hold the law – and thus counter the potential security risks from for example organized crime and refugee flows.”<sup>32</sup>

To investigate this hypothesis the article will now expand on some attempts to conceptualize the process of externalization and explore the efforts of the European Police Mission in Bosnia and Herzegovina to fight organized crime.

### **III. Externalization of JHA: Theoretical Perspectives**

The externalization of JHA has recently become a popular theme of academic research. This might be because it implies competences that traditionally belong to the core of national sovereignty and are thus unlikely to be transferred to supranational authorities or worst, unilaterally imposed upon sovereign states. Nevertheless, the debate over the ability of the EU to behave as a ‘normative power’,<sup>33</sup> prescribing its own rules to third countries, have prompted the re-emergence of theoretical concepts used by the functionalists in the 60s such as policy transfer and external governance.<sup>34</sup>

#### ***A. Rule Transfer and External Governance***

A first valuable theoretical framework to conceptualize the external activities of the EU in the field of JHA is what Schimmelfennig and Sedelmeier call ‘rule transfer’, or the “institutionalization” of EU standards “at the domestic level” by non-member states.<sup>35</sup> This process is triggered by the willingness to join the EU and countries are encouraged to undertake reforms conditionally to their accession. Enlargement is thus one way of transferring JHA rules

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<sup>31</sup> Lutterbeck, Derek, *Blurring the Dividing Line: The Convergence of Internal and External Security in Western Europe*, in: *European Security* (Volume 14, Issue 2), 2005, pp. 231-253, at p. 238.

<sup>32</sup> Hansen, Annika S., *Security and Defence: The EU Police Mission in Bosnia and Herzegovina*, in: Carlsnaes, Walter, Helene Sjursen and Brian White (eds), *Contemporary European Foreign Policy*, SAGE, London, 2004, pp. 173-185, at p.173.

<sup>33</sup> Manners, Ian, *Normative Power Europe: a Contradiction in Terms?*, in: *Journal of Common Market Studies* (Volume 40, Issue 2), 2002, pp. 235-258.

<sup>34</sup> Schmitter, Philip, *Three Neofunctional Hypotheses about International Integration*, in: *International Organization* (Volume 33, Issue 2), 1969, pp. 161-166.

<sup>35</sup> Schimmelfennig, Franck and Ulrich Sedelmeier, *Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe*, in: *Journal of European Public Policy* (Volume 11, Issue 4), 2004, pp. 661-679, at p. 662.

to third countries. With 'policy transfer' Marsh and Dolowitz have widened the scope of 'rule transfer' to go beyond the enlargement process,<sup>36</sup> and following this trend, Lavenex proposed the concept of 'external governance' to theorize the process of "*extension of parts of the Union's *acquis communautaire* beyond the circle of member states toward their immediate neighbours.*"<sup>37</sup> External governance takes place when the regulatory scope of the *acquis* is extended to non-member states and follow functional needs. At the same time, it can be seen as a means to increase the efficiency of internal policies and to serve the foreign policy objective of stabilizing the neighbourhood of the enlarged Union. This double function is interesting in the context of Bosnia and Herzegovina because it is at the same time a neighbour to be stabilized and a potential candidate to be included in the pursuit of internal policy goals. Lavenex explains that the "*selective expansion of EU's norms, rules and policies*" is determined by the "*perceptions of interdependence and threat*" or the fact that the EU's perceived vulnerability is dependent on the situation in its "*near abroad.*"<sup>38</sup>

### ***B. Exporting the Cooperative Model of JHA***

The work of Francesca Longo is also worth mentioning in this section as she attempts to define the substance of what is being transferred to third countries. She describes the third pillar,<sup>39</sup> as a 'cooperative model'. Despite the diversity of national internal security and criminal systems, she argues that "*the developing of common policy in the JHA field has developed some specific features*" to the extent that it has become possible to identify a 'cooperative model'.<sup>40</sup> This model includes instruments aiming to enhance justice and police cooperation between member states such as technical assistance and investigative methods to increase mutual confidence among national law enforcement agencies (LEAs), mechanisms to exchange police and judicial information, or the creation joint investigation teams.<sup>41</sup> A number of European bodies have also

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<sup>36</sup> Dolowitz, David and David Marsh, *Learning from Abroad: The Role of Policy Transfer in Contemporary Policy Making*, in: Governance (Volume 13, Issue 1), 2000, pp. 5-24.

<sup>37</sup> Lavenex, Sandra, *EU External Governance in "Wider Europe"*, in: Journal of European Public Policy (Volume 11, Issue 4), 2004, pp. 680-700, at p. 681.

<sup>38</sup> Lavenex, *EU External Governance in "Wider Europe"*, at p. 681.

<sup>39</sup> Police and justice cooperation in criminal matters or internal security standards.

<sup>40</sup> Longo, Francesca, *The Export of the Fight Against Organized Crime Policy Model and the EU's International Actorness*, in: Knodt, Michèle and Sebastiaan Princen (eds), *Understanding the European Union's External Relations*, Routledge, London, 2003, pp. 158-173, at p. 161.

<sup>41</sup> *Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union*, OJ C 197, 12 July 2000. Available online at: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0712\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0712(01):EN:HTML). *Joint Action of 22 April 1996 Concerning a Framework for the Exchange of Liaison Magistrates to Improve Judicial Cooperation between the Member States of the European Union*, 96/277/JHA, OJ L 105, 27 April 1996. Available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996F0277:EN:HTML>. *Council Framework Decision of 13 June 2002 on Joint Investigation Teams*, 2002/465/JHA, OJ L 162, 20 June 2002. Available online at: [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/l\\_162/l\\_16220020620en00010003.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/l_162/l_16220020620en00010003.pdf). *Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States*, 2002/584/JHA, OJ L 190, 18/07/2002. Available online at: [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/l\\_190/l\\_19020020718en00010018.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/l_190/l_19020020718en00010018.pdf).

been established to strengthen cooperation such as Europol, Eurojust and the European Police College.<sup>42</sup> On the long term these instruments will not only improve transnational cooperation but also approximate the different national investigative strategies and equipments so as to create a common judicial and police culture. Externalization of internal security standards to third countries is then perceptible because the model implemented abroad is based on the cooperative model adopted at EU level. In the field of organized crime, third countries are required to reconstruct national law enforcement and public prosecution services according to the model identified by JHA European ministers as the most efficient to tackle threats posed by organized crime. This model is based on two principles: centralization and specialization of the justice and law enforcement agencies and is described in the *Action Plan against Organized Crime* adopted in 1997.<sup>43</sup>

If as hypothesised in this article, ESDP police missions play a role of ‘conveyor’ of EU standards of internal security, then according to the model developed by Longo, there should be some concrete actions which resemble the EU’s cooperative model of internal security in countries where these missions operate.

#### **IV. Case Study: The EU Police Mission in Bosnia and Herzegovina and its Impact on the Local Internal Security Apparatus**

Bosnia and Herzegovina (BiH) represents a very specific challenge for the EU. On the one hand, this is a country in transition from a recent and violent civil war which unleashed destructive ethnical and nationalist feelings. The EU and other international actors such as NATO are thus heavily involved in peace-building operations and security sector reforms. In December 2004, EUFOR-*Althea*, the largest ever European military mission,<sup>44</sup> was launched to maintain a safe and secure environment and to support the implementation of the Dayton Agreement.<sup>45</sup> The EU also provides substantial economic and administrative assistance with the CARDS programme.<sup>46</sup> For 2005 alone, assistance to BiH totalled € 49.4 million.<sup>47</sup> The presence of the EU as a ‘pacifier’ was raised in 2002, when the High Representative of the International

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<sup>42</sup> Longo, *The Export of the Fight Against Organized Crime Policy Model and the EU's International Actorness*, at p. 162.

<sup>43</sup> European Council of Amsterdam, *Action Plan to Combat Organized Crime*, OJEC C 251, 15 June 1997

<sup>44</sup> *Council Joint Action of 12 July 2004 on the European Union Military Operation in Bosnia and Herzegovina*, 2004/569/CFSP, OJEU L 252, 28 July 2004.

<sup>45</sup> In December 1995, the Dayton Peace Agreement (DPA) ended the war that ravaged Bosnia and Herzegovina since it proclaimed its independence and left the Federal Republic of Yugoslavia in April 1992. Annex 4 of the General Framework Agreement on Peace (GFAP) created a federal state structure consisting of two national ‘entities’ and one district: the Federation of Bosnia and Herzegovina (FBiH) sub-divided into 10 cantons, the Republika Srpska (RS) and the District of Brčko which fell directly under the jurisdiction of the state. BiH is a weak central state authority, whereas the entities are relatively strong, with their own constitutions. The GFAP also includes a state Constitution which established the equal rights of the three ‘constituent ethnic peoples’: Serbs, Croats and Bosniaks.

<sup>46</sup> Community Assistance for Reconstruction, Development and Stabilisation. From 2007, it will be replaced by the Instrument for Pre-accession Assistance (IPA) and JHA will remain a key priority.

<sup>47</sup> According to the *Bosnia and Herzegovina 2005 Progress Report*, since the end of the war in 1995, Community assistance to BiH totalled €1.15 billion.



Community in BiH (HR)<sup>48</sup> also became the European Union's Special Representative (EUSR) in BiH.<sup>49</sup> On the other hand, because of its peculiar geographical location and its weak state structure, the country constitutes a difficult security challenge. In Bosnia, if organized crime is not dealt with successfully on the ground, it easily spreads into the EU. This is one of the main justification for the Union's actions to reform the security sector and to help local authorities to fight organized crime.<sup>50</sup> Among the four sectors supported by CARDS,<sup>51</sup> JHA is clearly a key priority and this is reflected by the major share of money (€ 31.3 million) devoted to reform BiH's judicial system and bring police forces in line with EU standards. Lastly, Bosnia has a natural vocation to join the European Union and was accordingly given a clear European perspective in 2003.<sup>52</sup> All these factors combine to make EU's actions in BiH difficult to conceptualize. But despite coordination problems,<sup>53</sup> all the instruments at EU disposal are currently engaged in the country (Community, CFSP/ESDP, JHA) in what seems to be the EU's first holistic action toward a third country.

#### ***A. The European Police Mission in Bosnia and Herzegovina (EUPM)***

Launched on 1 January 2003, following the seven years long UN police mission (IPTF),<sup>54</sup> EUPM is part of the Union overall support to the rule of law sector in BiH. Its mission is to

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<sup>48</sup> BiH is a quasi-protectorate based on the presence of international military forces and the far-reaching powers of the Office of the High Representative (OHR). Instituted by Annex 10 of the Dayton Agreement, the OHR's mandate is to oversee the implementation of the Agreement on behalf of the International Community. As the chief civilian peace implementer, the High Representative (HR) has the final authority to interpret all civilian aspects of the Agreement. He is entitled to use the 'Bonn powers' to remove from office public officials who practice obstructionism to reforms and to impose laws that he sees fit if BiH's legislative bodies fail to do so. The HR reports to the Peace Implementation Council (PIC), a group of 55 countries and international organizations set up after the negotiation on the DAP and responsible for directing and sponsoring the peace implementation process.

<sup>49</sup> Since January 2006, Christian Schwartz-Schilling is the new HR. Former High Representative of the International Community in BiH have been: Carl Bildt (1995-1997), Carlos Westendorp (1997-1999), Wolfgang Petritsch (1999-2002), and Paddy Ashdown (2002-2005).

<sup>50</sup> Council of the European Union, *EU Action against Organised Crime in the Western Balkans*, 14810/03, 2 December 2003, pp. 11. Friends of the Presidency, *Report by the Friends of the Presidency on Concrete Measures to Be Taken to Effectively Enhance the Fight Against Organised Crime Originating From the Western Balkans*, 13385/04, 28 September 2004, pp. 45. European Commission, *Communication from the Commission to the Council and the European Parliament - "Developing a Strategic Concept on Tackling Organised Crime"*, COM(2005) 232 final, 2 June 2005, pp. 11. Council of the European Union, *Action Oriented Paper on Improving Cooperation, on Organised Crime, Corruption, Illegal Immigration and Counter-terrorism, Between the EU, Western Balkans and Relevant ENP Countries*, 9272/06, 12 May 2006, pp. 34.

<sup>51</sup> Democratic Stabilisation (€ 3.1 million), Economic and Social Development (€ 14.5 million), Community Programmes (€ 0.5 million) and Good Governance and JHA (€ 31.3 million). Available online at: <http://www.delbih.ec.europa.eu>

<sup>52</sup> Thessaloniki European Council, *Presidency Conclusions*, 19-20 June 2003. Available online at: [http://europa.eu/european\\_council/conclusions/index\\_en.htm](http://europa.eu/european_council/conclusions/index_en.htm).

<sup>53</sup> Orsini, Dominique, *Future of ESDP: Lessons from Bosnia*, International Security Information Service, European Security Review (Number 29), Brussels, June 2006, pp. 5. Available online at: <http://www.isis-europe.org>.

<sup>54</sup> The UN International Police Task Force.

establish a sustainable, professional and multi-ethnic police service in Bosnia “*in accordance with best European and international practice.*”<sup>55</sup> Comprising about 200 police experts, co-located with local police at medium and senior level in around 30 locations across the country, the mission has no executive mandate. This means that EUPM is a ‘*strengthening mission*’ whose role is to educate, train, and advise, and not a ‘*substitution mission*’, with the power of law enforcement and arrest.<sup>56</sup> The Police Head of mission (PHoM)<sup>57</sup> reports to the Secretary General/High Representative for the CSFP, via the EU Special Representatives. The Political and Security Committee exercises political control over the missions and provides strategic directions. Given the persistence of organized crime and the unresolved problem of police reform, the mandate of EUPM was renewed until 31 December 2007. The mission statement of EUPM II heavily emphasis the objective of fighting organized crime and clarify its relationship with EUFOR: “*Under the direction of the EUSR, the EUPM will take the lead in the coordination of policing aspects of the ESDP efforts in the fight against organized crime. It will assist local authorities in planning and conducting organized crime investigations.*”<sup>58</sup>

### ***B. Substance of the Export: EUPM as a Conveyer of JHA Standards***

The basic police frameworks having been established by the UNIPTF, the main task of EUPM was to put flesh on the structures, by injecting good practices, efficient and modern working methods in the local LEAs. To do so, European rules and techniques should allegedly be used as ‘standards’ to be transferred. But as several experts note: “*Although there is an EU-shared corpus of human rights, civil liberties and best practices to be applied by EU police forces, there is not a joint EU book of rules which would lay out ‘European standards of policing’.*”<sup>59</sup> However, this statement is only partially true for in 2001 the Council of Europe developed a *European Code of Police Ethic* which establishes common European principles concerning the objectives, performance and accountability of the police and this document was used as a reference by the Union.<sup>60</sup> Furthermore, Longo demonstrated that the third pillar is characterized by a ‘cooperative model’ of policing and that most official EU documents such as the *Action Plan against Organized Crime*, insist that national LEAs should be organized according to the principles of centralization and specialization. Examining three concrete objectives of EUPM and their impacts on the internal security apparatus of Bosnia will enable us to determine what ‘substance’, if any, is exported by EUPM. The three objectives are: the reform of the police structure, and the establishment of two state-level LEAs whose main role is the fight against organized crime: the State Border Service (SBS) and the State Investigation and Protection Agency (SIPA), both under the authority of the Ministry of Security.

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<sup>55</sup> Council Joint Action of 11 March 2002 on the European Union Police Mission, 2002/210/CFSP, OJEU L70, 13 March 2002, at p. 6. Amended by Council Joint Action of 24 November 2005 on the European Police Mission (EUPM) in Bosnia and Herzegovina (BiH), 2005/824/CFSP, OJEU L307/55, 25 November 2005.

<sup>56</sup> Council Joint Action of 11 March 2002 on the European Union Police Mission, at p. 6.

<sup>57</sup> Brigadier-General Vincenzo Coppola.

<sup>58</sup> Council Joint Action of 24 November 2005 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH), 2005/824/CFSP, OJEU L 307/55, 25 November 2005.

<sup>59</sup> Confidential interviews, Secretariat of the European Council, Police Unit, Brussels, 12 June 2006.

<sup>60</sup> Council of the European Union, *EU Comprehensive Concept for Strengthening of Local Police Missions*, 9535/02, 31 May 2002, pp. 23, at p. 2.

1. *Police Restructuring: Implementing the EU Model of Centralized Police Organization*

Today the police in Bosnia and Herzegovina has to cope with not only one but two historical burdens. First, the heritage of Marshall Tito's single party regime and its secret police,<sup>61</sup> and second the civil war during which the police was indistinguishable from the paramilitaries based on ethnic origins.<sup>62</sup> Ethnically divided, often corrupted, the police in Bosnia is also profoundly politically oriented to the extent that investigating the rich and powerful always requires international pressure.<sup>63</sup> Collantes notes that incidents of detention without a trial, violence preventing people from returning to their home were still wide spread in the after-war period, continuing the ethnic cleansing in some part of the country.<sup>64</sup> In this context, police reform was a "major state building exercise" as it became central to the externally-managed "process of changing the dynamic of a society."<sup>65</sup> This is why IPTF focused on the restructuration of the Bosnian police. A new recruitment policy was developed in order to integrate police officers from minorities in pre-war areas by introducing ethnic quotas.<sup>66</sup> Besides, IPTF undertook a vast screening operation of the Bosnian police forces, know as the 'Certification process'. The aim was to reduce the 44,000 strong police forces by keeping only those who complied with the property legislation and were exempt from war crime convictions. After several years of UN-led reforms, the European Commission financed a broad study of the police. The findings highlighted that the police forces were currently not prepared for a 'European future'.<sup>67</sup> The lack of cooperation between police forces of the two entities is such that the situation is similar to the beginning of the Schengen area in the EU: "In Sarajevo if a crime is committed on the streets that are part of one of the entities, the Federation, and the criminal drives four kilometres outside the centre, he crosses the Boundary line (IEBL)<sup>68</sup> into Republika Srpska. (...) Then the Federation police no longer have the competence to follow the criminal."<sup>69</sup> The EU has hence imposed criteria to reform the police system so as to centralize the fragmented police force and to transfer competences to the state level (federal level). Also, with one policeman for 80

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<sup>61</sup> UDBA (Uprava državne bezbednost) or State Security Administration was Marshall Tito's political police. Part of the Yugoslav intelligence services, it was responsible for the assassination of many political dissidents between 1946 and 1991.

<sup>62</sup> Vejnovic, Dusko, and Velibor Lalic, *Community Policing in a Changing World: A Case Study of Bosnia and Herzegovina*, in: *Police Practice and Research* (Volume 6, Issue 4), 2005, pp. 363-373, at p. 364.

<sup>63</sup> International Crisis Group (ICG), *Policing the Police in Bosnia: A Further Reform Agenda*, Report Number 130, ICG, Brussels, 10 May 2002, pp. 75.

<sup>64</sup> Collantes Celador, Gemma, *Police Reform: Peacebuilding Through "Democratic Policing"?*, in: *International Peacekeeping* (Volume 12, Issue 3), 2005, pp. 364-376, at p. 365.

<sup>65</sup> Hansen, Annika S., *Strengthening Indigenous Police Capacity and the Rule of Law in the Balkans*, in: Pugh, M. and W. P. S. Sidhu (eds), *The United Nations and Regional Security*, Lynne Rienner, Boulder, 2003, pp. 175.

<sup>66</sup> IPTF imposed that 20% of the Republika Srpska police should be composed of minorities.

<sup>67</sup> European Commission, *Financial, Organisational and Administrative Assessment of the BiH Police Forces and the State Border Service*, Sarajevo, 30 June 2004, pp. 139.

<sup>68</sup> The Inter-Entity Boundary Line is the dividing line between the Federation of BiH and the Republika Srpska.

<sup>69</sup> BBC, *On Patrol with Sarajevo Police*, in: *BBC news online*, 19 July 2006. Available online at: <http://news.bbc.co.uk/2/hi/europe/5142374.stm>.

inhabitants, Bosnia is very far from the EU standard of one policeman for 350 people<sup>70</sup> and reduction of manpower is another priority.<sup>71</sup> Following the EU's recommendations, the OHR established a Police Restructuring Commission in July 2004, led by the former Belgian Prime Minister Wilfried Martens and whose mission was to suggest a single policing structure for the whole country.<sup>72</sup> Negotiations have proved to be very difficult mainly because authorities in Republika Srpska are not willing to hand over the control of their police to the state level.<sup>73</sup> On 5 October 2005 after years of negotiations, an Agreement on Police Reform was approved by the three political entities. The EU's Enlargement Commissioner, Olli Rehn, responded by giving a green light to start negotiations on a Stabilisation and Association Agreement. However, the perspective of the legislative elections in October 2006 has brought the negotiations to a halt. In practice, discussions on police reform are conducted directly by the EUPM at the highest level of its hierarchy. Brigadier-General Vincenzo Coppola, EUPM Police Head of Mission, chairs the weekly meetings encompassing delegations of the Federation of BiH polices, Republika Srpska police, OHR, EUFOR and the European Commission delegation.

The reform of the Bosnian police is a clear example of EU standards of internal security being exported and implemented by an ESDP police mission. The EU standard applied here is a common model of police forces organization based on the centralization principle, advocated by the EU and underlined by Longo.

## 2. *EUPM-SBS. Exporting EU Standards in Border Controls: a Case of Rule Transfer*

One of the tasks of EUPM is to support the development of the SBS, a state-level law enforcement agency responsible for policing the borders, ports and airports of Bosnia. In Tito's Yugoslavia, Bosnia had no international borders since it was surrounded by Croatia and Serbia. With the break-out of the former Yugoslavia, the country found itself with almost 1600 kilometres of borders and no police units specialized to patrol them. This is the reason why the UN mission to BiH established the SBS as soon as 1999. First multiethnic law enforcement agency, recruitment of agents must respect a scrupulous ethnical balance<sup>74</sup> and include at least 10% of women.<sup>75</sup> The SBS is modelled on the former German Federal Border Protection (BGS or *Bundesgrenzschutz*).<sup>76</sup> Acting at federal level, it is a centralized institution directed by the federal ministry of security. The service is organized in four regional headquarters<sup>77</sup> which do not take the IEBL into consideration. SBS agents are spread between field offices located at the

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<sup>70</sup> Confidential interview, French embassy in BiH, Sarajevo, 29/06/2006.

<sup>71</sup> The objective is to reduce police from 16,800 in 2004 to 13,300 in 2007. *Final Report on the Work of the Police Restructuring Commission of Bosnia and Herzegovina*, 31 December 2004.

<sup>72</sup> Damian, Matthieu and Heinz Vetschera, *Security Sector Reform in Bosnia and Herzegovina: The Role of the International Community*, in: *International Peacekeeping* (Volume 13, Issue 1), 2006, pp. 28-42, at p. 35.

<sup>73</sup> It must be noted that Republika Srpska police is already unified, whereas the Federation still has 10 different polices, one for each canton.

<sup>74</sup> Approximately one third of Croat origin, one third of Serbian origin and one third of Bosniak origin.

<sup>75</sup> This later requirement is a European standard.

<sup>76</sup> The BGS was renamed Bundespolizei (BPOL) on 1 July 2005. See the website of the BPOL: <http://www.bundespolizei.de>.

<sup>77</sup> Tuzla, Banja Luka, Mostar and Sarajevo.

main entry points and at the three airports in Sarajevo, Mostar and Banja Luka. Beside their regular control and surveillance activities, SBS officials play a crucial role in the fight against illegal trafficking of people,<sup>78</sup> stolen vehicles, arms, narcotics and organized crime in general. They use the most recent detection technologies and statistics show that SBS high rate of efficiency<sup>79</sup> ranks it among the most advanced border police services in South Eastern Europe. In addition, the International Organization for Migration (IOM) noted an 80% decrease in the number of referrals of trafficked victims between 2002 and 2003.<sup>80</sup> This success is largely due to EUPM support. The 27 European professional border guards which compose the EUPM-SBS unit are working in co-locations with SBS officers which mean that they meet their counterparts every day. They bring assistance in using the material provided by the EU and the member states and advice them on best attitudes to adopt to maximize their work. Although trainings are directly provided by the member states (notably Germany) and other international actors such as the IOM,<sup>81</sup> EUPM close monitoring of SBS activities consists *de facto* of a long term training to SBS officers.<sup>82</sup> One of the task of EUPM is to enhance SBS 'cooperative capacities' with other LEAs and services such as the customs and taxation services (ITA). According to EUPM officers, this work is grandly facilitated by the existence of clear EU standards in the field of border control and methods to be applied to third countries.<sup>83</sup>

The EU common policy in border management concretely materialises in a series of rules and procedures that national border services must follow when conducting checks on the EU external border.<sup>84</sup> These rules used to be contained in a number of disparate community and intergovernmental instruments but since March 2006 they are all gathered in a single *Community Code on the Management of the EU's External and Internal Borders* (or *Schengen Borders Code*).<sup>85</sup> Beside technical harmonization, these rules also list the cooperative mechanisms adopted to improve the overall security level of the common EU border. They

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<sup>78</sup> According to UN estimates, 50.000 illegal immigrants came to Europe through BiH in 2000. BBC, *UK Tackles Balkans "Crime Threat"*, in: *BBC News Online*, 2002. Criminal networks are able to traffic as many as 200.000 women and children through the Balkans every year. IOM, *Victims of Trafficking in the Balkans: A Study of Trafficking in Women and Children for Sexual Exploitation to, Through and From the Balkan Region*, International Organization for Migration, Austria, 2001, at p. 3. Available online at: [http://www.iom.int/documents/publication/en/balkan\\_trafficking.pdf](http://www.iom.int/documents/publication/en/balkan_trafficking.pdf).

<sup>79</sup> In 2005, the SBS arrested 507 people wanted by INTERPOL, confiscated 436 stolen cars and seized 27 kg of heroin and 110 kg of marijuana. *Brief on the security situation in BiH for 2005*, April 2006. Confidential document.

<sup>80</sup> IOM, *Changing Patterns and Trends of Trafficking in Persons in the Balkan Region*, International Organization for Migration, Geneva, July 2004, at p. 37. Available at:

[www.iom.hu/PDFs/Changing%20Patterns%20in%20Trafficking%20in%20Balkan%20region.pdf](http://www.iom.hu/PDFs/Changing%20Patterns%20in%20Trafficking%20in%20Balkan%20region.pdf).

<sup>81</sup> Confidential interview with an IOM official, Sarajevo, 17 July 2006.

<sup>82</sup> EUPM-SBS programmes include investigation techniques and dogs to fight drug smuggling, use of boat patrols along the rivers, and the establishment of Mobile Support and Control Units (MSCU) which control the borders beyond the official crossing points.

<sup>83</sup> Confidential interview with an EUPM official in charge of SBS monitoring, Sarajevo, 1 August 2006.

<sup>84</sup> Hobbing, Peter, *Integrated Border Management at the EU Level*, CEPS Working Document, 227, Centre for European Policy Studies, Brussels, August 2005, at p. 31

<sup>85</sup> *Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 Establishing a Community Code on the Rules Governing the Movement of Persons Across Borders* (Schengen Borders Code), *OJ L* 105/1, 13 April 2006. Available online at: [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l\\_105/l\\_10520060413en00010032.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_105/l_10520060413en00010032.pdf).

comprise joint operations at external borders, networks of member states' immigration and customs liaison officers, common training and core curriculum for border guards and systems of burden-sharing. In the context of the Eastern enlargement, perspective of entrusting new member states with the task of policing a longer and more porous common external border, pressed member states to externalize their common standards in border control. Potential candidate were asked to adopt a strategy to improve the efficiency of their borders: the 'Integrated Border Management' (IBM). Being a transit region for all kind of traffics in direction of the common European space, the Balkan countries were an obvious target for this process of externalization. The effectiveness of police patrolling borders is of crucial importance for the crime and security level within the EU. Consequently, the EU strongly encouraged its partners to adopt its own standards and develop cooperation mechanisms with neighbouring countries. In 2004, the Commission issued a document entitled *Guidelines for Integrated Border Management in the Western Balkans*. "By following these guidelines, the partner countries will be ensured that the policies and subsequent projects being develop are fully in line with EU standards."<sup>86</sup> For 2002-2004 the EC assistance for border management totalled € 117 million, mainly to implement the IBM strategy. IBM promotes inter-agency cooperations whereby all services active at the border, as well as ministries and authorities responsible for these services, cooperate properly (border control, customs, but also veterinary and transport services).

For EUPM officers, the existence of common EU standards in the field of border management undoubtedly explains the success of the SBS in Bosnia.<sup>87</sup> Their impact on the local police is more efficient if they have clear guidelines, politically endorsed by the EU and by the government of the country where they operate. For instance in July 2005, after the Council of Ministers of BiH adopted the *Integrated Border Management Strategy* under EUPM guidance, border patrols were reorganized so as to systematically include one SBS officer to check travel documents and one custom officer to check goods and custom duties. This progress was accepted with no difficulty by SBS officers because inter-agency cooperation is a requirement of the IBM strategy. EUPM has also induced SBS to be involved in regional cooperation initiatives and SBS officers now regularly attend regional meetings such as the Ohrid process,<sup>88</sup> the Stability Pact and the South East European Cooperation Centre. Finally, SBS has launched cooperations with LEAs in neighbouring countries. In June 2005, a cooperation agreement was signed with the Croatian Border Police.<sup>89</sup> The objective of EUPM is now to have SBS develop 'one stop' border crossing points where Bosnian and neighbouring countries border agents would control the border at the same spot, as it is the case in Europe, instead of the present system where each country has its own border crossing point distant of 500 meters.

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<sup>86</sup> European Commission, *European Neighbourhood Policy*, Strategy Paper COM(2004) 373 final, Brussels, 12 May 2004, pp. 35, at p. 11. Available online at: [http://ec.europa.eu/world/enp/pdf/strategy/strategy\\_paper\\_en.pdf](http://ec.europa.eu/world/enp/pdf/strategy/strategy_paper_en.pdf).

<sup>87</sup> Confidential interview with an EUPM official in charge of SBS monitoring, Sarajevo, 1 August 2006.

<sup>88</sup> Balkans Regional Conference on Border Management and Security organized in Ohrid (Macedonia) in 2003.

<sup>89</sup> European Commission, *Bosnia and Herzegovina: 2005 Progress Report*, SEC (2005) 1422, Brussels, 9 November 2005, at p. 60.

3. *EUPM-SIPA. The European Way of Fighting Organized Crime or a  
“Britishization” of the Bosnian Police?*

Supporting the SIPA is the other important task of EUPM. This other state-level LEA was again part of the UN police mission original projects and was created in 2002. However, its function was limited to the protection of facilities and VIPs and to the collection of data on criminal offences. In 2004, under the pressure of EUPM, its policing powers were extended. Its role can now be compared to the *Office Central de Répression* in France, the *Bundeskriminalamt* (BKA) in Germany or the *Serious Organized Crime Agency* (SOCA) established in 2005 in the United Kingdom. SIPA has a nation wide responsibility to investigate and fight all major crimes at the state level: organized crime, terrorism, high level corruption, human trafficking. The complicated police structure in Bosnia, characterized by a poor level of cooperation between entities polices, is the cause of the very low rate of efficiency. In addition, the high level of corruption and the existence vast networks of criminal groups and traffickers made imperious the need for an independent state-level police agency. This was also reinforced by the strengthened mandate of EUPM focusing on the fight against organized crime.<sup>90</sup> With no executive mandate, European policemen rely on the local police to achieve their objectives. This mere fact mechanically boosts the need to transfer the best techniques and methods of investigation so as to improve local police efficiency.

In the absence of clear guidelines in the field of EU policing, the role of EUPM officers is determinant in the process of ‘standards export’ because they rely on their personal *acquis* to choose what standards should be transmitted to the Bosnian police. Between 2000 and 2004, the 43 police forces in England and Wales adopted a National Intelligence Model (NIM). The NIM is an attempt to standardize the policing practices in England and Wales around a particular policing paradigm: the *Intelligence Led Policing* (ILP).<sup>91</sup> ILP aims at changing the nature of policing, shifting from reactive investigation to the targeting of individuals and criminal groups based upon intelligence. The last two EUPM chief advisor for SIPA were British police officers who had been involved of the process of NIM implementation in England and Wales. It therefore comes as no surprise that the idea of applying the NIM to Bosnia came around about April 2005.

While its new mandate was being recentred on the support of the local police to fight against organized crime, EUPM needed to develop SIPA’s abilities to tackle crime. “*One way of improving its efficiency was to adopt an intelligence led approach to policing, bringing together an intelligence community in Bosnia in support of the fight against organized crime.*”<sup>92</sup> Concretely, EUPM officers provided standards for the recording and dissemination of intelligence. Then, the EUPM’s Interface Cell for Criminal Intelligence (ICCI), pushed for the creation of criminal-intelligence support subdivisions in all crime departments across the country. The ICCI collects information from many sources (EUFOR, various national Intelligence Agencies actives in BiH, OHR) and share its intelligence packages with SIPA.

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<sup>90</sup> Interview with EUPM-SIPA Chief advisor, EUPM Headquarter, Sarajevo, 14 July 2006.

<sup>91</sup> Maguire, Mike, and Tim John, *Intelligence Led Policing, Managerialism and Community Engagement: Competing Priorities and the Role of the National Intelligence Model in the UK*, in: *Policing and Society* (Volume 16, Issue 1), 2006, pp. 67-85, at p. 69.

<sup>92</sup> Interview with EUPM-SIPA Chief advisor, EUPM Headquarter, Sarajevo, 14 July 2006.

Policemen from SIPA are then encouraged to have daily briefings with colleagues at various level of competence to exchange information and discuss cases. Lastly, they are urged to coordinate their efforts with all the actors of the criminal intelligence community, including prosecutors, Intelligence and Security Agency (OSA), cantonal police forces in the Federation of BiH, the Republika Srpska' police, SBS, EUPM, so as to create a genuine intelligence community to conduct 'smart investigations'.

The experience of SIPA indicates that the nature of the 'medium' through which the export takes place has an impact on the end result. In the absence of common EU standards of policing, EUPM officers rely on their own personal experience and pass on their own techniques. In this case, one may say that the EUPM generated a 'Britishization' of the Bosnian state police.

## **V. Conclusion**

This article only confirms what other scholars have demonstrated at length before. With the emergence of new threats linked to transnational organized crime, the traditional distinction between internal and external security is no longer valid. This was acknowledged by the EU in 2003 and progressively integrated in the relevant internal policies: development of the external dimension of the area of freedom, security and justice and externalization of internal security standards. In the meantime, external policies such as the European Security and Defence Policy were also adapted to these new challenges with the establishment of civilian components. The significance of the security sector reform to hold back the 'threats' outside the European territory has led to a gradual convergence of the aims of the two policies which had so far been distinguished by an institutional boundary (pillarization). The remaining question was then whether the blending of internal and external security policies objectives had reached sufficient a level that one would turn into the instrument of the other? In other words, have ESDP civilian crisis management missions become a tool to achieve the external objectives of the JHA policy? The study of the three main tasks of EUPM in Bosnia, namely the reform of the police structure and the development of the state-level polices (SIPA and SBS), contributes to answering these questions to the extent that it confirms the original hypothesis in several respects.

First, it shows that EUPM is considered by the EU as a practical tool to implement and to increase the efficiency of its internal policy in Bosnia. EUPM has a mandate to fight organized crime and to do so it develops the local capacities to tackle crime that would otherwise spread to the EU. Moreover, by monitoring and advising the local police, EUPM successfully transmits European standards of internal security. The diffusion of the National Intelligence Model to SIPA and the Integrated Border Management to SBS, clearly indicates that EUPM is a 'standards conveyer'. Second, the existence of clearly defined European standards, facilitate the externalization process. It gives EUPM officers clear guidelines and reduce the amount of national bias. As the case of SIPA points out, European police officers are naturally inclined to promote the model they know best. In the case of border control however, the Schengen model, which is widely recognized in Europe, is all the more easily exported abroad through the Integrated Border Management. This process of 'rule transfer' only takes place because European policemen are constantly monitoring their local counterparts. Their impact goes further than merely reforming the security sector: they export genuine European standards. A further evidence that ESDP police missions is instrumental in exporting JHA standards abroad



is that the system of internal security that EUPM contributes to shape in Bosnia, shares many similarities with the EU 'cooperative model' of policing described by Longo. Indeed, SIPA and SBS officers are systematically encouraged to cooperate, coordinate and exchange information with neighbouring countries and with Bosnian services involved in the fight against organized crime. This case study of EUPM demonstrates that ESDP police missions play a crucial role in the process of externalizing European standards of internal security by restructuring third country domestic security institutions.

The use of ESDP policy to pursue EU internal security objectives abroad is a direct result of the fusion between internal and external security. However, one of the adverse effect of this phenomenon is that by focusing exclusively on strengthening the performance of security actors and neglecting the development of the democratic accountability of these actors, the EU undermines its long term security objectives and reveals its true intentions. Security actors have the legitimate authority to use force but in order to gain that legitimacy, they must be accountable to elected bodies. Corruption, political abuse of intelligence services, nepotism, inefficiency, all problems commonly encountered in non-reformed security sector stem from the lack of transparency and accountability. Security sector reform is not only about effectiveness, it is also about good governance and democratic control.<sup>93</sup> Yet, EUPM has not aimed at developing a democratic and accountable police force and has failed to take the need of the civil society into account. It is used as an instrument to strengthen law enforcement capacities in order to prevent trafficking, illegal migration, and organized crime from reaching the European territory. In fact, the EUPM activities reflect the EU's perceptions of interdependence and vulnerability which, according to Lavenex, triggers the process of external governance. One may wonder whether this 'contamination' of Justice and Home Affairs issues with ESDP police mission is a good thing after all.

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<sup>93</sup> See Born, Hans, Philipp H. Fluri and Simon Lunn, *The Relevance of Parliamentary Oversight for the Security Sector and its Reform*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Brussels/Geneva, 2003, pp. 263. Law, David M., *The Post-Conflict Security Sector*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Policy Paper, 14, Geneva, June 2006, pp. 28. Chuter, David, *Understanding Security Sector Reform*, in: *Journal of Security Sector Management* (Volume 4, Issue 2), 2006, pp. 21.

# Discussing Definitions of Organised Crime: Word Play in Academic and Political Discourse

Maarten van Dijck<sup>1</sup>

*“Wer Recht durchzusetzen vermag, beweist damit, dass er Recht zu setzen berufen ist. Umgekehrt: wer nicht Macht genug hat, einen jeden im Volke gegen den anderen zu schützen, hat auch nicht das Recht, ihm zu befehlen.”*

(Gustaf Radbruch)

The discussion on the definition of organised crime rests on two several assumptions about the relation between ‘organised crime’ as a word string, organised crime as a concept and the social reality of (organised) criminal behaviour. Arguing that there is no need for a harmonised definition of organised crime the author will defend a comprehensive notion of organised crime that leaves room for political and cultural differences. By necessity, such an open definition is not a definition in the true sense, but it nevertheless may uncover the discursive nature of any notion of organised crime and the socio-political dynamics inherent to the discourse on organised crime.

## I. What’s in a Name?

*“What’s in a name?”* This rhetorical question is raised by Shakespeare’s most famous female character Juliet in the play *‘Romeo and Juliet’*. Although in its very essence it is merely a verbal token, the name *Montague* represents the exclusion of Romeo from ever becoming a legitimate

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and accepted member of the *Capulet* family. Being a *Montague*, Romeo will never be able to take Juliet as his wife, unless he is willing to betray his own very identity and origin. As far as the *Montagues* and the *Capulets* are concerned, Romeo's and Juliet's love is a forbidden love.

The names *Montague* and *Capulet*, though mere words, refer to the respective images of the self as adhered to by the members of both families. In the case of Shakespeare's play this self-image strongly relates to the way the other family is perceived and to the way their mutual history is constructed. The hostile relationship between the families depends on the reconstructive interpretation of members of the two families. The threat that both the *Montagues* and *Capulets* see in one another, may be a mere projection of old resentments, now propelled by the construction of words in which the threat is continuously reiterated.

What is the similarity between this complicated relationship between the two families and organised crime? Both concern a threat image upheld in the absence of easy ways to assess the actual nature and extent of the assumed menace.

This does not make the threat less real, at least in human perception and communication. But communications and perceptions are fluid, prone to multiple interpretation and even (political) abuse.

Scholars and policy makers (to a lesser degree) have been aware of this floating meaning of 'organised crime'. Actually, the definition of organised crime has been at the centre stage of the international criminological debate for several decades.<sup>2</sup> This is demonstrated once more by a recent publication of Finckenauer in *Trends in Organized Crime*.<sup>3</sup> In this publication the author expresses the hope of being able to convince the reader of the importance of a "clear and focused" definition of organised crime. Such a definition, according to Finckenauer, could serve "as a legal definition and for public policy purposes, but it is especially important for research purposes as well." Ideally such a definition would have the support of many because "if we have built a body of knowledge that is accumulated over time and from a number of researchers and a variety of studies, there must be some common definition(s) to insure that we are all meaning the same thing."<sup>4</sup>

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<sup>2</sup> See for example: Paoli, Letizia and Cyrille Fijnaut, *Introduction to Part I: The History of the Concept*, in: Fijnaut and Paoli (eds), *Organised Crime in Europe*, Kluwer, Deventer, 2004, at pp. 21-46; Kinzig, Jörg and Anna Luczak, *Organised Crime in Germany: A Passe-Partout Definition Encompassing Different Phenomena*, in: Fijnaut, C. and Paoli (eds), *Organised Crime in Europe*, Kluwer, Deventer, 2004, at pp. 333-357; Woodiwiss, M., *Organized Crime - The Dumbing of Discourse*, in: George Mair and Roger Tarling (eds), *The British Criminology Conference: Selected Proceedings* (Volume 3), Liverpool (UK), 2000, at pp. 13-27. Available online at: <http://www.britsoccrim.org/volume1/017.pdf> (All websites used in this article were last checked on 13 March 2007); Fijnaut, C.J.C.F., *Over de opzet, de uitvoering en de resultaten van het onderzoek* (transl.: "About the Setup, Execution and Results of the Research"), in: C. Fijnaut, Bovenkerk, Bruinsma en H. van de Bunt (eds), *De georganiseerde criminaliteit in Nederland*, Gouda Quint, Arnhem, 1996, at pp. 17-26.

<sup>3</sup> Finckenauer, James O., *Problems of Definition: What is Organized Crime?*, *Trends in Organized Crime* (Volume 8, Number 3), Transaction Publishers, 2005, at pp. 63-83, at p. 63.

<sup>4</sup> Finckenauer, James O., *Problems of Definition: What is Organized Crime?*, at p. 71.

Despite this lofty idealism Finckenauer's efforts to solve the definitional puzzle are bound to fail. A more close reading of the article reveals a major weakness in the attempt to solve the differences of opinions surrounding the forming of a definition. Literally, in the end Finckenauer quite bluntly advocates his own definition as being the 'true' definition conveying (what Finckenauer perceives as) the 'essence' of organised crime. Actually, Finckenauer is just one in a long row of scholars claiming to have formulated the one really valid definition.

## II. The Need for a Univocal Definition?

Surveying the literature on the definition of organised crime, one can discern two demands to be met by a definition. The first is the demand for a commonly shared, or at least broadly accepted, definition of organised crime. The second is the demand for a clear-cut, unambiguous definition. Both demands are combined in the single adjective 'univocal'. The current situation is such that "*we are now left with an ambiguous and conflated concept*".<sup>5</sup> The underlying thought is that a univocal definition will decrease the conceptual vagueness or at least limit the number of different concepts.

Both demands, though conceptually distinct, relate to one another. A definition is not truly common, not really shared, if the vagueness of its wording leaves room for alternative interpretations. A formal agreement on such an 'open' definition may then hide underlying differences in opinion about its true interpretation.

The need for a common and unambiguous definition has been expressed in four different contexts: in the context academic research; at the level of strategic analysis; in the context of legal cooperation and mutual assistance; and at the level of politics and policy making. As said, two different interpretations of what this need entails can be discerned. On the one hand, it has been argued that there is a need for an unambiguous definition for the purpose of delineating the concept of organised crime, primarily for research purposes. This need refers to scientific and/or academic research 'in the pursuit of knowledge'. On the other hand, there is a perceived need for a commonly accepted definition for the purpose of harmonising strategic (policy) research and law enforcement efforts. This second need refers to the more practical objectives of combating crime and, accessory to that, strategic analysis. As Fijnaut *et al.* put it:

*"[...] the way organised crime is defined, determines to a great extent the view on this phenomenon, but also has far-reaching consequences for the (required) policy fighting this phenomenon".*<sup>6</sup>

Whereas the latter objective is policy-driven, it is primarily realised through legal instruments. Mutual cooperation and mutual legal assistance in the fight against organised crime require both a mutually accepted (legal) definition and, in support of that, the political agreement on the scope of the assistance. But does this mutual acceptance and political agreement also require a strict unambiguity?

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<sup>5</sup> Paoli, Letizia and Cyrille Fijnaut, *Introduction to Part I: The History of the Concept*, at p. 22. See also Von Lampe in the same volume.

<sup>6</sup> Fijnaut, C.J.C.F., *Over de opzet, de uitvoering en de resultaten van het onderzoek*, at p. 12.

At the European level the need for an unambiguous and commonly accepted standard definition has also been expressed. Such a definition would not only serve as a basis of harmonised and comparable research and strategic analysis, but would supposedly also facilitate the combined fight against organised crime. Quoting Dobovšek: “*Organized crime is a major problem in most European countries. In spite of that, there is no generally accepted definition of organised crime yet. In fight against organised crime, it is essential to collect and analyse information about organized crime systematically. For this purpose we need the determination of an appropriate policy to fight organized crime and internationally recognised definition of organized crime.*”<sup>7</sup>

Initially similar thoughts were predominant within EU institutions such as the Council of the European Union and Europol, but that has changed about a decade ago. Van der Heijden observed that a common definition as such was no longer aspired to, because “*the aim to reach a common definition offered (too) many problems for the time being*”.<sup>8</sup> Instead, another approach was adopted in which organised crime groups are identified on the basis of the so called 4+7 criteria list (see appendix). Criminal cooperation structures are considered to be (involved in) organised crime if they comply with the four main criteria and, in addition, comply with at least two of the remaining seven criteria. Although this criteria list is not a definition in the strict sense of the word, they serve a purpose very similar to a real definition. The 4+7 criteria list has been used since 1997 by national strategic analysis units in the context of the annual Organised Crime Situation Report as demanded by Europol.<sup>9</sup> However, only to a limited extent this has had a harmonising effect.<sup>10</sup> Europol is the first to admit that the annual reports are construed according to very diverging methodologies and interpretations of the criteria list and that it was not in a position to check how well or consistently this list was applied.<sup>11</sup> Under the new name OCTA (Organised Crime Threat Analysis) a new assessment method is currently developed in the Europol’s headquarters in The Hague. In the new approach the analysis units providing the country reports will have limited discretion, but the 4+7 criteria list will be maintained as main selection criterion. This choice still reflects the ideal of a commonly accepted definition, but as a ‘second best’ solution. Or rather, by default.

In the context of academic research a similar demand for a common definition has been repeatedly expressed. One of the most recent examples of this is Finckenauer’s plea for such a

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<sup>7</sup> Dobovšek, Bojan, *Organised Crime - Can we Unify the Definition*, in: Milan Pagon (ed.), *Policing in Central and Eastern Europe: Comparing Firsthand Knowledge with Experience from the West*, College of Police and Security Studies, Slovenia, 1996, at p. 323. Available online at: <http://www.ncjrs.org/policing/org323.htm>.

<sup>8</sup> Heijden, T. van der, *Measuring Organised Crime in Western Europe*, in: Milan Pagon (ed), *Policing in Central and Eastern Europe: Comparing Firsthand Knowledge with Experience from the West*, College of Police and Security Studies, Slovenia, 1996, at p. 313. Available online at: <http://www.ncjrs.org/policing/org313.htm>.

<sup>9</sup> Council of the European Union, 6204/2/97, ENFOPOL 35, Brussels, 21 April 1997.

<sup>10</sup> See also Paoli and Fijnaut, *Introduction to Part I: The History of the Concept*, at p. 22, who mentions a ‘largely apparent’ consensus.

<sup>11</sup> Elvins, Martin, *Europe’s Response to Transnational Organised Crime*, in: Adam Edwards and Peter Gill (eds), *Transnational Organised Crime*, Routledge, London/New York, 2003, at pp. 28-41; Verpoest, Karen and Tom Vander Beken, *The European Union Methodology for Reporting on Organised Crime*, Ghent, 2005. Available online at: <http://www.assessingorganisedcrime.net/publications/AOC-DLV-EU-methodology-vF1.doc>.

definition (see comments on page 3 of this paper). According to Finckenauer<sup>12</sup> a commonly accepted definition would facilitate the shared pursuit for knowledge. Evidently a shared definition would serve the communication on the subject matter and prevent, to some extent, misinterpretations between participants in the same discourse, regardless whether the main focus of this discourse is policy making, law enforcement or academic research.

However, contrary to what Finckenauer claims, a common and clear-cut definition of organised crime is not a prerequisite for effective communication and comparability of research findings. The exchange of thoughts and opinions and the comparison of research findings can do without such a definition, as long as the ‘counting units’<sup>13</sup> and/or ‘empirical referents’<sup>14</sup> are unambiguously communicated. Moreover, even the most clear-cut definition will not prevent the emergence of a multitude of (competing) interpretations, especially not in the case of such a multifaceted concept as that of organised crime.

This does not imply that, from the perspective of scientific research an unambiguous definition would not be very useful to the empirical researcher. He still has to account for the delineation of his research domain, and a well formulated operational definition can just do that. But this does not necessarily have to be a definition of organised crime<sup>15</sup>, nor does it need to be a commonly, or even broadly accepted definition. In the context of a common approach in the fight against organised crime we can also do without such a commonly embraced definition. Whilst ‘organised crime’ is not a legal concept in many of the European countries<sup>16</sup>, it is clear that effective mutual cooperation does not require a common definition of organised crime at all, but rather the mutual recognition of legal charges and verdicts, instruments for mutual assistance, effective provisions for extradition, etc.

Research, especially empirical research aimed at measuring the magnitude of a phenomenon, cannot do without proper operationalisation of the prime concepts underlying the study. Proper operationalisation is only one of the very basic standards of scientific research and the dissemination of knowledge among fellow researchers. Hence, if a researcher set himself to the

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<sup>12</sup> Finckenauer, James O., *Problems of Definition: What is Organized Crime?*

<sup>13</sup> Duyne, Petrus C. van and Maarten van Dijck, *The Assessment of Organised Crime: A Critical Review. Report No. 21 of the Research Project Assessing Organised Crime: Testing the Feasibility of a Common European Approach in a Case Study of the Cigarette Black Market in the EU*, 2006. Available online at: <http://www.assessingorganisedcrime.net>.

<sup>14</sup> Lampe, K. von, *Making the Second Step before the First: Assessing Organized Crime. The Case of Germany*, Crime, Law & Social Change (Number 42), Springer Netherlands, 2004, at pp. 227-259.

<sup>15</sup> Duyne, P.C. van, R. Kouwenberg and G. Romeijn, *Misdaadondernemingen; ondernemende misdadigers in Nederland* (transl.: “Crime Business, Bsy Criminals in the Netherlands”), Gouda Quint, Arnhem, 1990; Duyne, P.C. van, *Organised Crime in Europe*, Nova, New York, 1996.

<sup>16</sup> For example, in the Netherlands the perpetrators of illegal activities, normally associated with the expression ‘organised crime’, are prosecuted on basis of a great number of offences laid down in a number of criminal codes. The offence that seems closest to the criminalisation of ‘organised crime’ is the offence of participating in a criminal organisation (Section 140 Dutch Penal Code). But that offence is only defined by a series of rulings of the Supreme Court. Interesting, in this respect, are the observations by Kinzig and Luczak (*Organised Crime in Germany: A Passe-Partout Definition Encompassing Different Phenomena*, at p. 337) concerning the implementation of the notion of organised crime in the German criminal code: “[...] according to the German legislator, the definition of ‘organised crime’ is not sufficiently established enough to constitute an aggravating factor in the penal Code”.

task of measuring (the phenomenon of) *organised crime* (as such) then he or she is bound to put forward an operational unambiguous definition. But then again, why would a researcher be interested in the study of organised crime as such, providing that he or she does agree with the thesis that organised crime is not one tangible phenomenon, but rather a political construct (as will be argued further down)? At the research level those behavioural manifestations which are commonly associated with the phrase ‘organised crime’ can be operationalised and measured without the operationalisation of the overarching concept of organised crime. However, the modes of conduct should be defined. This, in fact, is the approach advocated by Van Duyne<sup>17</sup>. In this view the expression ‘organised crime’ can be part of a political language play without risking ‘contamination’ of the scientific research by politically biased notions of the social reality of crime.<sup>18</sup>

Does this make the quest for a common definition a fruitless enterprise? From the elaboration above the answer depends on the field in which it is used. In this respect, we may heed the lessons to be learned from Wittgenstein. Embracing Wittgenstein’s view that meaning is use, we can discover the social and political significance of this concept by having a closer look at the way this concept serves the discourse. Only by looking at these circles of use (we may call them ‘language practices’) we can make a beginning in understanding its ‘essence’.<sup>19</sup>

### III. Theorising on Definitions: Different Questions

What does it mean to define ‘organised crime’? Defining means annotating the meaning of a word. In the discussion on the definition of organised crime, three questions with regard to the meaning of the expression ‘organised crime’ are erroneously mixed:

1. What is organised crime?
2. What is the meaning of the expression ‘organised crime’?
3. What definition is meaningful and serves its purpose well?

The first question can be interpreted in a twofold way:

- 1A. What distinguishes organised crime from other types or modes of crime? (*i.e.* What distinguishes organised crime as a discrete category or concept?)

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<sup>17</sup> Duyne, P.C. van, R. Kouwenberg and G. Romeijn, *Misdaadondernemingen; ondernemende misdadigers in Nederland* (transl.: “Crime Business, Busy Criminals in the Netherlands”), Gouda Quint, Arnhem, 1990; Duyne, P.C. van, *Organised Crime in Europe*, Nova, New York, 1996.

<sup>18</sup> See also Kinzig, Jörg and Anna Luczak, *Organised Crime in Germany: A Passe-Partout Definition Encompassing Different Phenomena*, at p. 333.

<sup>19</sup> Wittgenstein, L., *Philosophical Investigations*, translated by G.E.M. Ascombe, Macmillan Publishing Co., New York, 1968.

According to the author, the word ‘essence’ evidently is not to be read too literally. The viewpoint that the meaning of a word is dependent from the way it is used in a communicative setting is at odds with any notion of a ‘fixed’ meaning or range of meanings. However, this does not mean that in contemporary discourse the expression ‘organised crime’ does seem to have some ‘core’, in the sense that the phenomena it seems to refer to (or the reasons for this reference in the first place) do have something in common. What that is, will be discussed further down.

- 1B. What are the (essential) characteristics of organised crime manifestations?  
The second question can also be interpreted in a twofold way:  
2A. How is the expression 'organised crime' used in a given communicative setting?  
2B. How is the expression 'organised crime' stipulated by the author under scrutiny?

Although these questions are all closely related, they need to be clearly distinguished. For example, one of the evident differences between question 1 and question 3, is that the former refers to social phenomena qualified as organised crime, whereas the latter refers to the token 'organised crime'. E.g., it is important to note that question 1b refers to the *description* of organised phenomena, rather the definition thereof. As we will see, one view on what a definition is, limits the function of a definition to the delineation of a concept, e.g. in limiting the scope of a word or, in an operational sense, a research domain. According to that view, question 1b does not entail a definition at all. This contrasts with question 2b which explicitly refers to *word* use, rather than to real life phenomena. In contemporary language theory and epistemology the questions 2a and 2b represent the main stream view on definition and meaning.<sup>20</sup> Note that questions 2a and 2b represent a distinction most common in definitional theory, the distinction between descriptive and stipulative definitions (which will be briefly discussed later).

Finally, and most importantly, it must be noted that question 2a refers to a functional view on definitions. In fact, this functional view is not restricted to definitions, but extends to meaning in general. Both questions closely relate to Wittgenstein's most famous adage 'meaning is use'. In more philosophical (hermeneutical) vocabulary: the meaning of a word is not an *a priori*, but the result of the ongoing process of production and reproduction of meaning in the ongoing process of verbal communication. Words, in this view, do not have a fixed meaning or core, but their meaning is contingent.

According to Wittgenstein<sup>21</sup>, grasping the meaning of a word or phrase implies the ability to use the word in such way that it yields sensible (literally 'meaningful') results for the person using these words. Wittgenstein's approach is a functional one: the 'proper' meaning or interpretation of a word is measured by the success in achieving good results, that is, good results from the perspective of the user(s) of the words.

The reader should keep in mind that 'true' definitions as such do not exist, unless one refers to descriptive definitions, in which the use of a word within a given community and within a limited period of time is captured in the definition. Given the multitude of existing organised crime definitions and notions in contemporary discourse no single 'true' definition can be discerned, only more and less accepted definitions or more and less official definitions. Discussing the definition of organised crime, therefore, is not about 'what organised crime is', but about 'what these two words refer to'. Advocating for such a functional approach, I would further downsize this question to the question: how can organised crime be defined in a useful or meaningful way? The implication is that the quality of the definition will be related to the underlying purpose of drafting the definition. In the following paragraphs, three different

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<sup>20</sup> See for example Viskil, E., *Proefschrift: Definieren. Een bijdrage tot de theorievorming over het opstellen van definities*, Universiteit van Amsterdam, 1994.

<sup>21</sup> Wittgenstein, L., *Philosophical Investigations*.



approaches in defining ‘organised crime’ will be discussed in relation to the underlying objectives.

#### **IV. Three Approaches to the Definition of Organised Crime**

Numerous definitions have been produced during the last decade, serving quite divergent purposes.<sup>22</sup> In addition, quite some publications have addressed the definition issue, and the discussion about this issue, on a meta-level.<sup>23</sup> In general, three different approaches to define ‘organised crime’ can be discerned. I will call these subsequently the ‘lexical’ approach, the ‘essentialist’ approach and the ‘formalist’ approach.

##### **A. The ‘Lexical’ Approach**

In the lexical approach, the word combination ‘organised crime’ is split up in two parts: the obvious ‘organised’ and ‘crime’. This splitting up is in line with the oldest view on the construction of definitions, that of Aristotle (elaborated in his work *Metaphysics*). According to Aristotle, a definition is construed out of three parts: [ species/*eidōs* ] = [ genus/*genos* ] + [ distinctive criterion/*diaphora* ]. In this formula the criterion determines how the species or concept to be defined can be distinguished from other species belonging to the same genus or family. Inspired by this Aristotelian approach, we could define organised crime as crime that is organised.

For the sake of argument, I will ignore the circularity in this definition. At first glance, in order to know what ‘organised crime’ means, it seems sufficient to determine the meaning of the two words ‘organised’ and ‘crime’ separately. Some authors have used this approach<sup>24</sup> and have discussed or, for that matter, questioned the organisational nature of organised crime. Finckenauer, for example, expresses the view that “*This ‘thing’, this phenomenon known as organized crime, cannot be defined by crimes alone. Any definition must address and account for the elusive modifying term organized*”.<sup>25</sup> Many attempts have been made to explain and define organised crime in terms of the organisational degree of criminal conduct. Van Duyne, for example, has wondered why various types of crime, such as labour racketeering are not included in this set because of the high degree of organisation and the hard labour required

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<sup>22</sup> For a quite extensive overview, see Von Lampe’s definition list on <http://www.organized-crime.de>.

<sup>23</sup> See for example: Finckenauer, *Problems of Definition: What is Organized Crime?*, at p. 63; Paoli, Letizia and Cyrille Fijnaut, *Introduction to Part I: The History of the Concept*; Duyne, Petrus C. van and Maarten van Dijck, *The Assessment of Organised Crime: A Critical Review. Report No. 21 of the Research Project Assessing Organised Crime: Testing the Feasibility of a Common European Approach in a Case Study of the Cigarette Black Market in the EU*; Fijnaut, C.J.C.F., Bovenkerk, Bruinsma and van de Bunt, *Eindrapport Georganiseerde Criminaliteit in Nederland (TK 1995-1996, 24072, Nr. 16)* (transl.: “Final Report Organised Crime in the Netherlands”), Sdu uitgevers, Den Haag, 1996; Maltz, M., *Measuring the Effectiveness of Organized Crime Control Efforts*, Office of International Criminal Justice, University of Illinois, Chicago, IL, 1990.

<sup>24</sup> Albini, J., *The American Mafia: Genesis of a Legend*, Appleton-Century-Croft, New York, 1971, at p. 35.

<sup>25</sup> Finckenauer, *Problems of Definition: What is Organized Crime?*, at p. 64.

making this labour racketeering profitable.<sup>26</sup> Maltz struggles with the organisational degree as element of the definition of organised crime, arguing that not all crimes perpetrated with a great deal of organisation involve ‘organised crime’ or, as he formulates it, ‘organised crime groups’.<sup>27</sup>

In the opposite direction, van Duyne, and in a similar vein Levi and Naylor<sup>28</sup> and Reuter<sup>29</sup>, have criticised the very wording ‘organised crime’. They all emphasized the *disorganised*, chaotic aspects of criminal enterprise, which they frequently observed in studying manifestations of ‘organised crime’. In line with Block and Chambliss<sup>30</sup>, they argued to replace the words ‘organised crime’ by ‘organising crime’. This shift in wording does not only refer to the less organised way in which cooperating criminals conduct offences, but it also refers to a shift in investigative focus: from groups to behaviour.<sup>31</sup>

Language is a complex and dynamic phenomenon and in the case of the meaning of ‘organised crime’ the whole is more than the mere sum of the parts. The dysfunctional nature of the ‘lexical’ approach can easily be demonstrated by replacing the adjective ‘organised’ by another adjective commonly used in combination with ‘crime’, namely in the phrase ‘serious crime’. It would have yielded some odd results, indeed, if this phrase would have been broken down into its two components and the meaning of the whole would have been constructed by a simple adding up of the meaning of the respective components. Evidently the term ‘serious crime’ has to be given meaning as a whole. It makes no sense attempting to *define* ‘organised crime’ (or ‘serious crime’ for that matter) by breaking these phrases up in two components which are then separately attributed meaning.

### ***B. The ‘Essentialist’ Approach***

Defining and studying organised crime are two different things, even when taken into account that the one may inform the other, and vice versa. In the essentialist approach a definition

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<sup>26</sup> It must be noted that Van Duyne’s argumentation in this respect serve to pinpoint the arbitrary use of the expression ‘organised crime’. As will be discussed later, Van Duyne discards the very word combination ‘organised crime’ and, for that reason, does not really argue to include labour racketeering in the definition. He argues that the empirical study of labour racketeering, and in fact any form of crime, can well do without using the expression ‘organised crime’. Duyne, P.C. van, *Organised Crime in Europe*, Nova, New York, 1996 and Duyne, Petrus C. van and Mark J. Houtzager, *Criminal Subcontracting in the Netherlands: the Dutch ‘Koppelbaas’ as Crime Entrepreneur*, in: Petrus C. van Duyne, Klaus von Lampe, Maarten van Dijck and James L. Newell (eds), *The Organised Crime Economy. Managing Crime Markets in Europe*, Wolf Legal Publishers, Nijmegen, 2005, at pp. 163-188.

<sup>27</sup> Maltz, M., *Measuring the Effectiveness of Organized Crime Control Efforts*, at pp. 116, 117.

<sup>28</sup> Levi, M. and Naylor, *Organised Crime, the Organisation of Crime and the Organisation of Business*, Essay for the Crime Foresight Panel, Department of Trade and Industry, London, 2000. Available online at:

[http://www.foresight.gov.uk/Previous\\_Rounds/Foresight\\_1999\\_\\_2002/Crime\\_Prevention/Reports/Turning%20the%20Corner/essay6.htm](http://www.foresight.gov.uk/Previous_Rounds/Foresight_1999__2002/Crime_Prevention/Reports/Turning%20the%20Corner/essay6.htm).

<sup>29</sup> Reuter, P., *Disorganised Crime*, MIT Press, Cambridge Mass, 1983.

<sup>30</sup> Block, A. and Chambliss, *Organizing Crime*, Elsevier, New York, 1981.

<sup>31</sup> See also Paoli, Letizia and Cyrille Fijnaut, *Introduction to Part I: The History of the Concept*.

contains those components which together and exclusively are considered the necessary distinctive features. These are 'essential' to the underlying notion of organised crime. All other elements are just 'additional' attributes. In most cases the 'essential' features are empirically observed features and should be recognized in *any* manifestation of organised crime. Therefore it also has an excluding function: if the group or behavioural pattern under investigation does not have these features it is, therefore, no manifestation of organised crime.

The essentialist approach is not about the inclusion in or exclusion of criminal behaviour or groups. What groups are included is pre-given. What is at stake in this approach is the inclusion or exclusion of the characteristics alleged to be essential to organised crime. At first glance, this approach appears to enable a person to accept or discard a definition as 'good' or 'bad'. One simply has to check whether the characteristics apply to the forms of organised crime one knows. However, in fact, such an 'essential' definition is no definition at all, but a compressed description of previously observed phenomena. Hence, in the essentialist approach the study of phenomena (a priori) qualified as 'organised crime' appeared to be mixed up with the act of defining organised crime. The reasoning steps are then the following: (a) determine what one thinks are the manifestations of organised crime; (b) extract the characteristics from these and name these a 'definition'; (c) return with that definition to the previously collected set and say 'these is the organised crime set' because they have the essentials of organised crime.<sup>32</sup>

The essentialist approach is predominant in the literature on defining 'organised crime'.<sup>33</sup> I will refer to only one of many examples: Maltz. Maltz rejects the use of legitimate businesses as a central feature to organised crime, because if one does, he says, "*one runs the risk of overlooking emerging organized crime groups*".<sup>34</sup> On a substantive level I can agree with Maltz not to include the use of entities in the definition as a core feature. But unlike Maltz I would not exclude this feature on basis of a pre-existing notion of organised crime. Maltz, in fact does not need a definition at all, because somehow the decision what groups to include or exclude from the definition has already been made. It would be different if Maltz had written that he rejects corporation-use as a feature, because he would deem it *useful* to include groups which would fall outside *if* the feature was accepted as part of the definition. But this is not how he

<sup>32</sup> The first two steps are common in construct development in behavioural science. However, not this first step, creating a full circle. The next step would be to draw a new random sample, apply the definition and determine whether the outcome corresponds with the theory.

<sup>33</sup> See, for example: Finckenauer, *Problems of Definition: What is Organized Crime?*; Maltz, M., *Measuring the Effectiveness of Organized Crime Control Efforts*, Office of International Criminal Justice, University of Illinois, Chicago, IL, 1990; Maltz, M., *Towards Defining Organized Crime* in: H. Alexander and G. Caiden (eds), *The Politics and Economics of Organized Crime*, D C Heath, Lexington, MA, 1985; The European Parliament, *Fight against Organized Crime*. Available online at: [http://www.europarl.eu.int/comparl/libe/elsj/zoom\\_in/291\\_en.htm](http://www.europarl.eu.int/comparl/libe/elsj/zoom_in/291_en.htm); Abadinsky, Howard, *Organized Crime*, 3rd, Nelson-Hall, Chicago, 1991; Albanese, J., *Organized Crime in America*, Anderson, Cincinnati, 1989; California Commission on Organized Crime, *Special Crime Study Commission on Organized Crime*, 1953.

Although the 'essentialist' approach is as such not immediately recognisable in the definition itself an indication might be in the wording of the definition. The phrasing 'organised crime is ...' often indicates an 'essentialist' approach opposed to phrasing like 'under organised crime is understood ...', 'we see organised crime as...', 'within the context of this study organised crime is to be understood as ...', 'under the Penal Code organised crime is ...', etc.

<sup>34</sup> Maltz, M., *Measuring the Effectiveness of Organized Crime Control Efforts*.

formulates it. For Maltz, the very boundaries and scope of the word ‘organised crime’ are predetermined. The only question he is concerned with is whether the features of organised crime mentioned by others correlate with his own idea (or observations) of organised crime as *he* knows it.

As argued, I would agree with Maltz that the use of legitimate firms does not belong in a definition of organised crime. Like Maltz I would say that this would make the definition too narrow. But unlike Maltz, to provide further justification, I would relate to the notion of a ‘descriptive definition’ and say that including this feature in the definition is at odds with main stream *use* of the phrase ‘organised crime’. Most people tend to think about organised crime in such a way that the use of businesses is not a standard feature. If I was to include this feature then I would have to give a special reason for doing so. My definition, which includes use of legal entities, would contrast with the way many others use the word ‘organised crime’ and therefore be less practical.

In the essentialist approach a description of the (essential features) of the objects or phenomena under study are confused with the delineating function of a definition. Of course this statement can only be maintained in case the delineation of the domain *as such* is accepted as the primary (or only) function of a definition. This view is held by Van Duyne: “*What must a proper definition comply with? Actually very little: it must distinguish a set of observable phenomena as belonging to a collection*”.<sup>35</sup>

Following this line of reasoning, the essentialist approach is prone to yield circular definitions. In linguistic or – more specific – definition theory circular definitions like circular reasoning in general are considered to be a breach of academic standards.<sup>36</sup> I am of the opinion that the criticism of circularity is applicable to the definitions of organised crime as put forward by Maltz and Finckenauer. The judgement that a definition is a ‘true’ definition does in fact say little more than that such a definition does not contradict the observed features of criminal groups that are *a priori* qualified *as* organised crime groups.

In terms of main stream definition theory, the essentialist approach by necessity yields stipulative definitions. Stipulative definitions are definitions with an inherently limited scope and which are put forward by the author as *his* definition. In the case of a stipulative definition the author is not so much concerned with the ‘main stream’ meaning commonly attached to an expression. The author merely wants to express how he or she uses this particular word in a particular context (e.g. a book) merely to prevent miscommunications.

The view is generally held that the qualification ‘true’ or ‘false’ do not apply to stipulative definitions. Stipulative definitions, in contrast to descriptive definitions, are simply useful or less useful, depending on the objectives pursued with the definition. From the perspective of the view of the definition as a *decision rule* (which will be discussed in the following paragraph) ‘essentialist’ definitions are no definitions at all, because they do not help in deciding whether (new) groups or behavioural patters should be included. Indeed, this question of inclusion/exclusion has pre-empted in the very act of defining.

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<sup>35</sup> Duyne, P.C. van, *Organised Crime in Europe*, Nova, New York, 1996.

<sup>36</sup> See for example: Viskil, E., *Proefschrift: Definieren. Een bijdrage tot de theorievorming over het opstellen van definitities*.

To conclude, the ‘essentialist’ approach, in which definitions are attempts to capture observed key features of organised crime, is to be rejected. What goes wrong with the ‘essentialist’ approach is that the definition maker implicitly or explicitly claims universal applicability of his definition. This is a circular claim, as he pretends to have already encompassed all manifestations of organised crime.

One can easily see how this approach is not going to do any good to the definition discussion, because it sweeps the main focal point of that discussion under the carpet. The controversy, evidently, comes with the question what groups and criminal patterns to include to begin with. In the ‘essentialist’ approach this question is neither answered nor is it recognised as relevant.

### ***C. The ‘Formalist’ Approach***

The third approach to be discussed is the ‘formalist’ approach. In this approach a definition is regarded a decision rule aiming at the clear and unambiguous delineation of a domain of object or phenomena. In this approach the definition can consist of one or more criteria enabling the user of the definition to determine whether a given object or phenomenon is included in, or excluded from, the domain. In stead of a criterion a limitative enumeration can also do the job. Even a non-limitative enumeration could suffice, if at least from the sequence of enumerations a rule or general criterion can be deducted that is sufficiently decisive.<sup>37</sup> In the context of organised crime an example of a definition in the latter sense could be: ‘organised crime is constituted by the trafficking of heroin, cocaine, marihuana, hashish, opium, XTC, etcetera.’<sup>38</sup>

Analysing the very word ‘definition’ semantically, Van Duyne<sup>39</sup> argues that delineation is the one and only function of a definition and included in the element ‘*fin*’, literally meaning ‘end’. Definitions construed on basis of the ‘formalist’ approach serve well in the context of empirical research; the delineation of the research domain is not a mere necessity from a practical point of view, but in fact central to the very notion of scientific research as such.

Before starting his observations, a researcher needs to know what objects or phenomena to examine and which ones to discard as being (a priori) irrelevant to his study. In the field of organised crime research as well as strategic analysis (which is also a form of research) operational definitions are at the basis of the annual organised crime situation reports, such as being provided by Europol. The ‘definition’ – between brackets, because it is in fact the 4+7 criteria list that is being used and this is, as mentioned, not a definition in the strict sense – serves as a selection mechanism in order to include or exclude case files from the assessment.

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<sup>37</sup> This is in line with Wittgenstein’s notion of ‘rules’ (see page 6 of this paper). See for example: Roermund, G.C.G.J., *Het verdwijnpunt van de wet. Een essay over de symbolwerking van wetgeving* (transl.: “The Point of Convergence of the Law. An Essay about the Symbolic Function of Legislation”), Tjeenk Willink, Zwolle, 1997.

<sup>38</sup> Evidently this is not a very satisfying definition, for it only includes drug trafficking offences, but that is not the issue here.

<sup>39</sup> Duyne, Petrus C. van and Maarten van Dijck, *The Assessment of Organised Crime: A Critical Review. Report No. 21 of the Research Project Assessing Organised Crime: Testing the Feasibility of a Common European Approach in a Case Study of the Cigarette Black Market in the EU.*

A rather rigid application of the ‘formalist’ approach can be found with Van Duyne and Van Dijck. On the basis of a scrutiny of five authoritative organised crime definitions, they conclude that: “*The elusiveness of the organised crime notions was underlined by the analysis of a number of formal definitions used in various national assessments (report no. 7). From the perspective of empirical behavioural science they lacked logical and semantic consistency and were unable to delineate the intended phenomenon.*”<sup>40</sup>

In this view, the quality of a definition is primarily (or solely) determined by its unambiguity as a selection tool. Close reading of the five definitions, which included a scrutiny of the explanatory annotations, they came to the conclusion that only one definition could fulfil its *de-fining* task. The other definitions contained too much vagueness and were on that basis disqualified as properly delineating instruments.

#### **IV. Definitions, Maps and the Measurement of Organised Crime**

As argued above, the essentialist and the ‘formalist’ approach not merely yield different definitions. They represent entirely different views on what a definition is and what it should do. This functional difference can be illustrated by a metaphor about maps. Modern atlases in general contain two kinds of maps: geo-political maps and geographical maps. The main function of a geo-political map (in correspondence with the definition as a decision rule) is to show where the borders are drawn, where one country, or jurisdiction, ends and another begins. A geo-political map delineates a territory belonging to a state. Other information may be included in the map, such as where the biggest cities are located (in particular the capital), but this information is more or less subsidiary to the stipulation of borders.

The geographical map displays other things besides the borders of a country, and that other information is not merely peripheral to the map but represents equally important information. This includes characteristics of the landscape, such as the altitude (and altitude differences), the vegetation, the kind of soil, etcetera. Such a map, like definitions in the ‘essentialist’ approach, describes the observed features of the landscape or social economic aspects.

Apart from the question whether if an ‘essentialist’ definition is actually a definition –that again depends on the view what a definition should do– it is clear that they serve different purposes. However, this does not imply that different standards can be applied when it comes to accurateness. Like the reader of maps want both types of maps to be accurate and display correct and clear information, both definition types should fulfil the demand for preciseness and not include vague elements. This is one of the reasons for criticising open-ended ambiguity.<sup>41</sup>

On the other hand, an overly critical attitude towards definitions, in which each and every definition is criticised because it fails to provide an unambiguous decision rule, ignores the potential value of a more ‘informative’ definition attempting to convey some substantive

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<sup>41</sup> Duyne, Petrus C. van and Maarten van Dijck, *The Assessment of Organised Crime: A Critical Review. Report No. 21 of the Research Project Assessing Organised Crime: Testing the Feasibility of a Common European Approach in a Case Study of the Cigarette Black Market in the EU*, at p. 8.

information about the defined object(s). Van Duyne's<sup>42</sup> criticism with regard to the definition stipulated by Fijnaut *et al*<sup>43</sup> is justified to the extent the latter claimed to have coined the only 'true' and 'final' definition, which in addition is claimed to delineate the empirical research. But this does not make this definition utterly useless as it still gives information about what Fijnaut and his colleagues consider as the main characteristics of organised crime. But for that we do not need a definition. A simple text of how they perceive organised crime would suffice. Drafting a definition implies adhering to certain standards of accuracy. Following Van Duyne's argument: *defining* is about limiting the options, not about opening a wide range of interpretations and associations.

Hence, from researchers such as Fijnaut, Finckenauer, Maltz and from the people working on the 'official' definitions such as those of the *Bundeskriminalamt* and Europol, something more is expected than just a vague indication of what organised crime is or how it is understood. In the end, most of the organised crime definitions are not intended to be merely elements in a linguistic game play, but relate to the research of criminal phenomena. Definitions, in a research context, are necessarily related to the underlying research and measuring methodology. A flawed or vague definition is the first step towards a defective measuring methodology.<sup>44</sup> Van Duyne's (and Van Dijck's) criticism on defect definitions are in fact preludes to a wider criticism in which the research methodology is under scrutiny. A clear example is Van Duyne's critical evaluation of the definition as put forward by Fijnaut and van de Bunt.<sup>45</sup>

Vice versa Fijnaut *et al*<sup>46</sup> have criticised Van Duyne for presenting no definition at all, leaving *his* decision rule in total obscurity. But then again, Van Duyne did not claim to have investigated organised crime, though that word combination appeared frequently in the title and text of several of his main works. Did he bow for common word use merely for denoting the discourse in which he worked? Why Van Duyne did not provide for a definition, is explained in his publication (and I will discuss this further down). In a nutshell Van Duyne's argument boils down the idea, discussed above, that in order to investigate the way crime is organised and committed, one does not necessarily need to adhere to a definition of 'organised crime'. What Van Duyne did investigate was crime for profit, which he elaborated later. However, I think that Fijnaut's criticism does have a point, especially since Van Duyne does not provide a definition of 'profit oriented crime' either.

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<sup>42</sup> Duyne, P.C. van, *De schepping van een beeld: wisselwerking met de media rondom de georganiseerde misdaad* (transl.: "The Creation of an Image: Interaction with the Media and Organised Crime"), Gouda Quint, Deventer, 2001, at pp. 119-144 and Duyne, P.C. van, *Organized Crime in Europe*, Nova Science Publishers, New York, 1996.

<sup>43</sup> Fijnaut, C.J.C.F., F. Bovenkerk, G.J.N. Bruinsma, H.G. van de Bunt, *Eindrapport Georganiseerde Criminaliteit in Nederland (TK 1995-1996, 24072, nr. 16)* (transl.: "Final Report Organised Crime in the Netherlands"), Sdu uitgevers, Den Haag, 1996.

<sup>44</sup> In measurement theory, as is common in the behavioural science, there is simply no measurement if the defined object is not precisely delineated, though there are various scales of measurement, like the ordinal scale, which is less precise, as far as numerical attribution is concerned.

<sup>45</sup> Duyne, P.C. van, *Organized Crime in Europe*.

<sup>46</sup> Fijnaut, C.J.C.F., Bovenkerk, Bruinsma and van de Bunt, *Eindrapport Georganiseerde Criminaliteit in Nederland (TK 1995-1996, 24072, nr. 16)* (transl.: Final Report Organised Crime in the Netherlands), Sdu uitgevers, Den Haag, 1996; Fijnaut, C.J.C.F., *Over de opzet, de uitvoering en de resultaten van het onderzoek*, at p. 15.

Leaving this academic quarrel for what it is (for this moment), I will return to the question of the consequences of a vague definition of organised crime. To conclude: from the perspective of academic research and strategic analysis a vague and therefore ambiguous definition has a negative impact on the validity of the research findings. As pointed out by Van Duyne definitional vagueness may seduce the researcher to change course during his investigation simply because the outcomes may suit him better. This is not to say that an operational definition cannot be inspired by preliminary assumptions or previous research findings.

## V. Common Denominator: Authority Undermined

Before elaborating on the implications of a vague notion of organised crime on the level of politics, I will first return to the initial problem, described at the outset of this paper: the deadlock situation of the quest for a common definition.

In the previous paragraphs I have argued that this quest is twofold: the definition needs to be unambiguous and also commonly, or at least broadly, accepted. The first requirement finds its strict application in the ambiguity rejection principle of behavioural science: research based on ambiguous definitions is discarded or heavily criticised as being non-conclusive or lacking explanatory validity.

The second requirement is the most problematic. Given the predominance of what I called the ‘essentialist’ approach it will be well-nigh impossible to reach an international agreement about the one and only definition.

In itself this does not mean that we cannot investigate the possibility of a common feature, a common denominator which is shared by all notions of organised crime. In the following paragraphs I will explore such a common denominator, though I must warn the reader not to be too optimistic in his expectations. There most certainly *is* a common element in at least the most predominant notions of organised crime, but whether this element will enable us to stipulate a common *definition* is doubtful.

Whereas the previous paragraphs may explain why different definitions of organised crime exist, they only partially clarify why definitions on organised crime differ on the substantive level. Finckenauer, Maltz, van Duyne and Fijnaut, but also Cressey, Block, Bovenkerk, Von Lampe, Levi, Paoli and Ruggiero, to name only a few others, do all have a different picture in mind when thinking, speaking and writing about organised crime. These are all researchers having conducted empirical investigations in organised crime. Paoli and Fijnaut<sup>47</sup>, and in a very different way, Von Lampe *et. al.*<sup>48</sup> have made an attempt to map different notions of organised crime. In the end, it seems that different notions of organised crime do have little or nothing in common. Still they are somehow investigated under the same name tag ‘organised crime’.

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<sup>47</sup> Fijnaut, C. and Paoli, L (eds), *Organised Crime in Europe*, Kluwer, 2004.

<sup>48</sup> Lampe, Klaus von; Dijck, Maarten van; Hornsby, Rob; Markina, Anna; Verpoest, Karen, *Organised Crime is... Findings from a Cross-national Review of Literature*, in: Petrus C. van Duyne, Almir Maljevic, Maarten van Dijck, Klaus von Lampe, James L. Newell (eds), *The Organisation of Crime for Profit. Conduct Law and Measurement*, at p. 17.



One way to find this common denominator would be to compare all existing definitions of organised crime and to see where they overlap. However, apart from practical reasons there are other reasons not to follow this approach, e.g. because not all *notions* of organised crime are captured in *definitions* and because not all definitions do capture the underlying notion in the best way.<sup>49</sup>

Instead, I would like to suggest an alternative approach in which the issue of the common denominator is viewed from an entirely different angle. In my view a common denominator can be found by questioning the very *raison d'être* of the concept of organised crime as opposed to other modalities of crime. The central question then is:

**A. Why do we (want to) Distinguish between ‘Organised Crime’ (however Defined) and other Modalities of Crime?**

The answer to this question is to be found in politics, meaning that it emphasises the political relevance of organised crime as an essentially political concept.

The *rationale* behind a discernable concept of organised crime is quite simple. Regardless of the complexity and reality of politics as a practice, politicians essentially deal with the question how to allocate the (scarce) public means.<sup>50</sup> Politics, in the end, is about deciding what amount of money will be spent on what actions and activities and in what way. Intrinsic part of the decision making process (and regardless of the political system in question) is the very valuation of problems and threats to society. Politics deals with the ‘common good’ and with well-being of society at large. Criminal policy, ultimately, is about the allocation of (limited) means to actions and activities to cope with threats posed by criminals and their exploits. Given the scarcity of resources politicians and policy makers must determine which factors will have the most severe consequences to society. Therefore the ‘seriousness’ of crime is inherent to any notion of organised crime. In political reality many problems ‘compete’ in a game of seriousness- ranking: not all ‘problems’ are valued in the same way by all political actors. As politics are never impersonal or, for that matter, impartial, we can also formulate it differently: politics is a ‘problem owners’ contest.<sup>51</sup> Politicians, as ‘problem owners’, can gain politically in case they succeed in upgrading their ‘problem definition’ as the one adhered to by the majority. Most likely it will then also be their political solution that is accepted as the answer to it. For example, if in the Netherlands the confessional parties have a *morally* based problem against drug abuse, then it might be politically more opportune *not* to focus on the moral aspects

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<sup>49</sup> Lampe, Klaus von; Dijck, Maarten van; Hornsby, Rob; Markina, Anna; Verpoest, Karen, *Organised Crime is... Findings from a Cross-national Review of Literature*, in: Petrus C. van Duyne, Almir Maljevic, Maarten van Dijck, Klaus von Lampe, James L. Newell (eds), *The Organisation of Crime for Profit. Conduct Law and Measurement*.

<sup>50</sup> Maltz, M, *Measuring the Effectiveness of Organized Crime Control Efforts*, at p. 109.

<sup>51</sup> See also Duyne, P.C. van and Michael Levi, *Drugs and Money. Managing the Drug Trade and Crime - Money in Europe*, Routledge, New York, 2005; Duyne, P.C. van, *De schepping van een beeld: wisselwerking met de media rondom de georganiseerde misdaad* (transl.: “The creation of an Image: Interaction with the Media and Organised Crime”), Gouda Quint, Deventer, 2001, at pp. 119-144; Woodiwiss, M., *Organized Crime - The Dumping of Discourse*.

of the drug problem, but on the harm done by drug traffickers.<sup>52</sup> Depicting drug trafficking as a particularly harmful form of crime diverts the attention away from the underlying moral reasons, which may invoke lengthy and inconclusive argumentation.

The concept of organised crime is one of the key concepts in this political 'ranking' mechanism. The phrase 'organised crime', or for that matter 'serious crime' or 'professional crime', refer to phenomena and/or social behaviour that are deemed to be particularly threatening to society. Like terrorism, organised crime is singled out as a distinct crime category, because it can be declared of special concern to society.<sup>53</sup> The same threat features justify the rhetorical use of the phrase 'organised crime': it does not need further explanation, it is serious, ergo threatening to society. And, vice versa, it is threatening because it is serious. In the turmoil of rhetoric, those who question the actual threat level of organised crime, run the risk of being excluded from the discourse.<sup>54</sup>

This view on the concept of organised crime enables us to explain the many substantive differences in the various definitions of organised crime. Each country or society and each era is confronted with criminal threats of a different nature. Evidently the American authorities in Chicago in the 1920s were confronted with different crime problems than the American authorities of the 1960. And in Europe, a country like Italy has to face criminal threats that are very different from those being faced by the German or Dutch authorities. Especially in the case of the 'essentialist' approach, definitions may differ substantially because the object of concern is very different.

However, even if this is true, then the argument unfolded here still leaves open the question: why these very different 'organised' crime phenomena are to be clustered under one and the same expression 'organised crime'? What makes organised crime different from other forms of crime that would pose equal or even more severe threats to any society, such as terrorism, child pornography and crimes of war?

In the first place it can be observed that there is little self-restriction among academics (as a group), strategic analysts (as a group) and policy makers (as a group) in what to include under the broad organised crime umbrella.<sup>55</sup> This can of course partially be explained by saying that

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<sup>52</sup> Duyne, P.C. van and Michael Levi, *Drugs and Money. Managing the Drug Trade and Crime - Money in Europe*.

<sup>53</sup> In a somewhat similar line of reasoning, Paoli and Fijnaut explained the decreasing political interest in organised crime as a consequence of the emergence of terrorism as a more severe threat. This interest subsequently again increased when the focus shifted to possible connection between terrorism and organised crime. Paoli, Letizia and Cyrille Fijnaut, *Introduction to Part I: The History of the Concept*, at p. 23.

<sup>54</sup> See for example Beetstra, T.A., van Mourik, Neeffe and de Ridder, *De sociale constructie van georganiseerde criminaliteit in Nederland* (transl.: "The Social Construction of Organised Crime in The Netherlands") in: M. Moerings (ed), *Hoe punitief is nederland*, Gouda Quint, Arnhem, 1994, at pp. 237-252.

<sup>55</sup> Duyne, Petrus C. van and Maarten van Dijck, *The Assessment of Organised Crime: Description of the State of the Art*, Report No. 7 of the research project 'Assessing Organised Crime: testing the feasibility of a common European approach in a case study of the cigarette black market in the EU', 2006. Available online at: <http://www.assessingorganisedcrime.net>. See also Lampe, Klaus von; Dijck, Maarten van; Hornsby, Rob; Markina, Anna; Verpoest, Karen, *Organised Crime is... Findings from a Cross-national*

that these ‘groups’ of professionals are in fact no groups at all, but a loose conglomerate of individuals and small teams happening to be professionally involved in the study of and policy making on organised crime. Each individual or group operates pretty much by themselves. Socially the words ‘organised crime’ function as a topic marker (literally *topos*, a commonplace), indicating they are engaged in a common language practice (discourse) or in Wittgenstein’s words, a language play. They may cherish this word string because it enhanced mutual recognisability.

We could attempt to capture all meanings (uses) of the expression ‘organised crime’, like a dictionary. But following this approach, we would still fall short in our explanation if we do not try to distinguish organised crime from other serious forms of crime, such as terrorism, child pornography and war crimes. It seems that, if one characteristic connects all currently existing notions of organised crime, then this would be the *entrepreneurial nature* of the activities referred to. I deliberately avoid here the phrase ‘profit oriented’, because the entrepreneurial dimension exceeds the mere goal of making profit. It is first and foremost the *enduring* and *systematic* nature of crime that constitutes the threat, but it also includes the notion of personal (economic) gain as oppose to political gain.<sup>56</sup>

In contradiction to most other forms of crime ‘organised’ crime has a double dimension. It poses a *direct* threat to society by preying on its members, by acquiring illicit proceeds, by infringing upon rules of fair competition, by evading taxes, etcetera. In addition it poses an *indirect* threat to society by undermining the authority of the state. Because it does so in a rather latent, non-explicit but nevertheless persistent way and from a position *within* society<sup>57</sup>, organised crime can be distinguished from terrorism. Terrorism openly questions the authority of the state and thereby places itself ‘outside’ the state. Organised crime however, seems to embrace all or at least most of the principles of Rule of Law – not in the least those elements safeguarding private property.<sup>58</sup> Once the crime-for-profit-criminal feels secure enough, he most likely would attempt to invoke legal instruments to defend his seemingly (laundered) legitimate claim to such assets. The very act of laundering, pretending that these assets were legally his, implies embracing some of the very foundations of liberal democracy; private property. There is much duality in the crime-entrepreneur’s attitude.

The nature of the threat, as said, is in the ongoing, structural nature of the profit oriented criminal undertaking. This well expressed in the English equivalent of the phrase ‘organised crime’, namely ‘professional crime’. ‘Professional crime’ refers to the criminal who has made the perpetration of crime his profession, hence his main means of income. The threat becomes even more severe when professional criminals act in concert (which is, therefore, regularly

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*Review of Literature*, in: Petrus C. van Duyne, Almir Maljevic, Maarten van Dijck, Klaus von Lampe, James L. Newell (eds), *The Organisation of Crime for Profit. Conduct Law and Measurement*, at p. 17.

<sup>56</sup> Meaning that even if political interests are involved, e.g. in case of the mafia getting politically involved in decision making processes, then still the underlying objectives for this involvement is to be found in economic or, ultimately, personal gain. Crime perpetrated by political means is not the same as political crime.

<sup>57</sup> This is not to say that manifestations of organised crime never openly and quite visibly defy the law and the legal authorities.

<sup>58</sup> Lindlau, D., *Der Mob: Recherchen zum Organisierten Verbrechen* (transl.: „The Mob: Criminal Investigation of Organised Crime“), Hofmann und Campe, Hamburg, 1987.

adhered to one of the constituting ‘organised crime’ components). This does not merely increase the potential damage they may inflict, but also make the crime enterprise as such more resilient to law enforcement interference.<sup>59</sup>

The indirect threat posed by this crime modality is put into words by post-war legal philosopher Gustaf Radbruch<sup>60</sup>: the authority that does not have the competence (= *ability, power*) to actually protect the people from breaches of the law by others, does not have the competence (= *right*) to make the law. This is a rather free translation of one of the themes addressed by Radbruch. The significance of Radbruch’s ideas is that it connects in a rather direct way the legitimacy, and therefore the authority of state power to the efficacy in enforcing the laws and maintaining law and order. To put it differently, the authority of the state, and in particular of the state branch responsible for law enforcement, is undermined if the state is not able to enforce compliance, to at least some minimal credible degree.<sup>61</sup> Organised crime, understood as continuous non-compliance with the legal provisions does have such an undermining effect. In some occasions the reputation of being ‘untouchable’ has a devastating effect on the ‘legal morale’ of law-abiding citizens, who will be less and less inclined to obey the law when they become aware that crime does pay and that those who obey do pay the actual price for that. To conclude, organised crime, however defined or perceived, is singled out as a distinct crime category for criminal political reasons: it denotes those types of crime that pose a particular threat to society and to the state power because of its entrepreneurial and perpetual nature. This does not entail an unambiguous delineation. As a matter of fact, the set it comprises can shrink or expand and its contents can shift depending on all sort of political contingencies.

This view, to a large extent, explains the differences on the substantive level between various notions of organised crime. In any society those modalities of crime will be qualified as ‘organised crime’ when on a continuous basis they will affect those rules and values that are of particular importance to that society. It is, for example, no surprise that within the European Union an Council of Europe economic and financial crime have been included in the organised crime definition and discourse (albeit belatedly). After all, the European Union and European integration are primarily based on *economic* integration: the establishment of the Single Market. Fair competition is one of the most highly valued principles and many legislative initiatives on the supra-national level somehow relate to the protection of fair competition and the well-functioning of the common market in general. In a similar vain (political) attention is increasingly focused on the market disturbing effects of (organised) crime, such as the potential damage to the integrity of the financial system as allegedly caused by money laundering activities.

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<sup>59</sup> Kleemans, E.R., van den Berg and van de Bunt, *Georganiseerde criminaliteit in Nederland: rapportage op basis van de WODC-monitor* (transl.: “Organised Crime in the Netherlands: Report on Basis of the WODC Monitor”), WODC, Den Haag, 1998; Kleemans, E.R., Brienen, Bunt, van de, Kouwenberg, Paulides and Barendsen, *Georganiseerde criminaliteit in Nederland: tweede rapportage op basis van de WODC-monitor* (transl.: “Organised Crime in the Netherlands: Second Report on Basis of the WODC Monitor”), WODC, Den Haag, 2002.

<sup>60</sup> Radbruch, G., *Rechtsphilosophie*, Koehler, Stuttgart, 1950.

<sup>61</sup> Dijck, Maarten van, *Gedogen. Over vermogen en onvermogen tot handhaving van wet en recht*. (transl.: “Policies on the Condoning of Illegal Acts. About the Capacity or Incapacity to Enforce Legal Provisions under the Rule of Law”), Wolf Legal Publishers, Nijmegen, 2003.

On the other hand, despite this awareness raising effort of, among others, the Council of Europe, it has hardly stirred a debate on the position of economic and financial crime in the organised crime perception. By and large, the threat of the so-called 'white-collar' crime seems to be felt differently as that of the (ethnic) hoodlum. The rational 'state of law undermining' conception is itself undermined by the ambivalence towards potential new candidates to be included in the 'organise crime' family of crime types. However, on a meta-level, this ambivalence reiterates the essentially *political* nature of the organised crime concept. In the arena of organised crime discourse multiple notions of crime-threats compete for general acceptance and acknowledgement. The central question then is unabated: which crime manifestations require law enforcement priority?

In the following paragraphs three entirely different notions of organised crime derived from the Dutch academic literature on organised crime will be discussed. These three notions, while very divergent from the onset, serve to illustrate how the 'common denominator' as described in this paragraph is indeed common to very different notions of organised crime.

## **VI. Illustration I: Kleptocracy or the Weak State**

The fall of the Iron Curtain in 1989 set off a chain of event which, among many other things, put a number of Central and Eastern European countries in a state of transition. These countries had to establish a new economy and a new legal system in line with 20<sup>th</sup> century social democratic and neo-liberalist main stream ideology in which capitalist principles were combined with and partially mitigated by a liberal-socialist interpretation of the Rule of Law (*Rechtsstaat*) and civil right protection. In most of these countries the transition period was (and for some still is) an era of turmoil and extreme socio-legal and economic dynamic. The legal vacuum that existed for briefer or longer periods of time in some sectors opened up opportunities of abuse and personal gain. The most illustrating example, perhaps, is the privatisation of former state-owned real estate property. Those in control of sufficient money were able to cheaply buy themselves properties and production facilities of strategic importance and to obtain major positions in key decision positions, both in politics and in industry. Many of the funds used for financing this 'buyers market' were of criminal origin. It were mainly the criminals who had sufficient wealth to afford to buy real estate property of any economic importance. And also the other way around, profit opportunities were best to those occupying the seats of power, such as in the central government. Insider trade, although not a regular expression at the time, would express properly the privileged position of many key politician in the open market game of buying former state property... The effects for some countries were disastrous: criminals became 'elected' rulers, whereas the system also invoked stated officials and rulers to become involved in profitable crime. Organised Crime, such as the Russian and Albanian mafia, was systematically associated with high-level corruption.<sup>62</sup> At best these states were 'weak states': the centralised government not capable of exercising authority over the territory and too weak to effectively fight the criminal elements in society. Organised Crime rapidly gained ground over the weakened governments. At worst these states turned into

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<sup>62</sup> N. Mappes-Niediek, *Balkan-Mafia. Staaten in der Hand des Verbrechens - Eine Gefahr für Balkan-Mafia. Staaten in der Hand des Verbrechens - Eine Gefahr für Europa*, Christoph Links Verlag, Berlin, 2003, at p. 216.

outright kleptocracies in which criminals became rulers only providing lip service to the Rule of Law and in fact taking advantage of any opportunity to use state power for personal gain. In the line of the definition discussed above this is organised crime at its top. One can hardly think of any form of crime that is more devastating to the rule of law and state legitimacy.

## VII. Illustration II: A State within the State

In 1996, Fijnaut and Van de Bunt coined a definition of organised crime as part of their assignment to provide the then existing Parliamentary Inquiry Committee a report on the Dutch organised crime situation (see the appendix). This definition emphasises two features:

1. The seriousness of the consequences of organised crime for the society;
2. The capacity of criminal groups to effectively shield off their criminal activities.

One of the research questions put forward by Fijnaut and van de Bunt was the question to what extent organised crime constitutes a threat to democracy and the Rule of Law, in Dutch *de democratische rechtsstaat*.<sup>63</sup> In an attempt to answer this question, Fijnaut and his colleagues explored the use by criminal groups of contra strategies, corruption, intimidation and the use of mass media and, as part of the latter, the ‘use’ of (publicly known) persons of good reputation. The mere possibility that ‘organised crime’ criminals would buy themselves positions in upper world society, was of great concern to the researchers.<sup>64</sup> However, the ‘core and the threat of organised crime’, according to Fijnaut and his colleagues, is not so much related to the idea of criminals finding their ways in ‘upper world’ society, but stems from the fear that criminal can do whatever they want, without fear of state intervention: *“To the extent the cooperation between offenders becomes more dense, the criminal collective will be more capable to neutralise the influence of formal social control mechanisms”*.

The creation of a ‘state within the state’ – a metaphor for the unassailability of the perpetrators of organised crime – is viewed upon as the real threat.

*“Even more than the damage caused by organised crime, it is this ability to effectively fend off external interference that can lead to the ultimate situation in which a «mini-state» within the state will threaten society in its democratic roots. It is in this respect that criminal involved in organised crime differ from other offenders.”*<sup>65</sup>

The ability to actively evade the negative consequences of state, thus enabling the criminal entrepreneurs to build a durable crime enterprise, is not merely presented as the feature distinguishing organised crime from other crime modalities, but is also explained in terms of threat to state authority and the Rule of Law.

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<sup>63</sup> Fijnaut, C.J.C.F., F. Bovenkerk, G.J.N. Bruinsma, H.G. van de Bunt, *Eindrapport Georganiseerde Criminaliteit in Nederland, (TK 1995-1996, 24072, nr. 16)* (transl.: “Final Report Organised Crime in the Netherlands”), Sdu uitgevers, Den Haag, 1996, at p. 8.

<sup>64</sup> Fijnaut, C.J.C.F., F. Bovenkerk, G.J.N. Bruinsma, H.G. van de Bunt, *Eindrapport Georganiseerde Criminaliteit in Nederland*.

<sup>65</sup> Fijnaut, C.J.C.F., F. Bovenkerk, G.J.N. Bruinsma, H.G. van de Bunt, *Eindrapport Georganiseerde Criminaliteit in Nederland*.

### VIII. Illustration III: Competing with the State

In his book *Hedendaags Kwaad* ('Contemporary Evil') Frank Bovenkerk (who was one of the three researchers cooperating with Fijnaut in the research project for the Parliamentary Inquiry Committee) elaborates a functional approach of organised crime. Bovenkerk explains the existence of organised crime in terms of its function in society. Like many other authors, Bovenkerk emphasises the symbiotic relation between organised crime and its host society, as opposed to views which one-sidedly focus on the predatory aspects of organised crime. In Bovenkerk's view, organised crime has come into existence as a response to the demand for (cheaper) illegal goods and services.<sup>66</sup> Organised crime, according to Bovenkerk, "*provides provisional solutions to problems which are not adequately dealt with or completely ignored by the politicians.*" Organised crime fills a void created by government which is not capable or willing to provide a proper response to certain demands. In these cases, the authorities are slack and sometimes crippled by political controversy which frustrates efficacious government and decision making. By way of illustration, Bovenkerk describes the practice of labour racketeering. He observes that the mere existence of this crime modality is the result of "*the imperfect way of regulating the market.*" According to Bovenkerk "*labour racketeers (koppelbazen) provide a solution for a demand which can not be met by legal means.*" This is in conformity with broadly accepted theories explaining the mafia as 'caretaker' of governmental tasks.<sup>67</sup>

In a similar vein as Fijnaut and Van de Bunt, though from a completely different perspective, Bovenkerk also brings the aspect of undermining the authority of the state to the centre of the concept of organised crime. The threat posed by organised crime is not the result of forming a 'mini-state' within the state, as Fijnaut and Van de Bunt had put it, but the result of taking over tasks and responsibilities which ought to be exclusive for the state. The seriousness of the threat that emerges from this 'hostile takeover' perhaps is best formulated in the title of one of the most famous academic works on organised crime: Donald Cressey's *Theft of the nation*<sup>68</sup>. Organised crime is about not the regular 'thieving magpies' (to refer once more to Shakespeare) but the thieves of state responsibility and state authority. Grand theft indeed!

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<sup>66</sup> Bovenkerk, F., *Hedendaags kwaad* (transl.: "Contemporary Evil"), Meulenhof, Amsterdam, 1992, at p. 24.

<sup>67</sup> Gambetta, Diego, *The Sicilian Mafia: The Business of Private Protection*, Harvard University Press, Cambridge (Mass.), 1993; Paoli, Letizia, *Mafia Brotherhoods: Organized Crime, Italian Style*, Oxford University Press, Oxford (UK), 2003. See also Newell, James L., *Organised Crime and Corruption: the Case of the Sicilian Mafia*, in: Petrus C. van Duyne, Almir Maljevic, Maarten van Dijck, Klaus von Lampe, James L. Newell (eds), *The Organisation of Crime for profit. Conduct Law and Measurement*, Wolf Legal Publishers, Nijmegen, 2005, at p. 147.

<sup>68</sup> Cressey, Donald R., *Theft of the Nation: The Structure and Operations of Organized Crime in America*, Harper, New York, 1969.

### IX. Illustration IV: A Dissonant View?

In a sense the third approach of the concept organised crime to be discussed here, the approach by Petrus C. van Duyne, is diametrically opposed to the views of Fijnaut and Van de Bunt. In contradiction to the image of an emerging ‘underworld’ threat pictured by Fijnaut and Van de Bunt, Van Duyne locates organised crime in the centre of the ‘upper world’ host society: *“Organized crime is not restricted to class or certain criminal economic or social areas. It is a way of doing business by systematically using criminal methods which imply a fundamental disrespect for the rules which govern the economic and social fabric of our society. This systematic violation of the law while doing business is not the exclusive trademark of drug trafficking, though drug traffic is commonly considered the incarnation of Evil and therefore readily associated with Organized Crime, the heinous vehicle of this Evil. The market of legitimate goods is equally a favourable playground for organized crime-entrepreneurs”*.<sup>69</sup>

In a number of publications, Van Duyne openly questions the usefulness of the expression ‘organised crime’<sup>70</sup>. When reading his works one gets the impression that, though frequently criticising definitions of other, he principally refuses to formulate a definition himself. But Van Duyne also has to bow for power of common language and linguistic conventions and the word combination ‘organised crime’ frequently occurs in his writings. However, Van Duyne sees no reasons to confine the scope of this concept to the ‘traditional hoodlums’ normally associated with ‘organised crime’. Consistent use of the expression ‘organised crime’ requires us to include organisational and corporate crime in the debate.

*“Looking at ‘organized crime’ from the theory of the crime enterprise, as I have done in my research on crime enterprises in the Netherlands, I got serious doubts whether I needed the concept of organized crime at all. Instead of asking what ‘organized crime’ is? I tried to understand what organizing criminals do to make a profit out of their crime enterprises by looking at their market behaviour.[...] By starting from the enterprise-theory there was no longer any need to concentrate on the more or less ‘classical’ crime like drug trafficking while considering the world of business and big money as something different. Instead, one can look at organized fraud and other sorts of the so called ‘white collar crime’ by means of legal fronts as just other forms of criminal enterprises, comparable with the classical ‘organised crime’.”*<sup>71</sup>

Van Duyne’s alternating view on the scope of the concept of organised crime closely relates to his view on what should be on the agenda of crime research. Van Duyne wants to draw the attention to modalities of crime which provide their perpetrators any chance to develop profitable illegal activities, precisely *because* these crime forms lack sufficient attention of the public and public authorities. These crimes can be committed on a continuous basis and without fear for law enforcement intervention, because these are located at the periphery of political attention. Commonly the spotlights are pointed at more ferocious crimes, such as drug

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<sup>69</sup> Duyne, P.C. van, *Organized Crime in Europe*, Nova Science Publishers, New York, 1996.

<sup>70</sup> Duyne, P.C. van, *Organized Crime in Europe*.

<sup>71</sup> Duyne, P.C. van, *Organized Crime in Europe*.



trafficking, drawing most of the attention away.<sup>72</sup> According to Van Duyne, these latent forms of crime pose a threat that is at least as serious as the threat emerging from the crimes which are on top of the law enforcement agenda.

Reading Van Duyne's works, one gets the impression that he wants to raise awareness for the development in which an increasing number of seemingly law-abiding and respectable citizens and entrepreneurs violate the law systematically for the purpose of personal gain. This form of moral decay spreads throughout society as a fungus, slowly undermining its very fabric. Van Duyne does not use the very words, but from his texts one derives a concern about the Rule of Law. But his concern is not (only) about the upstart 'usual suspects'. He draws attention to the circumstance that men in (economic) power behind the veil of respectability have much more leverage to undermine society by their much more sophisticated forms of organising crime.

## **X. Conclusion: Research and Rhetorics**

Having discussed the function of the concept of organised crime as an essentially political<sup>73</sup> notion, we can now return to the issue of the definition of organised crime. Several conclusions can be drawn from the analysis above.

First, it must be noted that, given the intrinsically political nature and function of the concept of organised crime, there is very little chance that there will ever be a commonly or even broadly accepted definition of organised crime.<sup>74</sup>

Second. Although it is possible to pinpoint a common denominator, this common denominator (the perceived threat to the state authority and the Rule of Law) by itself is too vague and open to be translated into a definition. This common denominator is not broad in the sense that it covers a broad spectrum of crime modalities, but in the sense that it allows for including those crime modalities which are at a given time, in a given society deemed to pose a more serious threat than many other crime forms. Thus perceived, the common denominator does not have the delimitating quality of a definition. It is not intended to delimitate, but to enable us to understand and accommodate politically divergent notions of organised crime.

Third, any notion which takes into account this intrinsic political dimension opens the door to a vague use of the phrase 'organised crime', even to the extent of rhetorical abuse. In politics such an open 'container' notion of organised crime may serve very well the interests of the political actors. It allows for a dynamic discourse in which the imprecise application of the words 'organised crime' may dampen political controversy, because political disagreement as such is silently removed from the centre of the debate and swept under the carpet of vague wording.

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<sup>72</sup> See also Kinzig, Jörg and Anna Luczak, *Organised Crime in Germany: A Passe-Partout Definition Encompassing Different Phenomena*.

<sup>73</sup> The 'essentially' political nature concerns the concept of organised crime (not its definition). This view therefore is not at odds with the view expressed by Paoli and Fijnaut, who refer to the 'political uses that have been made of definitions of organised crime' (Paoli and Fijnaut, *Introduction to Part I: The History of the Concept*, at p. 23).

<sup>74</sup> Interview with Professor Lode van Outrive, MEP, Catholic University of Leuven, FECL (Volume 17, Number July/August), 1993. Also available online at: <http://fecl.org/circular/1709.htm>.

Politicians and others involved in the making of criminal politics seek the support of ‘experts’ in order to defend a certain problem definition. This, in turn, serves the purpose of getting support for a designated approach, which is being presented as “*the most effective way of fighting the problem*”. The ambiguous meaning and definitional vagueness of the phrase ‘organised crime’ may even degenerate into rhetoric. For the Dutch situation this has been described by Van Duyne,<sup>75</sup> while Woodiwiss<sup>76</sup> elaborates on the international scene of rhetoric numbing the open debate. In his article Van Duyne reconstructs the emergence of the concept of organised crime in the Netherlands and, parallel to that, the growing concern towards organised crime as an increasing menace to society. According to this reconstruction politicians, high ranking law enforcement officials and (even) scholars have orchestrated, or at least deliberately influenced, the information flow indicating the level of threat Dutch society allegedly had to face. Van Duyne’s critical reconstruction might serve as an example of the plausibility of the negative influence of rhetoric on the political decision making process. The conclusion is that though vagueness has in neutral terms a certain practical purpose, this does not need to be a positive one.

Fourth, given the mere possibility of rhetorical use and abuse of the phrase ‘organised crime’, researchers and strategic analysts should particularly beware not to become part of (or take part in) this rhetoric. Informing the public, but also informing politicians and policy makers is part of the work of scholars. This is even more so in the case of the strategic analysts, who are mostly in the service of governmental bodies. Therefore, for these people it makes sense to investigate those criminal phenomena that are at the centre of political attention, however badly defined the related notions of organised crime may be. In this respect ‘governmental’ researchers and strategic analysts in the service of the state, simply have to adhere to notions of organised crime that are politically predominant at a given time, at least within the limits of a certain band with.

However, when it comes to *defining* organised crime on the level of research and strategic analysis, they should be aware of his or her own responsibility as a scholarly craftsman. At this level the *definition* of ‘organised crime’ is not of a political nature, but serves as an instrument to delineate the domain of research. And at this level there is no place for open definitions (contradiction in terms) and vague wording resulting in definitional ambiguity.

To conclude, we can ask again: What’s in a name? Quite much! In the case of organised crime quite tacit consequences are attached to the way organised crime is being perceived, defined and subsequently investigated. Law enforcement budgets may depend on the political dynamics inherent to the concept of ‘organised crime’. In this sense ‘organised crime’ is very much a social and political reality.<sup>77</sup> In addition, the scope of civil rights may be sized down even

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<sup>75</sup> Duyne, P.C. van, *De schepping van een beeld: wisselwerking met de media rondom de georganiseerde misdaad* (transl.: “The Creation of an Image: Interaction with the Media and Organised Crime”), Gouda Quint, Deventer, 2001, at pp. 119-144.

<sup>76</sup> Woodiwiss, M., *Organized Crime - The Dumbing of Discourse*, in: George Mair and Roger Tarling (eds), *The British Criminology Conference: Selected Proceedings*, Volume 3, Liverpool (UK), 2000, at pp. 13-2; 7; Woodiwiss, M., *Transnational Organised Crime: the Global Reach of an American Concept*, in: Adam Edwards and Peter Gill (eds), *Transnational Organised Crime*, Routledge, London/New York, 2003, at pp. 13-27.

<sup>77</sup> Kinzig, Jörg and Anna Luczak, *Organised Crime in Germany: A Passe-Partout Definition Encompassing Different Phenomena*; Fijnaut, C. and Paoli, L (eds), *Organised Crime in Europe*, Kluwer, Deventer, 2004; Duyne, P.C. van, *Medieval Thinking and Organized Crime*, in: Viano, Emilio;

further, on basis of an unsubstantiated threat image, enabled by vague word use. History might still teach us a lesson or two in this respect.

If any group of people may be expected to prevent such rhetorical abuse from happening, then it is the forum of academic experts. Their task is to strive towards accurate definitions, but also to understand and explain the limitations of a (political or law enforcement) definition. Hence, they should first and foremost heed the intrinsic political significance of *any* concept of organised crime and give up the fruitless, even meaningless, search for the one true definition. If for practical purposes a common definition will be accepted by a multitude of definition users, then this is a good thing. But we cannot design a roadmap to achieve such a consensus. Moreover we can ask whether it is the task of researcher to strive to the ever evading consensus. His task is to carve out a piece of reality, delineate it as his 'research population' and collect reliable observations for valid conclusions.

Meanwhile criminal reality moves on. Crime-entrepreneurs do not remain idle. Criminals may shift markets when they experience a sudden increase in law enforcement efforts in the market they are operating in (thereby replacing 'the problem'). They may invoke the feeling that 'organised crime' shows up everywhere. As a matter of fact, it is merely a shift of market opportunities interpreted from the political and law enforcement angle as 'organised crime is everywhere'. That angle constitutes a reality of its own and should not be confused with the social reality of (entrepreneurial) crime. Fusing them leads to a continuous and conceptual blur. Not only is organised crime, as a concept, too interesting for that, but it is also too important as a field of criminological study.

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José Magallanes and Laurent Bridel (eds), *Transnational Organized Crime: Myth, Power, and Profit*, Caroline Academic Press, Durham, NC, 2003; Duyne, P.C. van, *De schepping van een beeld: wisselwerking met de media rondom de georganiseerde misdaad* (transl.: "The Creation of an Image: Interaction with the Media and Organised Crime"), Gouda Quint, Deventer, 2001, at pp. 119-144.

# Organized Crime in the Western Balkans<sup>1</sup>

*Věra Stojarová<sup>2</sup>*

*The author analyses the overall situation of organized crime in the Western Balkans, deals with the un/successful policies of the respective governments and presents one possible perspective on the OC groups in the region.*

## **I. Introduction**

Crime has always been present within society; the origins of European organized crime (OC) may be traced back to the rise of the Italian Mafia at the end of the 19<sup>th</sup> century. As with organized crime in Russia, which evolved after the break-up of the Soviet Union, Balkan organized crime is a new phenomenon, which evolved during the wars on the Balkan Peninsula during the last decade of the 20<sup>th</sup> century. These wars with their economic blockades, the presence of weak states in the post-war context, the legal vacuum and the coexistence of organized crime groups within the state, provided a favourable environment for this phenomenon to bloom. Although less notorious than Russian or Chinese organized crime, the Balkan region may currently be depicted as one of the most important epicentres of organized crime – a transnational and global phenomenon.<sup>3</sup>

The regional organized crime networks focus mainly on drug trafficking, trafficking of stolen vehicles, cigarette smuggling, petrol, money-laundering and, last but not least, on human trafficking. Two of the most common routes used for human trafficking start in the Ukraine, Moldova and Romania and run through Serbia heading for Western Europe or into a country of

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<sup>3</sup> Gyarmati, Istvan, *Security Sector Reform as a Contribution to Crime Prevention in South Eastern Europe*, in: Connections (Volume II, Number 2), Partnership for Peace Consortium of Defense Academies and Security Studies Institutes, June 2003, pp. 55-60, at p. 55; Riegler, Henriette, *Contextualizing Criminality and Security in South Eastern Europe*, in: Connections (Volume II, Number 2), Partnership for Peace Consortium of Defense Academies and Security Studies Institutes, 2003, pp. 51-53, at p. 51.

destination in the Balkan region such as Bosnia and Herzegovina (BiH), Kosovo or Macedonia.<sup>4</sup> The International Organisation for Migration (IOM) estimates that about 400.000 women each year are trafficked through the Balkan into the EU countries, while another 170.000 women end up in the Balkan region.<sup>5</sup>

Organized crime negatively impacts official financial streams, the market environment and relations with the countries of Western and Central Europe, and presents a threat at the regional as well as global levels.<sup>6</sup> Organized crime threatens the stability of every state. The structures of weak states encourage the threat of criminal activities and their profitability, due to the ease with which criminal organizations are able to penetrate the state and its institutions. The high level of infiltration by organized crime into state structures threatens democracy, democratic institutions and public confidence. Corruption enables the infiltration of organized crime into society because corrupted political elites do not effectively fight organized crime - very often because of mutual interest.<sup>7</sup>

The aim of this article is to provide an analysis of the state of organized crime in the Western Balkans.<sup>8</sup> The analysis is elaborated on the basis of a model developed by Klaus von Lampe and

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<sup>4</sup> BiH, Kosovo and Macedonia are countries of destination for trafficking in human beings mainly due to the presence of international missions, the presence of whose personnel increases the demand for sexual services. See Amnesty International Kosovo (Serbia), *The UN in Kosovo – A Legacy of Impunity*. Available online at: <http://web.amnesty.org/library/Index/ENGEUR700152006?open&of=ENG-393> (All websites in this essay were last checked on 11 May 2007); Amnesty International, *Trafficked Women and Girls have Human Rights*, 2004. Available online at: <http://news.amnesty.org/index/ENGEUR700122004>; Terdevci, Fatmire, *Kosovo: Placing the Blame*, in: *Transitions Online*, 13 May 2004; Harrington, Carol, *Peacekeeping and Prostitution in Bosnia-Herzegovina and Kosovo*. Available online at: [http://www.5thfeminist.lu.se/filer/paper\\_607.pdf](http://www.5thfeminist.lu.se/filer/paper_607.pdf).

<sup>5</sup> Lindstrom, Nicole, *Regional Sex Trafficking in the Balkans. Transnational Networks in an Enlarged Europe*, in: *Problems of Post-communism* (Volume 51, Number 3) M. E. Sharp, USA, 2004, pp. 45-52, at p. 46. Available online at: [http://www.ceu.hu/polsci/Illicit\\_Trade-CEU/Week10-Lindstrom.pdf](http://www.ceu.hu/polsci/Illicit_Trade-CEU/Week10-Lindstrom.pdf).

<sup>6</sup> For an analysis of Kosovo-Albanian organized crime in Germany see: Lemmel, Holger, *Kosovo-Albaner in Deutschland. Eine Bedrohung für die innere Sicherheit?* (Translation: “Kosovo Albanians in Germany. Security Threat for the Internal Security of the State?”), Schmidt-Römhild, Lübeck, 1997.

<sup>7</sup> Gyarmati, Istvan, *Security Sector Reform as a Contribution to Crime Prevention in South Eastern Europe*, at pp. 55-59.

<sup>8</sup> “Western Balkans” is the official *terminus technicus* created by the European Union and does not correspond to a geographical notion. The author uses the term “Western Balkans” following the EU terminology and not in geographical or other terms: the author therefore focuses on Croatia, Bosnia and Herzegovina, Serbia, Kosovo, Montenegro, Macedonia and Albania. Even though Kosovo is *de iure* an integral part of Serbia, its development has been diverging from Serbia politically, and *de facto* constitutes an independent political system; it will therefore be analyzed separately from Serbia. Furthermore, the author has chosen the term ‘Kosovo’, since it is more commonly used in English than ‘Kosova’ or ‘Kosovo and Metohija’. This does not mean the author supports any particular side in the conflict. The constitutional name of the Republic of Macedonia is used rather than the name FYROM, usually preferred in the English texts. The determination of sources was problematic: the author had to face poor accessibility of the primary literature, which literature is also often conflicting. Official data very often present a subjective view and the secondary literature on Balkan issues is very often partisan. Moreover, access to the archives and governmental documents is problematic and the sources very often contradict each other. Summing up, when reading one must always bear in mind the author's sources, or rather the state of perception of the *enemy*. The sources used were printed, oral and electronic.

includes: the actors who cooperate in rational, non-impulsive criminal activities, the structures that connect these actors, the criminal activities these actors are involved in, society, government and the realm of public discourse.<sup>9</sup> This model also enables the reader to acquire an overall picture of the OC situation in the region, discern varying manifestations of OC in relation to country-specific features (political situation, history, ethnic differences) and helps identify the main obstacles in the fight against groups of organized crime.

## II. Organized Crime in Croatia

Crime in Croatia is at a relatively low level compared to those countries which had to face the embargo. The TRANSCRIME report (*Joint Research Centre on Transnational Crime*), presented to the Special Coordinator of the Stability Pact, states: “*Organised crime may not have reached the level of other countries in the region, but the overall trend seems to be upwards. The post-war situation has been exploited by criminal groups to carry out a variety of activities, which produced dirty money to be laundered in the licit economy. Experts estimate that the number of organised crime groups in Croatia ranges between 1 and 10. As far as the internal structure is concerned, criminal groups in the Republic of Croatia cannot be considered criminal organisations or criminal associations in the classical sense of those terms, because there are no hierarchical relationships between members of the groups. The members are only related as personal acquaintances and have common interests in acquiring illegal material gain by the commission of one or several offences.*”<sup>10</sup>

Similar to other regional crime groups, the Croatian groups participate in drug trafficking from Asia to Western Europe. In terms of human trafficking, post-Soviet and post-Yugoslav states are usually the countries of origin of the women and children trafficked, while the country of destination is Italy.<sup>11</sup> The common report of the UN and OSCE mentions the trafficking of male prostitutes and states that in recent years, a substantial decrease has been observed in illegal migration into Croatia which is attributable to laws adopted by the Croatian government and

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Governmental documents were used as primary sources, while the analysis of organized crime elaborated by the EU structures, NGOs and INGOs served as secondary sources. The analysis of regional security experts served as supplementary material.

<sup>9</sup> Von Lampe, Klaus, *The Use of Models in the Study of Organized Crime*, Paper presented at the 2003 Conference of the European Consortium for Political Research, Marburg, Germany 19 September 2003. Available online at: <http://organized-crime.de/modelsofoc.htm>.

For definitions of organized crime see also: <http://www.organized-crime.de/OCDEF1.htm>; Chatterjee, Jharna. *The Changing Structure of Organized Crime Groups*, Royal Canadian Mounted Police, 2005. Available online at: [http://www.rcmp-grc.gc.ca/ccaps/organized\\_crime\\_structure\\_e.htm](http://www.rcmp-grc.gc.ca/ccaps/organized_crime_structure_e.htm).

<sup>10</sup> Transcrime, *The Contribution of Data Exchange Systems to the Fight against Organized Crime in the SEE Countries. Final Report for the Office of the Special Coordinator of the Stability pact for SEE*, 2004. Available online at: <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN019080.pdf>. Council of Europe. *Organised Crime Situation Report 2001*, at p. 95. Available online at: [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/combating\\_economic\\_crime/8\\_organised\\_crime/documents/Report2001E.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/8_organised_crime/documents/Report2001E.pdf).

<sup>11</sup> U.S. Department of State. *International Narcotics Control Strategy 2003*, March 2004. Available online at: <http://www.state.gov/p/inl/rls/nrcrpt/2003>. U.S. Department of State Bureau of Democracy, Human Rights, and Labor, *Croatia. Country Reports on Human Rights Practices*. Available online at: <http://www.state.gov/g/drl/rls/hrrpt/2003/27831.htm>.

stricter migration regimes in BiH and in Serbia. Croatia is, above all, a transit country, and only to a limited extent the country of origin or destination.

When it comes to the proliferation of small weapons, Croatia is a country of origin as well as transit: *“In 1999, 71 persons were reported for arms trafficking. In the same year, the authorities detected a large quantity of illicit weapons: 6978 firearms 107,589 explosive weapons, 219,995 pieces of ammunition and several kilograms of explosives. On 31 October 2002, a ship transporting 208 tons of explosives was stopped at a Croatian port.”*<sup>12</sup>

Transparency International (TI) states that Tujman’s death and the inauguration of the new government signified a considerable improvement in the level of corruption. Regarding the corruption index (91 countries listed), Croatia moved from 74<sup>th</sup> position in 1999 to 47<sup>th</sup> position in 2001. Privatization scandals and related corruption slowed the positive momentum, and in 2005 Croatia once again placed 71<sup>st</sup> with a corruption index of 3.4. In 2006, a slight improvement could be seen. Croatia rose to 69<sup>th</sup> position, with, however, the same score of 3.4.<sup>13</sup> Although there has been a pronounced regression among the countries analyzed, Croatia is the state with the lowest level of corruption and holds the position of the least corrupted in the region.

Organized crime in Croatia is among the weakest in the region and the situation may be compared to that in Macedonia. The heyday of Croatian organized crime was during the war. The criminals were engaged by paramilitary units and official security forces in ethnic cleansing. *“Promoted into war heroes many of them continued their criminal deals after the war to this day. When they were caught in the act, they were punished symbolically and only a few of them ended up in prison for longish sentences because they were so deeply involved in crime that even their protectors from the state and judicial authorities could not protect them and take them out of prison any more.”*<sup>14</sup> The termination of the war meant only the transition towards the new authoritarian regime led by Franjo Tujman under which all former criminals were protected as national heroes by the state authorities. Crime and corruption was hushed up under the Tujman regime and the political elites in Croatia did not avoid contact with organized crime groups. The most notorious criminals protected by the Zagreb government were Mladen Naletilić, known as *Tuta*, and Vinko Martinović, known as *Štel*, who had served as intermediaries for the participation of the Croatian Ministry of Defence in arms trafficking. Interestingly, as Daskalović states, Miodrag Luković *Legija* (the main suspect in the assassination of the former Serbian prime minister, Zoran Djindjić) possessed a Croatian

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<sup>12</sup> Transcrime, *The Contribution of Data Exchange Systems to the Fight against Organized Crime in the SEE countries*, at p. 135.

<sup>13</sup> 159 states are covered in the analysis; the corruption perception index ranges from 0 (most corrupted) to 10 (least corrupted). *Transparency International Corruption Perception Index 2005*. Available online at: [http://www.transparency.org/cpi/2005/dnld/media\\_pack\\_en.pdf](http://www.transparency.org/cpi/2005/dnld/media_pack_en.pdf).

<sup>14</sup> Daskalović, Zoran, *Corruption and Organized Crime. Croatia: Crime and Corruption Continue*. Available online at: <http://www.aimpress.ch/dyn/dos/archive/data/2003/30725-dose-01-02.htm>. See also: Hedl, Drago, *Links between Organized Crime and Croatia’s Top Brass*, Alternative Information Network, 11 April 2004. Available online at: <http://www.aimpress.ch/dyn/trae/archive/data/200104/10416-001-trae-zag.htm>.

passport, which was allegedly one of 930 passports that had disappeared from the Croatian consulate in Mostar and which were most probably distributed among the local OC groups.<sup>15</sup>

The beginning of the new transition dates to Tudjman's death.<sup>16</sup> One of the first steps of the new government, after the regime change, was (besides democratization and national reconciliation) to launch programmes to fight crime and corruption. These initiatives had an endogenous as well as exogenous character (among them, the Stability Pact for South Eastern Europe and other programmes were launched mainly by the EU). It is still very hard to assess how successful the Croatian fight against OC is. Nevertheless, the EU granted Croatia official candidate status in June 2004 and accession negotiations began in October 2005. Therefore the new Croatian government, led by HDZ (the Croatian Democratic Union), has to stay on track if it wishes to join the European Union in the near future.

Not much public discussion took place in the media during the reign of Tudjman. That notwithstanding, after the end of his regime the media began to focus upon some of the cases connected with the previous government. The public discourse about organized crime continues in the same direction. However there is no real discussion about the so-called patriotic war and crimes committed during wartime.

### **III. Organized Crime in Bosnia and Herzegovina**

In contrast with Croatia, BiH has been affected by crime to a greater extent; organized crime and corruption are the gravest problems in the country. While corruption used to be, and still is, one of the typical features of the Balkan administration, organized crime gained importance in the last decade of the 20<sup>th</sup> century. War, the related market collapse, the lack of basic economic resources and the economic sanctions imposed by the international community against the

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<sup>15</sup> Daskalović, Zoran, *Corruption and Organized Crime. Croatia: Crime and Corruption Continue*. Available online at: <http://www.aimpress.ch/dyn/dos/archive/data/2003/30725-dose-01-02.htm>. See also: Hedl, Drago, Links between Organized Crime and Croatia's Top Brass, Alternative Information Network, 11 April 2004. Available online at: <http://www.aimpress.ch/dyn/trae/archive/data/200104/10416-001-trae-zag.htm>.

<sup>16</sup> Even though it may sound cynical to some, the process of transition and consolidation of the political system was eased by the expulsion of the Serbian national minority. The current ethnically homogenous Croatia could be labeled according to the conditions set by Juan Linz and Alfred Stepan as a semi-consolidated democracy. However, one must always bear in mind that the Croatian democracy is the only game in town for Croatian nationals and that the opposition was marginalized via expulsion. The acceptance of Croatia by the international community was facilitated by the fact that the Croats were seen in the international arena as the *Good Guys* while the Serbs as the *Bad Guys*. Nevertheless, there has been no real discussion in society regarding the operations *Flash* and *Storm*. Despite the national reconciliation announced by Ivica Račan and his government, according to UNHCR sources only 132,500 refugees of Serbian origin out of an expected 250,000 have returned to Croatia.

See: United Nations High Commissioner for Refugees, *Home again, 10 Years after Croatia's Operation Storm*, 5 August 2005. Available online at: <http://www.unhcr.org/news/NEWS/42f38b084.html>.

The existence of the Government of Republika Srpska Krajina in exile is also worth mentioning. According to one member of government, Slobodan Jarčević, the government has been working for two years and has 10 members. Discussion with the author, Belgrade 4 May 2007. See also online: <http://www.krajinaforce.com/sajt/index.html>.



Federal Republic of Yugoslavia (FRY) compromised economic development in all the Balkan states and created ideal conditions for grey economy, corruption, illegal trade and the appearance of criminal conduct in the highest political structures.

An extraordinary organized crime network was established during the war. Practically, a kind of 'triangle' emerged in all ethnic communities. Political elites and their police and armed forces, pre-existing criminal groups and paramilitary units formed this triangle.<sup>17</sup> Almost all criminal groups were formed on an ethnic basis and operated only in those areas where their ethnicity accounted for the majority of the population. However, ethnic affiliation did not prevent criminal groups from active cooperation with other groups coming from the hostile camps in BiH or from other states in the region.

The end of the war did not mean the ending their activities - on the contrary, it meant their expansion. The termination of the conflict enabled and facilitated their activities. The international units IFOR (Implementation Force) and later SFOR (Stabilisation Force) focused on the termination of hostilities, peacekeeping, and later, on the arrest of war criminals – the fight against organized crime was not considered a priority.<sup>18</sup> The local structures were either unable to solve the problem or were part of the criminal network and were involved in its activities. Criminal groups operating on the supranational level achieved a stronger structure during peacetime. After the end of the war, specific groups interested in renewing the pre-war Balkan route started to come to Bosnia. In addition to the Serbian and the Croatian groups, Kosovo-Albanian groups and Bosnian gangs from Sandjak set up shop in the country.<sup>19</sup>

According to Transcrime, there are between 1 and 10 groups operating in BiH with an average of 3-10 members. The internal situation of organized crime may be defined as one structured in terms of local networks which carry out projects, rather than being organized in a strict pyramidal hierarchy.<sup>20</sup> Therefore the current structure of the groups is quite loose and flexible and their members adhere to particular groups only for the fulfilment of particular operations.

The fight against organized crime faces many problems: the two most noxious have already been mentioned – the reluctance of local organs to deal with the criminal structures and involvement by the elite in illegal activities. The third was until recently the non-existence of a common Ministry of the Interior (Ministry of Security), which would operate on the state-wide

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<sup>17</sup> About the relations between politics and organized crime see: Lopušina, Marko, *Tajni ratnici EX-Jugoslavije* (Translation: "The Secret Warriors of Ex-Yugoslavia"), Evro, Belgrad, 2003; Tesař, Filip, *Epilog* (Translation: "Epilogue"), in: Matvejević, Predrag, Vidosav Stevanović and Zlatko Dizdarević, *Strijci války a míru* (Translation: "The Instigators of War and Peace"), G plus G, Praha, 2003, pp. 137-147; Vasić, Miloš, *Atentat na Zorana Djindjića* (Translation: "Assassination on Zoran Djindjić"), Politika-B92-Vreme-Narodna knjiga, Beograd, 2005, at pp. 206-207.

<sup>18</sup> Institute for War and Peace Reporting, *Balkan Crisis Report N. 531*, 2 December 2004. Available online at: <http://iwpr.net>.

<sup>19</sup> The Institute for War and Peace Reporting estimates that the profit from trafficking in goods makes 150-300 million per year; that amount is equal to the BiH state budget. Criminal activities present the biggest threat, which could bar BiH to access the EU. (Institute for War and Peace Reporting, *Balkan Crisis Report N. 531*).

<sup>20</sup> Transcrime, *The Contribution of Data Exchange Systems to the Fight against Organized Crime in the SEE Countries*, at p. 73.

level. The Ministry of Security was only established in 2004 with a mandate to cover and coordinate the activities of all police agencies in Bosnia and Herzegovina. However, police structures operate under the framework of their entities and reform moves at a slow pace. The state security forces do not cooperate in the fight against organized crime, even though the international community ordered the creation of three common security structures: the border service, the state security and an intelligence agency and counter-intelligence security agency.<sup>21</sup> However, police structures alone cannot be blamed; one must also examine the work of the local judiciary. State prosecutors usually charge suspects without solid evidence, which leads to minor charges or withdrawal of the case. The international community left responsibility concerning organized crime up to the local structures. European Union Forces (EUFOR) were supposed to have a stronger mandate in this field so that they could fight against organized crime actively. The current mandate encompasses only assistance for local organs when dealing with organized crime.<sup>22</sup>

Looking at Transparency International's figures, among 159 countries, BiH was in 90<sup>th</sup> position in 2005 with a corruption index of 2,9, which was, after Croatia, the best result of any of the Western Balkan countries. In 2006 the corruption index remained the same, while BiH was placed at 93<sup>rd</sup> position.<sup>23</sup> Also, the international mission's personnel became engaged in criminal activities or corruption. In 2001 there were big corruption scandals in which representatives of the international missions played their role. According to Transparency International, some foreign subjects operating in the region 'acclimatized' and performed activities for which they would be prosecuted in their home countries. The same report states that the main cause for non-transparent activities and the increase in corruption among local and international institutions was the existence of a parallel government in these organs, creating an environment in which local and international institutions blame each other for their faults and inactivity.<sup>24</sup>

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<sup>21</sup> As IWPR states "the Bosnian deputy police minister Jozo Leutar was blown up by a car bomb in March 1998. It is believed the assassins were part of an organised crime ring – linked to senior Bosnian politicians – which Leutar was investigating prior to his death."

Institute for War and Peace Reporting, *Balkan Crisis Report N. 531*.

<sup>22</sup> Institute for War and Peace Reporting, *Balkan Crisis Report N. 542*, 18 February 2005. Available online at: <http://iwpr.net/>.

<sup>23</sup> BiH inhabitants perceive corruption as the second gravest problem in the country. The first is unemployment; criminality is in 5<sup>th</sup> place. Very interesting figures arise as well when looking on the perception of corruption among political parties. In 2004, almost 30% of respondents saw the SDA (Party of Democratic Action) as the most corrupt, while nearly 20% awarded that distinction to the HDZ (Croatian Democratic Union). Around 16% of the respondents perceived SDS (Serbian democratic party) as the most corrupt. Transparency International, *Studija percepcije korupcije. Bosna i Hercegovina* (Translation: "Study of the Perception of Corruption in Bosnia and Herzegovina"), Banja Luka/Sarajevo, June 2004, at p. 28 and 70 Available online at: <http://www.ti-bih.org/Articles.aspx?ArticleID=0a6f03f5-8f45-4b29-9a33-0ccc052278e0>.

Quite interesting are British estimates that Bosnian organized crime obtains an average of 266,536,116 Euro a year from its criminal activities, mainly due to customs officer corruption. Taken from Transcrime, *The Contribution of Data Exchange Systems to the Fight against Organized Crime in the SEE countries*, at p. 73.

<sup>24</sup> Most of the articles from that time are available at Transparency International BiH: <http://www.ti-bih.org/Media.aspx?y=2001>. See e.g.: *Ni međunarodna zajednica nije imuna na korupcionu kugu* (Translation: "Even the International Community is not Immune to Corruption"), Dnevni avaz, 25 August 2001 Available online at: [http://www.ti-bih.org/documents/2001\\_02/Ni\\_MZ.jpg](http://www.ti-bih.org/documents/2001_02/Ni_MZ.jpg); *Javno pričaju, tajno*

The interlinking of the local elites with organized crime groups is quite evident. One of the most scandalous events took place in April 2002, when five politicians of the SDA were arrested on suspicion of organizing training camps for terrorists in Mt. Pogorelica in 1996.<sup>25</sup> The media paid frequent attention with stories about the corrupt officials being involved in money laundering or having friends on the traffickers' side. Organized crime is no taboo topic in Bosnian society, due to its extensive media coverage. However one must always bear in mind that the media belongs to entities of a particular ethnic background and whose viewpoint may be subjective.

The political as well as social landscape in BiH remains largely divided along ethnic lines. Bosnia and Herzegovina is not a functioning state, but a weak state. Dysfunction has a direct impact on the fight against organized crime. As already mentioned, all interested parties blame each other for inactivity, while the local police and administration are in the hands of local ethnic parties. Therefore the question is always: by whom you were caught – is that an enemy or a friend? Even though the Constitutional Court as far back as 2000 declared some nationalist articles in the Constitution of the Republic of Srpska<sup>26</sup> to be invalid and the so-called Sarajevo agreements were signed, no real progress could be seen.<sup>27</sup> Bosnia Herzegovina remains a quasi-state, split *de iure* into two entities and *de facto* in three areas controlled by their respective nationalities, which are not willing to cooperate with one another. Surprisingly, this is not the case among the organized crime groups – they do not mind inter-ethnic cooperation at all, which always leaves them the winners.

Even though the situation in BiH is not among the worst in the region, the prospects are rather pessimistic. No progress in the fight against organized crime may be expected until the situation in Bosnia and Herzegovina has been solved. Some see its future in an unrealistic, idealistic multiethnic state based on inter-ethnic tolerance, mutual respect and cooperation. Others would rather see two (three??) independent states (perhaps attached to their neighbour states??). Which scenario wins is irrelevant – the only thing of significance is what results it will bring.

#### **IV. Organized Crime in Serbia**

The economic embargo which started with the boycott of Slovenian products in Serbia returned in the form of United Nations Security Council sanctions imposed on Yugoslavia in 1992,

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*rade* (Translation: “*They Publicly Speak and Secretly Do*”), Glas srpski, 25-26 August 2001. Available online at: [http://www.ti-bih.org/documents/2001\\_02/javno-tajno.jpg](http://www.ti-bih.org/documents/2001_02/javno-tajno.jpg).

<sup>25</sup> The case was special because they were released on bail just before the elections and therefore could have claimed to be martyrs and victims of the 2000 government.

<sup>26</sup> “*The RS is a state of the Serbian nation.*“ “*Taking the natural and democratic right, will and determination of the Serb people from Republika Srpska into account to link its State completely and tightly with other States of the Serb people*“. The Constitutional Court decided that RS wants to secede and integrate with Serbia.

<sup>27</sup> The Sarajevo agreement unprecedently modified the Dayton Peace Agreement with Article 4: The national representation in all the institutions must reflect the proportion of the population according to the census from 1991. This article is being ignored by all sides.

lasting 1.253 days.<sup>28</sup> The international embargo and the engagement of the FRY in the Bosnian conflict were the causes of the Serbian OC bloom and the creation of a widespread environment of corruption.<sup>29</sup> Serbian organized crime lived in symbiosis with the state and both players profited from this symbiosis.

As in the case of Bosnia and Herzegovina, the state special units were formed from criminals attached to the OC underworld. Being engaged in state security forces, they were practically immune, no matter what they did. Furthermore, they were regarded as useful in the fight against “state enemies”. The Unit for Special Operations (*Jedinica za specijalne operacije*), known as the Red Berets (*Crvene beretke*), was formed in 1991. The same unit was also operating in Croatia, BiH and Kosovo and most of its fighters were recidivist criminals. The most famous member of this unit was Milorad Luković, known as *Legija*, who had served in the French Foreign Legion.

These units survived even the fall of the Milošević regime and were not affected by the change of regime. Because of personal animosities and ambitions, conflicting themes (e.g. cooperation with ICTY), the fragmentation of the political scene, and other cleavages, no real debate about abolishing these forces took place. The assassination of Prime Minister Zoran Djindjić was the impulse for starting to “hunt” criminals. The Serbian government decided to dissolve the Red Berets on 23 March 2003 as a result of the indictment of one of its members for the assassination of Djindjić. Another member of the unit was indicted for the assassination of Ivan Stambolić and was accused of having relations to the so-called Zemun clan.<sup>30</sup> In spite of the fact that the reform of the security forces started in 2001, their relations with organized crime persist, and this also applies to the intelligence services. Milosavljević states that the security services are engaged in organized crime activities and are the last surviving example of undemocratic institutions of this type in Europe. The structure of these institutions is according to him based on the model of the KGB, Stasi or Securitatea.<sup>31</sup>

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<sup>28</sup> Durić, *The Economic Development of Montenegro*, in: Bieber, Florian (ed), *Montenegro in Transition. Problems of Identity and Statehood*, Nomos Verlagsgesellschaft, Baden-Baden, 2003, pp.139-159, at p. 140.

<sup>29</sup> Transparency International placed Serbia and Montenegro at 102<sup>nd</sup> place in 2005 (3<sup>rd</sup> among the countries of the Western Balkan) with a corruption perception index of 2.8. *Transparency International Corruption Perception Index 2005*. Available online at: [http://www.transparency.org/cpi/2005/dnld/media\\_pack\\_en.pdf](http://www.transparency.org/cpi/2005/dnld/media_pack_en.pdf).

<sup>30</sup> The secret services were spying not only on the regime’s opponents but on its collaborators as well – most of them were subject to assassination. The ten most monitored people were: Vuk Drašković, Zoran Djindjić, Vesna Pešić, Jovica Stanišić, Mihalj Kertes, Željko Ražnatović Arkan, Vladan Nikolić, Vojislav Šešelj, Ivan Stambolić and Slavko Čuruvija. It is still not clear whether the animosity between gangs or a state order for liquidation was behind these assassinations (or attempts). For example, after Arkan’s assassination, there was a rumour that he was killed by the CIA and Albanian terrorists.

Lopušina, Marko, *OVK protiv Jugoslavije. Kako smo izgubili Kosovo i Metohiju* (Translation: “*KLA against Yugoslavia. How we Lost Kosovo*”), LEGENDA, Čačak, 2001, pp. 140-160.

Djindjić was allegedly killed by the Serbian secret services. (Vejvoda in Batt, *The Western Balkans: Moving on* (Chaillot Paper N. 70), Institute of Security Studies, Paris, 2004, at p. 44. Available online at: <http://www.iss-eu.org/chaillot/chaill70.pdf>.

<sup>31</sup> Milosavljević, Bogoljub, *Reforme obevaštajno-bezbednosnih službi: slučaj Srbije* (Translation: “*Reform of the Secret-Security Services*”), in: Hadžić, Miroslav (ed), *Reforma sektora bezbednosti* (Translation “*Reform of the Security Sector*”), G 17 Institut i Centar za civilno-vojne odnose, Beograd,

During Milošević's era, the process of politicization and militarization of the police was present side by side with an increase in crime, rising and widespread corruption in the state administration, tolerance for criminal activities, legal anaemia and total moral decay in society.<sup>32</sup> The idea of militarization stemmed from the presumption that this organ would be a loyal partner to the army.

The high rate of criminality in Serbia is caused mainly by veterans from the Croatian and Bosnian wars, who fought within the framework of the paramilitary groups supported by the Serbian government. The most common crimes they commit are assassinations, kidnapping, trafficking, robberies, money laundering, and racketeering or illegal software production. The high profits from criminal activities, the corrupt environment and the possibility for money laundering are a source of concern for the international community, which believes that the capital gained will be invested in terrorist activities.<sup>33</sup>

The Serbian democratic opposition has not shunned involvement in illegal activities and its relations with organized crime continue even after the fall of the Milošević regime.<sup>34</sup> The Transcrime report states that there are around 50 criminal groups in Serbia and Montenegro, with at least 10 members in each. The groups are mainly organized in a horizontal manner. There is no strict hierarchy within the groups and "mid-level" members are not coordinated by a leader, but have a high degree of independence in their activities.<sup>35</sup> In the 1980's, the region of Southern Serbia, near Bujanovac (inhabited mainly by ethnic Albanians) and the village of Veliki Trnovac, between Serbia and Kosovo, gained in importance.<sup>36</sup> Goods were trafficked through Kosovo and Macedonia further to West. The wars in Croatia and in BiH interrupted the traditional trafficking route and it is said that 60% of the heroin did not reach its intended destination. The Balkan route had to be diverted and shipments started to be trafficked from Macedonia to the Albanian harbour Dürres, and further to Italy.

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2003, pp. 55-62; Milosavljević, Bogoljub and Aleksandar Resanović, *Državno nasilje nad građanima u Jugoslaviji* (Translation: "State Violence Directed at the Inhabitants of Yugoslavia"), Centar za antiratnu akciju, Beograd, 2001, at p. 50. Available online at: [http://www.caa.org.yu/index.php?page\\_id=23](http://www.caa.org.yu/index.php?page_id=23).

<sup>32</sup> Milosavljević, Bogoljub. *Dvogodišnji bilans i perspektive reformi policije u Srbiji* (Translation: "Two Years Balance and Perspectives of Police Reform in Serbia"), Centar za proucavanje odbrane i bezbednosti, G 17 Institut, Beograd, 2003, at p. 49. Available online at: <http://www.cemr-bg.org/rezultati/knjige/prikaz3.htm>.

<sup>33</sup> Transcrime, *The Contribution of Data Exchange Systems to the Fight against Organized Crime in the SEE Countries. Final Report for the Office of the Special Coordinator of the Stability Pact for SEE*, at pp. 262-263. E.g.: Ratko Mladić is still allegedly protected by the state security forces.

<sup>34</sup> Mappes-Niedek, N., *Balkan – Mafia. Staaten in der Hand des Verbrechens – Eine Gefahr für Europa* (Translation: "Balkan-Mafia. States in the Hands of Criminals – Security Threat for Europe"), Ch. Links Verlag, Berlin, 2003, at p. 57.

<sup>35</sup> Transcrime, *The Contribution of Data Exchange Systems to the Fight against Organized Crime in the SEE Countries. Final Report for the Office of the Special Coordinator of the Stability Pact for SEE*, at pp. 258-259.

<sup>36</sup> Lopusina, *Balkanska smrt. Šiptarska narkomafija* (Translation: "Balkan Death, Albanian Narco-Mafia"), LEGENDA, Čačak, 2000, at pp. 50-52; Mappes-Niedek, N., *Balkan – Mafia. Staaten in der Hand des Verbrechens – Eine Gefahr für Europa* (Translation: "Balkan-Mafia. States in the Hands of Criminals – Security Threat for Europe"), at pp. 73-74.

In dealing with the media, the Milošević regime strove to limit (or liquidate) pluralism. However, before 1998 this effort was only partially successful; with the Kosovo war and a new media law, the regime achieved better results in controlling the media sphere.<sup>37</sup> In any event, the media only disseminates common knowledge – society is quite well informed about the interlinking between state structures and criminals and is apathetic to this kind of information.

Transparency international placed Serbia in 90<sup>th</sup> position, with a corruption perception index of 3.0 in 2006, which represents a slight improvement from the 2005 rate: a corruption perception index of 2.8, at 97<sup>th</sup> position.<sup>38</sup> However, any claim this change was brought about by the Montenegrin separation is open to dispute.

The prospects for the fight against OC groups in Serbia are fairly pessimistic. The country still has to deal with its problematic past; the Kosovo issue and cooperation with the ICTY remain the hot issues in the political debate. There has been no national reconciliation in the country and even the politicians would rather deal with the past than with the future. Animosity is quite high, while opinions differ. Current Prime Minister Koštunica, who has a strong personality, hinders any progress towards national reconciliation while giving no space to the less nationalistic president Boris Tadić. There has been no real effort yet to transform the security forces and move from the security of the state to the security of state citizens. Until this reform is complete, there can be no real discussion about fighting OC groups.

## V. Organized Crime in Kosovo

The Europol report for 2004 states that Former Yugoslavian organized crime groups are “involved in many types of property crimes such as burglaries, ram-raids and armed robberies...Members of former Yugoslavian organized criminal groups have also been involved in motor vehicle crime in Spain (mainly Croatians and Bosnians) and The Netherlands (mainly Serbs), the transport of alcohol to the Nordic countries and the transport of chemical drugs from The Netherlands for their local market using Austria and Slovenia as transit countries. Most Member States report on nationalities rather than on ethnicity”.<sup>39</sup> The last fact makes the case a bit more difficult: having so many ethnic groups in the state, organized crime cannot be spoken of as being based upon ethnicity. However, even though the report notes the aforementioned difficulties, it still puts ethnic Albanian organized crime (OC) in first place among non-EU organized crime groups. “Ethnic Albanian OC groups have established themselves in many Member States. The criminal activities are controlled by OC groups in Albania, Kosovo and FYROM. They continue to extend their role from facilitators for other OC groups to achieving full control in certain crime areas, such as drugs trafficking, illegal

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<sup>37</sup> *Večernje Novosti* was put under the control of state controlled *Borba*, the broadcasting equipment was removed by the police from the *Studio B*, local *Lav TV* (Vrasac), *Radio Boom 93* (Pozorvac), *Radio Tir* (Cupria) *TV Nemanja* (Cuprija) and *Radio Golf* were closed. *Studio B*, *Radio B2-92*, *Radio Indeks* and the editorial office of *Blic* were closed or controlled by the regime.

<sup>38</sup> Transparency International, *The 2006 Transparency International Corruption Perceptions*. Available online at: <http://www.infoplease.com/ipa/A0781359.html>.

<sup>39</sup> Europol, *European Union Organized Crime Report 2004*, Luxembourg, 2004. Available online at: <http://www.europol.eu.int/publications/EUOrganisedCrimeSitRep/2004/EUOrganisedCrimeSitRep2004.pdf>.

*immigration and trafficking in human beings, in specific regions. Ethnic Albanian OC groups are hierarchal, disciplined and based on exclusive group membership. The significance of ethnic Albanian OC groups in the overall EU context is further increasing. Italy and Greece consider ethnic Albanians to be the largest non-indigenous OC group in their countries. Albanian OC is considered an increasing threat to the Member States”.*<sup>40</sup> The Europol Organized Crime Threat Assessment for 2006 explicitly states that the EU shall focus on Turkish and Albanian OC groups.<sup>41</sup>

In contrast to the Serbian gangs, the Albanian OC groups in Kosovo emerged out of official state structures. Albanian gangs took over control of the Balkan route from their Turkish counterparts, which emerged during the 1970's. However, the OC groups closely cooperated with the Kosovo Liberation Army (KLA, alb. acronym UÇK), whose warriors stepped into politics after the war and their cooperation continues in the situation of the *de iure* autonomous province and the *de facto* independent state.

The Albanian diaspora in Western Europe plays a big role in the scenario. As Phil Williams states, the communities of different ethnic origins may be perceived as an important source of organized crime; they are provided with new members and support. The recruitment of new members based on ethnicity is facilitated in the region where the immigrant groups were not accepted into the new society.<sup>42</sup> Albanian emigrants in Western Europe did not integrate into the Belgian, German or Dutch societies and the Albanian diaspora serves as the ideal basis for the Albanian organized crime network, which spreads from Eastern Europe through Kosovo, Macedonia and Albania into Western Europe and the United States of America (USA) and is interlinked even with the Colombian mafia.<sup>43</sup> An expert on security issues in South-Eastern Europe, Biljana Vankovska-Cvetkovska, stated in an interview with the Macedonian weekly *Puls*, that Kosovo has become a land of desperadoes, gangs and paramilitary organizations, while the Yugoslavian security forces no longer have control over the development of this autonomous province.<sup>44</sup> This situation persisted even after 1999, under the supervision of the international community. Part of the former KLA joined the organized crime network and committed ethnically, politically or economically motivated crimes.<sup>45</sup>

Demilitarization and the creation of political parties and military and police forces has provided only a partial solution to the question of the existence of the KLA. The whole of the former

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<sup>40</sup> Europol, *European Union Organized Crime Report 2004*.

<sup>41</sup> Europol, *Organized Crime Threat Assessment, 2006*. Available online at: <http://www.europol.eu.int/publications/OCTA/OCTA2006.pdf>.

<sup>42</sup> Williams, Phil, *Combating Transnational Crime. Concepts, Activities and Responses*, Frank Cass, London, 2001, at p. 61.

<sup>43</sup> Transcrime, Transcrime, *The Contribution of Data Exchange Systems to the Fight against Organized Crime in the SEE Countries. Final Report for the Office of the Special Coordinator of the Stability Pact for SEE*, at pp. 42 and 261.

<sup>44</sup> Interview with Biljana Vankovska - Cvetkovska. Implications of the Kosovo conflict for Macedonia. *Puls*, Skopje, 16 April 1999. Available online at: <http://jurist.law.pitt.edu/acad-com.htm#Biljana>.

<sup>45</sup> Mappes-Niedek, N., *Balkan – Mafia. Staaten in der Hand des Verbrechens – Eine Gefahr für Europa* (Translation: „*Balkan-Mafia. States in the Hands of Criminals – Security Threat for Europe*”), at pp. 80-100; Lopusina, M., *Balkanska smrt. Šiptarska narkomafija* (Translation: “*Balkan Death. Albanian Narco-Mafia*”), at pp. 72-73.

KLA could not integrate into these structures and due to the long conflict, their engagement in normal civil life is complicated. High unemployment and the low standing of the law are the reasons most former KLA fighters have found it easy to slide into organized crime. An interconnection, or more precisely symbiosis, between criminal and terrorist activities may be observed, hampering efforts to establish multiculturalism and stability in Kosovo. In 2003, the Serbian government published a new White Book called *Albanian Terrorism and Organized Crime in Kosovo and Metohija*, in which it is stated that between June 1999 and August 2003, Albanians in Kosovo and South-eastern Serbia allegedly committed 6571 attacks, of which 5.962 were against Serbs and Montenegrins, 207 against Albanians and 335 against other ethnicities. 1.206 people were killed, 1.396 civilians and 15 policemen were injured, and the destiny of 846 of the total 1.146 people kidnapped remains unknown.<sup>46</sup>

Transparency International placed Serbia in 90<sup>th</sup> position, with a corruption perception index of 3,0 in 2006. However, there is no corruption perception index for Kosovo. An interesting table is provided in the *Report on the Transparency International Global Corruption Barometer 2005*. When the question “*In the past 12 months, have you or anyone living in your household paid a bribe in any form?*” was asked in Kosovo, only nine participants out of 101 answered yes, 89 said no and three did not know, while in Serbia out of 100 respondents, 19 respondents answered yes, 74 said no and seven did not know.<sup>47</sup>

The Albanian and Montenegrin societies are the only ones in the region which are based on clans and kinship. As the Albanians say “Blood cannot be changed into water (*Gjaku nuk bëhet ujë*) therefore the ethnicity (being Albanian) is rather irrelevant in the context of the clans.<sup>48</sup> There are ten clans in Kosovo and the animosities among them must be noted<sup>49</sup>. Those animosities were reflected in the formation of two armed forces – FARK (Armed forces of the Republic of Kosovo initiated by exile government of Bujar Bukoshi) and the KLA. Even though the KLA was transformed into four entities (political, military, police and organized crime) after its disbandment, they may not be seen as separate entities due to the above mentioned kinship. Therefore, the OC lives symbiotically with society. This can hardly be overcome if one lacks the ambition to change the structure of society.

In speaking about OC in Kosovo, something that must be mentioned is the interlinking between the future status of Kosovo and the state of OC groups. If the international community were to

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<sup>46</sup> Government of Republic of Serbia, *Albanian Terrorism and Organized Crime in Kosovo and Metohija*, BIA, Belgrade 2003. Available online at: <http://www.apisgroup.org/pr.html?id=64>.

<sup>47</sup> Transparency International, *The 2006 Transparency International Corruption Perceptions Index*.

<sup>48</sup> The Albanians differentiate the blood lineage (*lisi i gjakut*), therefore the patrilineal line into which belongs the brotherhood (*vllazni*) and clan (*fis*); milk lineage (*lisi i tamblit*) therefore the matrilineal line; territorial units: village (*katund*), region (*flamur* or *bajrak*). Neke, Michael-Schmidt, *Der Kanun der albanischen Berge: Hintergrund der nordalbanischen Lebensweise*. (Translation: „*Kanun of the Albanian Mountains: Reasons for the Northern Albanian Lifestyle*”), in: Elsie, Robert, *Der Kanun. Das albanische Gewohnheitsrecht nach dem sogenannten Kanun des Lekë Dukagjini* (Translation: „*Kanun. Albanian Traditional Law after the so called Kanun Lekë Dukagjini*”), at p. xviii. Available online at: [http://www.elsie.de/pdf/B2001Der\\_Kanun.pdf](http://www.elsie.de/pdf/B2001Der_Kanun.pdf).

<sup>49</sup> The most medialized was the blood revenge between Musaj and Haradinaj families. Brother of former prime minister Ramush Haradinaj – Daut Haradinaj – got engaged in the murder of Sinan Musaj in 1999. The last victim of vendetta is Enver Haradinaj who was killed in April 2005.



favour the Serbs and proclaim Kosovo an autonomous province of Serbia, there would be an immediate response in the form of an Albanian offence led by the current military and police Kosovo structures. The state of OC would remain on the same level or could potentially increase due to the state of war. If the international community were to favour the Albanians and proclaim Kosovo independent, they would face no imminent war threat from the Serbian side. The threat would rather be a long-term one – the gradual radicalization of Serbian society.

The declaration of independence could help decrease the level of OC. Kosovo would become an independent sovereign state responsible for its actions, and would be forced to eradicate the OC groups. Whether this is a feasible idea in a state in which politicians are somehow interlinked with the OC groups because of the clan basis of society is difficult to answer. Independence would be disadvantageous for Albanians in the sense that there would be no real hindrance for ICTY to surrender war criminals to the Hague. However, the entire party system would need to be revamped.

The plan for a “non-independent, non-autonomous province” is quite advantageous for the Albanians. They have no need to act responsibly and can blame the international community for failures, while maintaining the flow of money into Kosovo. The international community has to side with someone; therefore Carla del Ponte cannot demand the surrender of the Albanian war criminals to the Hague. This could be advantageous for the Serbs – if they were to finally abandon the idea of Kosovo as part of Serbia (rather unrealistic), they might do business with the EU and exchange Kosovo for a better visa regime, international aid, foreign investments and the rapid integration of Serbia into the EU. However, this last option foresees no real improvement in the state of OC groups in Kosovo.

## **VI. Organized Crime in Montenegro**

Similarly as with Serbia, Montenegro had a strong police force in the 1990s; the police had strong ties to the political arena, as well as to the underworld. At one time, Montenegro had one of the strongest police forces per head of total population in Europe. In 1997, the Montenegrin police had 5.000 employees, while in 2000, there were 18.000, and the number of police per capita was higher than in Serbia. The police were very often engaged in illegal activities and Montenegro then became a paradise for all kinds of trafficking. Above all, it also became famous for the import of stolen motor vehicles, not only from Western Europe, but also from Serbia.

Security expert Lopusina states that one cannot claim the mafia was built in Montenegro by the police, but one can say that the mafia has always collaborated with the local police, either manifestly or invisibly. Montenegro is highlighted not only for the number of policemen but for the number of weapons per capita as well. The population in Montenegro used to be very well armed: Montenegrin inhabitants<sup>50</sup> at the end of the 20<sup>th</sup> and the beginning of the 21<sup>st</sup> century had a total 79.866 weapons, which means one weapon per eight inhabitants, including children and the elderly. Between 1999 and the beginning of 2002, Montenegrin police confiscated 6.367

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<sup>50</sup> According to the 2003 census: 620.145 inhabitants. Statistical Office of Montenegro, *General Data*, Available online at: <http://www.monstat.cg.yu/EngsrCGuBrojkama.htm>.

weapons, 67.874 rounds of alive ammunition, 446 bombs and 93 kg of explosives in illegal possession.<sup>51</sup>

The OC groups in Montenegro are famous for human trafficking and the smuggling of stolen vehicles, arms, drugs and cigarettes. Similar to Serbia, the groups are organized in horizontal fashion, with no strict hierarchy and a high degree of independence.

Reform of the police started in 2003 and according to the former Minister of Interior, Milan Filipović, the reform is based on respect for human rights, depolarisation, decentralisation, appropriate training of personnel, accountability, efficient internal control, international cooperation by the police and harmonization with modern democratic values with a goal of creating a safe and secure society.<sup>52</sup> It is very difficult to say how successful police reform has been up to this point.

When it comes to issues to do with organized crime, the Montenegrin government adopted a strategy for fighting corruption and organized crime in 2005, approving a set of anti-corruption laws and establishing a number of institutions. These include the Agency for Anti-Corruption Initiative, the Anti-Money-Laundering Agency, the Public Procurement Commission, the Commission for Establishing Conflict of Interest and a Special Prosecutor for the Fight against Organized Crime.<sup>53</sup> Montenegro is striving to become an EU member before Serbia, and trying to fulfil all the requirements of the European Union. Although it is very unlikely that Montenegro will become an EU member before Serbia, Montenegrin politicians are more willing and eager to fulfil EU requirements than their Serbian counterparts.

Transparency International placed Serbia and Montenegro at 97<sup>th</sup> position with a corruption perception index of 2,8 in 2005.<sup>54</sup> However, they did not include the Montenegrin figures for the year of 2006. According to the results of the Agency «Damar»'s Survey, gotten in March 2004, 76,4%, 50,9% and 49,9% of citizens recognize corruption and crime, poverty and unemployment, respectively, as the three biggest social problems in Montenegro.<sup>55</sup>

The declaration of independence last year (2006) should help the fight against OC groups in the country. Montenegro is now responsible and accountable to the EU for its own actions. If Montenegro wants to join the EU as soon as possible, it will have to speed up the process of fighting OC groups. This could, however, prove quite problematic, keeping in mind that Montenegrin society is clan-based.

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<sup>51</sup> Lopusina, *Crnogorski klan* (Translation: "Montenegrin Clan"), Alfa, Beograd, 2003, at p. 29.

<sup>52</sup> *Interview with Milan Filipović, Minister of Interior of the Republic of Montenegro*, in: OSCE Police Reform. Developments in Serbia and Montenegro (Number 3), 2003, at p. 2. Available online at: [http://www.osce.org/publications/fry/2003/10/18199\\_540\\_en.pdf](http://www.osce.org/publications/fry/2003/10/18199_540_en.pdf).

<sup>53</sup> UNDP, *Assessment of Development Results. Evaluation of UNDP's Contribution*, UNDP, Montenegro, New York, 2006. Available online at: [http://www.undp.org/eo/documents/ADR/ADR\\_Reports/ADR\\_Montenegro\\_web.pdf](http://www.undp.org/eo/documents/ADR/ADR_Reports/ADR_Montenegro_web.pdf)

<sup>54</sup> Transparency International, *The 2006 Transparency International Corruption Perceptions Index*.

<sup>55</sup> Government of the Republic of Montenegro, *Programme for the Fighting against Corruption and Organized Crime*, 2005. Available online at: <http://www.gom.cg.yu/files/1125055411.doc>.

## VII. Macedonia and Organized Crime

Organized crime in Macedonia does not present such a big problem as in neighbouring Albania. There are around 10 influential criminal groups in which both Macedonians and inhabitants from neighbouring countries are engaged and which operate on transnational level. The structure of these groups is mainly hierarchical. Macedonia is a transit country mainly for heroin from Southeast Asia, Afghanistan, and to a lesser extent, for cocaine from South America bound for Western Europe. Drug production in Macedonia is not a *sui generis* problem and we can only talk about marijuana production for personal use.

Regarding human trafficking, up until recent times Macedonia was only the country of origin and transit; lately it has become a destination country as well. The reason could be the activities of the international community in this country - the operation of the international organisations and the related increase in demand by a wealthy clientele for prostitution. In addition to local prostitutes, there are around 1500 to 2500 foreign women under the control of the Albanian gangs.<sup>56</sup> These women come into Macedonia via Bulgaria and are further trafficked to Albanian and to the Western European markets of the sex industry.<sup>57</sup>

Similarly as with neighbouring countries, Macedonian organized crime deals in car theft, trafficking of human beings and cigarettes. Money laundering and the engagement of state officers and security forces<sup>58</sup> in organized crime activities is quite common. Nevertheless, Macedonia is among countries in the region with the lowest number of organized crime groups and the situation is comparable to that in Croatia.

Transparency International placed Macedonia at 105<sup>th</sup> position, with a corruption index of 2.7. This is second-to-last position, ahead of Albania, among the Western Balkan countries in 2006.<sup>59</sup> In 2004 the murder rate declined and there was not a single murder which was politically or ethnically motivated.<sup>60</sup>

Unlike in the other states in the region, on the Macedonian side there were no (para) military forces with a majority membership from the criminal population. The only disputable groups were Lions (*Lavovi*), some of whose members allegedly had connections to the OC groups. However, the same may not be said about the Albanian side, where the National Liberation Army (NLA, Albanian acronym UÇK) was living off the profits of OC activities.

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<sup>56</sup> UNICEF, UNOHCHR and OSCE, *Trafficking in Human Beings in South Eastern Europe*, UNDP, Sarajevo, Warsaw, 2003, at pp. 105-122. Available online at: [http://www.osce.org/documents/odhr/2003/12/1645\\_en.pdf](http://www.osce.org/documents/odhr/2003/12/1645_en.pdf).

<sup>57</sup> Transcrime, *The Contribution of Data Exchange Systems to the Fight against Organized Crime in the SEE Countries. Final Report for the Office of the Special Coordinator of the Stability Pact for SEE*, at p. 459.

<sup>58</sup> Macedonian borders were checked till May 2004 by the army; since then the police have taken over border control.

<sup>59</sup> Transparency International, *Transparency International Corruption Perception Index 2006*.

<sup>60</sup> International Crisis Group, *Macedonia: Not out of the Woods yet*, Europe Briefing N. 37, 25 February 2005, at p. 9. Available online at: <http://www.crisisgroup.org/home/index.cfm?id=3295&l=1>.

The situation in Macedonia is closely connected to developments in the Kosovo issue. Even though the Albanians from Macedonia achieved everything they had demanded during the 1990's with the Ohrid Peace Agreement, one could still observe from time to time the activation of some radical groups demanding the formation of Greater Kosovo or even the almost forgotten Greater Albania.<sup>61</sup> Unless the Kosovo issued is solved, the country cannot start its way towards consolidation and implementation of tough policies aimed at eradicating OC groups in the country.

### **VIII. Organized Crime in Albania**

The geographical position of Albania, the Kosovo war, the non-existence of a state of law and the lack of remedies needed for fighting organized crime have transformed the country into the principal route for the illegal trade from West to East.<sup>62</sup> In addition to the strongest clan, *Kula*, which controls drugs, arms and human traffic from Turkey, the *Abazi* and *Boriçi* families hold important places.

Car theft is quite popular in Albania and reflects the state of legal awareness in Albanian society. Under the *Hoxha* regime, car ownership was a privilege granted to selected beneficiaries; after the fall of the totalitarian regime, the country was swamped with stolen foreign cars and Albania climbed to first place in the per capita ownership of Mercedes, even though there was not a single official dealership importing the car. The exact number of people accused of theft is untraceable, because national law does not recognize this type of criminal activity.<sup>63</sup>

Organized crime is widespread in the North as well as in the South of Albania; blackmail, intimidation and racketeering are very common practices.<sup>64</sup> During the Kosovo conflict, the number of armed robberies increased, and even humanitarian workers and the escorts of humanitarian aid convoys were victims. The Kosovo conflict enabled further expansion of human trafficking. Many of the Albanians left Albania pretending to be Kosovo Albanians in order to gain political asylum or a temporary stay in Western Europe.

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<sup>61</sup> The best-known is the Albanian national army (ANA, alb. acronym AKSh), which wants to create Greater Albania; the Macedonian division fights against the Ohrid peace agreement.

<sup>62</sup> United Nations Development Program (UNDP), *Albanian Human Development Report*, UNDP, 2000, at p. 29. Available online at: <http://www.al.undp.org/download/pdf/nhdr2000.pdf>; Transcrime, *The Contribution of Data Exchange Systems to the Fight against Organized Crime in the SEE Countries. Final Report for the Office of the Special Coordinator of the Stability Pact for SEE*, at p. 42.

<sup>63</sup> United Nations Development Program (UNDP), *Albanian Human Development Report*, at p. 30.

It is worth mentioning that the Albanian government was using cars stolen in Western Europe. The media broadcasted the case of the Minister of Public Order, Spartak Poci, who went to Greece for an official visit in a car stolen right in Greece, and was detained at the border by the Greek police.

<sup>64</sup> Intimidation applies to staff in international missions as well. In 2000 the official OSCE spokesman left Albania after his life had been threatened.

Crampton, *The Balkans since the Second World War*, Personal Education Limited, London, 2002, at p. 307.

Immigrants of non-Albanian origin (mainly Chinese or Kurds) came to Albania from Montenegro, Macedonia or Greece and then travelled further to Italy and other Western European states. Trafficking in women and children presents a big profit not only for organized gangs but for the corrupt Albanian police, as well. Around 37% of male and female prostitutes are underage. It is estimated that the number of the Albanian women working as prostitutes amounts to about 15.000 and Italy, 5.000 in Greece in 100 in France.<sup>65</sup>

According to official data, are around 1.000 Albanians are being detained in Swiss prisons on drug trafficking charges; around 300 youngsters from *Vlora* are being detained in Italy and Greece, charged with the same crime. According to the World Customs Organisation (WCO), together with Morocco, Albania is the largest exporter of *cannabis sativa* to Western Europe. In 1999 around 104 kg of heroin coming from Albania was confiscated in Western Europe. In the same year, police caught two cocaine traffickers on a flight from New York -Tirana.<sup>66</sup> There are suspicions that four or five Albanian families have established close relations with Colombian drug traffickers. A small amount of cocaine has come from South America to Western Europe via Albania's capital.<sup>67</sup>

Up to the 1990s, Kosovo Albanians served only as couriers for the Turkish gangs. The rapid increase in Albanian emigration and the settlement of Albanian migrant workers in Western Europe altered the situation. The Albanians created widespread organized crime networks and took over control from Turks over the Balkan route, or rather control of the entire illegal trade coming to Western Europe via the Balkans. "*Albania is the paradise for the illegal trade. Neither state nor police present problem for the drug chiefs: you can buy politicians and it is not rare when a leader of the criminal gang works in some state institution.*"<sup>68</sup>

In 1999, it was estimated that between 25 and 100 organized criminal groups were present in Albania, with a total number of participants ranging from 500 to 2.500. Transcrime states that the typical structure of Albanian criminal groups is hierarchical and clan-like. Most of the

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<sup>65</sup> United Nations Development Program (UNDP), *Albanian Human Development Report*, at pp. 31-32.

<sup>66</sup> According to police sources, police effort in the fight against organized crime is increasing. In this period, the police killed 40 men, whereas the Albanian mafia allegedly killed 160 policemen. United Nations Development Program (UNDP), *Albanian Human Development Report*, at p. 30.

<sup>67</sup> Transcrime, *The Contribution of Data Exchange Systems to the Fight against Organized Crime in the SEE Countries. Final Report for the Office of the Special Coordinator of the Stability Pact for SEE*, at p. 43.

<sup>68</sup> Mappes-Niedek, N., *Balkan – Mafia. Staaten in der Hand des Verbrechens – Eine Gefahr für Europa* (Translation: „*Balkan-Mafia. States in the Hands of Criminals – Security Threat for Europe*”), at p. 79; Trimçev, E., *Organized Crime in Albania: An Unconventional Security Threat*, in: *Connections* (Volume II, Number 2), June 2003, pp. 61-68; Transcrime, *The Contribution of Data Exchange Systems to the Fight against Organized Crime in the SEE Countries. Final Report for the Office of the Special Coordinator of the Stability Pact for SEE*.

Mappes-Niedek states that in 1997, the chief of the most influential mafia family, Arben Ben Hasani, became the chief of the local police in the town of Dürres. Furthermore he mentions the town of Vlora, governed by gangster kingpin Myrteza Caushi, who became the director of the local police. Nor are politicians above organized crime: in February 1999, police found a large number of weapons in the South African residence of Leka Zogu, the leader of the monarchist political party, who is eager to restore monarchy and become Albanian king. Zogu was charged with arms trafficking. The Former Minister of Defence, Safet Zhulalij, was charged with drug, oil, and cigarette trafficking and proliferating small arms.



*from which 868 are measures given for abuses and misuse in the duty, by sending for penal procedures 157 of these cases”.*<sup>72</sup>

However, it is highly questionable how effective these programmes by the Albanian government could be. Albanian society works on the kinship or friendship system and one is only arrested when one has no friends either in the police or at the state administration. Police salaries are very low and correspond to the level of the Albanian economy. Bribery has a long tradition extending back to the Ottoman Empire, and bribes are generally accepted. Looking at the figures of Transparency International, Albania was placed in 2005 at 126<sup>th</sup> position, with a corruption perception index of 2.4. In terms of this scale, Albania is the most corrupt country in Europe. There is a lack of institutional arrangements to fight organized crime. Organized crime lives in symbiosis with the state institutions and there is a real threat that OC groups could rule the state, leading to the long-term deformation of the Albanian political system.<sup>73</sup> The official proclamations of corrupted politicians and the Action plans of the Albanian governments<sup>74</sup> do not give us a real picture about the state of the fight against organized crime in the country, where it presents a real threat.

The Albanian political scene is controlled by the *Southerners* (Tosks as the main ethnic group, two minor groups: Labs and Chams) and *Northerners* (Gegs). The Albanian political scene was dominated during the reign of King Zogu I by Gegs, and during the Hoxha regime by Tosks (Hoxha himself was Lab). After the fall of the regime, there emerged two main political parties: the Democratic Party of Albania (PDSH) of Sali Berisha supported by the Northerners, and the Socialistic Party of Albania (PSSH). PDSH controlled the political scene till the pyramid scheme crisis in 1997 and came back to power in the latest elections in 2005. This sub-ethnic affiliation contributes to the fact that once a political party enters the government, it replaces all people on all state administrative levels with its “own sub-ethnic”.<sup>75</sup> The dissatisfaction with the political (economic) reality may even lead to armed revolt, as happened in 1997.<sup>76</sup> The country came close to revolt a year later (1998) in the context of the assassination of the prominent politician Azem Hajdari.<sup>77</sup>

Ministers are quite often replaced due to accusations that they are engaged in OC activities or are corrupt. Several examples may be mentioned; e.g., minister of finance Genc Ruli had to

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<sup>72</sup> Ministry of Public Order, *Rapport on the Work of Ministry of Public Order during 2002*.

<sup>73</sup> Trimçev, E, *Organized Crime in Albania: An Unconventional Security Threat*, at p. 63.

<sup>74</sup> Ministry of Foreign Affairs of the Republic of Albania, *Action Plan for the Prevention and Fight against Corruption 2002-2003*. Available online at: <http://www.mfa.gov.al>.

<sup>75</sup> The activities of the governments are limited by scandals on the Albanian political scene and by the opposition blaming the governing party for nepotism and corruption. For example, Sali Berisha stated for the delegation of the European popular party (EPP) in Albania that the “kleptocratic government of Fatos Nano is linked to the drug trafficking coming from Afghanistan and misuses 2/3 of the taxes to its own benefit.”

Berisha, *Nano ka lidhje me kontrabandën e drogës* (Translation: „*Berisha: Nano having Connections with the Drug Trafficking*“), Fakti, 22 June 2004, at p. 13.

<sup>76</sup> The revolt in 1997 was initiated by the Tosks, armed generals who dominated the political scene till 1991 and then lost their jobs.

<sup>77</sup> Berisha blamed the Socialists for the murder, however speculation emerged that Berisha ordered the assassination in order to provoke unrest and rebellion in which he could regain political power.

resign in 1993 due to accusations of cigarette smuggling and participation in a financial scandal with French national Nicolas Arsidi. In 2001, three members of the PSSh government had to resign due to accusations of corruption and abuse of authority. The new government very often prosecutes representatives of the previous regime.<sup>78</sup>

The Albanian political system is significantly marked by a great instability of governments, which usually last only one year.<sup>79</sup> Albania is the weak state par excellence; there is no real political and social consensus which would eliminate the use of force in politics. Albania is not able to implement its laws, formulate and implement long-term governmental policy, does not really offer its citizens public services, and the state does not fulfil one of its basic functions – protection of its citizens. The administrative vacuum which emerged after the fall of the Hoxha regime was not filled; Albania is not capable of controlling its own territory and armed gangs rule some areas of the land.<sup>80</sup> The latest elections (2005) demonstrated that Albania is far from being a consolidated country. The elections were marked by corruption, vote counterfeiting, intimidation and violence.

## **IX. Organized Crime in the Western Balkans – Conclusion**

The Balkans, tormented by two wars, have become penetrated by parallel structures of organized crime. Armed conflicts and embargos on goods and strategic materials have caused the flowering of the Balkan OC, which was not eliminated even after the end of the wars. Organized crime's structures are interlinked with the state apparatus and present a real threat not only for individuals, but for the state - the main actor of security. Criminal gangs attached to political elites in the various states threaten their transformation, their democratization and the process of integration into Euro-Atlantic structures. The Western Balkans is the case where organized crime presents the biggest threat in the sector of economic security.

Organized crime presents a relevant security threat not only for the Western Balkan states but for the whole of Europe. The series of conflicts in the Balkans during the final decade of the last century set ideal conditions for the growth of organized crime, which is currently present at all levels of the administration in most of the countries of South-eastern Europe. The end of the conflicts did not mean a decrease in organized crime activities; organized crime was not a priority for international units while the arrival of international missions entailed a higher demand for trafficked women, weapons and goods. Moreover, in Bosnia and Herzegovina, there was the special environment with two parallel administrations emerging, in which each blames the other for its passivity and failures.

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<sup>78</sup> E.g. the leader of PSSh Fatos Nano was imprisoned in 1993 with the accusation that while in government he misappropriated 8 mil. USD. Former prime minister Vilson Ahmeti was sentenced to two years imprisonment for the misuse of power.

<sup>79</sup> E.g. between 1997-2002 there were six inaugurations of governments (without counting the changes in ministerial posts).

<sup>80</sup> The Italian helicopter was attacked by the local villagers in the south of Albania on 18.8. 2004. The villagers started to shoot at the helicopter, which was monitoring with the approval of the Albanian side the territory of southern Albania in the framework of anti-drug operations. The cameras of the helicopter had managed to notice that the village Lazarat and its surroundings are a prospering region for cultivating and processing marijuana.



As Bruno Schönfelder states, in South-eastern Europe more than half of the working age population is engaged in illegal trade. But it is not such that local inhabitants would participate in illegal activities only sporadically – the substantial part of their income comes from the grey economy. Most of the people engaged perceive illegal activities as their second job which complements their main employment. Some groups deal exclusively with illegal trade, which is mainly the case with Albanians.<sup>81</sup>

Looking at the corruption perception index (CPI) prepared by Transparency International in the countries under analysis: the CPI is lowest in Albania (2,6 and 111<sup>th</sup> position out of 163 analysed countries in 2006) followed by Macedonia (2,7, 105<sup>th</sup> position in 2006), Montenegro (2,8, 98<sup>th</sup> position out of 159 analysed countries in 2005 together with Serbia), Bosnia Herzegovina (2,9, 93<sup>rd</sup> position in 2006) while the best results were achieved by Serbia (3,0, 90<sup>th</sup> position in 2006) and Croatia (3,4, 69<sup>th</sup> position in 2006). Even though the CPI score relates to the perception of the degree of corruption as seen by business people and country analysts and does not give us clear data about the state of corruption, it may still give us some insight into the corruption situation in the region.

Croatia, Macedonia and Bosnia and Herzegovina have the lowest number of the OC groups in the region (between one and ten). The worst situation seemed to be in Albania (25-100) and in the territory of Serbia and Montenegro (50). Notwithstanding, the figures for Albania are the estimate for the year 1999, only two years after the armed uprising, and therefore do not really show the current state of affairs. Regrettably, there were no separate figures available for Kosovo and Montenegro. The structure of the groups in Croatia, Bosnia and Herzegovina and Serbia is not hierarchical – they are quite loose and flexible and have a great deal of independence. This is not the case with the Albanian groups, which are strictly hierarchical and clan-like, operating according to conservative codes of conduct. However, the new Albanian groups emerging have similar (loose) structures to their Slavic counterparts.

There is no real specialisation among OC groups by “country of origin” – in all states of the region, the OC groups focus mainly on drug trafficking, trafficking in human beings, arms trafficking, trafficking of stolen vehicles and the smuggling of cigarettes and petrol. The regional OC groups do not organize themselves according to strict “ethnic rules” and one group may encompass more than one ethnicity. The operations of organized crime groups cross ethnic dividing lines – criminal gangs cooperate without regard to nationality – the main incentive is profit. Criminal gangs coming from mutually hostile ethnic populations cooperate without regard to officially declared animosity and ethnic origin. The idea of Yugoslavian unity and cooperation embodied in the motto *Bratstvo i jedinstvo (Brotherhood and unity)*, was paradoxically only maintained in organized crime activities.<sup>82</sup>

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<sup>81</sup> Hatschikjan-Troebst, *Südosteuropa. Gesellschaft, Politik, Wirtschaft, Kultur. Ein Handbuch* (Translation: “*Southeast Europe. Society, Politics, Economy, Culture. Handbook*”), Verlag C.H.Beck, München, 1999, at p. 342.

<sup>82</sup> For example, the commander of the special unit of the Serbian Ministry of Interior and the war veteran Milorad Ulemek Legija took part in drug trafficking and was in the past protected by the Croatian policemen Vladimir Milanković, who was responsible for the massacre of 80-120 Serbs in the town of Sisak.

During the wars, most of the OC groups were interlinked with state security forces and they nourished the (para) state apparatuses. In most countries, there has been only slight improvement in the restructuring and reform of the state security forces. The best situation is probably in Croatia, where the death of Franjo Tudjman meant change of the regime and coping with the legacies of the past. The worst situation is probably in Serbia, where the reform of the state security forces and the rupturing of the links to the OC groups is still only an idealistic vision, as shown clearly in the Ratko Mladić case. None of the countries analysed avoided the scandals of politicians linked to OC. The cases usually come out with the change of the government or are medialized by the oppositional (different ethnic) groups. OC is not a taboo in the local media; they all focus on OC activities and/or involvement of the politicians in dirty business (which was not a real case under the Tudjman, Milošević and Berisha regimes).

The Albanian OC groups seem to be the most active in the region, with possible impact in Central<sup>83</sup> and Western Europe. The Albanians gradually set up an organized crime net, controlling the illegal trade heading towards Western Europe. OC is the main source of finances and it has high recruiting potential for the Albanian 'national liberation' formations. Two EU member states – Italy and Greece - declared a couple of times that ethnic Albanians make up the biggest groups of criminal gangs of foreign origin in their countries. Europol states that Albanian organized crime is still perceived as the most significant security threat, with rising risk potential for the member states of the EU.<sup>84</sup>

The strong exogenous factor – the European Union – pushes for regional cooperation in the fight against OC groups. There have been several initiatives (e.g. SECI – Southeast European Cooperative Initiative, Stability Pact etc.) organizing several roundtables, which would lead to further cooperation throughout the region. These are the first steps in regional cooperation and hopefully we may see some improvement in the future. However this all depends on the situation of the countries per se.

What are the prospects for OC in the Western Balkans then? Croatia is far ahead of the rest of the group. The change of regime has helped to launch reforms (even though not fully implemented yet and below EU standards) and Croatia is seen as the first candidate from the region for EU membership. The situation in Bosnia and Herzegovina is not very good; the state does not work as a united body, everything rather functions separately at the entity level. The

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Kolko košta? (Translation: "How much Does it Cost?"), in: Kurir, 12-13 June 2004, Beograd, 2004, at p. 3. Available online at: <http://www.kurir-info.co.yu/Arhiva/2004/jun/12-13/V-01-12062004.shtml>.

<sup>83</sup> For example, in the Czech Republic, the Kosovo Albanians control the drug trafficking while the Bulgarians run the market of prostitutes and the Serbs and Montenegrins took over the market of car theft. Transcrime, *The Contribution of Data Exchange Systems to the Fight against Organized Crime in the SEE Countries. Final Report for the Office of the Special Coordinator of the Stability Pact for SEE*, at p. 332.

<sup>84</sup> SEE online, *Europol: Bulgaria, Romania and Albania Remain Important Source of Women Trafficking*. Available online at:

[http://www.southeasteurope.org/subpage.php?sub\\_site=2&id=13702&s\\_word=organized%20crime](http://www.southeasteurope.org/subpage.php?sub_site=2&id=13702&s_word=organized%20crime);  
O'Rourke, Breffni, *Europe: Council of Europe Report Says Organized Crime Poses Threat to Democracy*, Radio Free Europe. Radio Liberty, 26 January 2005. Available online at: <http://www.rferl.org/featuresarticle/2005/01/f7753263-8c4f-4f41-9bfa-d3b2ff06cdfe.html>.

borders are porous while border patrol officers are highly involved in trafficking. There is no short- or even midterm prospect for the situation in the country to improve. Serbia still has not broken free from its past, and one cannot talk about any real reform in the security forces. Unbelievably, the Serbian OC groups cooperate not only with the state security apparatus but with the Albanian OC groups in Kosovo. As regards Kosovo – if the current state of affairs is preserved (*de iure* autonomous province, *de facto* independent) the OC will only flourish. If independence is proclaimed, we may see (long-term) improvement - the state will have to bear responsibility, plus ICTY will be more willing to get the former KLA fighters (who were involved in OC activities) to the Hague. For the time being, it all depends upon Russia, which has not yet given a clear “veto/not veto”. The poor prognosis remains for the state of OC in the clan societies –Montenegro and Albanian. The existence of clan relations ensures continued interlinking with the state and no will to fight the groups in the respective countries. (The only exception might be Macedonia, due to the lower representation of Albanians in the state administration.) The fight against OC groups in the clan society can only be compared to the eternal struggle of the Sisyphus and we may therefore only keep our fingers crossed.