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Letizia Paoli and Cyrille Fijnaut

Organised Crime and Its Control Policies

Since the early 1990s, organised crime has become a ‘hot’ topic in public debate and in the political and scientific agenda. To control organised crime, far-reaching legal and institutional reforms have been passed in all European states and ad hoc instruments have been adopted by all major international organisations, ranging from the European Union (EU) to the Council of Europe and the United Nations.

The apparent consensus now dominating much European official and media discourse is in itself astonishing since until the mid-1980s the scientific communities, political leaderships and public opinions of virtually all European countries aside from Italy considered themselves largely unaffected by organised crime. This perception began to change in the late 1980s. Several long-term processes and a variety of both far-reaching and localised historical events contributed to the European and international success of the organised crime concept. Some of these changes and occurrences directly impinge on the activities and perpetrators typically associated with organised crime; others are related to them only indirectly. Among the former, the rise of the illegal drug and human smuggling industries are the most prominent. Among the latter, the most relevant are the worldwide processes of globalisation, the fall of the Iron Curtain in 1989 and the completion of the internal market and the abolition of internal border controls within the countries of the European Community (integrated into the Union in 1993).

These wider societal processes have affected not only the organisation and flow of illegal markets, particularly in the countries previously belonging to the communist bloc, but also the general perception of organised crime. Throughout Europe, organised crime – particularly in its transnational variant – has become one of the most frequent and successful labels to express the rising sense of insecurity caused by the sudden collapse of the bipolar world and, more generally, public anxiety at living in late modernity’s increasingly uncertain world. Specific events reinforced such a perception change. Great impact was in particular exercised by the murders of Judges Giovanni Falcone and Paolo Borsellino in 1992 and the bombs attacks in Continental Italy

in 1993, which were organised by the Sicilian Cosa Nostra mafia organisation and received widespread media attention throughout Europe. Following these and other unrelated events, organised crime has been stigmatised as a ‘folk devil’¹ and become a powerful political instrument to justify criminal law and criminal justice reforms.

That the European (and world) perception of organised crime could change so abruptly in less than a decade is certainly due also to the ambiguity of the concept itself. In the first section of this chapter, we thus reconstruct the trajectory of the concept of organised crime, which was coined in the United States at the end of the nineteenth century and was used almost exclusively there until the 1970s, before spreading rapidly to and across the ‘old Continent’ at the end of the twentieth century. In the following section we sketch the main patterns of organised crime in both the ‘old’ and ‘new’ Europe. In the third and final section we summarise the major policy developments at both the EU and national levels. For the last two sections we draw extensively on the first comparative assessment of organised crime concepts, patterns and control policies in thirteen – Eastern and Western – European countries, which we coordinated jointly for over three years and finalised in late 2004.²

1. THE HISTORY OF THE CONCEPT

Since it was first adopted over a century ago, such a wide variety of different meanings have been attributed to the term ‘organised crime’ that we are now left with an ambiguous, conflated concept. As Mike Levi puts it, organised crime is like the psychiatrist’s Rorschach blot, whose ‘attraction as well as ... weakness is that one can read almost anything into it’³. In Europe as in the United States, public, political and even scientific debates still oscillate between thinking of organised crime as meaning sets of criminalised activities, and as meaning sets of people engaged in crime. In other words, the concept of organised crime inconsistently incorporates the following two notions: a) the provision of illegal goods and services; b) a criminal organisation, understood as a large-scale entity primarily engaged in illegal activities with a well-defined collective identity and subdivision of work among its members.

¹ S. Cohen, *Folk Devils and Moral Panics. The Creation of the Mods and Rockers* (London 1972).

² C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004).

³ M. Levi, ‘The Organisation of Serious Crimes’, in M. Maguire, R. Morgan and R. Reiner, eds., *The Oxford Handbook of Criminology* (Oxford 2002) p. 887

1.1 The American Debate: From ‘Alien Conspiracy’ to ‘Illegal Enterprise’

The phrase ‘organised crime’ was probably first used in the late nineteenth century but, despite a couple of landmark empirical studies in the 1920s⁴ it did not become really popular until the early 1950s. Since that date several U.S. congressional bodies set out the terms of an Italian mafia-centred view of organised crime, which remained the U.S. official standpoint for almost three decades. This identified organised crime with a nationwide, centralised criminal organisation dominating the most profitable illegal markets, which allegedly derived from an analogous parallel Sicilian organisation and was headed by and, to a great extent, consisted of migrants of Italian (and specifically Sicilian) origin. In its *Third Interim Report* of 1951, the Kefauver Senate Investigating Committee famously concluded: ‘There is a nationwide crime syndicate known as the Mafia, whose tentacles are found in many large cities. It has international ramifications which appear most clearly in connection with the narcotics traffic. Its leaders are usually found in control of the most lucrative rackets of their cities’.⁵ In 1963 the testimony of former *mafioso* Joe Valachi before the Senate Permanent Subcommittee on Investigations⁶ further established the terms of this paradigm and gave a new name to this menacing criminal association: La Cosa Nostra. Thanks to the extensive television coverage, Valachi’s view became popularized in the American public.⁷

Despite its media and political success, the identification of organised crime with mighty mafia-type organisations – and the related idea of an alien conspiracy polluting the economic and social life of the United States – has been rejected by the majority of American social scientists since the 1960s. These have alternatively accused the mafia-centred view of organised crime of being ideological, serving personal political interests, and lacking in accuracy and empirical evidence. Most scholars, however, have overreacted, up to the early 1980s categorically denying the existence of the Italian American mafia as a structured and longstanding criminal organisation.⁸

⁴ J. Landesco, *Organized Crime in Chicago – Part III of the Illinois Crime Survey 1929*. (Chicago [1929], 1968).

⁵ U.S. Senate. *Third Interim Report of the Special Committee to Investigate Organized Crime in Interstate Commerce (Kefauver Committee)* 81st Cong., 2d sess. (Washington, D.C. 1951) p. 131.

⁶ U.S. Senate, Committee on Government Operations. Hearings of Joseph Valachi before the Permanent Subcommittee on Investigations of the Committee on Government Operations. Washington, D.C.: U.S. Government Printing Office (1963).

⁷ D. Jr. Smith, *The Mafia Mystique* (New York 1975).

⁸ See, among others G. Hawkins, ‘God and the Mafia’, 14 *Public Interest* (1969) pp 24-51; D. Jr. Smith, *The Mafia Mystique* (New York 1975). For a more updated and balanced view of the Italian American mafia, its structure as well as its illegal and legal activities, see J. Jacobs and L. Gouldin, ‘Cosa Nostra: The Final Chapter?’, in M. Tonry, ed., *Crime and Justice. A Review of Research*, vol. 25, (Chicago 1999) pp. 129-90.

Since the early 1970s scientific attention was re-directed upon the most visible and non-controversial aspect of organised crime: the supply of illegal products and services. In order to eradicate ethnic stereotypes of crime and direct attention to the marketplace, several authors have put forward the expression 'illicit' or 'illegal enterprise' as a substitute for the ethnically-loaded term 'organised crime'. As Dwight Smith, one of the earliest proponents of the new approach, expressed it, 'illicit enterprise is the extension of legitimate market activities into areas normally proscribed – i.e. beyond existing limits of law – for the pursuit of profit and in response to a latent illicit demand'.⁹

More often, however, organised crime itself has been equated with the provision of illegal goods and services. Hence, according to Alan Block and William Chambliss, 'organized crime [should] be defined as (or perhaps better limited to) those illegal activities involving the management and coordination of racketeering and vice'.¹⁰ Organised crime has thus become a synonym for illegal enterprise. According to a review of definitions carried out in the early 1980s by Frank Hagan,¹¹ a consensus by then existed among American criminologists that organised crime involved a continuing enterprise operating in a rational fashion and focused toward obtaining profits through illegal activities.

1.2 The European Debate

Since the mid-1970s the 'illegal enterprise' approach has acquired a dominant position in the European scientific debate, influencing both a series of studies on the Italian mafia¹² and, even more deeply, the conceptualisation of organised crime in all those European countries that long considered themselves immune to the problem. As early as the mid-1970s,¹³ for example, Hans-Jürgen Kerner and John Mack talked about a 'crime industry' and, in an earlier report written in German, Kerner subscribed even more explicitly to the view of organised crime as an enterprise.¹⁴

⁹ D. Jr. Smith, *The Mafia Mystique* (New York 1975) p. 335.

¹⁰ A. Block and W. Chambliss, *Organizing Crime* (Elsevier 1981) p. 13.

¹¹ F. Hagan, 'The Organized Crime Continuum: A Further Specification of a New Conceptual Model', 8 *Criminal Justice Review* (1983) pp. 52-57.

¹² P. Arlacchi, (1988). *Mafia Business. The Mafia Ethic and the Spirit of Capitalism*. (Oxford [1983] 1988); R. Catanzaro, *Men of Respect. A Social History of the Sicilian Mafia*, (New York [1988] 1992).

¹³ H.-J. Kerner and J. Mack, *The Crime Industry* (Lexington, Mass. 1975).

¹⁴ H.-J. Kerner, *Professionelles und Organisiertes Verbrechen. Versuch einer Bestandsaufnahme und Bericht über neuere Entwicklungstendenzen in der Bundesrepublik Deutschland und in den Niederlanden* (Wiesbaden 1973).

Notwithstanding scholarly conceptualisations, since the late 1980s the spectre of mighty mafia-type criminal organisations – primarily the Italian mafia, but since the early 1990s the Russian and other ethnic ‘mafias’ as well – has time and again been agitated with varying degrees of good faith by European media, politicians, law enforcement agencies and, more recently, international organisations to increase the power of domestic law enforcement agencies and to enhance international police and judicial co-operation. Since the early 1990s the transnational dimension of organised crime has also been strongly emphasised, obscuring the fact that most organised crime activities are anchored locally.¹⁵

Despite the popular identification of mafia with organised crime, the emphasis on illegal market activities has remained largely unchallenged in the scientific debate of all European countries except Italy. Thus, for example, according to Dick Hobbs¹⁶ ‘the master context for professional and organized crime is the marketplace ... [and] the marketplace can be seen to define and shape professional and organized criminal activity’. Likewise, the Dutch scholar Petrus van Duyne points out that organised crime results from illegal market dynamics: ‘What is organized crime without organizing some kind of criminal trade; without selling and buying of forbidden goods and services in an organizational context? The answer is simply nothing’.¹⁷

Only in Italy have several scholars variously emphasised the differences between Italian mafia groups and other, more business-like forms of organised *qua* enterprise crime. In the early 1990s Diego Gambetta¹⁸ proposed a variant of the long-dominant enterprise approach, conceptualizing the mafia as ‘a specific economic enterprise, an industry which produces, promotes, and sells private protection’. From different perspectives, other scholars have then re-assessed the cultural and political dimensions of the mafia phenomenon. According to Letizia Paoli,¹⁹ Southern Italian mafia organisations are ritualised secret brotherhoods that have traditionally employed the strength of mafia bonds to pursue a plurality of goals and to carry out numerous different functions. Though mafia groups have engaged, directly or through their members, in a plurality of legal and illegal entrepreneurial activities, one of the most important functions they have historically played is the exercise of political dominion within their communities. More radically, Henner Hess went as far as to

¹⁵ L. Paoli, and C. Fijnaut, ‘Introduction to Part I: The History of the Concept’, in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004), pp. 21-45.

¹⁶ D. Hobbs, ‘Professional and Organized Crime in Britain’ in M. Maguire, R. Morgan, and R. Reiner, eds., *The Oxford Handbook of Criminology*, 2nd edition. (1994 Oxford), pp. 441-468. p. 444-445.

¹⁷ P. van Duyne, ‘Organized Crime, Corruption, and Power’, 26 *Crime, Law, and Social Change* (1997) pp. 201-238, p. 203.

¹⁸ D. Gambetta, *The Sicilian Mafia. The Business of Private Protection* (Cambridge 1993) p. 1.

¹⁹ L. Paoli, *Mafia Brotherhoods. Organized Crime, Italian Style* (New York 2003).

conclude that ‘the mafia is a power structure and, as such, completely different from what is commonly called organised crime (and which is usually a cooperation aimed at gaining material advantages)’.²⁰

1.3 National and International Definitions: Broad and Unbinding

The legal definitions of organised crime adopted by most European states also hardly reflect the mafia fixation of much political and media discourse. Most of these definitions are very broad, if not vague, so much so that they – and the special powers granted to organised crime investigators, prosecutors and judges – can be applied to a wide range of criminal phenomena and suspects.²¹

As much as many European governments, international organisations pursue a sort of ‘double track’ approach, by emphasizing the scale and threat of organised crime, on the one hand, and, on the other, by adopting minimum common denominator definitions, with no strict criteria in terms of number of members and group structure. This strategy has been pursued by the United Nations to back its 2000 ‘Convention against Transnational Organized Crime’ and by the European Union.

To justify its intervention in this area, the EU Council has repeatedly presented organised crime as a new threat, whose novelty lies in the increasing involvement of criminal organisations in the supply of criminal goods and services. Such a view is clearly stated in the first programmatic document dealing with organised crime, the ‘Action Plan to Combat Organized Crime’, which was adopted in April 1997. Its opening statement maintains: ‘Organized crime is increasingly becoming a threat to society as we know it and want to preserve it. Criminal behaviour no longer is the domain of individuals only, but also of organizations that pervade the various structures of civil society, and indeed society as a whole’.²²

As much as the United Nations, however, the European Union has then proposed a very loose definition of organised crime, setting low numerical standards. In the Joint Action adopted by the European Council on May 1998, in fact, a criminal organisation is defined as ‘a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least

²⁰ H. Hess, ‘Parastato e capitalismo corsaro. La mafia siciliana dal 1943 al 1993’, *Incontri meridionali*, (1995) pp. 41-71, p. 63.

²¹ For a review, see L. Paoli, and C. Fijnaut, ‘Introduction to Part I: The History of the Concept’, in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004), pp. 21-45.

²² European Union Council, ‘Action Plan to Combat Organized Crime’ adopted by the Council on 28 April 1997, *Official Journal of the European Communities*, 15.8.1997, C 251, pp. 1-16.

four years or a more serious penalty'.²³ If three people only are sufficient to form a criminal organisation, one might justifiably ask if the (alleged) increasing presence of these entities in the illegal arena really represents a major innovation in regard to the past and the threatening menace that the Action Plan assumes it to be.

2. ORGANISED CRIME PATTERNS

Despite the lack of regular and reliable data on organised crime and poor cooperation between public agencies and independent researchers in most European countries, the main outline of the picture emerging from assessment of organised crime patterns in twelve European countries is fairly clear.

2.1 The Organisation of Organised Crime: Adieu to the Italian Mafia Model

Though much of the concern about organised crime was initially dictated by fear of the expansion of the Italian mafia to the whole of Europe and to its becoming a model for others involved in organised crime, these pessimistic scenarios have not been realised. Despite the possibilities opened up by the fall of the Iron Curtain in 1989, Italian mafia groups seem to have representatives and, less often, branches only in those countries – Germany, Belgium and France – that attracted consistent migration flows from southern Italy since at least the 1950s. In no European country except Italy – nor in northern or central Italy itself – do Italian mafia groups control a significant portion of local illegal economies or exercise a systematic influence over the legal economy or the political system.²⁴

Nor does any other criminal group, at least in Western Europe. Contrary to the exaggerated predictions of the early 1990s, other organised crime groups have not shown any interest in imitating the culture and structure of the Italian mafia. Nor are the average perpetrators involved in European organised crime interested in, or capable of, exercising a quasi-political power similar to that of the largest and most stable mafia associations in Southern Italy (i.e., the Sicilian Cosa Nostra and the Calabrian

²³ European Union Council, 'Joint Action of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to participate in criminal organisation in the Member States of the European Union', *Official Journal of the European Communities*, 29.12.1998, L 351, pp. 0001-0003.

²⁴ L. Paoli, 'Organised Crime in Italy: Mafia and Illegal Markets– Exception and Normality', in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 263-302.

'Ndrangheta). As even Europol recognises in its *2003 European Union Organised Crime Report*, 'politically, few OC groups pose a direct threat to Member States'.²⁵

Most organised crime groups active in Europe are simply too small and ephemeral to be able to exercise such political power. To quote Europol again, 'the traditional perception of hierarchically structured organised crime groups is being challenged. There is now a development suggesting that a greater percentage of powerful organised crime groups are far more cellular in structure, with loose affiliations made and broken on a regular basis and less obvious chains of command'²⁶. Whereas it is disputable that non-Italian mafia groups have ever complied with the 'traditional perception of hierarchically structured organised crime groups', Europol's departure from the Italia mafia model can only be welcomed.

The twelve country reports on organised crime published in Fijnaut and Paoli²⁷ show that the great majority of illegal exchanges in Western European countries are carried out by numerous, relatively small and often ephemeral enterprises. This is because all illegal market actors are subject to constraints deriving from the enforcement of prohibition. As a result of these constraints, illegal market entrepreneurs are obliged to operate both without and against the state.

First, since the goods and services they provide are prohibited, illegal market suppliers cannot resort to state institutions to enforce contracts and have violations of contracts prosecuted. Nor does the illegal arena host an alternative sovereign power to which a party may appeal for redress of injury. As a result, property rights are poorly protected, employment contracts cannot be formalised, and the development of large, formally organised, long-lasting companies is strongly discouraged.²⁸

Second, all suppliers of illegal commodities are forced to operate under the constant threat of arrest and confiscation of their assets by law enforcement institutions. Participants in criminal trades will thus try to organise their activities in such a way as to assure that the risk of police detection is minimised. Incorporating drug transactions into kinship and friendship networks and reducing the number of customers and employees are two of the most frequent strategies illegal entrepreneurs employ to reduce their vulnerability to law enforcement moves.²⁹

²⁵ Europol, *2003 European Union Organised Crime Report*. Luxembourg: Office for the Official Publications of the European Communities. (2003) p. 10.

²⁶ Europol *2003 European Union Organised Crime Report*. Luxembourg: Office for the Official Publications of the European Communities. (2003) p. 8.

²⁷ L. Paoli, and C. Fijnaut, 'Introduction to Part I: The History of the Concept', in C. Fijnaut and L. Paoli (eds.), *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004), pp. 21-45.

²⁸ P. Reuter, *Disorganized Crime. The Economics of the Visible Hand* (Cambridge 1983).

²⁹ P. Reuter, *Disorganized Crime. The Economics of the Visible Hand* (Cambridge 1983).

The factors promoting the development of bureaucracies in the legal portion of the economy – namely taking advantage of economies of scale of operations and specialisation of roles – are outbalanced in the illegal arena by the very consequences of product illegality. As a result of them, within the illegal economy of countries with efficient governments, there is no immanent tendency towards the consolidation of large-scale, modern illegal bureaucracies. In other words, in the illegal markets of most industrialised countries ruled by relatively strong and efficient state apparatuses, the dominant model is not organised crime, but – following the title of a famous book by Peter Reuter.³⁰

2.2 Illegal Markets Expansion ...

Recognising the relatively ‘disorganised’ nature of European organised crime does not imply an optimistic assessment of its nature, scale and danger. Forming flexible and changeable networks, the small and ephemeral enterprises comprising the bulk of Western European organised crime have, since the mid-1970s, sustained a phenomenal expansion of illegal markets in Western and, after the fall of the Berlin Wall, in Eastern Europe as well.

Since the early 1970s, in particular, a rising demand for a variety of illegal drugs – predominantly cannabis and heroin in the 1970s and 1980s with the addition of cocaine, ecstasy and other amphetamine products since the early 1990s – has fostered the development of an international drug trade from producing to consumer countries and the emergence of nationwide drug distribution systems in all European states. This process has also entailed the consolidation of the professional role of the drug dealer. From the early 1970s in Western Europe and from the early 1990s in the eastern part of the Continent, this role has emerged to link producers to consumers and to regularly supply large urban centres with a variety of illegal drugs from distant regions. To meet expanding popular demand, pre-existing criminal associations – such as Italian mafia groups – and thousands of individuals, cliques and groups with and without previous criminal expertise have entered the drug trafficking business, attracted by the anticipation of large profits.

In the last two decades of the twentieth century, several European countries acquired a pivotal role in the world illegal drug trade. Since the early 1980s Turkey has without interruptions been the main gate for Afghan heroin on its way to Western European markets.³¹ Due to its geographic position, Spain has since the 1980s become the main

³⁰ P. Reuter, *Disorganized Crime. The Economics of the Visible Hand* (Cambridge 1983).

³¹ F. Bovenkerk and Y. Yeşilgöz, ‘The Turkish Mafia and the State’, in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 585-601.

entry point for Moroccan hashish, with seizures recently accounting for 75 percent of all hashish seizures in Europe. Together with the Netherlands, Spain is also preferred by Colombian traffickers for smuggling cocaine into Europe.³²

In some countries – most notably the Netherlands and Belgium but more recently also Poland and Albania – we find not only illegal drug traffickers and distributors but drug producers as well. From the early 1990s onwards the Netherlands and Belgium have become the major European and, possibly, world producer of ecstasy. Polish chemists have specialised in the production of amphetamines for both Western and Eastern markets and Albanians have taken up the cultivation and sale of marijuana, re-launching a product that had for almost twenty years disappeared from many Western European markets.³³

Despite the re-conversion of many professional criminals to drug trafficking and dealing, several – traditional and non-traditional – profit-making criminal activities have continued to proliferate. Some, such as the illegal trade in weapons, are instrumental to a life ‘on the other side of the law’. Other activities – ranging from car thefts, to robberies and the exploitation of prostitution – experienced an unexpected revival in the years immediately following the fall of the Iron Curtain, when Eastern European criminals primarily resorted to violence and ruthlessness to earn a ‘fast buck’ in Western Europe.

As a few scholars and particularly Mike Levi³⁴ and Tom Naylor³⁵ have shown, a third group of entrepreneurial crime activities also flourished in the 1980s and 1990s and continue to do so today, though they are hardly the prerogative of traditional underworld members. These activities range from fraud and other financial crimes to bid-rigging in public works tenders and the illegal wholesale trade in toxic waste, weapons, diamonds and gold. They form a part of organised crime, if one accepts the loose definitions of organised crime that dominate the legal and scientific discourse on organised crime in Europe today.

Whereas the more white-collar forms of organised crime usually attract public attention only in the immediate aftermath of a big scandal, a second wave of expansion of European illegal markets, which started to develop fifteen years after the

³² A. Gómez-Céspedes, and P. Stangeland, ‘Spain: The Flourishing Illegal Drug Haven in Europe’, in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 387–411.

³³ E. Plywaczewski, ‘Organised Crime in Poland: Its Development from “Real Socialism” to Present Times’, in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 467–497; R.T. Naylor, *Wages of Crime: Black Markets, Illegal Finance, and the Underworld Economy* (Ithaca 2002).

³⁴ M. Levi, ed., *Fraud: Organization, Motivation and Control* (Aldershot 1999).

³⁵ R.T. Naylor, *Wages of Crime: Black Markets, Illegal Finance, and the Underworld Economy* (Ithaca 2002).

first, drug-related wave, has raised much concern in government institutions and the general public. This expansion was largely triggered by the enactment of increasingly restrictive immigration policies in most Western European countries during the 1980s and 1990s, which created a large demand for human smuggling services. The number of potential customers as well as victims of veritable human trafficking suddenly multiplied, as the liberation of Eastern Europe in 1989 and the collapse of the Soviet Union in 1991 finally abolished restrictions on the mobility of almost four hundred million people. Crises in other parts of the world, ranging from several African countries to Iraq, Afghanistan and East Timor, also engorged the flow of prospective migrants, at the same time as growth and improvement of transportation facilitated their movements, by drastically reducing logistical constraints.

To meet this demand, human smuggling ‘companies’ popped up at all the crucial borders of ‘Fortress Europe’. Though many smugglers merely sell services desperately wanted by their customers, not only are their prices in most cases extortionate, but conditions are often inhuman, as proven by the many accidents all over Europe that cost the lives of undocumented migrants. Moreover, this flourishing black market has opened up space for all kinds of exploitation that sometimes end up as real trafficking in human beings.

2.3 ... and Internationalisation

Almost inevitably the internationalisation of European illegal markets has affected not only the demand but also the supply of illegal commodities. The irreversible globalisation of the licit economy and the erosion of national borders entail, as an unwanted side effect, a growing geographical mobility and exchange of goods, know-how and capital of criminal origin. Today in Milan, as in Frankfurt, London or Amsterdam, illicit goods and services are offered and exchanged by a multi-ethnic mob. Alongside local criminals one finds illicit entrepreneurs from all parts of the world.

This process of internationalisation of illegal markets started in most northern and central western European countries in the 1960s and 1970s following the legal migration of millions of people from former colonies and southern European countries. In the latter including Italy, it took place very rapidly from the mid-1980s onwards, when even this part of the continent became the destination of considerable migration flows. Thus, instead of the feared ‘Italianisation’ of Europe, in most of continental Italy the opposite process has taken place: i.e. a more accelerated assimilation of local illicit markets to the organisational models and multi-ethnic composition of northern European markets.

In all countries, the over-representation of recent (but also sometimes not so recent) migrants in illicit activities is largely due to their social exclusion and poor integration into host societies. As the history of the United States also proves, a small but highly visible portion of migrants use crime – to use the famous expression of

Daniel Bell³⁶ – as a ‘queer ladder of social mobility’. To a greater extent than in the past, moreover, migrants today have a harder time accessing the legal economy and, due to the restrictive policies adopted by most Western European states, are more likely to find a means of survival only in the informal and illegal economies. A few of those willing to earn a living through crime are able to exploit contacts with producers and distributors of drugs and other illegal commodities in their home countries or the weakness of their native state institutions, to become involved in the wholesale and most profitable sections of illegal markets (especially drug markets). Most, however, end up working as crime labourers carrying out dangerous and not very profitable tasks neglected by autochthonous criminal entrepreneurs.

Despite their occasional violence and aggressiveness, the crime groups set up by migrants are hardly comparable to Italian mafia clans as they are in most cases poorly organised and ephemeral. Their degree of infiltration of government institutions and the licit economy is generally low. However, since most of them are mutable gangs that make use of different languages and cultural codes, they are hard to identify and repress.

2.4 The Infiltration of the Legitimate Economy and Politics: An Over-Estimated Threat

Organised crime’s infiltration of the legitimate economy, civil society and politics has been investigated and studied much less than its illegal markets activities, so much so that in many European countries it is impossible to go beyond guess-estimates and speculations. Despite the serious shortcomings of information sources, it can safely be stated that in most Western European countries traditional organised crime groups’ ability to infiltrate the legitimate economy and corrupt civil and political institutions was grossly overstated when organised crime began to attract media and political attention in the early 1990s.

In the Netherlands, for example, both the initial study carried out by the Fijnaut research group in the mid-1990s³⁷ and the successive ‘organised crime monitor’ run by the Research and Documentation Centre of the Dutch Ministry of Justice (WODC) found that no criminal group at either national or local level has ever gained control of legitimate sectors of the economy by taking over crucial businesses or trade unions.³⁸

³⁶ D. Bell, ‘Crime as an American Way of Life’, in *The End of Ideology. On the Exhaustion of Political Ideas in the Fifties* (New York [1953] 1965), pp. 127-150.

³⁷ C. Fijnaut, F. Bovenkerk, G. Bruinsma and H. van de Bunt, *Organized Crime in the Netherlands* (The Hague 1998).

³⁸ E. Kleemans, ‘Crossing Borders: Organised Crime in the Netherlands’, in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 303-331.

Likewise, no proof of systematic infiltration of organised crime into the legitimate economy emerges from the *Organised Crime Situation Reports* published annually by the German federal police, the Bundeskriminalamt.³⁹ Even in Switzerland, according to Claudio Besozzi⁴⁰, the few empirical studies carried out on the topic do not support the view that the local financial system is infiltrated and threatened by foreign mafia-like organisations laundering money in the country.

In many European countries, however, perpetrators of organised crime invest in several legitimate industries – above all in the transport, finance, real estate, hotel and night-life sectors – to facilitate their illegal activities and reinvest their illicit proceeds. This pattern of action clearly emerges from Lalam's⁴¹ and Gómez-Céspedes and Stangeland's⁴² reports on organised crime patterns in France and Spain, respectively. Organised crime's investment in hotels, night-clubs and pubs in several Dutch cities (especially in Amsterdam) and in real estate in the south of Spain are also considered worrying.⁴³

The picture becomes even less clear-cut if one considers the perpetrators of non-traditional organised crime activities, such as fraud, the manipulation of public tenders and the illegal trade in toxic waste, weapons and gold. These white-collar criminals have no need to 'infiltrate' into the legitimate economy as they are already an established part of it, and the revenues of their 'dirty' activities are barely distinguishable from the flows of 'clean' and 'hot' money that are traded incessantly around the world.

The ability of both traditional and non-traditional organised criminals to corrupt politicians and civil servants appear to be rather low in most Western European countries. Despite occasional scandals and charges against single law enforcement officers and elected officials, six out of eight reports on organised crime patterns in a Western European country (in addition to those already quoted in this subsection, see

³⁹ J. Kinzig and A. Luczak, 'Organised Crime in Germany: A Passe-partout Definition Encompassing Different Phenomena' in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 333-355.

⁴⁰ C. Besozzi, 'Illegal Markets and Organised crime in Switzerland: A Critical Assessment', in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 499-535.

⁴¹ N. Lalam, 'How Organised Is Organised Crime in France?', in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 357-386.

⁴² A. Gómez-Céspedes, and P. Stangeland, 'Spain: The Flourishing Illegal Drug Haven in Europe.' In C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 387-411.

⁴³ E. Kleemans, 'Crossing Borders: Organised Crime in the Netherlands', in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 303-331.

Hobbs⁴⁴ agree that in their respective countries there is no evidence of a systematic pattern of corruption and infiltration of political and government institutions by criminal groups.

Even in Western Europe, however, there are two main exceptions to this rather reassuring picture: Italy and Turkey. Organised crime's infiltration of the legitimate and informal economies is, according to Paoli,⁴⁵ an important specificity of Italian organised crime. This specificity largely derives from the claim of Italian mafia groups to exercise a political dominion within their communities, mainly expressed today by the extraction of a 'protection tax'. Through this systematic pattern of extortion, mafia families have been able to gain large and sometimes dominant positions, especially in the construction industry, but also in other entirely legitimate economic sectors in at least three southern Italian regions: Campania, Calabria, and Sicily.

Mafia groups' conditioning of Italian public life also finds no parallel in Western (or even in Eastern) Europe. The political power of mafia groups was not only accepted and even legalised by government representatives until the 1950s, but systematic exchanges of favours and collusions have continued until the present, as the investigations against Giulio Andreotti (Italy's prime minister seven times) and Silvio Berlusconi (prime minister since 2001) indicate.

In contrast to Italy, Turkey does not host lasting and well-structured secret criminal societies comparable to the Sicilian Cosa Nostra and the Calabrian 'Ndrangheta. Nonetheless, in their strenuous fight against left-wing protestors in the 1970s and, later, against Kurdish separatist groups, several Turkish cabinets and the military have developed shady alliances with right-wing paramilitary groups. These and a variety of Kurdish clans that had sided with the government were often given *carte blanche*, including the authorisation to run illegal businesses, ranging from extortion and murder to drug trafficking.⁴⁶

⁴⁴ D. Hobbs, 'The Nature and Representation of Organised Crime in the United Kingdom', in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 413-434.

⁴⁵ L. Paoli, 'Organised Crime in Italy: Mafia and Illegal Markets – Exception and Normality', in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 263-302.

⁴⁶ F. Bovenkerk and Y. Yeşilgöz, 'The Turkish Mafia and the State.' in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 585-601.

2.5 Organised Crime in Eastern Europe: A Phenomenon of a Different Quality?

In answering the question posed in the title of this subsection, one at first notes numerous similarities between organised crime activities and participants in Western and Eastern Europe. Long curtailed by socialist dictatorships, illegal markets have boomed in all eastern European countries since the fall of the Iron Curtain in 1989. In particular, illegal drug consumption and trade have expanded phenomenally in Russia and most other former Warsaw Pact countries.

Illegal psychoactive substances were used even prior to 1991, but during the communist regimes both the number of consumers and the range of available substances were limited. Due to travel and trade restrictions, none of the former communist countries either constituted a single drug market or participated significantly in international narcotic exchanges as a consumer or supplier of illicit substances. However, this pattern of relative self-sufficiency changed drastically during the 1990s, as Eastern Europe and Russia rapidly became integrated into the international drug trade.⁴⁷ Today large quantities of illegal drugs transit these countries to supply local demand and reach Western European consumers. Growing domestic consumption is also increasingly fed by more powerful and easier-to-use drugs imported from abroad. Since the mid-1990s, in particular, most Eastern European countries and Russia have had to deal with a real heroin epidemic, which has become the primary means of spreading HIV and AIDS.⁴⁸

Whereas the heroin sold in Eastern (and Western) Europe usually originates in Afghanistan, other drugs consumed in the entire post-Soviet area are produced in – or transit through – Western European countries. This is first of all the case for ecstasy and other methamphetamines, which are predominantly fabricated in the Netherlands and Belgium. *Mutatis mutandis*, the same is also true for cocaine and to a more limited extent for hashish, which frequently reach Eastern European markets through Western Europe. Moreover, drugs are not the only illegal commodities exported from Western to Eastern Europe: weapons, toxic waste and counterfeit objects also frequently travel from West to East to be sold on local black markets.

Because of the increased mobility of Western European and, even more so, other foreign criminals, Eastern European illegal markets have undergone a rapid process of internationalisation since the early 1990s. Eastern European cities have become

⁴⁷ L. Paoli, *Illegal Drug Trade in Russia. A Research Project Commissioned by the United Nations Office for Drug Control and Crime Prevention* (Freiburg 2001).

⁴⁸ E. Plywaczewski, 'Organised Crime in Poland: Its Development from "Real Socialism" to Present Times', in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 467-497.

venues for meetings and clashes between criminal groups and gangs from both farther east and west, ranging from Vietnamese and Chinese to Italian, Albanian and Russian-speaking groups.⁴⁹ With their readiness to employ violence, their enormous and shady capital and high-level political connections, the latter are today considered by far the most dangerous people in organised crime.

A closer look at the Russian-speaking crime groups may help us identify the peculiarities and, eventually, the specific dangers of Eastern European organised crime. Like the great majority of their Western counterparts, most Russian and Eastern European organised crime groups are not strict hierarchical organisations, based on ritual family ties, permanent membership and initiation rituals. However, contrary to the situation in the West, Russian organised crime groups do not exclusively comprise 'underworld' criminals, but also 'overworld' figures, who often originate from the ranks of the former Communist Party and state structures and are today successful entrepreneurs or high-ranking government officials.

Exploiting their high-level contacts and the difficulties of the post-Soviet transition, many representatives of Russian organised crime made large fortunes through trade in commodities that would have been legitimate in capitalist societies, and managed to gain control of many, sometimes strategic, parts of the legitimate economy. Their entrepreneurial success was further enhanced by their unusual high-tech capacity, resulting from their well-educated backgrounds and connections with security services, as well as their readiness to use violence and military potential. Thanks to this combination of capabilities, for example, three crime bosses managed to acquire large shares of the Russian aluminium industry.⁵⁰

Due to its ambiguity and suggestiveness, the term 'organised crime' has also been employed – in Russia as in other Eastern European countries – to characterise all those successful entrepreneurs who have rapidly built huge fortunes, usually by acquiring former state companies. It is indeed hard to separate this group clearly from 'normal' organised crime perpetrators, as their methods are quite similar. Both groups, in fact, rely on high-level political connections and shady strategies. As a rule, legitimate entrepreneurs cannot directly command violence, but many of them have had no restraints – or even worse, were obliged in the earliest and rockiest phases of the transition – to resort to the protection services offered by violent thugs.⁵¹

⁴⁹ M. Nozina, 'The Czech Republic: A Crossroads for Organised Crime', in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 435-466.

⁵⁰ L. Shelley, 'Contemporary Russian Organised Crime: Embedded in Russian Society', in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 563-584.

⁵¹ V. Volkov, *Violent Entrepreneurs: The Use of Force in the Making of Russian Capitalism* (Ithaca 2002).

Whether or not they should be termed organised crime, some activities at the crossroads of the legal and illegal economies have threatened the economic and political stability of the countries in transition. In both Russia and Albania, tax evasion and illegal export of capital remain widespread practices among many legitimate firms and members of the upper classes, constituting a serious impediment to the consolidation of the state. As late as 2000, for example, capital leakage from Russia exceeded US\$ 1 billion per month, down from US\$ 25 billion at the height of Russia's financial crisis in 1998.⁵² The burst of the pyramid scheme bubble in Albania in late 1996, which yielded an estimated US\$ 13 million in illegal proceeds, ended up in deadly rioting and widespread chaos and resulted in a dramatic fall in the Albanian GDP.⁵³ Thus, according to the Council of Europe, the scale of organised crime and corruption constitutes 'the single most important problem for Albania' and 'the single most important threat to the functioning of democratic institutions and the rule of law in the country'.⁵⁴

3. CONTROL POLICIES

Since the early 1990s the fight against organised crime has been one of European politicians' and government agencies' most effective arguments to enact criminal and criminal procedural law reforms, introduce new offences and special investigative powers for law enforcement agencies and, last but not least, propel the transnationalisation of crime control and criminal justice.

3.1 Internationalisation of Policy: the EU ...

It is by no means excessive to say that, in Europe, policy on organised crime has increasingly transcended national boundaries and since the late 1990s become a matter of international politics and hence also of the foreign policy of individual countries. After the 'Action Plan to Combat Organised Crime' of April 1997, the fight of organised

⁵² L. Shelley, 'Contemporary Russian Organised Crime: Embedded in Russian Society', in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 563-584.

⁵³ V. Hysi, 'Organised Crime in Albania: The Ugly Side of Capitalism and Democracy', in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 413-434.

⁵⁴ Council of Europe, Parliamentary Assembly, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, Honouring of Obligations and Commitments by Albania, doc. 10116, 23 March 2004, 8; 2 Available online: <http://assembly.coe.int/Documents/WorkingDocs/Doc04/EDOC10116.htm>.

crime was elevated to the rank of a treaty issue in the Treaty of Amsterdam, becoming central to the Third Pillar. In the reformulated Title VI ('Provisions in the Field of Justice and Home Affairs'), strengthening police and judicial cooperation was supposed to serve just one purpose: to combat organised crime. At a special summit in Tampere, Finland, in October 1999 the European Council expressed itself 'deeply committed to reinforcing the fight against serious organised and transnational crime' and launched a 'Unionwide Fight against Crime', meaning primarily organised crime.

In the following years many initiatives were introduced by the European Council and Commission to implement the agreements reached. For instance, Eurojust (a sort of European prosecutor's office with the task of facilitating the proper coordination of national prosecuting authorities) and the Police Chiefs Operational Task Force were set up, the talks on the Convention on Mutual Assistance in Criminal Matters were completed in 2000 and a framework was developed for the creation of joint investigation teams.

In addition to becoming a pillar of the Third Pillar, organised crime control has acquired a growing relevance in EU foreign policy. In 1998 the applicant countries, which joined the EU in May 2004, were made sign a 'Pre-Accession Pact on Organised Crime' and put under considerable pressure to adopt Western European policy in this area: the famous *acquis communautaire*. At the same time, a variety of programs were initiated by the European Commission and the Council of Europe to help all former Communist European countries strengthen their political and judicial capacities in the fight against organised crime and corruption.

This important development – the interweaving of the domestic and foreign policies of the European Union, particularly in the field of combating organised crime – culminated in the European Security Strategy, which was adopted on 12 December 2003. In this document, organised crime is considered one of the key threats to Europe, alongside terrorism and regional conflicts. Its control is thus singled out as one of the most relevant EU's strategic objectives and 'better coordination between external action and Justice and Home Affairs policies is' stated as 'crucial in the fight against both terrorism and organised crime'.⁵⁵

3.2 ... the Council of Europe and the European Court of Human Rights

Besides joint projects with the EU, the Council of Europe also takes initiatives of its own accord to combat organised crime and these are intended for all its Member States, whether or not they belong to the EU. Though they do not explicitly refer to

⁵⁵ See for a lengthy description of these initiatives L. Paoli and C. Fijnaut, 'Comparative Synthesis to Part II', in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 603-623.

organised crime as such, several conventions sponsored by the Council of Europe constitute important pieces of the European organised crime control policies, e.g. the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocols (1959) and the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (1990).

Some other initiatives of the Council of Europe explicitly target organised crime. In 1997 the Committee of Ministers of the Council of Europe Member States set up a Committee of Experts on Criminal Law and Criminological Aspects of Organised Crime (PC-CO), which in 2000 was replaced by the Group of Experts on Criminological and Criminal Law Aspects of Organised Crime (PC-S-CO). Under the authority of the European Committee on Crime Problems (CDPC), the new bodies are required to assess the organised crime control policies of the single Member States and have prepared several best practice surveys in the field of the fight against organised crime.⁵⁶

In 2001 the Committee of Ministers issued an overarching recommendation to the Member States, providing guiding principles on the fight against organised crime. These guidelines cover the whole policy field in this area: from the prevention of organised crime to the use of the criminal justice system to control it and the mechanisms of international police and judicial cooperation.⁵⁷

The important role played by the European Court of Human Rights in Strasbourg should also be highlighted in this context. Through its judgments, this Court has had a major influence in the past few years on efforts to establish the legal limits within which the battle against organised crime in Europe must be waged. One example that springs to mind is the case law concerning the use of undercover agents and anonymous witnesses; another example relates to the direct and indirect interception of communication.⁵⁸

3.3 Bias and Questions

The internationalisation of organised crime control policy well explains why the changes that have taken place on several fronts in individual countries are so similar, whether they involve the centralisation of the police, the judiciary and the customs

⁵⁶ Council of Europe, *Best Practice Survey No. 5: Cross Border Cooperation in the Combating of Organised Crime* (Strasbourg January 2003); Council of Europe, *Best Practice Survey No. 9: Preventive Legal Measures against Organised Crime* (Strasbourg, June 2003). Council of Europe, *Best Practice Survey No. 8: Cooperation against Trafficking in Human Beings* (Strasbourg September 2003).

⁵⁷ Council of Europe, *Recommendation of the Committee of Ministers to Member States concerning Guiding Principles on the Fight against Organised Crime* – Rec (2001) p. 11.

⁵⁸ G. Dutertre, *Key Case-Law Extracts European Court of Human Rights* (Strasbourg 2003).

authorities, or the creation of special units within these institutions, or the introduction of intrusive methods of investigation, such as phone tapping, anonymous witnesses and undercover agents.

Incidentally, internationalisation of policy can also throw up negative similarities between countries, not just positive ones, as is plainly evident in the neglect of an administrative, preventive approach to organised crime. Most countries do not have such an approach in place or have not properly implemented one; Italy and the Netherlands are the only two (partial) exceptions.⁵⁹ The one-sidedness – in other words, the predominantly repressive bias – of the organised crime control policy propagated by the European institutions and/or by major countries is also reflected in the policy that many individual countries have conducted over the past few years.⁶⁰ Coupled with evident differences in the scope of organised crime in European countries, this one-sidedness raises certain questions about both the substance of the international/foreign control policy and the way in which it came about.

The first question that comes to mind is whether the policy conducted by the two main European institutions – the European Union and the Council of Europe – is not far too uniform: one and the same policy for each Member State. Given the significant differences between countries, would it not be advisable to differentiate more? For instance, should a distinction not be made between compulsory measures that all Member States must adopt because they relate to mutual cross-border cooperation and optional measures they can choose to implement, depending on the problems each country has to deal with?

The second question ties in with this last point: when determining which optional measures to adopt, is it not necessary to scrutinise more closely the policy developments that actually occur in the Member States, and not just at the national level, but also at a regional or local level? This approach at least offers some guarantee that the range of measures on offer is as wide as possible, thus ensuring that policy-makers really have a choice.

This brings us to the third question. Precisely because organised crime is a serious problem that manifests itself locally in a variety of guises, should not local authorities, above all Europe's largest cities, and important implementing bodies (such as customs and police forces) be more directly involved in policy-making?

⁵⁹ A. La Spina, 'The Paradox of Effectiveness: Growth, Institutionalisation and Evaluation of Anti-Mafia Policies in Italy', in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 625-640; H. van de Bunt, 'Organised Crime Control Policies in the Netherlands', in C. Fijnaut and L. Paoli, eds., *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond* (Dordrecht 2004) pp. 677-715.

⁶⁰ M. Levi and M. Maguire, 'Reducing and Preventing Organised Crime: An Evidence-Based Critique', 41 *Crime Law and Social Change* (2004) pp. 397-469.

Whatever the concrete solutions adopted, every effort must be made to prevent the internationalisation of policy leading to a situation where this policy becomes alienated from the very problems it is designed to tackle or is not in line with the policy conducted locally to control these problems.