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Foreword

In the 2003 annual conference of the European Society of Criminology (ESC) in Helsinki (27–30 August), quite a large number of papers (21) were presented that focused on issues related to organised crime, including trafficking in human beings and corruption. This collection presents all of these papers to the benefit of those who attended and, in particular, those who did not. During the conference, many colleagues expressed the feeling that such material should be made more widely available than was possible at the conference alone.

One particular feature of interest is the high proportion of colleagues from Eastern European countries in this context—twelve out of twenty-one—which is a lot considering that the vast majority of presenters came from other regions than these. This feature is a special bonus, we hope, for many who are unfamiliar with criminological work in that region. It may be too hasty a conclusion to believe that organised crime issues must be particularly acute and topical in those parts of Europe as the volume of contributions might indicate. The outcome could, however, just as well be a reflection of a peculiar lack of interest and tradition concerning this topic in Western Europe, amazing as this may seem. My observation has been, at any rate, that the European criminological tradition(s) have been oddly disinterested in this matter. This is not to say that a lot of good work had not been done; our concern is just that there might be more of it. The present situation is understandable as organised crime is not among the easiest research topics, in particular if empirical studies are called for. Not so long ago, many European colleagues were expressing serious doubts as to whether such a thing exists at all in reality, it being the kind of social construct as it no doubt also is.

One practical problem became quickly clear when the editing of this volume commenced: the language. Europe speaks and writes mostly languages other than English. For this reason, a project like this one easily becomes relatively expensive and labour-intensive. The language barrier being a major cause of dissemination difficulties, a volume like the present one attempts to overcome some of this European dilemma. Although a British standard of English has been aspired to, this report serves also of an example of how English language is in use way beyond the borders of the Commonwealth, and ways of expression are constantly borrowed from other languages.

This collection is hoped to inspire more serious work in this area. On behalf of HEUNI, I also wish continued success to the ESC in advancing researcher contacts and improved scientific work on issues related to organised crime. For this purpose, we have also included the contact information to the authors (as provided to the ESC conference) as an appendix to this volume.

Kauko Aromaa
Director

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Banking, Fraud and Stock Manipulation: Russian Opportunities and Dilemmas

Alan A. Block
The Pennsylvania State University, United States

Introduction

There are two primary and related issues when it comes to the money that flowed out of the former Soviet Union and the Eastern bloc. How much was more or less traditional capital flight in which rapacious and sometimes frightened business people moved their money to safe havens; how much was the result of organized criminal activities; and how much was clandestinely contributed by politicians and state officers. It certainly is not possible to effectively calculate the real figures of capital flight, although there have been, from time to time, educated guesses, and more importantly, real cases which light a small corner or two of the sums involved in capital flight. The real bottom line, therefore, is not how much was moved nor by whom, but how lucky it was for all those involved that so many Western banks were so anxious to co-operate. And indeed none more so than The Bank of New York.

The Bank of New York: Berlin and Edwards Plead Guilty

On February 16, 2000, forty-one year old Lucy (Ludmilla) Edwards, a Bank of New York (BONY) vice-president working in the newly minted Eastern European Division, and her husband, Peter Berlin, forty-five years old with a degree in physics from the Moscow Physical Technical Institute, pled guilty for participating in a conspiracy to evade income taxes, establishing a branch of a foreign bank in the United States without the approval of the Federal Reserve, operating an illegal money-transmitting business, laundering money and engaging in a wire fraud service scheme to defraud the Russian government of customs duties and tax revenues.[1] There was much more. Edwards and Berlin admitted to making corrupt payments to two Bank of New York employees as well as laundering these payments through offshore accounts. In addition, the pair stashed their illicit earnings in offshore locations, principally the Isle of Man.[2] Edwards con-

1 See, TRANSCRIPT OF THE ALLOCUTION HEARING PURSUANT TO THE GUILTY PLEA OF LUCY EDWARDS UNITED STATES DISTRICT COURT. SOUTHERN DISTRICT OF NEW YORK, UNITED STATES OF AMERICA, 99 Cr. 914 (SWK); PETER BERLIN, LUCY EDWARDS, BENEX INTERNATIONAL CO., BECS INTERNATIONAL CO., INC. and LOWLAND, INC., Defendants, February 16, 2000 10:00 a.m., Before: HON. SHIRLEY WOHL KRAM, District Judge.

2 Alan Cowell and Edmund L. Andrews, "The Isle of Man as an Enclave of Intrigue", *New York Times*, September 24, 1999. On the internet check www.globalpolicy.org/nations/isleoman.htm

fessed that she assisted Russian customers of the Bank in obtaining visas to enter the United States for business trips. In order to accomplish this, she prepared false documents for Russian bankers which were sent to various U.S. embassies. In her testimony, she significantly added that this was "*consistent with the practice of the Eastern European Division of the Bank of New York*". Her intent, it appears, was to raise the issue of collusion with some of the highest officers of the bank.

The judge in the case, the Honorable Shirley Wohl Kram, summarized when and how the Berlin-Edward's criminal activities were carried out. They began in late 1995 when Edwards was approached by Russians who had control of the Depositarno-Kliringovy Bank (DKB) in Moscow whom she knew from her work in BONY's Eastern European Division. They wanted BONY's zippy wire transfer software, Micro/Ca$h-Register, in order to move money through a new BONY account. Edwards and Berlin, therefore, crafted a criminal agreement with DKB which enabled them to personally receive and keep wire transfer commissions. This enabled the Russians to transfer money in and out of the BONY account with no real-time intervention, oversight, or control by the Bank. Berlin established the DKB account at BONY early in 1996.[3] At approximately the same time, Edwards was assigned to the London office of the Bank of New York, and the couple moved to England.

To move the scheme forward, in early 1996 Berlin opened a corporate account at BONY in the name of Benex International Co., Inc., a New Jersey firm of which he had been the president since 1993. In the first few years Benex arranged to ship stereo equipment and some other electronic items to Russia. Unsatisfied, he decided to hustle money instead.[4] Edwards, as one would expect, also had an unrevealed interest in Benex. In the next phase, Edwards installed Micro/Ca$h-Register software on a computer located in an office in Forest Hills, Queens, run by individuals from DKB, and Aleksey Volkov who was the putative head of an analogous money-laundering firm named Torfinex. Indeed, the mailing address for Benex's activities, 118-21 Queens Boulevard, Forest Hills, Queens County, New York, was in the name of Torfinex. Volkov had actually applied for a Torfinex license "to engage in business as a Transmitter of Money" which was received on November 17, 1997, by the New York State Banking Department.[5] The application was somewhat tardy as Torfinex had been ordered by the New York State Banking Department to cease and desist from transmitting money one month earlier.

In the summer of 1996, the DKB high riders had Berlin open a second account at BONY, called BECS International L.L.C. Berlin became BECS's president. This maneuver doubled the Russians' ability to wire transfer huge amounts of money to their pals around the world. Then, in the autumn of 1998, the DKB-ers wanted another BONY account because they had taken control of a Russian bank

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3 Berlin and Edwards also set up Benex and BECS' accounts in Barclays Bank PLC in London in 1996. See, Paul Beckett and Michael Allen, with assistance from Ann Davis, "Two Firms in Money-Laundering Probe Held Accounts at Barclays Bank of U.K." *The Wall Street Journal*, October 8, 1999, p. A4.

4 Timothy L. O'Brien and Lowell Bergman, "The Money Movers: A Special Report; Tracking How Pair Went From Rags to Riches", *New York Times*, October 19, 1999.

5 State of New York Banking Department, *Weekly Bulletin*, December 5, 1997, Section 1, code number (TM-LFS).

with a Florida sounding name—Commercial Bank Flamingo. Berlin, ever compliant, dubbed the new account Lowland, became its president, and established a Lowland–Flamingo office in New Jersey.

Berlin was, he said in his testimony, somewhat perplexed that DKB continued to use Benex, BECS and Lowland after it had obtained its own BONY correspondent account in April 1997.[6] Perhaps DKB preferred the anonymity of Benex and certainly Berlin did not hesitate in aiding the venture. In June 1998, DKB told both Berlin and Edwards that BECS should be deep-sixed because the FBI was sniffing around. The FBI's activity was centered on a BECS' account transaction involving an incoming transfer of $300,000, which represented the payment of ransom money on behalf of a kidnapped Russian businessman, Edouard Olevinskiy.

Around that same time, DKB wanted Berlin to turn over the Benex corporate seal, which he did, knowing they would use it to create a trail of false documents. DKB also established a bank in Nauru which lies 1,200 miles east of New Guinea, just south of the Equator. Nauru is one of those "new opportunity" Pacific Island nations which includes Vanuatu, the Cook Islands, and Samoa.[7] The Nauru bank was dubbed Sinex and it was used to carry out transfers to the Benex and BECS accounts. Sinex was founded in the early 1990's by several Russians. Its president was Andrey Mizerov, and one of its directors, not surprisingly, was Aleksey Volkov, Peter Berlin's compadre.

In an attempt to hide Sinex's Nauru home, DKB listed Australia as its domicile in the BONY transfer records. In addition, DKB promoted Sinex through the Commercial Bank of San Francisco, another haven for Russian organized crime which will be discussed shortly.[8] Along with Sinex Bank came Sinex Corp. and Sinex Securities. Supposedly, Sinex's correspondent account in the Commercial Bank of San Francisco only lasted a few months.

One Ukrainian suspected of participation in the Edwards–Berlin scheme is the organized crime baron, Semion Mogilevich. Thus, it may have been Mogilevich's underlings that Lucy Edwards had in mind when she commented in her confession that she was "aware that personnel from DKB were on occasion . . . afraid to leave the bank because they said customers with machine guns were waiting for them".[9]

Although the FBI's watchful presence was known to the conspirators, it did not stop them from carrying out their plans with only one or two very minor exceptions. Thus in April 1999, Flamingo went into operation, transferring money into the Lowland account and then using Micro/Ca$h-Register software in Russia to wire transfer money out. Little did the conspirators know that the Flamingo

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6 DKB's BONY correspondent account numbered 890003119259 and its customer ID 5001830017 were opened on April 20, 1997.

7 Anthony van Fossen, "Sovereignty, Security and the Development of Offshore Financial Centres in the Pacific Islands", in Michael Bowe, Lino Briguglio, and James W. Dean, eds., *Banking and Finance in Islands and Small States*, (London: Pinter), 1998.

8 Knut Royce, "San Francisco Bank Linked to Laundering Probe at Bank of New York", *The Center for Public Integrity*, November 9, 1999.

9 Jack Hitt, "The Billion-Dollar Shack", *New York Times Magazine*, December 10, 2000. Hitt noted: "According to the deputy chairman of Russia's central bank, Viktor Melnikov, in 1998 Russian criminals laundered about $70 billion through . . . Nauru, draining off precious hard currency and crippling the former superpower."

deal would not last through the summer. It was, in fact, the last "hurrah" before their roof tumbled down.

Combined, the three conduit companies deposited more than $7 billion at BONY in a 42-month period and transmitted almost all the funds shortly after receipt to offshore locations. Benex, BECS and Lowland sent nearly 160,000 wire transfers an average of more than 170 transfers each business day. Edwards and Berlin made approximately $1.8 million from their commissions, paid from BONY accounts, and sent directly to the following offshore companies—Globestar Corporation, Highborough Services and Sandbrook Ltd.

Other Benex Operations

Outside of their BONY activities, Edwards and Berlin also worked their magic at a Fleet Financial bank in upstate New York.[10] There they opened Benex accounts through which they transferred more Russian money. Some of the transfers were in the considerable range of $200 million. Fleet Financial and BankBoston were in the midst of a merger process at the time, and BankBoston helpfully wired money to Benex accounts at Fleet.[11] I would assume, therefore, that BankBoston had its own series of Russian accounts only some of which were destined for Benex.

Another potentially significant line into the Benex-BONY saga, that was left out of Edwards' and Berlin's confessions, was developed by Russian reporter Oleg Lurie who followed the affairs of Sergei Victorovich Pugachev, the founder and chairman of the board of the International Industrial Bank, Russia. Pugachev was also a member of the administration of the Russian Union of Industrialists and Entrepreneurs, who first worked for Promstroibank and then, in 1992, joined Meshprombank. Lurie states that these days Pugachev "has actively been cultivating his image in two basic directions: Orthodox religiosity and friendly closeness to Vladimir Putin". Pugachev's most important Meshprombank officer was vice-president Eleonora Razdorskaya. She was, Lurie notes, the link between Pugachev and organizers of Russian money that "cascaded into the Bank of New York". In addition, Razdorskaya had her own joint venture with Peter Berlin's Benex company, and was a co-manager in an unidentified offshore company belonging to Berlin. This firm dealt exclusively with laundering money through

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10 Once a sleepy Rhode Island lender, back in the days before massive consolidation when a bank could stand on its own, there were two separate banks, Fleet Financial Group and BankBoston. In October 1999, that all changed when the two banks decided to merge operations and form the FleetBoston Financial Corp. The combined institution boasts assets of roughly $185 billion and ranks as the nation's eighth-largest bank holding company. It became the largest bank in New England and one of the 10 largest banks in the U.S. The company's aggressive stance emerged during the 1980s, a decade that saw Fleet acquire 46 smaller banks. During the 1990s, however, Fleet went after bigger targets. It purchased the Bank of New England in 1991, bought Boston-based Shawmut National in 1995, and acquired NatWest in 1996. As of early 1999, the bank was the ninth-largest in the U.S., with about $100 billion in assets, having acquired Advanta Corp's credit card business for $500 million, and about half the credit card accounts of the Crestar Financial Corporation for $48 million in 1998. Also in a busy 1998, Fleet acquired the nation's third-largest discount brokerage, Quick & Reilly, and the U.S. unit of Japan's fourth-largest bank, Sanwa Business Credit. The bank has also rapidly built its mutual fund business by waiving its sales charge on its Galaxy mutual funds for retirement accounts (thus making them "no-load" funds). In 1998, the assets in Fleet's Galaxy accounts shot up more than 100 percent.

11 See, Inner City Press' Federal Reserve Reporter, September 27–December 31, 1999, Archive # 4.

BONY accounts. An FBI agent, seconded to Russia and involved in the overall investigation of money-laundering through BONY, said that "Mezhprombank of Russia and its head Pugachev are probably directly concerned with the money laundering. We are aware of a whole series of dubious transfers of big amounts of money and quite possibly we may have some questions we would like Pugachev to reply to. The questions will not only be related to BONY, but also with connections to the Russian mafia."[12] And there the issues lingered and soon passed away.[13]

Reporters seem to have had a better grasp of the situation, from time to time, than did the FBI. James Bone and David Lister, for example, raised important questions about the International Monetary Fund's loans to Russia in 1998, some of which appear "to have passed through three commercial banks in the U.S. and Europe before ending up in an offshore account in the Channel Islands controlled by a Russian bank".[14] Czech detectives also discovered a "network of questionable financial transactions between BONY and the Prague affiliates of Komercni Banka and Invedticni Postovni Banka", and they were certain these transactions were a part of the money-laundering operation of IMF funds. Komercni Bank had a long-running correspondent account with BONY which was originally sealed on October 31, 1990.[15]

And finally, there was Peter Berlin's Benex Worldwide Ltd., which first nestled on St. Barnabas Road, London. Supposedly its business was "Commodity Contracts Brokers, Dealers". It was incorporated on May 18, 1998, and reported no employees, no sales, no profits, and no net worth. On August 24, 1999, just after the New York Times broke the Bank of New York money laundering story, Benex Worldwide Limited moved from St Barnabas Road to 62 Montagu Mansions, London. A careful reading of Benex Worldwide in the British registry showed the only category in which it reported an actual figure was "Issued Capital (Sterling)". The figure entered was 2 pounds. Benex Worldwide did state it had share capital but again no entry was made in the registry. Nothing else stands out in the registry except the category Latest 10 Transactions, which actually recorded five. They were the following: June 9, 1998—change among the directors of the company; February 15, 2000—new incorporation; March 21, 2000—first dissolution; and July 11, 2000—final dissolution.[16] Whoever the new directors were and whatever was meant by a new incorporation remain a mystery.

Clearly, Edwards and Berlin had come a very long way in a relatively short time. However, they harbored a kind of "grifter" mentality that slid, from time to time, from big-time crime to small and shoddy crime. Edwards, for example, had two encounters with New Jersey law enforcement while employed by BONY, for

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12 Oleg Lurie, "Putin Likes Skiing: So What Does Pugachev Have To Do With It?" *Novaya Gazeta*, November 28, 2001. The article can be found on David Johnson's Russia List Home, davidjohnson@erols.com, #8 November 26–28, 2001.

13 Pugachev also "figured in a string of scandals" as he attempted to take control of the state diamond company, Alrosa, which Pavel Borodin now heads. "Russia: Profile-Part 2: Sergei Pugachev: The 'Orthodox-Chekist' Banker", *Financial Times Information*, April 24, 2002.

14 James Bone and David Lister, "London, New York, and the Channel Islands Implicated in Money Laundering: New York bank linked to IMF's missing millions", *The Times*, August 24, 1999.

15 Komercni Banka Prague's correspondent account in BONY was CAS 8900053488, and its ID number was 9027710015.

16 See Dialog Web Records, file: ///C/mail/attachment/Benex Intl corp data.htm.

what some call shoplifting and others, theft. She pled guilty to both and paid fines. On the other hand, when Berlin, was arrested for shoplifting he quickly hired a lawyer and the local A & P, in Fairview, New Jersey, magnanimously dropped the charges.[17]

Boris Avramovich Goldstein—*Friend of Friends*

The Commercial Bank of San Francisco is a small privately-held bank formed in the mid-1970s. Its primary function was to handle small-business loans. But when Boris Avramovich Goldstein, from Latvia, and his Bulgarian partner, Peter Nenkov came on the scene in 1994, the bank underwent somewhat of a renaissance. A computer whiz in Latvia, Goldstein had first become rich in the software business and then turned to banking. He was a founder of Dalderis Bank in Latvia which merged into another Latvian bank called Sakaru. The business manager at Sakaru Bank was Edmund Johanson, who had retired as the last chairman of the Latvian KGB in 1991, when Latvia achieved independence from the Soviet Union.[18] Sakaru had an intriguing band of shareholders which included at least one gangster, various money-launderers and financial criminals at the center of the infamous Mabatex-Mercata scandal.

The Kremlin and Flight Capital

Mabatex's President was Behgjet Pacolli from Kosovo, in residence in Lugano, Switzerland. Viktor Stolpovskikh, a Russian living in the canton of Ticino, Switzerland, was in charge of the Mabetex Company in Moscow from 1992 through 1994.[19] Mabatex and its sister company Mercata became the centerpiece of a series of long investigations into what was called the Palace project. The issues investigated linked President Boris Yeltsin and members of his staff and family to quite massive corruption. One very small example: Pacolli transferred $1 million to a Budapest bank account in late 1995 for Yeltsin's benefit. A Pacolli associate stated it was to help Yeltsin's political campaign, while Pacolli held it was used to buy advertising which was handled by Trinlo Investment, supposedly with addresses in both the British Virgin Islands and The Bahamas. No one, as far as I know, has been able to find them or Trinlo's officers. Other key players in the scandal included Pavel Borodin, one of the most powerful persons in the Kremlin. Borodin worked directly under Yeltsin, heading the Office of Presidential Affairs and was in charge of all the State's property—planes, palaces, hospitals and hotels. Andre Silyetsky, Borodin's son-in-law, was the Kremlin's property manager. The Swiss investigation of this case (there were others, particularly in Russia, which did not work nearly so well) established the following.

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17 Timothy L. O'Brien and Lowell Bergman, Ibid.
18 Ibid.
19 "Text of Swiss Magistrate's Investigative Request on 'Mabetex' Case Sent to RF Prosecutor-General", Document ID: CEP20000912000280, Entry Date: 9/12/2000, Version Number: 01, Region: Central Eurasia, West Europe, Sub-Region: Russia, West Europe, Country: Russia, Switzerland, Topic: Crime, Domestic Political, International Political Leader.

In 1995, Stolpovskikh together with Siletskiy, bought out the dormant Swiss joint-stock company Mercata Trading & Engineering SA. Then they cobbled together a finely tuned series of mostly offshore accounts. The movement of money began when Stolpovskikh purchased Lightstar Low Voltage Systems Ltd., registered on the Isle of Man. Lightstar opened a bank account in the Midland Bank branch on the Isle of Man. Next, Mercata and Lightstar concluded a contract for services agreement on May 29, 1996. The agreement's preamble stated the following: "In view of the fact that the Lightstar company, because of its connections and its work in Russia [which were nonexistent], will allow Mercata to conclude and finance two contracts with the Business Administration of the Russian Federation President",[20] etc. The initial contract was for renovating the Kremlin Palace in Moscow, the second for renovating the Comptroller's Office in Moscow. The agreement held that Mercata would receive promissory notes for $492 million guaranteed by Vneshtorgbank. The first part of the payment came to $150 million and Lightstar received $21 million to distribute. In the second tranche, Lightstar distributed more than $41 million.

With whatever commission Lightstar itself received, the rest was passed to at least ten offshore companies and the United Overseas Bank, Nassau, The Bahamas. They were Zofos Enterprises Ltd., and Somos Investment in Cyprus; Winsford Investment Ltd., and the Amati Trading Corporation in The Bahamas; the Thornton Foundation, and Skaurus AG., in Liechtenstein; the ABS Trading Establishment and Bersher Enterprises in the British Virgin Islands; and finally the Amadeus and Carmina Foundations in Panama. There was of course the standard "layering" through these offshore accounts. For example, of the $9,208,691.45 transferred to the Bersher company, $5,172,052 was subsequently transferred to Account No 2214 in Bank Hoffman in Guernsey which was the Thornton Foundation account in Liechtenstein. Overall, more than $62.52 million was paid out to these money-laundering institutions in 1997–1998.

All the commission fees that Mercata paid to the Lightstar company were done at the instructions of Stolpovskikh. They were transferred to the Isle of Man's Midland Bank into the Lightstar account No. 12018701360. Instructions on the distribution of the fees in Midland Bank were provided by attorney Gregory Connor, the Lightstar company's Geneva-based administrator. The putative owners of the offshore accounts were the following: Stolpovskikh, Viktor Bondarenko and his wife Ravida Mingaleyeva, Olga Beltsova, Pavel Borodin and his daughter Yekaterina Siletskaya, Milena Novotorzhina, Vitality Mashitskiy, and Andrey Nerodenkov. The banks that were used to move the money into the offshore accounts were the Swiss Bank Corporation, Geneva; Banco Del Gottardo, Lugano; Bank Adamas, Lugano; UBS, Zürich; and Bank Kamondo, Geneva.

Much of the media attention on the Mabatex-Mercata dynamos centered on Yeltsin's two daughters, Tatyana Dyachenko and and Yelena Okulova, who ap-

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20 Robert O'Harrow Jr. and Sharon LaFraniere , "Unfolding Bank of N.Y. Probes Have Many Leads", *Washington Post*, October 3, 1999, p. H3.

pear to have had their extremely large credit-card bills paid by Mabatex-Mercata. Tatyana is married to Leonid Dyachenko, "an oil trader who maintained Bank of New York accounts in the Cayman Islands containing more than $2 million".[21] Two of his known companies are East-Coast Petroleum and Belka Energy New York. Tatyana is also famous for having become Yeltsin's tough right-hand strategist.

Not covered nearly as well, however, was the cunning partnership between Mabatex and a Serbian firm Genex. While the economy of Serbia and Montenegro was consolidating into the hands of perhaps 30 to 40 families, business and politics became indissolubly linked. Genex was the country's primary import-export firm. In 1990 its capital was valued at more than $1 billion. Meanwhile, thanks to a network of relations and friendships in Moscow, Slobodan Milosevic's brother managed to obtain gas supplies from Gazprom on credit, at a cost of $300 million a year. It was this relationship that brought Genex into contact with Mabetex. Pacolli recently ended up in the Kremlin-Gate inquiry, "the scandal of 'golden contracts' in Russia, kickbacks totalling millions of dollars".[22] It was the Geneva daily Le Temps that first discovered Genex was a partner in the restoration of the Kremlin.

Goldstein claimed he was only a passive investor in Sakaru and knew none of his partners. In 1996, Sakaru Bank collapsed largely because the First Russian Bank in Moscow had failed. Sakaru had a correspondent account there and was thus unable to meet certain capital requirements. Goldstein was also a fairly important shareholder in First Russian although he described himself as a passive investor "unfamiliar with its day-to-day operations". The bank failed, quite simply, U.S. Intelligence said, because of embezzlement. For a fellow who sat on both Sakaru's and First Russian's Boards, Goldstein seemed to know very little about either. I suppose someone somewhere might believe Goldstein's claim that he never knew many of his associates were criminals, indeed hardly knew much about them at all. But aside from everything mentioned so far, both the FBI and CIA were certain his partner Nenkov was an associate of criminals in Bulgaria. Goldstein's endlessly reiterated lack of knowledge about his partners was simply nonsense.[23]

Spotty Russian Banks

At the center stage of Berlin and Edwards' laundering activities would appear to be DKB and Flamingo, but appearances can be deceiving. The principal owners of the Moscow Business World Bank, known as MDM, and Sobinbank were the primary owners of DKB and "helped raise new capital in 1996 for the other conduit bank, Commercial Bank Flamingo".[24] Both MDM and Sobinbank had cor-

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21 Ibid.
22 Sandro Orlando, "Banker Slobo is worth $10 Billion", *Corriere Economia*, April 26, 1999.
23 Royce, Ibid.
24 Jonathan Fuerbringer, "Russian Banks Hold Enigmas Within Mazes; U.S. Tries to Follow Path of Suspected Wrongdoing", *New York Times: Business/Financial Desk*, April 21, 2000.

respondent accounts with BONY. MDM's was recorded on the last day of May 1994, and Sobinbank's in August 1996.[25]

Neither MDM nor Sobinbank was pleased to be in the middle of this mess and Gleb A. Kostin, the young deputy chairman of MDM, stated the real problem was not criminality but the "vast cultural differences between Russia and America, and that American investigators know nothing about the Russian banking process".[26] To some extent Kostin was correct. For example, MDM did not pay its workers in a conventional manner nor did it contribute money to the government for its workers' pension benefits. Instead it came up with an ingenious salary substitution scheme. It worked like this: "a company would take a loan from the bank and redeposit the cash from the loan in the bank. It then made interest payments on the loan. MDM paid a higher interest rate on the deposit than the company paid on the loan, and the difference was paid to the company's employees instead of salaries." The companies, never identified, "received compensation for providing this service through other moves".[27]

MDM and Sobinbank insisted that they did nothing wrong. They argued, rather unconvincingly, that all their actions were premised by what their unidentified clients wanted them to do. And, they insisted that the web of interconnections in Russian banking confused U.S. prosecutors about their role.

Sobinbank was what the Russian's call a "pocket bank". Its origins came from state enterprises which turned their financial departments into co-operative banks which soon became known as "pocket banks".[28] To put it as mildly as possible, they were tightly attached to individual enterprises. Sobinbank's 1998 annual report reflects its pocket bank ambience. Eighty percent of its loans that year went to just five borrowers. Its major investors were a space company, a Gazprom affiliate, a large oil producer, and the developer of a Moscow underground shopping mall, strongly desired by Moscow's Mayor, Yury Luzhkov. In addition, Sobinbank moved approximately 40 percent of its assets outside Russia. Its foreign exchange transactions were limited to one unnamed but related company. It seems that what these institutions primarily had in common with foreign banks, was the use of the word ***bank***. So when Mikhail Kasyanov, Russia's first deputy prime minister, said the majority of Russian banking institutions "have never been banks in the real sense",[29] he knew precisely what he was talking about.

Of course, there were real reasons for Russian "pocket banks" and others to search for unconventional methods of operation. For example, raising capital was a very complicated procedure especially from 1996 on when the Russian Central Bank limited who could invest in a bank and how much could be invested. Therefore, investors searched for a "beard"—a group of companies or banks, or both, who were willing to purchase all or part of the equity in the bank for them. After the sale was approved by the central bank, the "beard" would sell

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25 MDM's correspondent account with BONY was numbered 8900106891, its Customer ID was 9203660011; Sobinbank's CAS was 8900261137, its ID was 9312820010.
26 Fuerbringer, Ibid.
27 Ibid.
28 Juliet Johnson, Ibid., pp. 42–43, 50–55.
29 Fuerbringer, Ibid.

the stock to companies chosen by the real investors. This is the role that MDM Bank said it played in raising capital for both DKB and Flamingo Bank.

Gleb Kostin claimed that in 1996, at the direction of yet another unnamed client, MDM Bank bought stock in Flamingo Bank and held it from September 3rd of that year to December 10th. Additionally, MDM owned stock in DKB from June 13th to December 10th. After that, Kostin said, the stock was sold to other companies, also at the client's direction. Kostin would neither name the companies nor the client.[30] Sobinbank's chairman, Aleksandr Zanadvorov, echoed MDM's claim.

To the contrary, however, a Russian banker involved in the Bank of New York investigation insisted that Sobinbank was the primary participant in raising capital for DKB and Flamingo Bank, and that both DKB and Flamingo were actually bought for one or both of the DKB bankers, Ivan Bronov and Kiril Gusev. Bronov and Gusev were strongly believed to be co-conspirators with Edwards and Berlin. Bronov also worked at some time in the past with Zanadvorov of Sobinbank.[31] As if this were not complicated enough, it was discovered in the late 1990s that Sobinbank was a subsidiary of the almost defunct SBS-Agro bank which, it turned out, had held 20 percent of Flamingo's shares.[32] It was all so chummy although Sobinbank did have to "renounce" $11.75 million which it held in its Bank of New York account upon the order of Manhattan federal district judge William K. Casey.[33]

And finally, when all else is confusing, one can turn with solace to the straight-forward machinations of the International Cassaf Bank situated in Moscow, headed by Latvian Alexey Ushakov who was accused of money-laundering to the tune of approximately $500 million in 1997–1998. Though Cassaf was in Moscow, its heart and soul was in the South Pacific. Here was another Nauru episode, which began in 1994 when Cassaf registered in Nauru, with a slight twist. Cassaf ran at least part of its scheme utilizing its correspondent accounts with MDM, Rossiyskiy Kredit, Atlant-Bank, and others. The almost-very-clever Ushakov, who sat in a Moscow lockup as his trial moved forward, took down about $600,000 a month before being caught. But given the vagaries of Russian justice, none of the perpetrators had much to worry about. In March 2000 the case was turned over to the court. The trial began in the summer of 2001 and ended in January 2002. Over the course of almost nine months, 260 witnesses testified. After some jockeying, and a great deal of foolishness, the prosecutor called for a three-year sentence. The court solemnly announced the sentence and then "amnestied everybody at once". Nonetheless, numerous major foreign banks, including the Bank of New York, served as middlemen in transferring the money abroad. For instance, in the period from October 1997 through March 1998 around $50 million was transferred from Russia via the Bank of New York. Cassaf's income from this operation alone was $1.2 million. In all, according to a

30 Richard Hainsworth, "Thompson Bank Watch Report", July 30, 1997
31 Ibid.
32 "Banking Inquiry Retraces a Trail Reaching Lofty Levels in Moscow", *New York Times*, February 18, 2000.
33 See, "Sobinbank signed an agreement on confiscation of $12 million in connection with the prosecution of laundering of Russian money through The Bank Of New York", Agency WPS—Banking and Stock Exchange, October 24, 2001.

seemingly serious Russian investigation marred by the zany and/or corrupt Judge Z. Zadorozhnikova, Cassaf had at least 1,500 clients, and the bank laundered somewhere around $500 million. The defendants, on the other hand, had to pony up 17,000 rubles, the equivalent of several parking tickets in Manhattan, as their financial penalty.[34]

The Life and Times of YBM Magnex

Culled from the work of eleven reporters from the Wall Street Journal, the Philadelphia Inquirer, U.S. News and World Report, and the World Economy Weekly in Budapest, it was determined there were clear ties between Benex and YBM Magnex International Inc., a Newtown, Pennsylvania, maker of industrial magnets. In fact, Benex has been described as a distributor of YBM Magnex magnets. Semion Mogilevich, one of the most feared organized criminals, was the founding shareholder of the company, although in 1994, a Russian emigre scientist, Jacob G. Bogatin, was credited with starting the firm. Under his direction, YBM specialized in manufacturing magnets and bicycles. In less than four years, YBM rose "from an obscure penny stock to a multinational worth nearly $1 billion". From 1994 to March 1998, YBM's "net sales quadrupled, net income jumped ninefold, earnings rose by a factor of five, and the future looked just as promising". Indeed, YBM boasted of "plans to become the world's leading producer of high-energy permanent magnets".[35] At any given time, some parts of this YBM yarn might actually have been true, although one must always keep in mind that the intention of those who created YBM was always base, an expanding criminal enterprise in which bicycles played no part.

YBM's saga is also another example of the complicated mechanisms which organized criminals use, though surely un-organized criminals specializing in fraud follow many of the same patterns. In this case, Canadian stock markets were central. The responsible YBM officers included Bogatin, Harry W. Antes, Igor Fisherman, Daniel E. Gatti, Frank Greenwald, Kenneth E. Davies, James J. Held, R. Owen Mitchell, Michael D. Schmidt, and Lawrence D. Wilder. Two firms that often specialized in pumping near worthless stocks, Griffiths McBurney & Partners, and First Marathon Securities Limited were also hip deep in this case.[36]

To get the ball rolling YBM Magnex International Inc. was incorporated on March 16, 1994, in Alberta, Canada. It then used a shell company, Pratecs Tech-

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34 "Major money laundering trial opens in Moscow", BBC Monitoring, June, 8, 2001, Source: 'Kommersant', Moscow, in Russian, June 7, 2001. See http://www.russianlaw.org and "Moscow Court Hearing on Money Laundering Case Against Cassaf Bank's Head Continues", *Vremya Novosti*, August 7, 2001. Also see A. Shvarev, "The Court gave and took", *Vremya Novosti*, January 2, 2002, p. 3; M. Kondratieva, "Money Laundering", *Gazeta*, January 2, 2002, p. 4; M. Semenova, "The underground banker is out of prison", *Kommersant*, January 2, 2002, p. 12.

35 "Foreign Loans Diverted in Monster Money Laundering? The Mafia, Oligarchs, and Russia's Torment", an article based on the work of reporters Michael Allen, Paul Beckett, Michael Binyon, James Bone, David S. Cloud, Alan S. Cullison, Andrew Higgins, David Lister, Lacy McCrary, Gyorgyi Kocsis, and David Kaplan. See, http://www.worldbank.org/html/prddr/trans/julaug99/pgs11-13.htm.

36 See, In the Matter of the Securities Act R.S.O. 1900, c.S.5, as Amended, "Statement of Allegations of Staff of the Ontario Securities Commission", Toronto, Canada, November 1, 1999. Also, http://www.osc.gov.on.ca/en/Enforcement/Allegations/ybmmagnexinternationalinc_19991101.html.

nologies Inc., as its listed name and in August of that year began trading on the Alberta Stock Exchange as a Junior Capital venture or "blind pool".

Generically speaking, a blind pool typically stands for a sham corporation which has been created to "merge with other closely-held public companies in order to bypass . . . securities regulation, gain immediate access to the secondary market and serve as a vehicle for market manipulation".[37] Canadian commentator Diane Francis described "blind pools" as "venture capital outfits" that raise money without needing to tell the investors there was a "specific plan" in mind for use of their money.[38]

In the old days a penny-stock-criminal firm made its money through an initial public offering of some phony and/or overvalued security. Over the course of time, stock swindlers refined the idea and began conning investors to give them money for investments in unspecified companies. They were asking for what came to be known as a "blank check". A "blank check" when combined with a "blind pool" created the synergy needed to make investors' money evaporate after the felons made theirs. The secondary market became the arena for making really big criminal money. It works like this: a public offering is made for the stock of a sham company, which is merging with another usually unspecified firm already registered with a securities exchange. Investors are not informed that the bulk of the shares are owned by the swindler's firm. This practice is known as "scalping".[39] The price is then driven up, made all the easier when the crooked firm is the sole market maker.

"Blank checks" and "blind pools" rely on the most important technical innovation the criminal stock firm has—the telephone, which by the 1980s had evolved to include 800 numbers, call waiting, call screening, the availability of specialized phone lists, and hooked into fax machines and computers. The stock swindlers' basic tool has become better and better. Their methods reveal the kinship between the penny-stock racket and the classic swindler's "boiler room" operation resulting in high pressure telephone promotion of a phony commodity by people who usually haven't the foggiest idea what it is they are promoting.[40]

Pratecs publicly announced it would "acquire Canadian distribution rights for YBM Magnex Inc. products and, further, to acquire all the shares of YBM Magnex". As stock analyst Adrian Du Plessis noted, both of these represented non-arms length transactions as the president of Pratecs, Robert Ventresca, and a director, Jacob Bogatin, were also principals and/or shareholders of the private entity, YBM Magnex. The rest of this initial scheme included the Canadian distribution rights for "magnetic materials produced by YBM Magnex" which would be bought with four million shares of Pratecs costing 20 cents a share. Of course Pratecs had to wait until it issued its first tranche of shares, which num-

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37 North American Securities Administrators Association, "The NASAA Report on Fraud and Abuse in the Penny Stock Industry", submitted to the Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives, September 1989, p. 162.

38 Diane Francis, *Bre-X: This Inside Story*, (Toronto: Key Porter Books, 1997), p. 54.

39 David Ratner, *Securities Regulation In a Nutshell*, (St. Paul, Minnesota: West Publishing, 1978), p. 154.

40 Sean Patrick Griffin and Alan A. Block, "Penny Wise: Accounting for Fraud in the Penny-Stock Industry", in Henry N. Pontell and David Shicor (eds.), *Contemporary Issues in Crime and Criminal Justice: Essays in Honor of Gilbert Geis* (New Jersey: Prentice Hall, 2001), p. 103.

bered 110,000,000, to the always enthusiastic market vendors in league with the company.

Early in 1996, the managers of YBM/Pratecs brought on Robert Owen Mitchell, the Vice President of First Marathon Brokerage, Canada's largest independently-owned brokerage house, and the former Ontario Premier David Peterson whose law firm—Cassels Brock and Blackwell—assisted YBM. There were others who were helpful and past masters at pumping worthless stock. These included money managers such as Connor Clark and Lunn, and Kaan Oran who was formerly with First Marathon and very enthusiastic about YBM.

In the summer of 1995, Pratecs' trading ground to a halt. This was the result of Britain's Operation Sword which targeted several British solicitors for aiding and abetting Mogilevich's money-laundering and other similar matters. The Pratecs' response said the British firms were "in no way related to YBM or its Channel Island subsidiary, Arigon". By the first week in October, 1995, however, Pratecs changed its name to YBM. About four months later, "YBM became a reporting issuer in Ontario." That meant YBM shares would soon be listed on the Toronto Stock Exchange. YBM hit the big time on March 7, 1996.

YBM was, if nothing else, hopelessly dishonest, although that did not seem to bother those key Canadian brokerages that helped to ratchet up its share price from 20 cents to almost $20 Canadian. Meanwhile, there had been some internal changes. Given the publicity about Arigon, the crooks in charge decided to make a move. They formed a new offshore company named United Trade Limited in the Cayman Islands, and dumped all of Arigon into it. They also slid 99.9 percent of the shares of Magnex RT based in Hungary into the new venture. One other part of this fraudulent clean-up was the allegedly complete separation from YBM's other known subsidiary, Arbat International, Inc. Interestingly, YBM's Chief Operating Officer, Igor Fisherman, was the President of the rather soiled Arigon, but he quickly nestled into the same position with UTL.

Although YBM had a mercurial ride, it was destined to slip slide away into a series of hints and allegations and on into numerous civil cases followed by one or two ventures into the criminal side. The slide began in August 1996 when YBM learned there was a "pending investigation" of the company by the U.S. Attorney's office in Philadelphia. On August 29, YBM held an emergency meeting and formed a Special (Independent) Committee to investigate the allegations and innuendos. They retained the Fairfax Group, a U.S. based private detective firm, which is now known as "Decision Strategies". The senior Fairfax investigators working the case included a former Special Prosecutor, a forensic accountant, and a retired U.S. Ambassador and former senior official with the U.S. State Department.

For a company riven through with world renowned mobsters, this was a seemingly odd choice. The initial Fairfax report to YBM took place in Toronto on March 21, 1997, and in Philadelphia the following day. It was an oral report. In sum Fairfax confirmed YBM's original shareholders were organized criminals, that Arbat in Russia, Arigon in the U.K., and Magnex in Hungary, were owned or controlled by the Mogilevich syndicate. Fairfax also went over other areas—"companies with which YBM was doing business, some of these companies were shells, others were shells within shells, others did not exist"—which

added to the grim picture. Moreover, Fairfax had found that Igor Fisherman, YBM's Chief Operating Officer, maintained a long-standing friendship with Mogilevich. Indeed, it seems Mogilevich "had access to bank accounts at a key Eastern European YBM subsidiary run by Fisherman".[41] Despite what would appear to be very bad news, YBM's gallant Special Independent Committee was soon pleased to inform YBM staff that Fairfax looked hard but "could not find any evidence to substantiate the rumours" swirling around YBM.[42] This, I must add, despite the Special Committee's own notes, actually two versions, which confirmed what Fairfax had actually said.

YBM's slide accelerated in the spring of 1997 when it filed a preliminary prospectus that was to a large extent, misleading. Actually, it was completely misleading Another supposedly independent committee of the Board of Directors was then set up to "review the Company's operations to ensure that they are consistent with the standards applicable to Canadian public companies".[43] The next problem emerged when YBM's auditor, Deloitte & Touche LLP (U.S.), said it was stopping its audit of YBM's 1997 financial statements and would not continue until the firm truly underwent and completed a serious forensic investigation. YBM had not notified D & T about the Fairfax conclusions. YBM held together for another year. In fact, on April 27, 1998, it sent out a glowing news release reporting its net income had increased 94.6% compared to the preceding year, and that sales of shares were up 38.2%. The stock pumpers were giddy. However, this was YBM's last gasp.

On May 13, 1998, the Ontario Securities Commission finished off YBM's ability to sell shares. A few months later, YBM's general counsel, Cassels Brock and Blackwell, represented by YBM board member Lawrence D. Wilder, left the scene. On December 8, 1998, a Receiver was appointed to handle the YBM windup, and First Marathon Securities Limited changed its name to National Bank Financial.[44] There were several prosecutions of YBM principals.

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41 Sandra Rubin, "YBM Linked to Russian Underworld: Headquarters Raided", October 27, 1998, at http://www.nationalpost.com/features/annivgallery/Oct 27 1998.pdf.

42 Ibid.

43 See, "Statement of Allegations of Staff of the Ontario Securities Commission", II. Overview of Staff's Allegations, p. 7.

44 There were a series of court cases that bloomed from the YBM fiasco. I am listing three.
Ontario Superior Court of Justice, Court File No. 01-CV-209418, Between Plaintiff YBM Magnex International, Inc. Through its Independent Litigation Supervisor, Paul Farrar, and Defendants Jacob Bogatin, Igor Fishermam, Harry Antes, Kenneth Davies, Frank Greenwald, R. Owen Mitchell, David Peterson, Michael Schmidt, Cassels, Brock & Blackwell, Parente, Randolph, Orlando, Carey & Associates, Deloitte & Touche LLP, National Bank Financial Corp., formerly First Marathon Securities Limited, Griffiths McBurney & Partners, Scotia-McLeod Inc., Canaccord Capital Corporation and HSBC James Capel Inc., Formerly Gordon Capital Corporation, Defendants, and Third Parties Connor Clark & Lunn Investment Management Ltd., Fogler Rubinoff LLP, Decision Strategies LLC and Pepper Hamilton LLP.Ontario Superior Court of Justice, Commercial List, Court File No. 99-CL-3424, Between Plaintiff YBM Magnex International Inc., by its Receiver and Manager Ernst and Young YBM Inc., and Defendants Jacob Bogatin, Igor Fisherman, Michael Schmidt, Kenneth Davies, Frank Greenwald, Guy Scala, Daniel Gatti, James Held, Robert Ventresca and Harry Antes.

Summary

First and foremost, the Berlin-Edwards finagle proved without a shadow of a doubt that "due diligence", "know thy customer", and all the other phrases in the post-modern banking world did not really apply to The Bank of New York. Its Eastern Europe Division had a minimum of 378 correspondent accounts and each transfer through The Bank of New York made money. In fact, the processing fees from wire transfer revenues went from $530 million in 1994 to more than $1 billion three years later. Indeed, so profitable was the Electronic Funds Transfer Division that BONY's senior management called it "the golden child". Added to this windfall were the extraordinary number of BONY correspondent banks that were very busy transferring money into other banks and/or businesses. A large percentage of these institutions were either absorbed by the felt necessity of engaging in tumultuous capital flight or were little more than criminal organizations.

Research into Organised Crime in the Czech Republic—solved topics, methodology, basic results

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Organised crime appeared in the Czech Republic in a developed form after the year 1990. Though some elements had previously existed in the black and grey economy, and occasional pilfering of the cultural heritage occurred as well, these activities were not developed in any significant form. In totalitarian regime, conditions for organised criminals to attain maximum profits with a minimum risk were far from ideal. Numerous repressive measures, including the almost impervious closed borders, presented too much of an obstacle. An insolvent population, which could hardly pay for the brokering of illegal goods or services, held no promise of any significant source of income. The risks were too great when compared with the potential profits.

Politicians, the appropriate organs of the state administration and the general public reacted to the threat of organised crime that emerged after 1990. It was paradoxical that the citizens reacted before the politicians. Criminological research also focused on the issue of organised crime right in the early 90s. In the Institute for Criminology and Social Prevention, we first summarised information from specialised literature at the end of 1992, focusing especially on foreign experiences with the possible utilisation of research methods. We attempted to come up with a working definition and to create a probable model of the activities of organised crime which could be taken into consideration. The preliminary information was summarised in a theoretical methodological study. (Cejp 1993)

In 1993 we began with systematic research. We observed both the general characteristics of the structure of groups and of their activities, as well as specific issues. The basic characteristics of the groups and activities were investigated regularly each year. (Cejp 1996) In the framework of specific themes we focused on the detailed research of those activities which were most widespread or typical of the Czech Republic. We inquired into the involvement of organised crime in manufacturing, smuggling and distribution of drugs (Gawlik 1994), in the organisation and operation of prostitution (Trávníčková 1995), in illegal migration (Scheinost 1995), in thefts of artistic monuments (Gawlik 1995), in violent crime (Marešová 1996) and extortion (Cejp 1995).

We gradually attempted to resolve specific themes as well. Since it had been demonstrated that in the Czech Republic, the Czechs participate in almost half of the cases of organised crime, and that 25% of the groups operating are purely Czech, we decided to look in greater detail at organised criminal activities of the

citizens of the Czech Republic (Scheinost 1999). Foreigners were also separately addressed (Scheinost 1996). Later we systematically studied the involvement of organised crime in financial areas (Baloun 1999), inquired into economic crime, especially money laundering (Kadeřábková 1999), and into the issue of the deliberate evasion of taxes (Marešová 1999). Furthermore, we attempted to analyse the flow of funds both inside and outside the world of organised crime. Over the last ten years we have assessed the effect of specific legal measures that were established and applied for the purpose of fighting organised crime. (Karabec 1999) At the end of the 1990s, we analysed the issue of organised crime in a wider social context. We looked for criminological factors in the life of the society that enable organised crime to realise its activities and acquire accomplices or clients for illegal goods and services. (Cejp 1999) In the framework of attempting a prognosis of selected types of criminality, we specified problematic as well as developmental facts that could prove effective when fighting crime in the coming years. (Cejp et al. 2001) In addition to particular reports, we presented research results in comprehensive publications, in which a particular stage was always summarised. (Scheinost et al. 1994, Scheinost et al. 1997, Cejp et al. 1999)

International co-operation is a significant part of the research of organised crime. We have gathered information on the basic characteristics of organised crime and on the possibility of its research from foreign sources (i.e. Fijnaut 1999). We have released several translated proceedings that present documents from the UN, CE, EU, as well as translations of foreign legal norms. Systematic international co-operation began in 1996, when we compiled data for the Council of Europe questionnaire "Groups for criminal law and criminological issues of organised crime". After that the survey was conducted annually, and we directly participated in the work of the groups. Once we also compiled data on organised crime for the European Union, and participated in the preparation of the Pre-entry Pact on the issue of organised crime, ratified in Brussels in May, 1998. We also participated in the preparation of the UN Convention on fighting organised crime, and on the UNICRI pre-research realised in 1997. The Institute for Criminology and Social Prevention co-operated with the Florida University during the organisation of a joint seminar (1995), and in 1999 we organised the "Cross-border crime in Europe" international conference in co-operation with the University in Tilburg.

Methodology

When researching organised crime, we cannot for the most part use research methods and techniques which have a direct link with the criminal environment. Due to the fact that before 1998, there were no cases in which a defendant was prosecuted, charged and convicted of participation in a criminal conspiracy, the analysis of investigation and court files is very limited. In 1998 the first few dozen cases appeared, but the information obtained from such a small sample cannot be generalised, but used only as an example. For the same reasons, we cannot fully utilise police and court statistics. Hitherto we have been largely dependant on indirectly obtained information.

We utilise various methods for gathering information from experts: For the repeated acquisition of basic data on the structure of groups and their activities, we turn to police officers specialised in detecting or investigating organised crime. Anonymous inquiries are realised with questionnaires sent to approximately 30 experts. Attempts to broaden the field to include specialists from state representatives and judges have not proven effective so far. In matters related to specific themes, we give preference to individual interviews. For prognoses we have used the "round-table" method in particular issues, and "focus-groups" for solution proposals. When assessing the effects of developmental and limiting societal factors, the SWOT method is used. In addition, we utilise information from specialised publications and sources as well as comparative analyses of legal means. Statistics are used at least for orientation, and when possible, concrete cases from file materials are analysed. Results from public opinion polls, and more technically oriented newspaper articles can also be utilised to limited extent.

For research purposes we use the following working criminological definition: Organised crime comprises of repeated (systematic) acts of purposefully co-ordinated criminal activities (and activities supporting these acts), where actors are criminal groups or organisations (largely with a multiple-level vertical organisational structure) whose main goal is to attain the maximum illegal profit while minimising the risk (ensured via contacts in decisive social structures). Accidental criminal groups or organisations, the majority of white-collar crime or terrorism are thus excluded from the scope of organised crime.

Basic Information about Groups

We can deduce the main changes occurring between 1993–2002 in the basic indicators from the qualified assessment of the experts. A wide range of data is stable as far as criminal groups are concerned. The age variable is on the whole unchanged: most rank and file members are 20–25-year-olds, bosses 30–35-year-olds. The participation of women (about 15%) is also demonstrated, especially in organised prostitution and drug trafficking. Women also participate to a lesser extent in illegal migration and corruption. They sporadically appear as negotiators of extortionist groups. The ratio of permanent members and outside help (50:50) is also stable. External collaborators are quite often used to provide all sorts of supporting services or information, and to realise contacts or special operations. In more demanding operations they act as advisors. The proportion of international and local elements in criminal groups is also altogether stabile. Foreign participants are represented a bit more frequently than Czech citizens. Some 20–30% of the groups are purely local. (See Table 1)

As far as the level of organisation is concerned, a definite increasing tendency can be detected. Highly organised groups usually have a three-level organisation: The highest leadership is on top, managing several independently operating groups known as the middle link. At the lowest level there are the rank and file, and outside help. In the 1990s, about one third of the groups in the Czech Republic were organised in this way. Since the year 2000 we have noted an increase: four out of ten groups are highly organised.

Table 1. Estimate of the ratio of international and domestic groups of organised crime in the Czech Republic

	1993	1994	1996	1997	1998	1999	2000	2001	2002
	N=12	N=17	N=18	N=31	N=20	N=27	N=27	N=31	N21
International	-	30	20	25	27	31	28	24	28
(Total: international)	(53)	(61)	(47)	(53)	(55)	(60)	(55)	(53)	(54)
Mixed: predominantly international	-	31	27	28	28	29	27	29	26
Mixed: predominantly domestic	-	21	20	24	20	20	21	20	23
(Total: domestic)	(47)	(39)	(53)	(47)	(45)	(40)	(45)	(47)	(46)
Domestic		18	33	23	25	20	24	27	23
Total	100	100	100	100	100	100	100	100	100

Even though we have not detected changes in the ratio of foreign and Czech citizens in groups of organised crime, certain variation has occurred in the level in which individual countries are represented. In the 1990s, organised crime in the Czech Republic involved mostly Ukrainians, Russians, Chinese and Yugoslavians, and often also Vietnamese, Albanians and Bulgarians. At the end of the 1990s, the number of Chinese citizens began to decrease—apparently not sharply, but rather gradually. The decrease in the number of Yugoslavians apparently resulted from the disintegration of the former federative Yugoslavia into a number of smaller states, whose citizens are still represented in organised crime. The share of Bulgarians is also decreasing, and Poles have almost disappeared.

In 2002, Ukrainians and Russians were most conspicuously represented. They were followed at some distance by the Vietnamese, Chinese and Albanians. Arabs, followed by Bulgarians, Byelorussians and Yugoslavians are further down the list. Israelis, Croatians, Romanians, Germans and Afghans appear rarely, and there are isolated cases involving people from Poland, Austria, Italy, Turkey and Dagestan.

Basic Data about Activities

When we first started to examine organised crime in 1993, we chose 35 activities which could be taken into consideration. It was a theoretical, model conception—at the time we did not know the real situation. We started with the criminal law and considered which criminal acts could be practised by organised crime. We also took "supporting activities" into account, such as compromising or suppressing evidence, and organising offenders' getaway. We were also inspired by foreign experiences, though these were not as extensive as they are at the current time, and could not be applied mechanically.

The 35 activities were then presented to experts, who were asked to judge whether each individual activity was in a developed or embryonic stage in the Czech Republic, or non-existent in the present time. We later submitted the list for examination every year, updated with the results from the preceding survey. Activities which in previous year had been deemed non-existent were discarded. Experts were also allowed to suggest new activities. In this way, the counterfeiting of CDs and videocassettes, the transfer of shares without owner's knowledge, eliciting money with the promise of its great appreciation, trading in radioactive materials, and the illegal import and export of hazardous waste, for example, were added to the list. We discarded usury and activities peculiar to transition periods: fraud connected with the process of privatisation or establishing private enterprises.

The order of the most widespread activities is defined according to the number of experts who estimate the given activity as widespread. We mainly concentrate on those activities which have been marked as widespread by more than half of the experts. This does not mean that the other activities would not be present at all. We can assess the order of the embryonic activities as well. Some activities have been listed as embryonic for ten years now without becoming widespread (i.e. computer crime).

As far as the most widespread activities are concerned, the following are included in the most recent data from 2002: the theft of motor vehicles; organising prostitution and trading in women; the production, smuggling and distribution of drugs; organising illegal migration, receiving stolen goods; tax, loan, insurance and exchange fraud. The order of the other activities is presented in Table 2.

Owing to the fact that the extent of the activities has been monitored annually since 1993, we are able to determine trends and observe changes. Throughout this 10-year time span, organised prostitution and the theft of automobiles have been among the most widespread activities of organised crime in the Czech Republic. Since the middle of the 1990s, a majority of experts have predicted a decrease in the theft of automobiles. So far there is no evidence of such reduction, but other changes have occurred: more expensive automobiles are stolen, and instead of Bulgarians and Poles, more Czechs are involved in organised theft. Since 1995 the production, smuggling and distribution of drugs has persistently belonged to the group of the most widespread activities. Thus the most common activity of organised crime world-wide has gradually taken its place also in the Czech Republic. In 1993, only half of the experts considered organised drug trafficking to be widespread. In 1994, however, it was already ranked among 5 most common activities, and from that year onwards it has remained among the most widespread. This development corresponds to the real situation. In the early 1990s, the Czech Republic was more of a transit country for drug dealers. Since 1995 the local market has proven to be profitable. Another significant change in the group of the most widespread activities is the substantial increase in illegal migration. Since 1999 it has regularly ranked among the most widespread ones. Organised illegal migration has thus become a significant problem.

Until the mid-1990s, the theft of art objects belonged to the most widespread activities. This activity, deriving from the period before the year 1989, and distinctive to Spain and Italy as well as to the Czech Republic, gradually began to

Table 2. Estimate of the occurrence of the most widespread forms of organised crime in the Czech Republic in 2002

		N=21
1.–2.	Theft of motor vehicles	20
	Organised prostitution and trading in women	20
3.–5.	Production, smuggling and distribution of drugs	19
	Organised illegal migration	19
	Receiving stolen goods	19
6.	Tax, credit, insurance and exchange fraud	18
7.–10.	Counterfeiting CDs and illegal copies of videocassettes	16
	Extortion and collecting a fee for "protection"	16
	Founding fraudulent and fictitious companies	16
	Customs fraud	16
11.–13.	Theft of art objects and their export	15
	Hired debt collection	15
	Theft by breaking into apartments, cottages, shops and warehouses	15
14.–15.	Theft from transport trucks and lorries	14
	Bank fraud	14
16.–17.	Money laundering	13
	Eliciting money with the promise of its great appreciation	13
18.	Murder	11
19.	Bribery and corruption	10
20.–21.	Counterfeiting documents, cheques, money, coins	9
	Bank robbery	9
22.	International trade in weapons and explosives	8
23.–25.	Other violence	7
	Gambling	7
	Computer crime	7

lose its importance in the second half of the 90s, probably owing to the many precautions the state had taken: the Ministry of Culture improved its records and the Ministry of the Interior its protection. International police co-operation enabled many illegally exported artefacts to be successfully intercepted and returned. The cultural monuments administered by the church are still, however, in danger due to poor record-keeping.

In addition to the most widespread activities of organised crime, there also exists a whole group of heavily widespread activities, mentioned by 65–85% of the experts. These activities are characterised by fairly strong fluctuations. Tax fraud has belonged to this group since the second half of the 90's, the receiving of stolen goods since 2000, and the counterfeiting of CDs and illegally copied videocassettes since 1999. Customs frauds are also relatively common—though with fluctuations. In 2002, there was a strong increase in the founding of fictitious companies. Extortion and collecting a fee for "protection" also have definite fluctuations, but are usually ranked in top ten. The illegal collection of debts is somewhat more rare, but has had two peak years: in 1994 and 1999 it was among the five most widespread activities of organised crime.

The other activities are relatively widespread. This is especially true for bank fraud; money laundering; forging documents, money and coins; theft after breaking and entering; bank robbery and corruption. The occurrence of violent criminality and murders is average. Organised crime avoids violence if at all possible. If it does occur, it seems to be confined to criminal underworld, since so far there are no other cases recorded. Trading in weapons, explosives and radioactive materials is not very common, either.

Since 1999 we have regularly followed the activities in which foreign groups are involved. It seems that Ukrainian groups focus on extortion, violent crime, robbery, theft, organised prostitution, smuggling weapons and, after 2001, on the theft of automobiles, and more recently also on drugs. Russian groups have similar tendencies. They are involved in extortion, violent crime, organised prostitution, robbery, smuggling weapons and radioactive materials, automobile theft, and, since 2001, in drugs. If compared to Ukrainians, Russians are much more frequently engaged in economic crime, money laundering, bank fraud, corruption, and in founding fictitious companies.

Vietnamese groups focus on the forgery and smuggling of goods, often involving infringement of trademarks and copyrights, as well as customs and tax fraud. The Vietnamese are active in illegal migration, the distribution of drugs, and in organised prostitution. Chinese groups are foremost engaged in illegal migration, but also in smuggling, organised prostitution, drugs, money laundering, and tax and other types of fraud. Albanian groups focus on drugs, illegal trade in weapons, organised prostitution and automobile theft. Arab groups are mostly involved in drugs, illegal migration, money laundering and prostitution. Bulgarians are active in organised prostitution, but relatively seldom in drugs, and to diminishing extent in automobile theft.

Members of other nationalities turn up only sporadically in the Czech Republic, and thus their activities are also less numerous. Byelorussians and Afghans are specialised in extortion, Yugoslavs, Croatians and Turks in drugs. Slovaks have committed criminal acts connected with illegal migration.

Topical themes

In addition to collecting data on the structure of the groups and on their activities, most of our annual surveys cover topical themes to which the experts are asked to respond. We have defined organised crime in greater detail, and characterised its features. We have looked for criteria with which organised crime can be differentiated from regular criminality carried out in an organised form. From time to time we have paid somewhat greater attention to the predictions of future developments. The growth of organised crime is still probable, though at lesser rate since the strongest groups have already made contact and divided the spheres of influence. Drug-related activities will outweigh the others.

In 1999 we focused on the social causes and consequences of organised crime by specifying 150 relevant factors. In 2000 the issue of corruption was probed. We inquired into the extent in which organised crime attempts to use corruption when dealing with individual elements of society. In the same year we also focused more on ascertaining the ethnicity-based co-operation within criminal groups. In 2001 we attempted to pinpoint elements of society into which organised crime is trying to penetrate, and groups against which it uses force. On the basis of the events that transpired on September 11th, 2001 we examined whether any co-operation between organised crime and terrorism existed in Czech conditions, and whether such co-operation could occur in the coming years. In 2002 we, together with the experts, sought the main problems which, when removed, would lead to successful measures against organised crime. This year we also want to assess possible developmental factors.

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Part I

Comparison of estimates of the occurrences of the most widespread forms of organised crime in the Czech Republic in 1993–2002

%	1993 N=12	1994 N=17	1995 N=19	1996 N=18	1997 N=31
100	cars(12) Art(12)	cars(17)	drugs (19) prostitution(19)		drugs (30) cars (30) prostitution(30)
		art(16)	cars(18)	drugs(17) cars(17)	
		prostitution(15)		prostitution(16) art(16)	
90	prostitution(10)	debts(15) drugs (15)			
		burglary(14) Receiving(14)			tax(25)
80	custom(9) burglary(9)		corruption(15) enterpr.fr.(15) art (15)	tax(14)	m.launder.(24) corruption(23)
		Migration(13) racket.(13)	migration(14) debst(13) fict. firms(13) custom(13)	migration(13) custom(13)	bank.fr.(23) art(23) receiving (23) burgl.into cars(22) privatization fr.(22)
70	penetration(8) migration(8)	corruption(11) enterpr.fr.(11)	racket.(13) m.launder.(12) privat.fr.(12) enterpr.f.(12)	receiver(12) bank.fr.(12) enterpr.fr.(12) privat.fr.(12) debst(12) racket.(12)	debst(22) fict.firms(21) enterpr.fraud(21) custom fraud. (21) migration(20) racket.(20)
60	corruption(7) receiver(7) gambling(7)	m.launder.(10) arms(10) murders(10)	burglary(11) murders(11) tax(10) arms(10)	fict.firms(11) counterfeiting(11) m.launder(10) murders(10) burglary(10) arms(10)	murders(19) burglary(18) arms(16)
50	m.laudering(6) racket.(6) drugs(6)	custom.f.(8)	corruption(9)		

Part II

Comparison of estimates of the occurrences of the most widespread forms of organised crime in the Czech Republic in 1993–2002

%	1998 N=20	1999 N=27	2000 N=27	2001 N=31	2002 N=21
100	drugs(20)	drugs(27)	drugs(27)	drugs(31)	
	cars(20)	cars(27)		migration(31)	
	prostitution(20)			cars(30)	
		prostitution(26)		prostitution(30)	cars(20)
		migration(26)			prostitution(20)
	migration(19)		cars(25)		
			migration(25)		
			prostitution(24)		
	art(18)		corruption(24)		drugs(19)
90					migration(19)
			receiving(23)		receiving(19)
			m.laundering(23)		
			video/CD(23)		tax(18)
			murder(23)		
		debst(22)	trucks(22)	video/CD(25)	
			art(22)		
80			burglary(22)		
		custom(21)			
					video/CD(16)
			debst(21)		racket.(16)
	corruption(15)		tax(21)		fict.firms(16)
		art(20)			custom(16)
		m.launder.(20)			
					art(15)
	racket.(14)	racket.(19)	bank robbery(19)	receiving(22)	debst(15)
70	debst(14)	video/CD(19)	counterf.(19)	corruption(21)	burglary(15)
			bank.fr.(19)	m.laundering(21)	
		trucks(18)	racket.(18)		trucks(14)
	m.launder.(13)			art(20)	banking frauds(14)
	video/CD(13)	corruption(17)	custom(17)	trucks(20)	
		burglary(17)	fict.firms(17)	debst(20)	
		murder(17)		burglary(19)	m.laundering(13)
	arms(12)			racket.(19)	eliciting m.(13)
60	fict.firms(12)		eliciting m.(16)		
ntbl	bank fr.(11)	privat.fr.(15)			
	tax(11)	countref.(15)	arms(15)	murder(17)	
	trucks(11)	Receiving(15)		violence(16)	
	privatiz.fr.(11)			tax(16)	
	counterfeit.(11)	arms(14)			murder(11)
50	custom(10)	eliciting(14)			
	receiving(10)			fict.firms(15)	
	murder(10)			custom(15)	corruption(10)
				arms(15)	
				counterfeiting(14)	
				banking frauds(14)	counterfeiting(9)
			gambling(12)	eliciting(14)	bank robbery(9)

Mediterranean Sea and the Protection of the Underwater Cultural Heritage

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Thefts and Illicit Trade of Works of Art. An Overview

Theft and illicit trade of stolen works of art surely are not new phenomena: we can think for instance about the precautions and means adopted in Ancient Egypt in order to prevent the pillage of pharaonic tombs. But in spite of the social, religious and legal blame encircling their traffics, the thieves always succeeded in finding purchasers disposed to buy objects with the royal seal, clearly coming from royal tombs.

Since the antiquity, the problem of the thefts of works of art has always been seen to involve two closely connected groups of people: the thieves (commissioners of the thefts) and the receivers of the stolen goods (merchants, collectors or simply incautious purchasers).

This phenomenon has recently reached such proportions and caused so much concern that Interpol, anxious of the amount of international crime connected to the art market, considers this activity one of the main categories of transnational crime (*The Sunday Times*, 8 January 1995).

The rapidity of not only international but also intercontinental movements, the development of new kinds of contacts and communications, a constantly increasing private demand for archaeological goods, the lack of scruples in people connected with the illegal trade of the objects, and the increasing involvement of international organised crime have over the past few years given the market of works and objects of art a new and extremely worrisome dimension and character. The objects are often defended and protected in an inadequate way. Once stolen, they can easily be concealed and transported, and are thus extremely difficult to recover.

In Italy, the situation appears to be particularly difficult, because there is great amount of small works of art, hardly controlled and controllable. The problem is aggravated by undeniable budget limits: only greater museums and galleries can manage the costs of adequate and up-to-date alarm systems, while private galleries, foundations, small civic or ecclesiastical museums are in many cases defenceless in front of professionals thieves.

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The frequent lack of means for prevention and preventive co-ordination is underlined in the crucial moments following the theft, when the victim, confused, can waste valuable time before denouncing and describing to the police the objects that have been stolen, thereby preventing any serious investigation co-ordination and allowing the thieves enough time to remove the assets. The *follow-up* phase is always static, and based above all on improvisation, good will and chance, facilitating those who consider trafficking of works of art as a profitable profession.

At world-wide level, we can see, on one hand, a true haemorrhage of objects from archaeological sites (often still unexplored) in Latin America, Africa and Asia, and, on the other hand, an annual increase in thefts from galleries, museums, churches and houses in industrialised countries. In 1994, the Interpol General Secretariat launched a "*call for action"* in order to prevent and fight such types of crime.

It is worth noting that in the trade of stolen works of art, the risks the criminals take are often low: in many countries, there is no specific national legislation on the matter (or the legislation is difficult to apply), crossing national frontiers is easy, and individual works of art are rarely photographed or documented—especially if they are of low economic value—which complicates the identification and recovery of the object. In addition, dealers' rapidity, lack of scruple, flexibility, and degree of organisation add to the problem, above all in the less industrialised countries.

Another problem is the enormous expansion of the art market over the last two decades; it has become a field for economic investments where several interested parties try to gain high profits in minimum time. This increase in demand has unavoidably facilitated the illegal trade in works of art, owing also to the lack of control on the part of private purchasers, but also of institutional purchasers such as museums and galleries. For example, it seems that in London, art vendors (including major auction galleries like Christie's or Sotheby's) exercise the practical "*no questions asked"* policy: when they acquire works of art to put on the market through their normal sales channels, they usually do not verify the real origin of the objects, and whether the supplier has obtained them legally or not. They thus act as "*go-betweens"* with no guarantees or references.

There are many reasons for the enormous increase in the demand for artistic assets: an increasing number of wealthy people need secure investment objects, interest in art in general is greater, and private financing has assumed a bigger role in the world of art collecting, especially in Japan and the United States[2].

We can point out three indirect consequences of the thefts of works of art, diminishing the effectiveness of the price system in the international *legal* art market:

- often the theft involves damaging the works in order to facilitate the removal (for example, it may be necessary to cut the cloth along the edges of the frame in order to steal a painting) or the transport (for instance, by dividing large

2 These are regarded as countries that *import* stolen works of art. Others, such as Italy, from where a greater part of the stolen works originate, are called *exporting countries*, and countries, like Switzerland, which usually act as temporary storage places, *transit countries*.

sculptures in smaller parts by taking them apart or breaking). This surely can happen when the works are taken from private homes, museums, churches or palaces, but is more frequent and worrisome when occurring at archaeological sites, where the stone sculptures (such as ornaments and statues) are always broken into smaller pieces in order to maximise the profit by selling them separately;

- the increasing risk of thefts forces to take more precautions in order to protect the works of art. This causes nuisance to museum visitors and exhibitors in two ways: due to inflexible timetables and restricted access, it becomes more and more difficult to actually see the works, and the necessary technical systems and security guards incur expenses and eventually result in higher ticket prices;
- thefts have raised the price of works of art, which in turn has stimulated the production of counterfeits, causing uncertainty in art markets.

Thieves prefer objects that are saleable in richer countries: pictures, prints, terra-cottas, china, jewels, sculptures, religious objects (reliquaries, ciboria and so on). According to Interpol database, in 1998 approximately 50% of the stolen objects were either paintings, sculptures or statues.

Thieves favour works which meet the following criteria:

a) not well-protected or guarded;
b) situated in a church or similar religious building[3], especially if it is small, isolated and abandoned or quite abandoned;
c) painting, print or sculpture made by a European or other well-known artist;
d) easy to transport, hide and sell;
e) piece is well known and valued.

Two additional criteria could be added: piece meets buyer's requirements, as in case of commissioned thefts (frequent with rare, famous works or objects of unexceptional value), and familiarity with the alarm system. The latter hypothesis mostly concerns thefts carried out in museums, foundations or private homes by own employees or others with access: the thief takes pieces of minor value, often stored in a warehouse and not yet inventoried or protected.

People Involved

Most people involved in the illicit trade of works of art operate in two parallel art markets:

1. criminal groups offer stolen works to legitimate buyers (museums, galleries, merchants, auction galleries, private citizens);
2. independent galleries and small museums are "*resupplied*" by criminal groups.

3 Always deserted at night.

The black art market is also fed by independent professional thieves who often co-operate with organised crime acting as a mediator between the buyer and the thief. We again have to underline the increasingly relevant and active role of organised crime in this field, its means, and economic, human, organisational and, nowadays, also technological resources.

Organised crime operates in several ways in the art market:

a) it can manage the entire operation, selling objects it has obtained through its own activities;
b) it can act as an intermediary between the buyer and the professional thief;
c) it can use works of art that are easily transported, concealed and marketed as payment for drugs;
d) it can use stolen works to blackmail institutions (as happened in Modena, Italy in 1992, when Felice Maniero's organised crime group stole Velasquez' and Correggio's paintings, and tried to use them for an "*exchange of favours"* with the police enforcement agencies, fortunately not succeeding);
e) it can use the objects for money laundering.

Archaeological objects and works of art are ideal for money laundering, because they are fungible and easy to sell. Today, the art market is one of the most popular means of money laundering, employing several financial channels; it has been claimed that drug traffickers control the world of art to such an extent that if they suddenly stopped covering their illicit doings by buying works of art, the global art market would collapse. It is obvious that all criminal systems developed by the dealers include some degree of control over art vendors, auction galleries and so on; otherwise it could not exist.

The rare and valuable pieces are removed from the place of theft at a very early stage, or hidden in a safe place until "*things settle down"*, sometimes longer. Only professional thieves or ones connected to criminal organisations use international distribution channels for stolen goods. The most famous objects are transported from one country to the next skilfully hidden (if small in size), and the less famous ones by counterfeiting the certificates and documents.

If a purchaser is not found, the thieves sometimes convince an insurance company—same one that has insured the piece—to buy the stolen object back at the price that usually amounts to 10% of its value. However, most stolen objects end up in private collections.

Underwater Cultural Heritage

One of the most interesting (and, unfortunately, also one of the most dangerous) features of modern criminal organisations is their enormous ability to adapt to the environmental, political and social conditions in which they operate, as well as to the requirements and possibilities of the legal or illegal market (it is worth remembering that organised crime organisations profit from both the legal and illegal markets, obviously adapting and modifying their actions case by case).

From the economic point of view, criminal organisations are behaving more and more like multinational companies, differentiating their fields of activity and the range of services being offered to various customers. Thus they are able to obtain high profits also in a case of "*crisis*" in a specific "*economic*" field.

As already mentioned, organised crime is very interested in the market of works of art, a market that holds few risks and enormous profits. Organised crime organisations launder money by feeding the illegal market with stolen works of art or objects recovered from archaeological sites (plundered in a clandestine, non-authorised way), directing them to private collectors (as in commissioned thefts) or through auction galleries to legal market.

For a long time now police enforcement agencies have focused on traditional trafficking in works of art, usually stolen from museums, churches, palaces, public buildings and so on. Only recently they have become aware of the activities of organised crime in this field. It has become evident that criminal organisations are especially interested in several archaeological sites, particularly underwater ones that are rich in artistic and cultural relics, and often unexplored. Oceans, seas, rivers and lakes embed an enormous amount of objects from all periods of human history, from the beginning (prehistoric stilt houses, for example, by now usually submerged) towards the present times (ships sunk during WW II, etc). The difficulty in recovering such objects and the lack of necessary resources has prevented the states, but fortunately, also criminal elements from exploiting these riches. However, the situation has now changed: the states are still unable to organise large-scale recovery expeditions—mostly due to issues concerning territorial waters, jurisdictions and national prerogatives—but criminal organisations (the only ones to have enough men, means and, above all, money to undertake such activity), sometimes disguised as recovery companies only a bit more "*unscrupulous*" than the others, proceed to recover underwater objects with great velocity.

This is why far greater attention must be given to this part of our cultural patrimony, and why current international laws must quickly be adapted to the new situation.

Before proceeding with our analysis, it should be explained what we mean by "*underwater cultural heritage*". Surely the most applicable definition is the one supplied by UNESCO in "*Convention on the Protection of the Underwater Cultural Heritage*" (Paris, 2 November 2001). According to it, underwater cultural heritage is comprised of

> *"All traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years (…)"*[4]

When examining this definition, one can see that the underwater cultural heritage does not only include works of art or valuable objects (like the treasures in Spanish ships that sank during their voyage from Americas to Europe) but all cultural, historical or archaeological relics of human civilisation that have been

4 Convention on the Protection of the Underwater Cultural Heritage (UNESCO, Paris, 2 November 2001), art. 1, par. 1 *a*.

submerged[5], totally or in part, periodically (tides, etc.) or continuously for at least 100 years. This limit of 100 years is a compromise, set during the preparation of the Convention, and was chosen to distinguish cultural heritage from the more recent objects and wrecks, which are regulated by the normal international statutes. The time limit was necessary to avoid criticism and disagreement from many countries, most of them concerned with aeroplanes and ships that sank during the World War II. By excluding the most recent wrecks from the protection and "*international competence"* established by the Convention, fulmination was perhaps avoided, but problems were not. In some cases, such as *R.M.S. Titanic*, the time limit has led to total destruction of the wreckage before the effective and actual international protection takes effect.

Protection of Underwater Cultural Heritage

There are various instruments provided by the international legal system for the protection of the underwater cultural heritage:

- General international normative instruments (Conventions)
- Specific international normative instruments (ILA and UNESCO Conventions)
- Bilateral agreements
- Statements
- Diplomatic agreements

We will next examine in detail the most important normative acts concerning this matter. They are as follows:

1. General international normative instruments (Conventions)
   - United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982)
   - Recommendation 848 (1978) of the Parliamentary Assembly of the Council of Europe on the underwater cultural heritage
   - Recommendation 1486 (2000) of the Parliamentary Assembly of the Council of Europe on the maritime and fluvial cultural heritage
   - International Convention on Salvage (London, 28 April 1989)
2. Specific international normative instruments (ILA and UNESCO Conventions)
   - International Law Association - Draft Convention on the Protection of Underwater Cultural Heritage (Buenos Aires, 20 August 1994)

5 In marine and oceanic waters but also in inland waters like lakes, rivers and so on. One would think that inland waters would be less problematic as they usually concern only one state, and territorial limits do not need to be taken into account. However, sometimes the state in question is not equipped with normative instruments and laws necessary to protect the submerged objects. We also need to remember that usually these waters are not very deep, and the recovery of relics is therefore easier, which opens a window of opportunity also for the less well-equipped perpetrators. Inland waters are often rich in testimonies: take for instance the numerous ritual offerings ancient peoples threw into lakes.

- Charte Internationale sur la Protection et la Gestion du Patrimoine Culturel Subaquatique (Sofia, le 9 Octobre 1996)
- Convention on the Protection of the Underwater Cultural Heritage (UNESCO, Paris, 2 November 2001)

3. Bilateral agreements
   - Exchange of Notes between South Africa and the United Kingdom Concerning the Regulation of the Term of Settlement of the Salvaging of the Wreck of *HMS Birkenhead* (Pretoria, 22 September 1989)[6]
   - Agreement between the Government of the United States of America and the Government of the French Republic Concerning the Wreck of the *CSS Alabama* (Paris, 3 October 1989)[7]
4. Statements
   - Statement by the President of the United States on U.S. Policy for the Protection of Sunken Warships (19 January 2001)
   - Siracusa Declaration on the Submarine Cultural Heritage of the Mediterranean Sea of 10 March 2001 (adopted during the international conference "*Means for the Protection and Tourist Promotion of the Marine Cultural Heritage in the Mediterranean"*)
5. Diplomatic agreements
   - In many occasions unofficial and informal, particular, and decided case by case.

Not one of these instruments is by itself sufficient to protect the underwater cultural heritage, especially since most conventions (of more general nature, such as the one on the Right of the Sea) have not been ratified by all countries, and provide no means to enforce their execution. In the case of the more specific conventions, such as the UNESCO Convention on the underwater cultural heritage, the situation is even worse. Bilateral agreements are usually more effective, but they naturally involve only a limited number of countries and usually relate to a single, specific case. As far as the so-called "*declarations*" (or *"statements"*) are concerned, they only apply to the country/countries enforcing them (like in the case of the United States[8]), and thus have very limited effect on the international community.

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6 On 26 February 1852, the English warship *HMS Birkenhead*, with 638 passengers, supplies and a great amount of money on board, all destined to the English army engaged in the Kaffir War in South Africa, sank off Cape Danger (Cape Town); there were only 193 survivors. On 22 September, 1989, Great Britain and South Africa signed an agreement for the common "*management*" of the wreckage: South Africa declared *Birkenhead* a "National Monument", so anyone taking objects from the ship, or parts of the wreckage itself, would be punished with an economic penalty and two years of imprisonment. Recoveries can only be made by qualified persons (the so-called "*salvors*"), with a special permission issued by the South African Council for the Cultural Heritage; all recovery activities are to respect the underwater grave site, and everything that is recovered must be divided equally between the two states.

7 On 19 June, 1864, U.S. corvette *Kearsarge* hit and sank confederate ship *CSS Alabama* just outside the French town of Cherbourg. According to a federal declaration, all the goods of the Confederation were to be considered part of the U.S. patrimony after the Civil War. In 1984, the wreckage of *CSS Alabama* was found in the French territorial waters; to resolve the problems of authority regarding the wreckage, a bilateral agreement was signed between USA and France, stating a common "*management*" of the sunken ship and creation of a "*protection zone*" around the wreckage.

8 Statement by the President of the United States on U.S. Policy for the Protection of Sunken Warships (19 January 2001).

This overview aims to demonstrate that the international normative legislation is not sufficient to protect the underwater cultural heritage owing to a number of reasons:

- incoherent territorial jurisdictions;
- ineffectiveness of international protection efforts;
- special legislation regarding the sunken military ships and the so-called "*State ships*"[9]

International protection of the underwater cultural heritage is extremely limited by state borders and territorial waters, and usually there is low interest regarding the underwater cultural heritage because the states are more focused on the marine resources that are potentially more remunerative (such as fishing resources or oil). As regards to sunken ships, the problem is reversed: instead of low interest, there is too much interest, because usually both the flag state and the coastal state guard their interests.

All military vehicles are protected by a particular immunity; but the problem is whether such immunity covers also the wrecks. The 2001 USA Declaration[10] speaks about "*immunity that never ends"*. Considering the rapidity of innovations in war industry, especially in recent times, it is difficult to understand the strategic importance of military ships that have sunk more than a hundred years ago. In addition, the norms that concern these wrecks are actually formed by praxis (neither uniform nor coherent) and bilateral specific agreements[11], even though the 2001 UNESCO Convention states that if a military vehicle is older than one hundred years, the coastal and the flag state should co-operate[12].

Unfortunately, the situation of undefined norms and international conflicts regarding the protection of underwater cultural heritage is causing a loss (even without the participation of criminal organisations!) of numerous wreckages and extremely precious objects since every one of them is unique and characterised by history and particular vicissitudes. This is undoubtedly the case with *RMS Titanic*, for example, demonstrating one of the greatest failures of international protection of the underwater cultural heritage.

On 14 April 1912, during her maiden voyage from London to New York, the Royal Mail Steamer *Titanic*, owned by the English White Star Line Company, sank off the United States' coast after a collision with an iceberg. Of the 2227 passengers and crewmen on board, only 705 survived. Owing to the great loss of lives, the famous technical innovations (which, however, did not prevent the shipwreck), and the luxurious furniture and cabins, *Titanic* became a legend, even if a sad one, fascinating people all over the world. On 1 September 1985, a

9 Ships engaged in official government tasks at the time of the sinking, like postal ships.

10 Statement by the President of the United States on U.S. Policy for the Protection of Sunken Warships (19 January 2001).

11 As between USA and France regarding the ship *CSS Alabama*, or in the case of the *HMS Birkenhead*, where Great Britain and South Africa were the contracting parties.

12 The coastal state "*... should inform* the flag State...", Convention on the Protection of the Underwater Cultural Heritage (UNESCO, Paris, 2 November 2001), art. 7.

scientific expedition led by Robert Ballard, found *Titanic* very deep in the ocean, and in July 1986, the wreckage was explored and photographed for the first time. Ballard proposed that *Titanic* should be considered an international monument, and protected against plundering.

Unfortunately, no such protection has been executed. As a result, the wreckage has been emptied and irremediably damaged by numerous "expeditions". In 2012, when *Titanic* finally becomes part of the underwater cultural heritage[13] and gets some protection, there will be nothing left.

The "Siracusa Declaration"

In this general overview regarding this particular kind of cultural heritage, the activities of organised crime are given a new dimension. We have already seen that criminal organisations have money, men and others resources, but often also better technical and scientific possibilities, facilitated not only by money, but also by the lack of scruples and the prevailing legal and territorial indetermination. Criminal organisations are indifferent to territorial waters, competences, rights of the coastal and the flag states, and they surely do not recognise legal, ethical, moral or other types of boundaries. They have only one goal: to obtain maximum profit with minimum risk and economic investment[14].

Consequences are clear: recoveries are directed to only those objects that are economically favourable, and no attention is paid to the possible damaging of the site. The aim is to recover objects as quickly as possible, not to observe the sites, to analyse them, to study the cultural testimonies. Fundamental historical and archaeological items are lost in the process. Cultural heritage is plundered and destroyed, and thus human history abates every day.

If possible, the situation is even worse in the Mediterranean Sea: it is a closed sea, and has been used since prehistoric times by numerous European, African and Asian populations. It is full of wrecks, sunken ships, traces of lost villages and villas, and so on. We have just begun to understand the extent of the threats facing these wonderful things, especially so since the Mediterranean Sea is so shallow that wrecks and objects can be easily recovered.

Many Mediterranean states have approved specific legislation regarding the researches and underwater recoveries (sometimes they use current internal legislation and extend it to submarine heritage[15]), and we can see attempts to extend the competence of the Mediterranean coastal states to parts of the international waters, at least as far as the cultural heritage is concerned (although some countries, particularly USA, the United Kingdom and the Low Countries, do not agree with this kind of development[16]).

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13 According to the Convention on the Protection of the Underwater Cultural Heritage (UNESCO, Paris, 2 November 2001).

14 Unfortunately, often the criminal organisations are not very different from the "*legal*"ones operating just on the borderline of laws. These types of organisations are interested in locating wreckages and in "*treasure hunting*", as in the case of *RMS Titanic*.

15 As Morocco did, extending the prerogatives of the exclusive fishing area to archaeological objects.

16 These states are concerned about the right of passage for their ships in the Mediterranean international waters, should the control of the coastal states become stronger.

Italy has no specific legislation regarding the underwater cultural heritage, nor a specifically protected archaeological area around its coast. This is a shame since a large quantity of Roman wrecks is situated just off the Italian coast and isles. Great expectations are thus laid on the Siracusa Declaration on the Submarine Cultural Heritage of the Mediterranean Sea (March 10, 2001), signed by many Mediterranean states in the city of Siracusa, Sicily (Italy).

Indeed, we can say that the future of the protection of the underwater cultural heritage in the Mediterranean area is laid out by the Siracusa Declaration. Even though the Declaration is not an international normative act, all Mediterranean countries are trying to focus on its goals, and work towards transforming it into a formal international Convention.

The Declaration is divided in two main parts:

I) Preservation of the integrity of the submarine sites.
Concerning the preservation of the sites, it is recommended that the submarine heritage is primarily preserved *in situ*[17], with the intention of opening the sites to the public if possible (for instance, by using little submarines or boats with see-through bottoms). The objects are removed only if it is not possible to conserve them on site. The Declaration aims to non-destructive research methods and to the protection of the environment (with specific preliminary studies). Researches are not to damage human remains or religious sites, buildings or objects, and all steps of the research and eventual recovery of the objects need to be described in scientific documents and publications.

II) Strengthening the involvement of concerned states.
In the second part of the Declaration, the Mediterranean nations state that *"without prejudice to the rights of the coastal State"*[18], all countries having a verifiable link with the objects should be informed of, and possibly also involved in an activity concerning the underwater cultural heritage. Furthermore, *"without prejudice to the rights of the coastal State"*, consultations on how to ensure the appropriate investigation, effective protection and, if *in situ* preservation is not possible, final destination of the objects belonging to the Mediterranean submarine cultural heritage should be held among all the countries having a verifiable link with the objects.

As we can see, the goals of the Declaration are ambitious, especially in regard to the preservation of the objects "*in situ*": that is probably the main cause why the Declaration is still only a statement. We can consider the Declaration as a kind of a *programme*, a *project* for the future. It is partly comprised of general statements and hypothesis that are more wishes than effective intentions. The realisation of the Declaration might prove problematic, most of all due to the opposition of many non-Mediterranean nations and the difficulty to find sufficient funds to realise preliminary studies, adequate researches and innovative submarine "museums".

17 Where it is: under the water.
18 This is the main condition for the cooperation of all the Mediterranean coastal states.

However, we cannot forget that while we are trying to find the ideal way to recover and preserve the submarine cultural heritage, international organised crime continues to plunder the sites, not caring at all about the rights of the flag or the coastal states, and without any consideration for what is not economically profitable. Unless we understand that time is not a variable to be ignored, we are destined to lose a great part of our history. Heritage is turning into a mere economic commodity.

Map of Corruption in Lithuania: The Residents' View

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Corruption is most frequently defined as "the misuse of entrusted power for private benefit".[1] According to this definition, the main source of corruption is the conflict of public and private interests. Political power or public authority is intended for managing public affairs. Public authority representatives are not delegated to realise interests of their own or their fellow men, but in the first place to take care of public affairs. This is the mission of public power. If the government does its duties improperly and respects only private interests, thus impairing public interests, one says that such a government is corrupt, as are its respective activities. Uncontrolled "privatisation" of public functions performed by political authority impedes democratic and economic reforms, deepens social differentiation and demoralises society.

Organisation of anticorruption activity is a critical issue not only in Lithuania and the former "communist" Central and East European countries. The United Nations Convention Against Corruption adopted by the United Nations General Assembly in 2003 reads that "corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international co-operation to protect and control it essential".[2]

It takes more to curb corruption than merely adopt anticorruption legislation, organise appropriate divisions in law enforcement authorities or make public declarations of good intentions. Anticorruption activity is a sophisticated, complex activity including not only different political, economic and cultural spheres of life, but also envisaging specific control and prevention mechanisms to fight corruption. One of the most effective mechanisms is corruption diagnostics, which helps to identify the most sensitive spheres of life in respect of corruption, and thus contributes to the development of the most effective anticorruption programmes.

In recent years, quite a number of corruption diagnostic researches have been developed around the world. One of the best-known diagnostics is the Corruption Perceptions Index that is made public annually by the international anticorruption organisation *Transparency International*. The Corruption Perceptions Index is a complex indicator constructed on the basis of surveys of business sector representatives and other expert studies, enabling the grouping of states by corruption proliferation rate. According to the said Index, Lithuania

1 Transparency International Source Book 2000. Berlin: Transparency International. 2000, p. 1
2 United Nations Convention against Corruption. United Nations. 2003.

still does not belong to countries with a low level of perceived corruption, and is rated among the "mediocre" states.[3]

Another well-known corruption diagnostic tool is presented in "Anticorruption in Transition: A Contribution to the Policy Debate", a research conducted by the World Bank in 2000.[4] This study analyses two forms of corruption: state capture and administrative corruption. The former influences "rules of the game" of everyday life, and strives to modify them according to one or another interest group. Administrative corruption, on the other hand, makes no attempt to change these "rules of the game", but tries to affect those who are responsible for implementing them. According to this research, the state capture index in Lithuania is on the same average level as in such Central and East European countries as the Czech Republic, Poland, Estonia and Hungary. However, by the administrative corruption index, Lithuania "outdistances" the said countries, and its position is closer to that of Kazakhstan, Russia or Albania. Considering that the administrative corruption is most often associated with the bribery of public officials, the results of the World Bank investigation should be seen as a warning, indicating that the rate of bribery is high in Lithuania, which may in turn hamper the restructuring of society in line with western democratic standards.

The above-mentioned and similar researches have a huge impact when denominating common corruption proliferation factors, both globally and within specific regions or states. This is simultaneously an advantage and disadvantage, because such investigations usually fail to represent specific institutional problems of each country. Based on these investigations, one may say that the administrative corruption rate is rather high in Lithuania, but one cannot answer the questions where and how this administrative corruption manifests itself in society.

In 2001–2002 the *Transparency Intentional* Lithuanian Branch—*Transparency International – Lithuanian chapter*—initiated the first national survey in Lithuania: "Map of Corruption in Lithuania". The survey attempted to monitor the institutional and geographical spread of corruption in Lithuania. The methodology of the project presupposed the use of representative sociological surveys for the evaluation and analysis of:

- attitudes of the general public and entrepreneurs towards corruption, its level and role in society;
- personal experience of the general public and entrepreneurs regarding corruption (bribes);
- sources of information about corruption for the general public and entrepreneurs;
- anti-corruption means proposed by the general public and entrepreneurs.

The Embassies of Finland, Great Britain and the United States of America as well as the World Bank Lithuanian Branch contributed to the project.

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3 In 2003 Lithuania's index was 4.7 out of 10; it ranked 41 among 133 states.
4 Anticorruption in Transition: A Contribution to the Policy Debate. Washington: World Bank. 2000.

Two groups—Lithuanian residents and representatives of the Lithuanian business sector—were involved in the study. This article presents the results of the sociological surveys of Lithuanian residents.

The Joint British–Lithuanian Public Opinion and Market Research Company "Baltijos tyrimai" carried out sociological questionnaire surveys of the Lithuanian general public. The surveys were carried out in July 2001 with 2,028 respondents and in November 2002, when 1,012 residents were interviewed. The statistical error did not exceed 3.1 percent.

Attitude of Lithuanian residents towards the phenomenon of corruption in Lithuania

The respondents were asked: "Which of the following statements corresponds best with your opinion?" The result is presented in Chart 1.

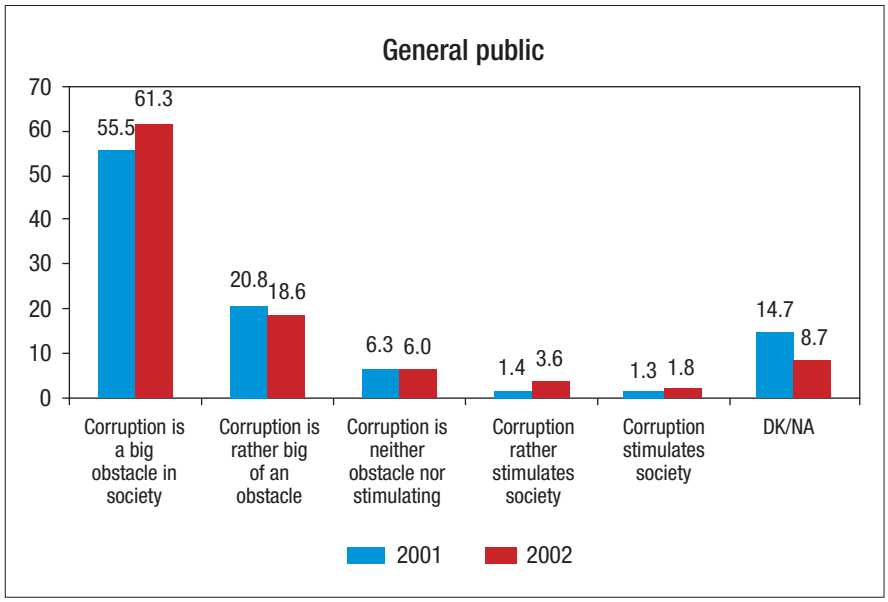

Chart 1. Attitude of Lithuanian residents towards the phenomenon of corruption in 2001-02.

As Chart 1 shows, an absolute majority of residents consider corruption a big obstacle or an impediment to public life. The number of those who considered corruption a big obstacle increased by almost 6 percentage points from 2001 to 2002.

The opinions of the respondents about the corruption growth in Lithuania over the last five years are shown in Chart 2.

More than half of the respondents stated that the corruption rate in Lithuania had increased during the last years. If compared to 2001, the number of those

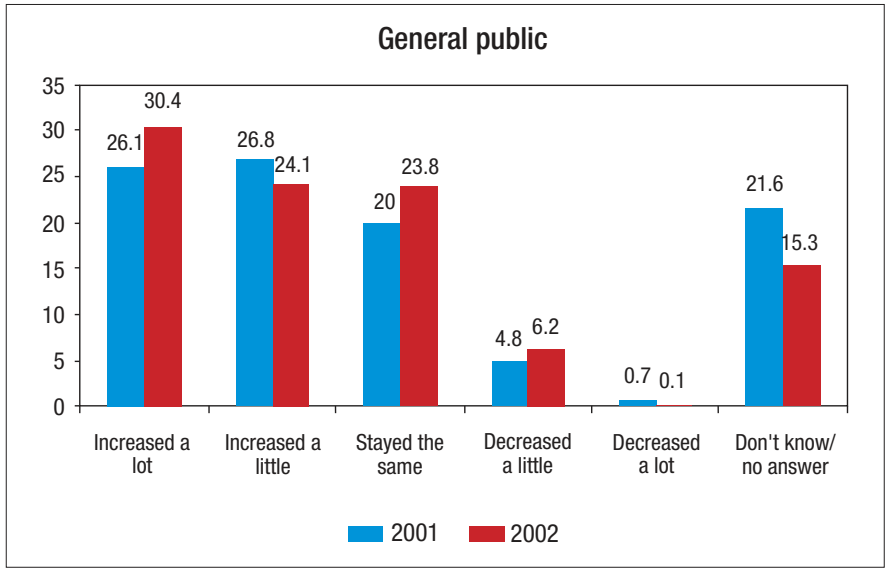

Chart 2. Opinion of Lithuanian residents about the corruption growth in Lithuania over the last five years.

who thought that the corruption rate had grown very much increased in 2002 by 4 percentage points, as did the number of those who said that corruption rate had remained stable (also 4 percentage points).

The respondents were also asked to assess the corruptness of 88 public authorities. Chart 3 represents these assessments (the higher to the top, the more frequent was the assessment "very corrupt") and the personal experience of the respondents in respect of public authorities (the farther to the right, the greater the number of respondents who had experienced corruption).

When judging by the "institutional experience" and "institutional assessment" criteria, the following three public authorities were considered as being most problematic: the Customs, the Traffic Police and the Tax Inspectorate. The negative assessment of these public authorities was at times based on the respondent's personal experience. However, in the cases of the Privatisation Agency, the State Medicines Control Agency and the Financial Crime Investigation Service, the negative assessment was hardly ever linked with personal experience. It is noteworthy that respondents frequently expressed their opinion about the level of corruption without referring to their personal experience.

Chart 4 shows the sources from which Lithuanian residents obtain information about corruption.

Both in 2001 and 2002, the main sources of information about corruption were the mass media, personal experience and experience of friends/acquaintances. While in 2001 the difference between the said sources was insignificant, in 2002 television had become an indisputable leader in that field: 33 percent of respondents indicated this to be the main source of information. Experience of friends and acquaintances ranked second (24 percent), and national press and

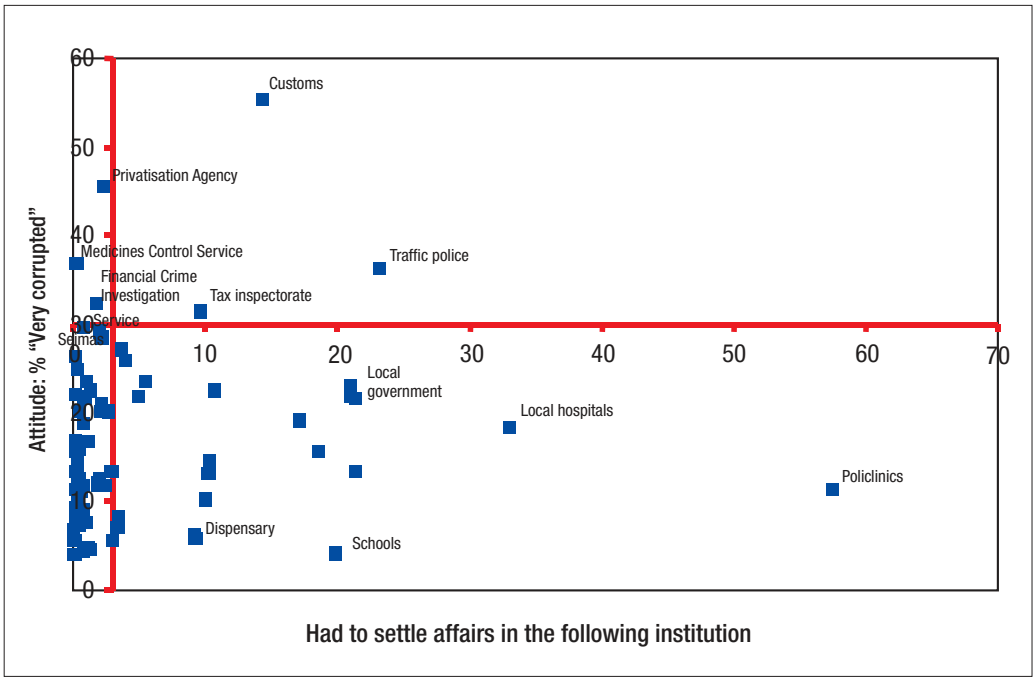

Chart 3. Institutional experience of Lithuanian residents and their assessment of the level of corruption in governmental institutions (2002)

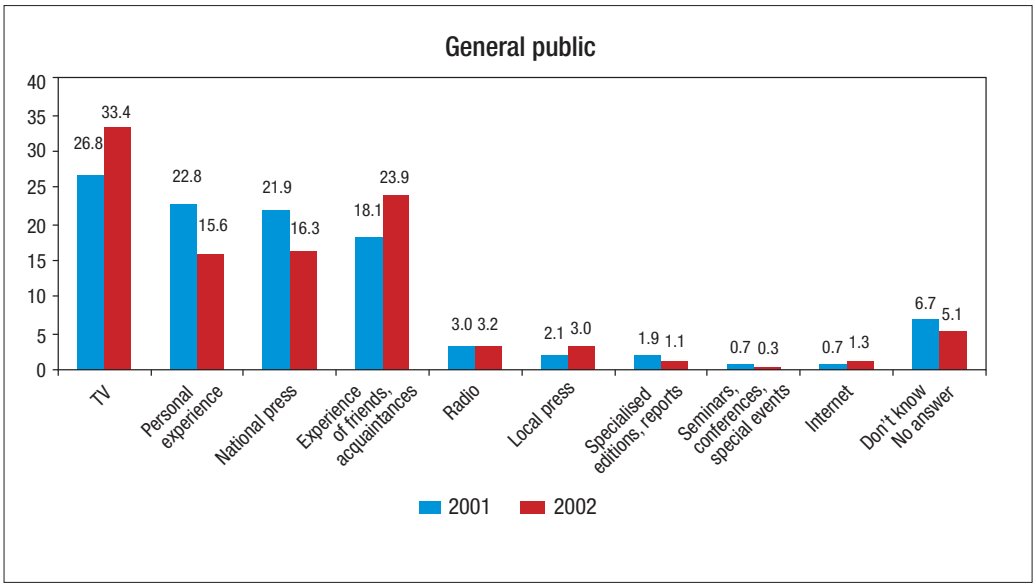

Chart 4. Sources of information for residents to obtain information about corruption in 2001–2002.

personal experience third and fourth respectively (both approximately 16 percent).

The residents assessed the phenomenon of corruption negatively and estimated that the corruption rate had considerably increased over the last five years. The respondents were frequently inclined to assess the corruptness of the public authorities not by referring to their personal experience, but rather to the mass media, especially television.

The popular assessment of the level of corruption is significant information, although it does not necessarily reflect reality since, as was noticed, mass media affected this assessment. As media researches disclose, the mass media may either underestimate or overestimate the presented social problem[5]. Therefore, the following questions arise: what kind of corruption-related experience do Lithuanian residents really have? How often and in what ways have they become victims/initiators of corruption?

Corruption-related experience of Lithuanian residents

The respondents were asked whether they had given a bribe over the last five years. Chart 5 presents the results of the 2001 and 2002 surveys.

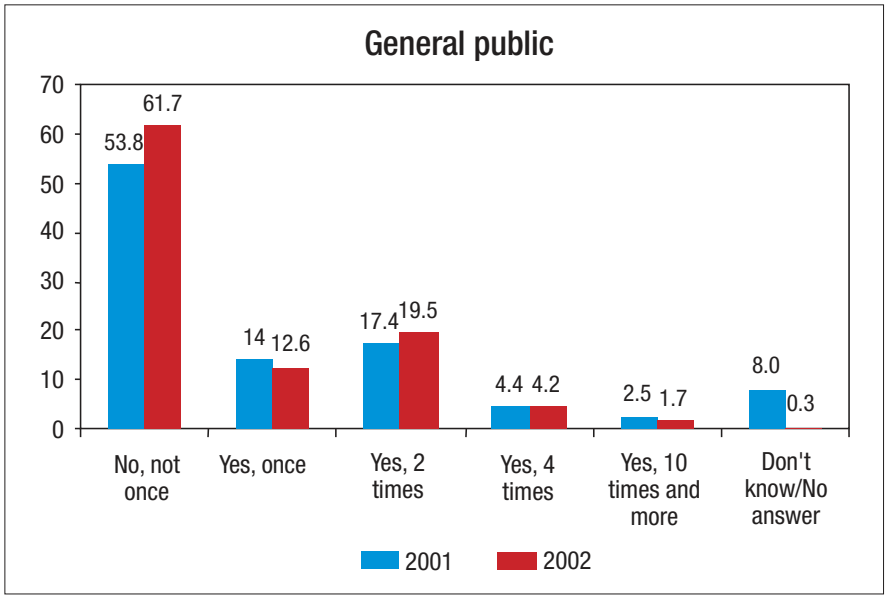

Chart 5. Have you given a bribe over the last five years?

5 A. Dobryninas. Virtual reality of crime. Vilnius: Eugrimas. 2001, p. 66–74.

Table 1. Which public officials did you bribe? (2002)

Level of institution	Alytus County	Kaunas County	Klaipéda County	Marijampolé County	Panevéžys County	Šiauliai County	Tauragé County	Telšiai County	Utena County	Vilnius County	Average
National	8.1	10.6	3.8	15.0	8.1	2.3	8.2	3.8	10.5	10.8	8.4
County	14.6	9.6	10.9	8.2	3.6	7.5	25.9	6.8	6.7	8.6	9.2
Municipal	16.8	21.6	28.4	18.5	13.9	18.4	27.9	16.1	27.3	19.6	20.7
No answer	17.3	9.6	6.4	2.0	6.3	12.9	1.2	7.7	7.7	4.1	7.5
Total	5.3	20.6	11.7	4.8	9.2	11.0	3.3	4.4	5.7	23.9	100

Both in 2001 and 2002, about 38 percent of the respondents admitted that they had given a bribe during the past five years. The number of residents who had not given bribes increased from 54 percent in 2001 to 62 percent in 2002. This can be explained by the fact that the number of respondents who had no opinion was reduced by 8 percent over the same period.

Naturally, bribes are not distributed evenly—neither geographically nor institutionally. Certain public authorities and regions can be distinguished for their high bribery rate, others for a smaller one. Which public officials in which regions had the respondents bribed? Table 1 represents the results.

The results reveal that residents most often paid off public officials of the municipal level (20.7 percent), markedly more often than those of the county (9.2 percent) or national level (8.4 percent). Of the ten counties in Lithuania, the worst situation was in Klaipeda, where more than 28 percent of the respondents had "paid off" public authority officials of the municipal level. The best situation was registered in the Panevezys County, where the corresponding figure was about 13 percent.

When analysing the bribery distribution, it is important to establish which public authorities are most corrupt. Chart 6 discloses five most frequently indicated governmental institutions among the analysed 88 Lithuanian public authorities and institutions.

As one can see from the presented results, residents most often bribed the following institutions: local hospitals, policlinics, national level hospitals, the Traffic Police and the Customs.

The so-called bribery indices, i.e. those of extortion, giving, effectiveness and initiative, help to clarify the situation in the said institutions. The first index registers how often one "made somebody understand" that a bribe should be given, the second one how often a bribe was given, the third whether a bribe helped the situation, and the fourth on whose initiative bribery took place—the briber or the receiver of the bribe.

The results presented in Table 2 reveal that the highest bribery indices were established in national level hospitals and the Traffic Police: respectively in 55 and 53 cases one "made somebody understand" that a bribe should be given. And indeed, also the bribery index is the highest in the said institutions: respectively

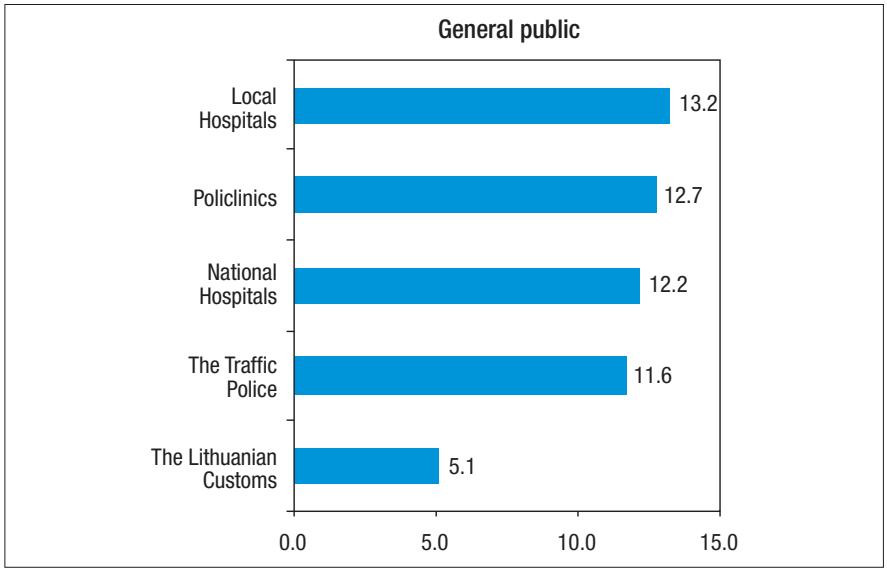

Chart 6. Most frequently indicated governmental institutions in 2002 (based on experience of last five years)

Table 2. Bribery indices (2002)

	Index of extortion	Index of giving	Index of effectiveness	Index of initiative
Local hospitals	0.44	0.40	0.75	-0.04
Policlinics	0.23	0.22	0.82	-0.01
National level hospitals	0.55	0.58	0.78	0.03
Traffic police	0.53	0.50	0.90	-0.03
Customs	0.44	0.36	0.86	-0.08

in 58 and 50 cases bribes were given. The index of effectiveness is the highest with the Traffic Police: bribery helped in 90 out of 100 cases. Only in national level hospitals were the respondents active to take the initiative; in all other institutions, the initiative was more often taken by the representative of the institution than by the client.

The high index of effectiveness supports the respondents' notion that bribes help to resolve "challenging problems". People are prepared to pay considerable amounts for such illegal "decisions". There even exists an unwritten price-list for illegal payments in Lithuania. Chart 7 represents the average "maximum and minimum bribe" in the aforementioned most corrupt institutions.

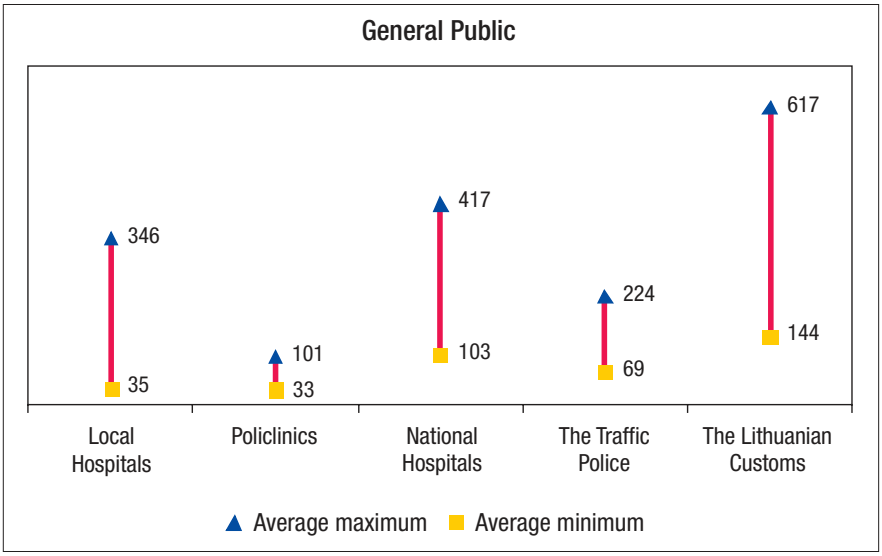

Chart 7. Bribery "price-list" (2002)

Among the five most corrupt institutions, Lithuanian residents paid the most in Customs Houses—the average maximum was as much as 617 LTL[6], while the average minimum was 144 LTL. The smallest bribes were paid in policlinics: the average maximum was 101 LTL, the average minimum 33 LTL.

Sociological surveys have shown that about one-third of all corruption cases consist of bribery. In Lithuania, the residents' attitude towards bribery causes anxiety. An absolute majority of the respondents (75 percent) believed that bribery helps to resolve "problems" in Lithuania, 60 percent were ready to give a bribe "when necessary" and only 21 percent maintained that they would not give a bribe. This reveals a peculiar and prevalent "bribery" mentality in Lithuanian society.

Unfortunately, one has to say that there exists quite a substantial potential "bribery market" in Lithuania. Neither the possible imposition of a punitive sanction (bribing and taking a bribe are both considered a crime), nor the common attitude of residents that corruption does not promote public life have been able to diminish it.

Lithuanian residents' assessment of anticorruption potential

How do residents, who on one hand condemn corruption as an obstacle for life and society's development but who, on the other hand, are prepared to settle their affairs by bribery, plan to fight corruption? Chart 8 gives a partial answer to this question:

6 1 € = 3.45 LTL

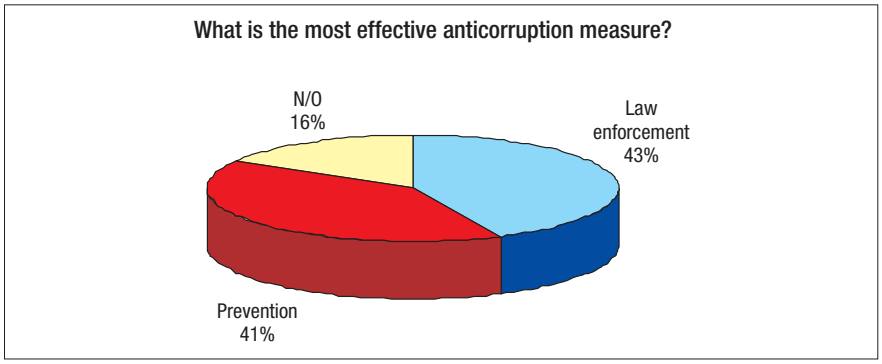

Chart 8. Effectiveness of anti-corruption measures (2002)

As many as 43 percent of residents gave priority to law enforcement or punitive measures. A slightly lower percentage preferred preventive measures, i.e. they wanted to concentrate on the causes rather than the outcome. However, when the respondents were asked whether a National anti-corruption strategy would help to reduce the corruption rate in Lithuania, only 15 percent responded that it would, 45 percent said that it would not and 40 percent gave no answer.

The anti-corruption potential can be assessed from another perspective, too. This is provided by the interesting group of those who responded that they had never given a bribe. Chart 9 illustrates their motivations.

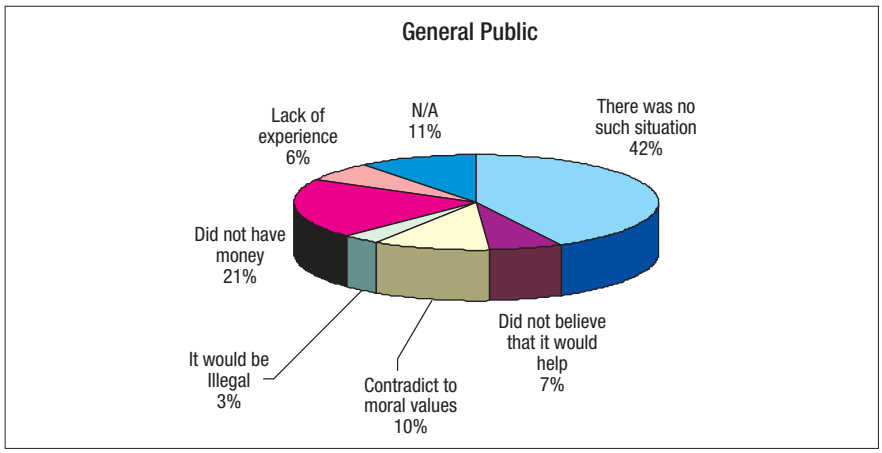

Chart 9. Why did you not give a bribe? (2002)

One should pay attention to the fact that only 13 percent had not given a bribe due to moral conviction or because it is prohibited. One can hardly expect that their share will increase in the near future: attitudes may eventually change provided that there is effective anti-corruption education available. Therefore, if one

wants to prevent corruption, a mere appeal to one's morality and legal principles is not enough. At present, such arguments seem to fall on deaf ears in Lithuania.

On the other hand, 42 percent of the respondents answered that they had never given a bribe because they had not felt the need to do so. This result can be assessed both pessimistically and optimistically: One could say that the absence of bribery depends upon contingency. However, one could also suggest that people live in such an environment where services can be obtained without some extra illegal payment. This would confirm the opinion of anti-corruption experts who say that there lies a huge anti-corruption potential primarily in public administration and new management, where the lack of corruption is ensured by the transparency and openness of governance.[7]

In the process of assessing the provided results, one must emphasise that the "Map of Corruption in Lithuania", like any other diagnostic measurement, is only able to assess those phenomena that can be disclosed by applying research methodology. In this case, we can only hope that the corruption monitoring methodology used to assess the residents' attitudes towards anticorruption and their corruption-related experience, not only enable us to clearly delineate the institutional and geographical corruption map and provide deeper analysis of the corruption rate in Lithuania, but that it also provides public authorities and non-governmental organisations with more precise, more practical and more effective tools with which they can resolve corruption problems in Lithuanian society.

7 Transparency International Source Book 2000. Berlin: Transparency International. 2000, p. 105.

Organized Crime and Corruption in Ukraine as a System Phenomenon

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The history of mankind is not just a story of progressive development and spiritual improvement. It is also a story of terrible violent crimes with millions of victims all over the world. From the beginning of humanity people have been trying to explain the origin and meaning of human life. The history of mankind is a never-ending struggle with nature in order to survive. At the same time humanity has been unable to stop people from killing other people. Many centuries have passed, but people have achieved very little: they have simply invented different types of punishment for different crimes. People have thought of different and complicated ways to commit crimes, while others have elaborated a whole punitive system for serious and minor offences. Today the world is full of prisons. Some of them are modern and comfortable, others simply degrading and barbaric. People use violence as a remedy against violence and murder against murder, which has become an accepted norm and is recognised by the law. Such legalised violence is the prerogative of a state as the main political and social institute. Violence, stipulated by the law, is gradually becoming an essential part of modern civilisation and a crime itself. Modern states have succeeded in developing cruel repressive methods, which do not, however, stop people from breaking the law. Thousands of executed and millions of convicted criminals, kept in prisons, prove that even severe and inhuman punishments cannot change human nature, nor affect the unexplainable and unreasonable desire to kill and hurt other human beings.

The last decade of the 20th century witnessed an unprecedented social experiment, which had a tremendous impact on the fates of nations and individuals. By this we mean the collapse of the communist bloc, the disintegration of the Soviet Union and the emergence of new independent states. All these developments radically changed the world geopolitical situation.

Many politicians assume that the main outcomes of the current reforms in the former Soviet Union republics will be the establishment of free market economy and truly democratic civil society. However, we should expect equally significant criminological consequences from the collapse of the USSR. They are manifested in the penetration of crime and organised crime into economy, politics and culture, embracing all layers of society. Total criminalisation threatens to transform the post-communist society into a criminal society.

Professionals have been given a unique chance to observe and even participate in the global social and criminological experiment, which can significantly

influence the long-lasting debate about the role of social and biological factors in the determination of criminal behaviour. Obviously the genetic nature of human beings has not changed very much during the recent decade while the social conditions of their lives have taken a radical turn. This leads to the conclusion that deterioration of social welfare and other similar factors are the main causes for an extremely high level of crime. However, it would be unfair to say that the reforms alone lead to total criminalisation because also a completely different conclusion can be made: the crime level is constantly increasing in spite of the changing conditions of human life (both for the worse and for the better). Thus probably the main and even the only source of crime is human nature, which has remained more or less the same for many centuries. The law of self-preservation makes human beings react and adjust to the changing environment.

Criminal and anti-social behaviour is one form of such reaction and means of self-preservation, manifested by high level of crime and vivid tendency to grow. Official statistics show that criminal activity has become one of the most widespread types of activity and can be called a criminal practice.

A criminal practice is a widespread type of social practice and specific experience manifested in behaviour forbidden by criminal law. Criminal practice has adopted features of a concrete "focused" activity, competing with other social practices, such as labour, recreation or sports. The contents of this activity is crime. Criminal practice has become an independent phenomenon performing specific functions in society. It is proved by the fact that the words *criminality, criminal society, criminal activity, criminal environment, criminal leader, criminal way of life*, etc are commonly used in conversational, written and professional language. Criminal jargon is also widely used in everyday speech.

Millions of people are involved in criminal activity all over the world. Due to its enormous financial, human and ideological resources, criminal practice greatly influences all legitimate activities and expands the reproduction of crime. Organised crime is the most vivid example of criminal practice since it has all the features of professional activity. As any social practice, criminal practice has a subject, object and content form. Understanding criminal practice as a type of social experience to a great extent clarifies the issue of crime reproduction.

In spite of the fact that the available criminological data on crime expansion in modern world need theoretical analysis, the issue of crime reproduction has not been largely discussed by Ukrainian criminologists. In Russia, this area has been studied for many years by Professor A. Dolgova and her school within the framework of comprehensive analysis of crime *[1]*. Dolgova regards crime as a system with internal and external links, certain patterns and capacity for self-determination. Such an approach has a well-grounded theoretical basis. But *how did the system become established* and *what are the sources for its existence?* The conclusion about self-determination and the effects on society explains the operational mechanism of the criminal system. These conclusions are confirmed by criminal practice.

The Table below contains statistics on crime in Ukraine for the period 1973–2000. The general trends of crime rates are the following:

Table 1. Crime rate and conviction rate in Ukraine (1973–2000)

Year	Registered crimes	% compared to the previous year	% compared to 1973	Detected offenders	% compared to the previous year	% compared to 1973	Convicted offenders	% compared to 1973	Custodial sentences	% of custodial sentences
1973	128 340	94.6	100	136 752	96.2	100	103 969	100	-	-
1974	144 325	112.5	112.5	142 517	104.2	104.2	110 373	106.2	-	-
1975	145 117	100.5	113.1	152 761	107.2	111.7	110 419	106.2	-	-
1976	148 514	102.3	115.8	153 411	100.4	112.2	113 294	109.0	-	-
1977	141 604	95.3	110.3	138 455	90.3	101.2	104 100	100.1	-	-
1978	155 088	109.5	120.8	145 240	104.9	106.2	113 338	109.0	-	-
1979	178 019	114.8	138.7	153 623	105.8	112.3	123 566	118.8	-	-
1980	196 902	110.6	153.4	175 244	114.1	128.1	138 223	132.9	-	-
1981	209 136	106.2	163.0	189 252	107.8	138.4	151 495	145.7	-	-
1982	212 990	101.8	166.9	196 551	103.9	143.7	162 777	156.6	-	-
1983	236 580	111.1	184.3	209 083	106.4	152.9	167 901	161.5	-	-
1984	229 712	97.1	179.0	203 034	97.1	148.5	169 509	163.0	-	-
1985	249 553	108.7	194.5	226 072	111.3	165.3	173 877	167.2	-	-
1986	248 663	99.6	193.8	230 236	101.8	168.4	167 572	161.2	-	-
1987	237 821	95.6	185.3	204 482	88.8	149.5	124 905	120.1	38 845	31.1
1988	242 974	102.2	189.3	172 703	84.5	126.3	90 987	87.5	29 372	32.3
1989	322 340	132.7	251.2	173 997	100.7	127.2	90 121	86.7	31 197	34.6
1990	369 809	114.7	288.2	186 683	107.3	136.5	104 199	100.2	35 947	34.5
1991	405 516	109.7	316.0	187 468	100.4	137.1	108 555	104.4	35 045	32.3
1992	480 478	118.5	374.4	207 326	110.6	151.6	115 260	110.9	38 740	33.7
1993	539 299	112.2	420.2	242 363	116.9	177.2	152 878	147.0	54 019	35.3
1994	571 891	106.0	445.6	269 061	111.0	196.8	174 959	168.3	63 572	36.3
1995	641 860	112.2	500.1	340 421	126.5	248.9	212 915	204.8	74 689	35.1
1996	617 262	96.2	481.0	339 530	99.7	248.3	242 124	232.9	85 824	35.4
1997	589 208	95.5	459.1	337 908	99.5	247.1	234 613	225.7	83 396	35.1
1998	575 982	97.8	448.8	330 067	97.7	241.4	232 598	223.7	86 437	37.2
1999	545 416	94.7	425.0	309 808	93.9	226.5	222 239	213.8	83 339	37.5
2000	553 594	101.5	431.4	309 057	99.8	226.0	230 903	222.1	82 869	35.9
Total	9 317 993	-	-	6 063 105	-	-	4 247 669	-	-	-

From the Table it is evident that the years when Ukrainian independence was built were marked by the highest level of crime.

From 1986 (the beginning of democratic reforms in the USSR) to 1997 (the following year was the starting point for the slump in crime rates) the number of crimes per 100,000 population were the following: 488 crimes in 1986; 484 in 1987; 473 in 1988; 623 in 1989; 718 in 1990; 921 in 1992; 1,033 in 1993; 1,096 in 1994; 1,241 in 1995; 1,202 in 1996; 1,159 in 1997.

For the purpose of criminological analysis we subdivide the outlined period into three phases, distinguished by the economic and political situation, peculiarities of legal regulation and dynamics of crime rate.

The first period (1973–1981), known as the stagnation period or Brezhnev's epoch, was marked by the authoritarian system of government. The second period (1982–1990) is known as *perestroyka*, used in different languages without translation. This period began under Yu. Andropov and continued under the government of M. Gorbachev. The third period (1991–2000) was marked by the collapse of the Soviet Union and the emergence of new independent states. Each period is characterised by specific peculiarities reflected, among other things, in the crime statistics.

In 1973–1981, the total number of registered crimes was 1,447,045; in 1982–1990 2,350,442 crimes; and in 1991–2000 their number was 5,520,506. Compared to 1973, the growth in the crime rate was 184% in 1983; 500% in 1995, and 431% in the year 2000.

The rate of crime detection corresponds to the above figures. Statistics for the detected offenders are the following:

Year	1973	1983	1995	2000
Detected offenders	196 551	209 083	340 421	309 057
Growth rate compared to 1973	-	153 %	249 %	226 %

When the high level of latency is taken into account, we can assume that in reality the crime rate is perhaps four or five times higher than the official statistics.

Judicial practice within the same period reveals a different tendency. In 1973, the number of convicted offenders was 103,969; in 1983 and 1995 it was 167,901 and 212,915 respectively (162% and 205% compared to 1973). When compared to 1973, the number of registered crimes and people charged with offence increased in 1995 500% and 249% respectively. However, the number of offenders convicted by the Court increased only by 205%. Naturally, one needs to bear in mind repeated crime, which affects the figure of convicted offenders.

However, it is quite evident that the dynamic growth in registered crime does not correspond to the dynamic growth in convictions. Some years are characterised by the growth in crime and dramatic fall in convictions (the most vivid examples being 1987–1989). These data should be analysed separately. The analysed period is generally marked by the large growth of crime.

The social status of the offenders does not reflect the social stratification of the population in general. For example, in 1996 the social status of convicted offenders was the following:

- industrial workers: 22%
- agricultural workers approx. 7%

- employees approx. 7%
- students approx. 5%
- other categories (pensioners, disabled people, housewives) 10,8%
- unemployed approx. 42% (57% in 1997)

About half of all offenders were unemployed when they committed the offence. These facts prove the direct link between economic crisis and the rate of crime.

The classification of crimes reflects the whole spectre of motivation for offensive behaviour. The public is most concerned about the steady growth in serious violent crimes, such as intentional murder and serious bodily harm. In 1993–1997, the share of intentional murders increased from 16 to 21%, and serious bodily harm from 27 to 37%. The following table illustrates the dynamics of intentional murder within this period.

Year	1993	1994	1995	1996	1997
Number of crimes	4 008	4 571	4 783	4 896	4 529

In 1993, juvenile offenders committed 159 intentional murders, in 1997 this figure increased to 232 intentional murders.

Both intentional murder and serious bodily harm are often committed under such circumstances where many people are exposed to danger, and where explosions, arson, and firearms are involved. The criminals try to intimidate the public by using terrorist methods. In 1991, 70 crimes were committed using terrorist methods, while in 1995 such methods were applied in more than 180 cases. A similar situation applies to mercenary killings: 1993 – 87 registered crimes; 1994 – 198; 1995 – 210; 1996 – 157 *[2]*.

During 9 months of 2002, the gangs and criminal organisations throughout Ukraine committed 5,298 crimes, of which 4,340 belonged to the category of common criminal offences.

The Table below lists the main types of offences committed by these criminal groups, and their share in the total amount of common criminal offences *[3]*.

Type of offence	Detected offences	Share of all offences
Common criminal offence	4 340	100 %
Theft	1 707	39 %
Major theft	500	0.01% (29% of total theft)
Brigandage	588	14 %
Illegal dealing in drugs, psychotropic substances and precursors	450	10 %
Illegal dealing in weapons	215	5 %
Robbery	187	4 %
Extortion	108	2.50 %
Intentional murder (including attempts)	80	2 %
Gangsterism	66	2 %
Human trafficking	26	0.60 %
Taking of hostages	2	0.05 %

The figures prove that common criminal offences like thefts, robberies and illegal drug dealing constitute the biggest share of all offences (63%).

The Ministry of the Interior reports that 1987–1997 were marked by an intensive growth in armed robberies: in ten years their number multiplied by a factor of nine.

In spite of the undeniable growth in violent crimes, there is evidence that the most pressing problem in Ukraine is the growth in economic crime. Between 1987 and 1997 their number doubled to 62,400 crimes, although this type of crime as well as tax evasion, corruption, financial fraud, etc is marked by a high level of latency.

The above-mentioned types of offence are mostly committed in connection with banking and crediting, foreign economic activity, privatisation and energy supply. According to the official statistics of the Ministry of Internal Affairs, in 1997, 3,600 offences were detected in the sphere of energy supply. They involved 1,855 offences in oil industry, 278 offences dealing with natural gas, and 805 offences related to electricity supply. In addition, the law enforcement bodies detected 1,102 crimes in enterprises manufacturing and selling alcoholic beverages *[4]*. Offences in this sphere have acquired the form of organised crime. In 1997, the Fraud department detected 1,079 criminal gangs with a total of 4,393 members. They committed 7,434 crimes, including 361 violations in banking and crediting, and 184 violations in the sphere of foreign economic activity. There is evidence that the members of these gangs were involved in 112 murders and 530 armed robberies. According to V. Skribets, organised crime is becoming more influential due to the accumulated financial resources and connections in the government bodies. Organised criminal groups try to establish control over commercial banks, foreign economic activity, exportation of goods and raw materials, and privatisation of state property *[5]*.

The transition period with its economic reforms brought about new types of economic crimes and mechanisms, new methods of planning illegal transactions and taking advantage of corruption. Criminal conduct is particularly common in the sphere of finance because it is very difficult to exercise legal control over financial transactions.

This is demonstrated by the dynamic growth in financial crimes. Over the last years, their number has tripled to 9,000 crimes of which 4,100 occur in the sphere of banking. For comparison, corresponding figures from preceding years:

Year	1995	1996	1997	1998	1999
Number of financial crimes	362	533	5 400	7 800	8 200

In 2000, 6,200 banking violations were investigated and charges were brought against 1,500 persons. The growing number of offences in this sphere results in bigger damages to the country's economy amounting to 75% of losses in the sphere of finance.

There is no doubt that shadow economy is a crucial factor contributing to the growth of organised crime. According to the Ukrainian Ministry of Statistics and

some expert assessments, shadow economy amounts to 40 percent of the gross domestic product. In one way or another, the entire population of Ukraine is involved in the shadow economy. The forms of this involvement vary from getting payment in cash in so-called "envelopes" to tax evasion, corruption, etc. According to some estimates, capital kept abroad amounts to $15–20 billion *[6]*. Thus, organised crime is closely related to the shadow economy, which emerges and flourishes due to the loopholes in legislation, and to the merger of criminal world and different branches of government with the purpose of gaining power and profit *[7]*.

The shadow economy in modern Ukraine has been shaped over the past two decades on the basis of two main components: corrupt representatives of state power and matured criminal "businessmen". The share of criminalised business clans is constantly increasing *[8]*.

Corruption plays a very special role in the reproduction of crime. In Ukraine, the level of corruption is so high that foreign experts place it among the most corrupt states in the world. Corruption of the law enforcement bodies and of the judiciary system presents the biggest threat to society. In 1997, the Institute of Economic Development at the World Bank investigated corruption among Ukrainian judges. According to this research, more than 20 percent of the citizens whose cases had been tried in the Courts of first instance (District Courts) had bribed judges either by cash or commodities. More than 30 percent of the respondents complained about unjustified delays and 15 percent about inappropriate behaviour of the judges *[9]*.

According to a research conducted in Odessa in 2003, 80% of the 400 respondents believed that corruption flourishes among the judges and the staff of the law enforcement bodies, such as militia, the prosecutor's office, taxation agency and the National Security service. 68% knew cases of corruption in the local courts, 63% in administrative courts, and 56% in the Court of Appeal. 47% of the respondents were certain that the judges of the Supreme Court are also corrupt.

The interrelationship between organised crime and corruption has become a cliché. Corruption of the law enforcement officers is one of the means with which they are forced to co-operate with the criminal world. To a great extent, corruption is caused by low salaries, which do not ensure a decent lifestyle for the law enforcers.

Assessment of the current situation of corruption leads to the conclusion that corruption is an integral part of Ukrainian society and an independent system of social relations. At the same time it is closely linked with other spheres of social relations. There is an intricate system of corrupt relationships on different levels of government and law enforcement, making corruption a constituent element of the whole system.

Due to huge investments of funds, corruption is capable of reproduction. People view corruption as an independent source of income that is much higher than the official salary. Corruption has become one of the strongest elements of the shadow economy, inseparable from legitimate economy. There are justified opinions that at the moment, the state is not interested in eliminating corruption because it could lead to social, economic and political crisis.

One of the crucial issues is to identify the causes of such rapid growth of organised crime and corruption in Ukraine. In the author's opinion it is the result of several factors.

The rapid growth of organised crime in Ukraine was largely affected by the destabilisation of state power as a result of the collapse of the USSR. Political, economic and legal reforms led to social instability, and the criminally-minded part of the population took advantage of this situation. The unjustified redistribution of national income, abusive privatisation, deceit of the population due to financial fraud and other similar activities led to the unprecedented growth in the criminal potential used for the expansion of criminal activity and its influence in society.

The participants of the Round table, dedicated to the prevention of economic crime, came to the conclusion that the causes of economic crime and its growth include ineffective management, shortcomings in the new laws and narrowing of governmental control over economic activities *[10].*

It is widely known that the USSR was an authoritarian state based on Communist ideology. From the official standpoint, there was no criminality in the Soviet state. In order to conceal the actual situation, the communist party did not publish official crime statistics. Yet during the years of Soviet power at least 80–90 million people served sentences in prison or exile. They acquired certain criminal experience, which they passed on to the next generation. In the Soviet Union, there were basically two categories of crime: common criminal offences, such as murder, theft, armed robbery, etc) and political crimes, such espionage, treason, etc. Naturally the first category was the prevailing one. Low living standards led to the emergence of specific criminal groups with their own jargon and criminal traditions. After the collapse of the Soviet Union, Ukrainian *nouveau riches* privatised properties and accumulated huge fortunes with fraudulent transactions on the security market. Very soon the public discovered that the capital and properties had been captured by the former communist party and Comsomol bosses who had been in power when the Soviet Union collapsed. They had held auctions and carried out the privatisation according to an old familiar custom: power outweighs the law.

Organised crime emerged in Ukraine and in other post-Soviet states due to the merger of political and economic opportunities of the former party and Comsomol *apparatchiks* with recidivist criminals, known today as the Godfathers. This relationship which might at first seem strange, is actually quite natural and logical, and based on a common style of management where violence, suppression, deceit and fear are the key factors.

As their fortunes accumulated, the new capitalists realised the need to protect and increase their property acquired through crime. They tried to penetrate into the private sector and government in order to acquire political influence and affect decision-making on the highest level. At the same time they were keen on expanding illegal business that would enable them to gain maximum profit in minimum time. As it was a dangerous occupation, they had to think about their personal security. To meet these objectives they started forming criminal organi-

sations, similar to the gangs of some Western countries. Thus, as strange as it might seem, the communist ideology was easily replaced by a criminal one, and the former party leaders eagerly entered into co-operation with the criminal world.

Presently large criminal organisations and small gangs possess whole arsenals of firearms and explosive substances. With weapons the criminals are able to demonstrate to the public their real strength and power *[11]*. In 1997, the law enforcement bodies confiscated 892 pistols, 205 automatic guns, 1,090 units of custom-made pistols, 613 carabines, 960 sports guns, 430.3 kg of explosive substances, 835 grenades, and 298.5 thousand cartridges. Statistics on intentional murder with the use of firearms demonstrate the following dynamics:

Year	1993	1994	1995	1996	1997
Number of intentional murders with the use of firearms	194	296	254	300	300

Analysts of the Ministry of the Interior have noted that modern criminal organisations utilise a mixed type of economic and violent crime, combining methods of criminal business with violent methods of terror against business rivals, legitimate businessmen and officials *[12]*.

Criminal terror as a feature of organised crime is essential for the reproduction and self-determination of crime.

Criminal leaders often act as arbitrators who solve both disputes of the criminal world and ordinary business disputes. Thus they have become an important part of economic and political life, and decision-making instruments on the level of national and local governments. By using terrorist methods the criminals force government officials and businessmen to undertake actions for their benefit. The impunity of criminal leaders and gang members creates an impression of the unlimited power of the Mafia. It inspires respect among some parts of the population, particularly the young, and under certain circumstances they may be willing to join up.

We believe that the path the organised crime in Ukraine has chosen is particularly dangerous for society. The merger of the former communist party *apparatchiks* and the new criminal leaders makes it easier for organised crime to penetrate into all spheres of public life. The interrelation of legal and criminal business creates a basis and source of reproduction for organised crime. Criminal traditions and sub-culture have a strong influence also on the cultural sphere.

The mass media and modern show business facilitate the matter by propagating violence, terror and force. All these factors change the traditional moral values and attitudes.

Hundreds of domestic and imported movies show that violence is the main tool for managing peoples' behaviour. Films portray criminal leaders and ordinary gangsters as attractive characters worthy of the spectator's sympathy (a vivid example being the "Brigade" TV serial). The Internet and numerous violent computer games make matters worse. Young people get used to violence and start to believe that it is an acceptable method to solve problems.

The mass media lavishes the public with information about terrorist acts, "resonance" crimes, murders, mercenary killings, robberies, etc. Attitude studies show that criminal news are among the most popular topics in newspapers and on TV.

Using the method of content analysis the author of the present paper studied about 500 publications on legal topics in several central and local newspapers. The author discovered that about 80 percent of these publications deal with crime. A vast majority of articles (58 percent) describe in detail serious violent crimes, such as terrorist acts, gangster attacks, extremely violent murders, rapes, torture, racket, etc. The press and TV indulge in the description of crime and the victims' sufferings. Numerous publications about serial killers are often based on interviews with the criminals, their friends and relatives. Each resonant crime is reproduced in numerous editions and cycles of TV programmes, etc. The public gets an impression that such crimes are very common and widespread. The image of criminals, created by the media, is often far from reality. Some criminals are misjudged by the audience due to the "nimbus effect". The people attribute qualities to criminals which they do not possess in real life.

Hence we are actually dealing with two types of crime: the actual crime existing in reality, and the informational crime reproduced by the mass media ("infocrime"). Our perceptions and ideas about crime are shaped by both reality and media depiction. It is evident that these two phenomena are not identical in form or content: in real life profitable non-violent crimes and fraud predominate (more than 60 percent), but in infocrime, the share of serious violent crimes is approximately 70 percent.

Both the reality and the mass media have added to a specific social and psychological atmosphere in society, characterised by such attitudes and ideas that contribute to the neutralisation and justification of criminal behaviour.

The comprehensive approach to crime as a type of social practice will shift the focus from "combating" crime to bringing positive changes to this behaviour. It is hardly possible to "combat" the entire population. Moreover, the enemies in this fight have similar moral values and psychology, and often change place with each other. However, the notion of social and anti-social behaviour gives us hope that the level of crime and the number of people involved in criminal activity can be reduced. In this respect the only alternative is to increase financial motivation. It is vitally important to create conditions under which criminal activity will not be profitable. This can be achieved by introducing corporate criminal liability and other measures.

Presently, Ukraine does not have a comprehensive public policy for combating organised crime on different levels. To elaborate such a policy it would be necessary to work out a state policy concept against crime in general, and measures against organised crime should be an integral part of such comprehensive strategies. The policy should be based on the realisation that organised crime is a complex social phenomenon, capable of self-determination and reproduction. The primary goal of such a policy should be public security as an essential element of national security. However, it is quite obvious that such objectives are

not achievable without political will to reform the judicial system, the law-enforcement bodies and the system of government.

On the other hand, the government should undertake the responsibility to provide employment for those who change their anti-social attitudes and stop offending. In this respect the past experience of the Soviet Union and international practices can be useful. It involves governmental funding for new enterprises and new jobs (Japan, Sweden, etc.). The growth in crime during the transition period in Ukraine shows that the state should maintain some control over national economy. There is no doubt that eventually Ukraine, a new independent state will become stronger. To resist crime, the government will elaborate and implement sound state policy, based on moral values and ideology and adequate financial support.

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Contemporary Russian Corruption

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All social reality is precarious.
All societies are constructions
in the face of chaos.

P. Berger, T. Luckmann

Do ut facias[1].

What is corruption?

There are too many *definitions* of corruption (Friedrich, 1972; Heidenheimer, Johnston, Le Vine, 1989; Meny, 1996; Nye, 1967; Palmier, 1985; Rose-Ackerman, 1978; Wewer, 1994; and others). Perhaps the shortest (and the most precise) of them is: "*the abuse of public power for private profit*" (/Joseph Senturia/ see: Wewer, 1994: 481). The UN offers an analogous definition (Resolution 34/169 of the UN General Assembly, 12.17.1979).

There are too many *forms* (manifestations) of corruption: bribery, favouritism, nepotism, protectionism, lobbying, illegal distribution and redistribution of public resources and funds, theft of treasury, illegal privatisation, illegal financing of political structures, extortion, allowance of favourable credit (contracts), buying votes, the famous Russian "*blat*" (different services for relatives, friends, acquaintances /Ledeneva, 1998/), etc.

There are three main *sociological models* of corruption: "nomenclative" (infringement of official norms for the sake of private relations), "market" (business activities for maximisation of income) and "public interest" (corrupt practices as threat to public interest).

Heidenheimer distinguishes "routine" (presents, bribery) and "aggravating" corruption (extortion and organised crime relations); and "white" (when public opinion does not regard corrupt action as reprehensible), "grey" (when there is no public consensus) and "black" (general disapproval of corrupt action) corruption (Heidenheimer, Johnston, Le Vine, 1989).

Corruption is a complicated *social phenomenon*. It is intertwined with the relations of economic exchange (brokers). It is a type (manifestation) of venality just as marriage swindling or prostitution (the venality of spirit or body…), and it exists in societies of commodity and pecuniary circulation.

1 I give that you make (Latin)

Corruption is a *social construction* (Berger, Luckmann, 1967). Society determines ("constructs") what, where, when, and under which conditions is considered as "corruption", "crime", "prostitution" and so forth. How is corruption constructed? This process includes numerous bribes of different State employees; the consciousness of these facts as social phenomenon, as corruption, as social problem; the criminalisation of some forms of corruption (for example, bribery, extortion, theft of treasury, etc.), and so on.

Corruption is a *social institution* (Kuznetchov, 2000; Timofeev, 2000). *It is a part, an element of the system of management and government;* it consists of some elements, ways, methods, means of the process of managing and governing. It is a pity, but it is a fact. Corruption is a social institution because:

- Corruption carries out certain social *functions*: simplifying administrative relations; accelerating administrative decisions; consolidating and restructuring relations between social classes, strata; adding to economic development by decreasing government regulation; optimising economy when there is a deficit of resources; etc. (Leff, 1964; Scott, 1972; and others).
- The process of corruption involves actions of *certain persons*: bribe-takers, bribers, mediators. They are in "patron–client" relationship with each other. They play certain *social roles.*
- There are certain *rules (norms)*, and participants know them.
- Certain *slang* and *symbols* exist.
- There are certain *fixed prices* ("tariffs"). In Russia, some of these prices have been made public by the press. The newspaper "Signal" (1996, N1) published tariffs for the illegal services of GAI—State Transport Inspection; the newspaper "Vash Tain'y Sovetnik" ("Your Secret Counselor") tariffs for "free" education in different universities of St. Petersburg (including faculties of law and Police Academy…). Perhaps the most interesting data were published in the book "*Corruption and Combat Corruption"* (2000: 62-63): there are fixed prices for bribery when obstructing an investigation (bringing an action) in criminal cases - $1,000-10,000; for substitution of arrest for obligation to give a written statement agreeing not to leave a place—$20,000–25,000; for reducing punishment—$5,000–15,000; for "ignorance" in customs infringement—$10,000–20,000 or 20–25% of customs duty. Moreover there are data on tariffs for bribing high State officials: the head of Duma's (Russian parliament) committee—$30,000, assistant of the deputy—$4,000–5,000, a presentation of law project—$250,000 (Sungurov, 2000: 41). These prices are undoubtedly subject to inflation adjustment, and will, therefore, rise.

Brief summary of Russian corruption

It is a pity, but corruption is a Russian tradition (see: Kabanov, 1995; Kirpitchnikov, 1997). "Legal" corruption began already in the IX–X centuries, when an institute called "*kormlenie*" ("nourishment", "feeding") was formed. The Russian head of State (prince, tsar) sent his representative to a province without salary, but for "kormlenie": the people of the province were to provide for the representative, who had a lot of power. Local people started to bring

"presents" for favourable decisions. The institute was officially abolished in 1556, but the habit of bribing survived (and still does…).

Later "kormlenie" was transformed to "*lichoimstvo"* (bribe with infringement of law) and *"mzdoimstvo"* (bribe without infringement of law), which in turn were (in ca. XV century) replaced by "*vzjatotchnitchestvo"* (taking a bribe, corruption). The first law to stipulate a punishment for judges who took bribes was "Sudebnik" (Law for Court, "sud" = court) of 1497. In the 16th century, *"Vymogatel'stvo"* (extortion) was acknowledged as a form of corruption. Corruption turned into an epidemic in Russia in the XVIII century. The Tsar (emperor) Peter I ("Peter the Great", 1672–1725) was very concerned of mass corruption, and attempted to restrict it even by the death penalty (Edicts 23 August 1713, 24 December 1714, 5 February 1724), but in vain. Even his best friend, Prince Men'shikov, was corrupt! All future legislation (1845, 1866, 1916) included statutes on the different forms of corruption. But "Corruption is immortal!"… Or as P. Berlin wrote about Russia: "Taking bribes is indissolubly interlaced with the whole system and political life" (Berlin, 1910: 48).

The Soviet State fought corruption, too (also by death penalty since 1922), but nothing worked. It is known that corruption existed even during Stalin's totalitarian regime, although in complete secrecy. In the 1960s and 1970s, the leaders of the Communist Party and the Soviet State (the so-called "nomenclature") and Soviet bureaucrats were absolutely corrupt.

How widespread is Russian corruption?

There is corruption in all countries. It is a world-wide problem. But the dimensions of corruption vary. In Russia, corruption is common in all organs of power and establishments. The Corruption Perception Index 2002 (published by Transparency International) for Russia is 2.7; it is on the 74th place among 102 countries (least corruption: Finland, Index—9.7, most corruption: Bangladesh, Index—1.2).

The damage caused by corruption is estimated at $20–25 milliard per year. Every year $15–25 milliard of Russian capital is exported abroad. Between 1988–1999, the corresponding figure was $300–350 milliard in all (Corruption and Combat Corruption: Role of Civil Society, 2000: 18–21; 72–73).

Every day Russian and foreign mass media reveal more facts about Russian corruption and corrupt activities. Every day Russian newspapers and journals publish names of people who have taken bribes, and describe the amounts of money or types of services exchanged, but the authorities do not react. In July 2003 (N49), "*New newspaper*" published the price of education in St. Petersburg's universities: from $2500 to $4000. In December 2002 (N93), it cited a booklet of Duma's deputy Professor G. Kostin, where prices for buying off the highest State officials were stipulated: head of department of the Supreme Court of Justice—$400,000; deputy of head of Moscow's Arbitration Tribunal—$1.3 million; deputy of Ministry of Power Engineering—$10 million. The newspaper hoped to get some reaction from state officials (excuse, refutation, inquiry) but got nothing! Most of the highest officials enjoy inviolability *de jure* (deputies, judges, etc) or *de facto*.

Konstantinov's "Corrupt Petersburg" contains a great number of facts about corruption (Konstantinov, 1997). The USA Congress report "Russia's Road to Corruption" (September, 2000) is interesting, too.

There are extensive *corruption networks* including ministries, police, FSB (former KGB) (Satarov, 2002; Sungurov, 2000: 72–82). *Corruption in contemporary Russia is an element of the political system, a mechanism of the political regime.* There are two levels of corruption: "lower" ("face-to-face") and "higher" (corruption networks). The study of Fond INDEM (head Dr. G. Satarov, former assistant of ex-president Boris Yeltsin) shows that there are extensive corruption networks in the Ministry of Internal Affairs, the Federal Service of Security, and the State Committee of Customs Service. The Military Government is also very corrupt. Each corruption network contains three structures: commercial or financial, state officials and "group of defence"—police, FSB, prosecutors office (Satarov, 2000: 8).

On the "lower" level, an average bribe (for policeman, doctor, teacher and so on) ranges from $20–$120 to $1000–$5000 (Arguments and facts, 2002:4) per occasion. The dimensions of bribes on corruption networks are greater. There is also an other system for calculating the bribe, "*otkat*" ("recoil", "delivery", "return"): the official gets 3–10% (Satarov, 2000: 8) or 40–60% of the sum of an agreement (New Newspaper, 2003: 12).

Corruption paralyses all positive, creative activities. It is virtually impossible to develop production, market economy or social reforms when everything depends on corrupt officials. Corruption of police, the prosecutor's office and judges is particularly dangerous. "Corruption of judges is one of the most powerful corruption markets in Russia… Corruption of judges penetrates the different corruption networks at different levels of power" (Satarov, 2003). Arbitration courts are particularly corrupt.

The Center of Deviantology (Sociology of Deviance and Social Control) of the St. Petersburg Sociological Institute of Russian Academy of Sciences (head Prof. Y. Gilinskiy) studies organised crime and corruption in Russia, especially in St. Petersburg. Our respondents (informants) have commented as follows on the contemporary situation: "The average businessman is extremely involved in crime… One has to bribe for everything… one cannot deal with taxation inspection without a bribe… A bribe is an inevitability in the sphere of business…Tax inspection is highly corrupt". One has to bribe when registering a business, when renting premises from state bodies, when acquiring licenses for their utilisation, when obtaining low-interest bank credits, when reporting to tax inspectors, when completing customs formalities, etc. The "tariff" for fire inspection is higher than for sanitary inspection, but lower than what is paid to the custom house… However, business people are not the only ones who suffer from corruption. *Everybody* must offer bribes, in educational institutions, in medical institutions, in different administrations, in the police, and so on.

There are various forms of taking bribes. One of our respondents (interviewer Dr. Y. Kostjukovsky) mentioned an interesting method: "I can invite somebody to the casino and he will win. He can win as much as I want. This situation is pure and perfect—no bribes, no corruption. The person is lucky, no problems".

Official data on bribes and corruption are presented in Table 1. But corruption, including taking bribes, is a very latent phenomenon. Official, registered data portray the results of police action rather than the reality: Firstly, these figures are only "a drop in the ocean". Secondly, the number of registered crimes (bribes) is two times higher than the number of revealed persons, and the number of revealed persons two times higher than the number of convicted persons (Table 2). Thirdly, these revealed and convicted persons are "small fish", including workers, students, the unemployed (Table 3). Furthermore, the rates of "corrupt crimes" (bribes, embezzlement, appropriation) in 1999 were the following: Moscow 11.8, St. Petersburg 11.2, Komi Republic 78.7, Kurgansky region 75.6, Kostromskaja region 70.9 (Luneev, 2000). This is a sheer impossibility: corruption in Moscow and St. Petersburg is far greater than in other Russian regions.

Corruption is a "normal" way of solving different problems in contemporary Russia. Results from various questionnaire studies provide interesting information. For example, although 56% of our respondents (St. Petersburg, 1993) regarded corruption as a negative phenomenon, 45% of them were ready to take or give bribes (Afanasjev, Gilinskiy, 1995: 94). 37% of respondents (Russian representative interrogation, 1999) had witnessed (participated in) corrupt activities (of business people 65%); 50% had given "presents" to medical institutions (of business people 62%) (Kljamkin, Timofeev, 2000: 11,14). In a survey examining the regional elites of Russia's Northwest, 94.4% of the respondents confirmed that "corruption and taking bribes are widespread in Russia" (Duka, 2001: 162).

It is known that there is "white", "grey" and "black" corruption (Heidenheimer, Johnston, Le Vine, 1989). Russian corruption is becoming more and more "white", because the tolerance of corruption is growing. It is a shame that young Russians have learnt in childhood, at school and university (including the faculty of law) that in Russia, *anything* can be bought and sold.

Old Russian tradition (and *ethics!*) of corruption is reflected in local proverbs and sayings: "Let's put a candle in front of God, let's put a sack (with a present in it—Y.G.) in front of a judge", "Hands exist in order to take", "What you do for me, I do for you", and so on (see: Kuznetchov, 2000: 67). Russian ethics tolerate bribery. It is a custom, habit—a way to "thank" for "a service".

What are the causes of contemporary corruption in Russia? There are countless factors ("causes"), but I believe the following to be the primary ones:

- Old Russian traditions;
- The corrupt "nomenclature" of the former Soviet system has maintained its position and power, and brought its corrupt habits to the "new" system;
- The privatisation by the "nomenclature" created an economic basis for corruption;
- Powerful Russian organised crime uses bribery as its main means of defence;
- Since the highest strata of power are corrupt, it is clear that lower and ordinary officials will take bribes, too (or as a Russian proverb puts it: "a fish starts to rot from its head").

I think corruption is the most serious problem in Russia, because all other problems remain unsolved when anything can be bought and sold.

Is it possible to fight corruption in Russia?

I think it is impossible (as it is impossible in any country). Corruption is an eternal social problem. It is impossible "to gain victory over corruption" in Russia, or the world.

In today's Russia, *legal* reaction to corruption poses a very complicated problem. On one hand, the Criminal Code of the Russian Federation (CC RF) stipulates stern punishments: for taking a bribe a maximum of 12 years of imprisonment (Art. 290, CC RF), for giving or offering a bribe up to 8 years of imprisonment (Art. 291, CC RF), for abuse of power up to 8 years of imprisonment (Art. 285 CC RF) and so forth. On the other hand, a "Law of Corruption" has not yet been passed (although it has been prepared for a number of years), and in practice, convictions of high officials are rare.

There are no *real organisational mechanisms* for counteracting corruption, but too many institutions which "combat corruption": the prosecutor's office, FSB (former KGB), the Ministry of Internal Affairs (MVD), different commissions and committees.

In reality, any attempts to reduce the scale of corruption must be made step by step. It is a long and hard process involving social, political, economic and juridical means (not only juridical!). I believe that the primary means are:

- A drastic reduction of the plenary powers of bureaucrats.
- A drastic reduction of the right of bureaucrats to "regulate" economics, education, science, medicine and so on.
- Decreasing the number of bureaucrats (in 1990s, there were 15 million bureaucrats in Russia; in 1991, the "State machinery" employed 715,900 officials and in 1993, already 926,600; in 1996, the personnel of the Ministry of Internal Affairs—MVD—comprised 1.5 million people, or 1,200 per 100,000 population, which is more than in any other country /Corruption and Combat Corruption, 2000: 29; Newman, 1999: 124/).
- Increasing the independence of businesses and citizens.
- Increasing the independence and prestige of courts (judges).
- Developing civil society.
- Increasing the salary of officials.
- Forming corresponding social consciousness (by Mass Media, by actual attempts to fight corruption, etc).
- Forming political will to decrease corruption; etc.

Unfortunately, I think this is impossible in contemporary Russia. Police and prosecutor's office are very corrupt (Corruption and combat corruption, 2000: 86–112), as are all strata of power. "We can talk about a new model of government, where the corruption of the government staff is a way of maintaining power. Corruption… is a part of commanding policy" (Brovkin, 2000: 70). Who will fight corruption? That is the question!

Table 1. Bribery in Russia (1986–2002)

Year	Registered cases	Rate (per 100,000 population of 16-year-olds or older)
1986	6 562	5.9
1987	4 155	3.8
1988	2 462	2.2
1989	2 195	2.0
1990	2 691	2.4
1991	2 534	2.3
1992	3 331	2.9
1993	4 497	3.9
1994	4 921	4.3
1995	4 889	4.3
1996	5 453	4.8
1997	5 608	4.9
1998	5 804	5.0
1999	6 871	5.9
2000	7 047	6.0
2001	7 909	6.8
2002	7 311	5.1

Source: Crime and Delinquency in the USSR (1991: 83,84); Crime and Delinquency (1995: 116, 121); Crime and Delinquency (2002: 117, 122);

Table 2. Some data on bribery in Russia (1987–2001)

Year	Registered cases	Revealed persons	Convictions
1987	4 155	2 836	2 008
1988	2 462	1 994	812
1989	2 195	1 306	451
1990	2 691	1 510	649
1991	2 534	1 266	612
1992	3 331	1 537	686
1993	4 497	2 279	843
1994	4 921	2 727	1 114
1995	4 889	2 342	1 071
1996	5 453	2 692	1 243
1997	5 608	2 320	1 381
1998	5 804	2 803	1 314
1999	6 823	2 921	1 515
2000	7 047	3 481	1 529
2001	7 909	3 696	2 084

Source: Crime and Delinquency (1992: 97, 146); Crime and Delinquency (1995: 117, 154); Crime and Delinquency (2002: 118, 171)

Table 3. Bribery: Data on revealed persons in Russia, % (1987–2001)

	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Total	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Gender:															
– male	58.7	48.7	59.7	69.0	66.3	70.1	75.2	77.3	77.5	77.4	73.7	75.4	70.1	74.2	73.4
– female	41.3	51.3	40.3	31.0	33.7	29.9	24.8	22.7	22.5	22.6	26.3	24.6	29.9	25.8	26.6
Age:															
– 16–17	0.3	0.4	0.1	0.0	0.2	0.2	0.3	0.1	*	*	*	*	*	*	*
– 18–29	17.8	19.3	20.5	25.4	19.6	28.6	27.2	30.7	29.8	28.8	27.1	26.4	8.9	26.9	26.2
– 30 or older	81.9	80.3	79.4	74.6	80.2	71.2	72.2	69.2	70.2	71.2	72.9	73.4	91.0	73.1	72.9
Social status:	33.2	38.4	37.7	37.9	34.0	33.8	16.4	18.5	19.3	21.3	13.7	15.0	13.2	14.1	16.8
– workers															
– employees	58.3	50.8	51.2	50.0	53.9	51.3	43.9	46.4	50.9	48.8	46.3	48.6	50.7	46.8	43.2
– farmers	1.7	1.8	1.8	1.2	0.6	1.1	1.5	1.4	0.2	0.3	0.6	0.5	0.5	0.4	0.6
– students	0.7	1.4	0.6	2.9	0.7	0.2	2.2	0.3	0.5	0.6	1.7	0.8	1.3	2.7	4.0
– without work or study place (unemployed)	1.7	2.0	3.1	3.0	3.9	6.5	6.8	3.6	12.6	13.1	14.2	12.9	9.8	13.9	15.1

* No data

Source: Crime and Delinquency (1992: 97); Crime and Delinquency (1995: 117); Crime and Delinquency (2002: 118).

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Human Trafficking: Concept, Classification, and Questions of Legislative Regulation

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Human Trafficking has become a global business bringing huge profits to organised criminal syndicates. Studies show that the overall annual profit in this sector is 5–7 billion dollars, in some years 9.5 billion dollars. An increasing number of criminal communities are moving from drug trafficking to human trafficking and trade, which is characterised by high profits, small expenditures and minimal risk of punishment. It is also worth noting that the exploitation of people is often long-term, and unlike drug trafficking, it does not require preparation, processing and realisation of the initial goods.

The reasons for the growth of trafficking are the following:

- On one hand, the liberal legislation of many advanced countries does not enforce a strict policy against slave labour, especially in sex and porno businesses. They fear that stricter policies would harm the economy and the growth of tourism, and hence decrease tax revenues.
- On the other hand, economic reasons and poor living conditions result in mass emigration. Some countries cannot ensure appropriate conditions for their citizens or control demographic processes.

The said circumstances guarantee the satisfaction of the modern slave market, reflected in a balance of demand and supply of illegal human resources.

The situation in Georgia

After the breakdown of the USSR, negative political, economic and demographic processes have led to a complete social disorganisation, economic collapse, ethnic conflicts and civil wars, and have radically changed the public life in the Republic.

Numerous researches have shown that the annual "Human Trafficking" cases for sexual exploitation in the countries of the Central Caucasus involve more than 10,000–15,000 people. As for the quantity of cases concerning other forms of exploitation of human beings (trafficking in migrants for sweatshops, domestic or agricultural labour, and other forms of involuntary servitude), there are no accurate statistical data available.[1]

1 G. Glonti – Trafficking in Human Beings in Georgia and the CIS

The fall of the "iron curtain" and removal of barriers between the East and the West freed the people of the USSR from totalitarianism, but the social changes occurring in the countries of the former Soviet Union gave rise to a whole new set of difficulties: interethnic conflicts, unemployment and other economic problems, increased illegal migration, terrorism, organised crime and corruption. Criminal groups took advantage of the situation and became more involved in drug dealing and prostitution. Human trafficking, a new crime in the former Soviet Union, also grew into a highly attractive and lucrative business. In the Soviet era, borders were tightly controlled and movement limited. Therefore, human trafficking, or transporting people across borders for financial gain, did not occur before 1991. When the Soviet Union collapsed, law enforcement agencies and border control troops were unprepared for the massive migration flows and the rise in criminality that quickly took root. New criminal structures created expanding transnational networks for prostitution and exporting young people abroad for various forms of labour exploitation.

The author's research has shown that in Georgia, negative tendencies in the migratory processes emerged at the beginning of the 1990s. This marked the beginning of organised commercial export of people with the purpose of exploitation, i.e. so-called "human trafficking" or "white slavery". Trafficking has become a very lucrative business in Georgia, involving both professional criminals and high-level state officials.

As the analysis of the data from the Ministry of Internal Affairs has shown, Georgian criminal clans, headed by the so-called "Thieves-in-Law"[2], are actively expanding their transnational connections, participating in the organisation of the trafficking throughout the former Soviet Union, especially in Russia and Ukraine.[3] They are striving for gaining more influence in other countries as well, the richest western states in particular. Recently, a whole network of criminal organisations has established a foothold in USA and some other countries. The said organisation is involved in trafficking from Georgia, and consists of some recent Georgian immigrants as well as professional criminals. Organisations interact with criminal groups of the former USSR, creating a so-called transnational network of trafficking that recruits, transports and exploits people for the purpose of obtaining material profit. According to a non-governmental agency, in recent years, more than 160 cases of sexual exploitation of Georgian women have been reported in Western Europe, Israel and USA.[4] According to expert data, more than 5,000 Georgian women have been forced into prostitution through the trafficking network, and even more people have been subjected to exploitation as cheap manpower or victims of deception.[5]

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2 More information – J. Finckenauer, E. Waring - Russian Mafia in America. Immigration, Culture and Crime Boston 1998, pp 107–110; J. Serio and V. Radzinkin "Thieves Professing the Code: The Traditional Role of Vory v Zakone in Russia's Criminal World and Adaptations in New Social Reality," CJ Europe Online. Web.doc www.acsp.uic.edu

3 G. Glonti – Problems Associated with Organised Crime in Georgia, Researches project. Tbilisi, 2000

4 V. Sulashvili – Materials of International Conference April 2001

5 I. Tchovrebashbili – Researches Proposal 2000, The Institute of legal reform of Georgia

We can name the main reasons for trafficking in Georgia:

Political destabilisation and massive migration of population from Georgia

Migration processes have occurred in waves in several stages:

1. In the beginning of the 1990s, emigration of the Russian population began. Since then more than 200,000 citizens have left for permanent residence in Russia. Within a few years, Georgia lost a significant part of its technical and qualified labour force traditionally belonging to the Russian Diaspora.
2. In 1992–1993, ethnic conflicts in South Ossetia and Abkhazia led to internal migratory processes. As a result, more than 300,000 people were forced to leave their homes and become refugees in various regions of Georgia.
3. From 1995 to the present, economic crisis, unemployment, and the resulting migration have affected not only national minorities, but also ethnic Georgians.

According to the census data from 1987 to 2003, the population of Georgia has reduced from 5.6 million to 4.3 million.[6] The number of inhabitants has thus decreased by 1.3 million or nearly 25%, but if parameters of natural population growth are taken into account, the reduction is close to 30%. Researchers unequivocally regard this as a demographic disaster. It is worth noting that demographic losses have to a great extent concerned the young, able-bodied population which can emigrate and adjust to other countries.

Poverty

UN data on Georgia shows that between 1990 and 1995, the standard of living decreased to almost one-seventh: from 2,250 dollars per capita per year to 370 dollars.[7] As a result, in 2002, about 80% of the population lived below the poverty line, making less than the living wage of approximately 50 dollars a month.

Prostitution

In Georgia, especially in Tbilisi and the cities near the Turkish border, prostitution has quickly developed into a form of organised criminal business. The number of brothels has increased, and there is also a significant number of street prostitutes. These facts are indirectly confirmed by data on the growth of venereal diseases: from 1990 to 1997, the number of venereal diseases nearly quintupled.

According to Interpol data, in 1997, 98 Georgian citizens were detained for prostitution by the Turkish police, and 4 by the Greek police. According to the Institute of legal reforms, up to 5,000 Georgians are engaged in this activity in the specified countries.

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6 Materials of State Statistical Department, Tbilisi, Georgia 2003
7 UN Report Committee of the elimination of discrimination against women, Georgia, 55. 10/030/1998.

Children's homelessness

Neglected and homeless children have turned out to be the primary victims of the situation. Many have become street children, spending most of their time on the streets and earning money by begging and stealing. A private voluntary organisation, Child and Environment, noted a dramatic rise in homeless children following the collapse of the Soviet Union. It estimates that there are now more than 2,500 street children in Tbilisi due to the inability of orphanages and other social service institutions to provide with adequate care. Many homeless children survive by turning to criminal activity, narcotics, and prostitution.[8] In 1997, internal affairs agencies registered 50 underage girls found guilty of prostitution.[9]

Imperfection of legal mechanisms in protecting victims of trafficking.

Georgian legislation needs complex anti-trafficking laws which should include:

1. The organisational basis for fighting trafficking (list of organisations responsible for combating trafficking; rights and responsibilities)
2. The legal basis
   - amendments and changes to Criminal, criminal-procedural, civil and administrative Codes and the legislation on the control of immigration, necessary for preventing and fighting human trafficking.
   - Special instructions for Georgian Consular services abroad on rendering assistance to the victims of "human trafficking"
   - harmonisation of Georgian legislation with international standards
3. Measures of rehabilitation. The organisation of special centres providing assistance to victims
4. Preventive measures: plans how to work with the potential victims of human trafficking, how to decrease professional prostitution, vagrancy and drug addiction in the country
5. Measures for international co-operation with receiving (recipient) countries
6. Sources of financing anti-trafficking law and prevention programmes

The high level of illegal migration and trafficking has drawn sharp criticism against Georgian government from many international organisations and local NGOs. However, up to the middle of 2003, authorities did not pay due attention to these phenomena and failed to carry out the necessary legal reforms.

It is particularly regrettable that the Parliament of Georgia has not yet ratified the United Nations Convention against transnational organised crime, signed by the Minister of Justice of Georgia in Palermo, Italy, on 15 December 2000.

The situation has triggered negative consequences: In the report on human trafficking prepared for the U.S. Congress in June 2003, Georgia was categorised as a "Tier 3" country under the provisions of the U.S. government's Trafficking Victims Protection Act of 2000", i.e. as a country that fails to meet the

8 US Dept of State, Country Reports on Human Rights Practices – 2000, February 2001, citing Child and Environment report

9 UN CEDAW/C/GEO/1 March 1998 http://www.un.org/womenwatch/daw/cedaw/cedaw21/georgia.htm

minimum standards of combating human trafficking.[10] In the previous report of 2002, Georgia was among "Tier 2" countries. The bases for categorising are not very clear, because in many countries, especially those of the former Soviet Union, the conditions of trafficking are the same or even worse.

The U.S. Congress has threatened to take severe measures against the countries that do not fight trafficking, and to deny governmental credits and grants. This would cause serious problems for Georgia, because about 1/4 of its budget comes from the U.S. (over the past 10 years, US financial support has amounted to more than 1 billion). US sanctions would undoubtedly result in a collapse of Georgian economy and in political destabilisation. The threat has, however, provided an effective stimulus for Georgian authorities to improve the situation with trafficking. It forced the Parliament of Georgia to show activity and hastily ratify several anti-trafficking laws, including additions and amendments to criminal and criminal-procedural codes.

After the said changes, the U.S. Congress decided to reverse its decision, and on 11 June 2003, Georgia was returned to "Tier 2".[11]

Unfortunately, it seems that changes to anti-trafficking laws that are made under the pressure of the international community are not enough to promote fundamental improvements in the situation.

Criminal Characteristics of Trafficking in Georgia

Research has shown that it is possible to name three basic stages *of trafficking from Georgia:*

1. Recruitment of the victim;
2. Transit of the victim (crossing international borders);
3. Exploitation (illegal use of the physical abilities of a person with the purpose of gaining profit).

The first two stages of trafficking are carried out in Georgian territory, while exploitation usually occurs in some third country, beyond the jurisdiction of Georgia.

1. Recruitment

It is a fact that a majority of Georgians aspire to go abroad. They do so on their own initiative and voluntarily, driven by the difficult economic situation in the country. However, the realisation of the plan is often difficult, because western consulates impose restrictive visa policies to reduce the number of illegal labour migrants. People then turn to agents, middlemen or agencies who are specialised in getting visas, and who promise to solve the problem. Such individuals and

10 Trafficking in Persons Report, June 2003 US - www.state.gov/g/tip/rls/tiprpt/2003/

11 United States Recognizes Georgia's Progress against Human Trafficking Public Affair Section / Embassy of US in Georgia http://georgia.usembassy.gov/releases/Sept11_03.htm

agencies actively advertise their services in mass media, but also resort to more veiled forms of labour recruitment.

The criminal activity starts with the registration of travel documents.

According to IOM International, a majority of the victims of trafficking (84.5%) request help from travel agents and visa brokers to depart from the country, and pay directly for the intermediary services. 13% of the victims refrain from saying how they obtained visas, and only 2.5% receive visas without go-betweens.[12]

On the grounds of the kinds of services offered we can distinguish different types of agencies:

1. agencies providing legal tourist visas, insurances and other required travel documents.
2. agencies providing legal visas and organising illegal jobs abroad.
3. agencies providing false documents or organising illegal entry to a country.
4. agencies specialised in trafficking young women and providing travel documents, transportation, and employment abroad.
5. agencies specialised in frauds, promising to provide travel documents and highly paid work abroad, but not fulfilling their obligations.

As research has shown, there are no firms in Georgia which would have the right and possibility to organise legal employment for citizens abroad, which would meet all the necessary requirements, and would have a universal (uniform, standard, approved by state) form of contract with the client.

A majority of the illegitimate firms have a "roof", meaning that they are controlled by organised crime. The organisations, especially those that provide clients with legal documents, have close contacts with officials, sometimes with the highest echelons of power. For example, there is evidence that governmental delegations have been used to smuggle people abroad.

A more widespread method of smuggling people is to give them so-called artistic or sports visas, and to include them in a well-known arts group, ensemble or sports team that frequently travels abroad. In some cases, officials have connived to form fictitious groups for the sole purpose of obtaining legal visas. Such frauds are usually executed by highly organised groups of criminals, controlled by "thieves in the law" or other criminal authorities. The cost of such services varies from $1,500 to $10,000 depending on the country of destination.

Some agencies are specialised in smuggling people to specific countries, such as Greece. The standard price—$1,500. The Bulgarian/Greek border, the so-called "green corridor", is usually crossed with the assistance of local smugglers.[13]

Some agencies and individuals are specialised in manufacturing false passports and other documents. Normally the following procedure is used: criminals acquire a passport of a person who has a valid visa for a western country, and re-

12 International Organization for Migration (IOM), 2001 report on trafficking titled "Hardship Abroad or Hunger at Home," 14

13 International Organization for Migration (IOM), 2001 report on trafficking entitled "Hardship Abroad or Hunger at Home," 23

place the photo in the passport with that of another person. Such falsification is easily feasible since the photographs in Georgian passports issued for travelling abroad are not affixed by seal or other means of protection. As a result of this negligence, hundreds or even thousands of people have migrated illegally. It is also quite common that passport service officers help people who have been refused a visa to acquire a new passport with a different surname.

In my opinion, there is no clear-cut distinction between human trafficking and other forms of illegal migration from Georgia. Frequently the same firms are engaged in the organisation of trafficking and illegal migration, using the same methods of recruitment and transportation, and the same intermediaries for getting visas.

However, the victims of trafficking are somewhat different from other illegal migrants:

1. Victims of trafficking are more often women.
2. Victims of trafficking are usually younger than other migrants.
3. Victims of trafficking are more often unmarried, divorced or live alone.
4. Victims of trafficking more often have no prior experience of staying abroad.
5. Victims of trafficking more willingly entrust themselves to dishonest middlemen.
6. Victims of trafficking more often come from rural areas.
7. Victims of trafficking more often have a lower level of education, and are less familiar with their rights.

Practice has shown that middlemen tend to give preference to the organisation of trafficking in women over illegal migration, because it is more profitable.

There are different ways of recruiting girls with the purpose of involving them in sex business:

1. Recruiters contact professional prostitutes working in brothels, and suggest they continue their business abroad.
2. Recruiters invite girls to work as models, waitresses, dancers or maids, and then voluntarily or violently engage them in prostitution.
3. Recruiters blackmail girls who owe to commercial organisations or private persons, and force them to be engaged in prostitution to pay their debts.
4. Recruiters addict girls to drugs, take them abroad and then force them to be engaged in prostitution in exchange for drugs.

The commission per girl is $2,000–5,000 depending on her age and physical appearance.

2. Transit

A majority of illegal migrants go to the country of destination in the company of other migrants. In 61% of the cases, the group is accompanied by its "enlister" or an assistant to the agent.

Transit is carried out in different ways, depending on the legality of the migrants' transportation. Studies show that approximately 72% of the migrants

cross the border legally and by using an optimum means of transport in terms of cost and time. In other cases, the migrants are treated as "contraband".

Firms that are specialised in smuggling people organise the manufacturing of false documents, develop complex routes of transit, and have close ties with international organised crime.

For example, in 2001, a criminal group recruited five Georgians (women) to work in the USA, took them first to Russia, where they were given Russian international passports, then moved them to the port of Kaliningrad, and onward to the USA by ship. Not one of the five women would have received American visa through official channels, and one of them had already been deported from the country.[14]

In recent years the amount of illicit human smuggling organised by travel agencies has increased in Georgia. This owes to the fact that many consulates have tightened their visa requirements, but also to the increasing number of Georgians who have become personae non grata in different countries for different offences.

One of the most popular illicit routes runs from Georgia via Turkey and Bulgaria to Greece. Usually Georgian migrant groups use Bulgarian smugglers to get across the Bulgarian-Greek border, also known as the "green corridor". In 2001 a tragic incident occurred when four Georgians were found frozen to death at the mountains after attempting to cross the border in winter.

The international ties of traffickers are impressive, and over the last five years new routes of trafficking have been established, including:

- Georgia–Turkey–Bulgaria–Macedonia–Greece
- Georgia–Latvia–Poland–Germany
- Georgia–Czech Republic–Germany
- Georgia–Russia–Mexico–the USA[15]

Sometimes air routes from Europe to Central American countries are used. The flights transit through the USA (Miami), where migrants disembark the plane and stay illegally in the country.

In 2001, a group of Georgian citizens travelled via Armenia and Amsterdam to Panama, and from there to Mexico. When they tried to enter the USA, they were, however, apprehended by customs authorities and returned to Mexico with no means.

In practice, many illegal migrants manage to reach the desired country safely through the ramified network of transnational organised crime to which Georgian criminal organisations also belong. Trade in people has become such a lucrative business that criminal organisations take pains to perfect the chain from recruitment and transportation to safe exploitation of potential slaves in host countries.

14 Information collected by NGO "FCRS"
15 Researches carried out by the Institute of Legal Reform Tbilisi 2002

3. Exploitation

A majority of migrants who become victims of trafficking are employed abroad through intermediary travel companies and agencies which operate legally in Georgia.

Usually migrants are accompanied by traffickers all the way to their final destination, i.e. place of work. Transit routes to the USA and Greece are especially closely monitored since traffickers tend to have close connections to Georgian Diasporas and emigrants.

As a rule, conditions which migrants meet in the country of destination do not correspond to the promises given by the travel agency in Georgia.

Research has shown that trafficking from Georgia is carried out for the purpose of:

1. acquiring slave labour
2. sexual exploitation (prostitution and porno business)
3. adoption (trade in minors)
4. trafficking in organs (obtaining transplants).
5. using women as substitute mothers [16]

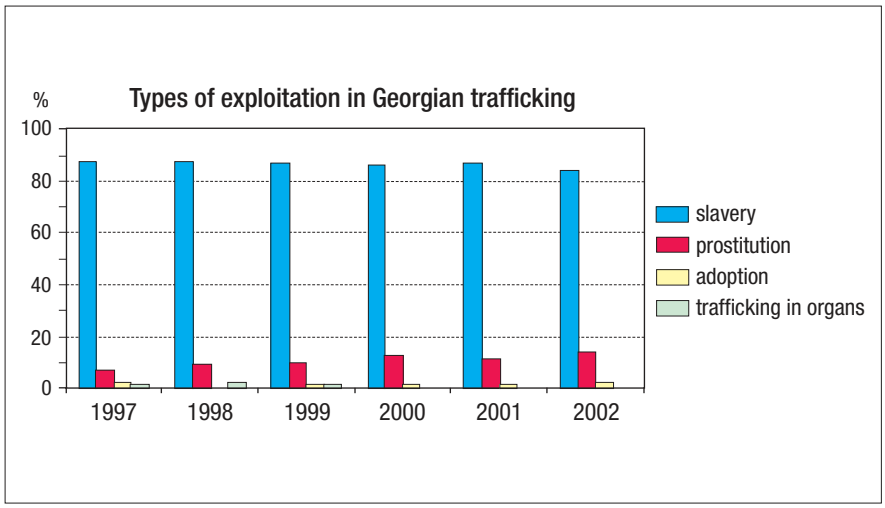

Figure 1. Types of exploitation to which Georgian victims of trafficking have been subjected.

As the Figure 1 above indicates, most Georgian victims of exploitation (approx. 90% of all cases) are engaged in slave or forced labour. The second largest group (8–10%) is formed by victims of sexual exploitation including porno business. Although a majority of them are engaged in regular prostitution, some are periodically exposed to sexual exploitation in their primary work of serving,

16 Glonti G. – Trafficking in Georgia Tbilisi, 2003 newspaper "Criminal Chronic"

cleaning, waiting tables, etc. Over the last few years there have been some reported cases of child trafficking, and one case of using a woman as a substitute mother.

It is worth noting that not all Georgians who go abroad to earn a living fall into the hands of criminals and are exposed to slave-like exploitation. Many of our fellow citizens find well-paid (especially by Georgian standards) work in the European Community or North America as maids, nurses, cooks, construction workers, unskilled workers, seasonal workers, etc. They are even able to help their families and relatives in Georgia. However, if the job, any kind of job, has been obtained illegally, our compatriots abroad are regarded as offenders, and cannot usually expect to be protected by labour and basic human rights. They can be left to do dirty and harmful work for employers who disregard safety precautions and responsibility in case of an occupational accident or even death. Practically none of the Georgian workers have a medical insurance policy or means to get by in case of a trauma or illness.

Any illegal work abroad is, therefore, coupled with major, and frequently unjustified, risks.

In spite of the fact that sexual exploitation constitutes only 1/10 of all trafficking cases, as a phenomenon, it is regarded as the most scandalous and unacceptable by the international community.

As the pie chart (Figure 2) shows, about 69% of sexual exploitation falls into the category of regular professional prostitution, while 22% of the victims are exposed to periodic sexual exploitation. Strip dancing is significantly more rare (7%), probably owing to the fact that dancers must have special skills and certain type of physical appearance. Only 2% of the victims are engaged in porno busi-

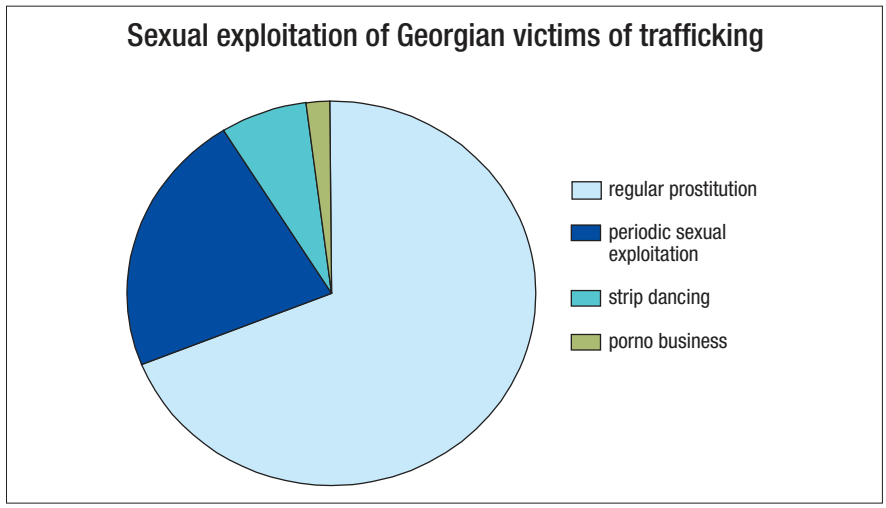

Figure 2. Types of sexual exploitation.

ness. Porno business is particularly difficult to measure and prevent also in Georgia since it spreads through the Internet, as well as the film and photo industry.

Studies show that about 60% of the young women working illegally abroad in sectors not connected with prostitution, have been subjected to sexual violence or serious harassment by their employers.

As far as trafficking in organs is concerned, scandalous stories connected to this phenomenon are frequently published in the press. On the other hand, representatives of law enforcement bodies claim that no such cases have been recorded in Georgia. However, V. Tsurkanu, Minister of Internal Affairs of the Republic of Moldova, has stated that certain organised Georgian groups participate in the international trade of human organs. In his opinion, there is an established international network through which healthy young Moldavian men (as a rule unemployed or earning minimum wage) between the ages of twenty-five and thirty, sell their organs either voluntarily or by force. The said network allegedly operates in the following way: Donors are recruited (mostly from the poor Southern Moldova) and transported to Istanbul by minibuses. There they are monitored for a week, and if their health is in order, they are taken to Georgia. In Tbilisi, they are usually accommodated in a hotel called "Ajara". After additional medical inspection they are operated in a nearby hospital. From Tbilisi, the donors return home to Moldova USD 3,000 richer, while their kidneys go to Turkey. The organs, kidneys in particular, are later sold in Germany for USD 30,000. The Ministry of Internal Affairs of Georgia has conducted an official investigation into this matter, but found no proof of the existence of such a network.[17]

Although we do not know whether this information is true or not, we do know that there are well-equipped clinics in Tbilisi where the removal and preservation of human organs would be technically possible.

A majority of the crimes connected with trafficking in Georgia, especially those of a sexual nature, are marked by high latency, i.e. victims seldom report them to law enforcement bodies. It is hardly surprising that victims refuse to describe how they worked abroad as prostitutes and had sexual contacts with a number of men every day. In Georgia, latency in all sexual crimes is common, more than 95%. This means that of every 100 crimes of sexual violence, only five are reported.

It is also worth mentioning that even if the victim of trafficking decides to come forward, lack of appropriate experience and legislative tools prevents the police and the Public Prosecutor's Office from providing qualified help.

In conclusion, I would like to express my opinion: the problem of human trafficking cannot be solved with a single campaign in a single country. Combating this negative phenomenon should become a part of international policy, constructed on a complex programme including organisational, legislative, administrative, financial, scientific, propagandistic and other measures.

17 Analytical materials Ministry of internal affairs of Georgia 1998–1999

Social Co-ordinates of the Use of and Experimentation with Drugs among Young People in the European Part of Russia—the Example of Tatarstan

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The use of illegal drugs by some Russian youths has become a relatively widespread and statistically stable phenomenon. The social co-ordinates of the use of and experimentation with narcotic substances among young people in the European part of Russia can be assessed by the results of a research carried out in Tatarstan under the supervision of the author of the present article. Tatarstan and the other regions of the Volga-Basin (Ulyanovsk, Samara areas) are situated on a drug trafficking route from Central Asia to the central part of Russia and to Western Europe. The use of and experimentation with narcotic substances among young people was studied with a formalised interview method at homes and in the streets in November 2002. The sample of 1,100 units of analysis adequately represents the youth community between the ages 14 to 29. The sample is characterised by the following values: sex—52.2 per cent men and 47.8 per cent women; age—41.3 per cent in age group 14–19-year-olds; 23.6 per cent in age group 20–23-year-olds; 35 per cent 24–29-year-olds; ethnicity—50 per cent Tatars, 45.6 per cent Russian, and 4.7 per cent representatives of other ethnic groups. The methods of respondent selection and research technique have been described in detail in earlier literature (Komlev 2003, 28–33). The present article is devoted to the description and comparison of levels, degree of activity, and other social parameters of the use of and experimentation with narcotic substances among young people in Tatarstan, also typical of other areas of Russia.

According to the study, the level of drug experiences among young people (all forms of experiences) in the region is 25.6 per cent. This number characterises the external diameter of a 'drug funnel'. More detailed study reveals that 19.3 per cent of respondents have used drugs once or several times. 1.6 per cent have been actively using drugs earlier, but have stopped. At present, 4.7 per cent of the youth are using drugs actively and on a regular basis, including hard drugs. This population of active drug addicts represents the internal diameter of the youth 'drug funnel', and can form a reliable empirical basis for an estimation of the quantity of drug addicts among young people between 14 and 29 years of age.

The regional centre, Kazan, shows a general level of youth drug use of 25.8 per cent. 19.0 per cent of young Kazanians have experimented with drugs once or several times. 1.6 per cent have been using drugs actively earlier, but stopped. At present, 5.2 per cent of the youth are active drug addicts. The situation in other

cities is more complicated. As the received data show, the general rate of drug use there is 28.1 per cent. 21.5 per cent of urban youth have experimented with drugs once or several times. 1.7 per cent of young men have used drugs actively earlier, but stopped. At the moment, 4.8 per cent of respondents are actively using drugs, including hard drugs.

The level of drug use in rural areas is considerably lower at 19.8 per cent. There, 14.9 per cent of respondents have experimented with drugs at least once. 1.2 per cent of rural youths have been actively using drugs earlier, but stopped. At the moment, 3.7 per cent of respondents are using drugs actively, including hard drugs.

A comparison of the Tatarstan data with the results of Keselman's research of Samara area reveals many similarities. For example, the vox pop survey shows that in Samara, the general level of drug use among urban youths is 30 per cent (same as in Tatarstan).

What is surprising is the uneven distribution of youth drug use in the urban environment. The research data show that the general drug use level in Naberezhnye Chelny, the second largest city of Tatarstan, is 27.3 per cent, and thus higher than in Kazan. The highest level of general drug use in Tatarstan is registered in Bugulma, where 58.7 percent of all youths have used drugs in one way or the other. Most have experimented with cannabinoids once or several times instead of using drugs systematically. The situation in this small city in the southeast of Tatarstan results from its proximity to the borders of three large regions (Bashkiria, Samara area, and Orenburg area), where one of the drug traffic routes runs. According to research data, this city is also distinguished by a relatively high crime rate and corruption of law enforcement bodies. As a result, there is not enough formal and informal social control to prevent the expansion of drug use.

The research data show that of those who have tried drugs at least once, 76.1 per cent are young people. The Samara area data show that 97.1 per cent of drug users used cannabinoids (Keselman 1998, 45).

The situation among the young is characterised by a spread of 'light' drugs, which are more available due to their low price. Young people as a rule do not consider 'grass' to be a drug, and do not define themselves as drug addicts. The notion that marijuana is not dangerous, and that one can easily stop using it at will is widespread among the youth. Law enforcement agencies counteract mainly the expansion of heroin and other 'hard' drugs, and underestimate the danger of cannabinoid proliferation.

All other drugs are much less known by the youth. 14 per cent of respondents with drug use experience have tested various opiates, 5.8 per cent heroin, 3.7 per cent 'poppy straw' (an opiate derivative), and 2.9 per cent opium. In the Samara area, the rate of opium and opiates users among all drug users is considerably higher at 21.8 per cent (Keselman 1998, 45). Only 1.4 per cent of Tatarstan youths have tested cocaine and coca derivatives. 9.8 per cent of respondents with drug use experience have used phenylalkylamines (amphetamine, metamphetamine, methadone, ephedrine, 'ecstasy', and other central nervous system stimulators). The most popular of these substances is amphetamine. Its use is reported by 4.7 per cent of respondents with drug use experience. In addition, some

have experienced the euphoria effect by inhaling acetone fumes, 'Moment' glue (universal glue made of acetone) or different aerosols. This is reported by 4.7 per cent of respondents. Barbiturates and hallucinogens are not widespread in the region.

Drug use among the young is clearly gender-, socio-professional status- and age-dependent: The general drug use level among young males below the age of 30 is 37 per cent, but considerably lower among young females—13.1 per cent. The Samara data show somewhat higher levels of drug use among the latter (males—34 per cent, females—16.6 per cent). A similar pattern has also been observed by other Russian researchers (Gilinsky and Afanasiev 1993, 78).

According to the 2002 census data, the Tatarstan youth community is bi-ethnic, with approximately an equal number of Tatars and Russians. Tatars dominate in rural areas and small towns. The youth community also includes other ethnic groups: chuvash, mari, udmurt, as well as representatives of other ethnic regions of Russia. The present research was conducted by dividing the young into three groups: Russians, Tatars, and other. It was found that curves of drug use activity distribution are identical, but the levels of drug use differ. The general drug use level among Tatars is 23.9 per cent (3.9 per cent active drug users). Russian youth show a somewhat higher drug use level—25.7 per cent (5.3 per cent active users). The research indicates that the situation in large cities where there are no noticeable ethnic-cultural differences between Tatars and Russians (same language, similar values, identical forms of recreation, same interests) is characterised by equal drug use levels, e.g. in Kazan they are practically the same. What is surprising is the dynamics of drug use among the other ethnic groups. Calculations show that these youth are more involved in drug use, the general level being 39.3 per cent. This phenomenon needs more profound research.

Our attention was drawn to the relatively high proportion of young males among drug users (27.3 per cent), and also to the frequency of their drug use (7.3 per cent active users). Another important observation is that males in both rural and urban areas have approximately identical drug use levels regardless of their ethnic background. The situation in Tatarstan indicates a masculinisation of youth drug use that is typical also of the other regions in central Russia.

Drug use is not generally typical for females from rural areas. This may be caused by the ethnic-confessional specific features of young Tatar females which in rural areas prevail over females of other ethnic origins. Provincial Tatar females are more oriented towards the norms of traditionally male-oriented behaviour.

At age 20–21, the involvement in drug use slightly increases to the rate of 30 per cent. This figure is the highest in the Samara region—38 per cent (Keselman 1998, 50). This group also uses more drugs than the others, since 10 per cent of its drug users use drugs actively. In the age group of 22–23-year-olds, the general level of drug use reaches its maximum—33.3 per cent. This group shows a lesser number of active drug users (3.8 per cent) and an increasing number of those who refer to drug use at an earlier period of life (4.5 per cent). In sum, the general drug use level increases rapidly between the ages 14 to 23.

Analysis of gender and age features can lead us to the conclusion that young men between 14 and 16 years of age, irrespectively of their family status and other characteristics, belong to the group with the highest risk of contact with narcotic substances. According to the received data, the level of the use of and experimentation with narcotic substances among 16–17-year-olds is twice that of 14–15-year-olds, and continues to increase.

The survey shows that the socially disadvantaged, often unemployed, demonstrate rather a high level of drug use. Most of them are people whose social and professional position is weak, and who are perceived as outsiders by the general public. 35.5 per cent of the jobless youth are addicted to drugs. 10.5 per cent of them are active drug users.

The involvement in drug use is high also among the students of vocational schools (35.5 per cent) and the working-class youth engaged in manual labour (34.1 per cent). However, these two groups differ in the rate of active drug users (4 per cent and 7.2 per cent respectively). The situation among college students is not much better: 31.1 per cent of them are involved in drug use, 8.1 per cent actively. The general drug use level in this category in Kazan is extremely high, reaching 44.5 per cent. The working and studying youth rank high in the level of criminalisation, too. Young people are responsible for most registered offences which also adds to the increase in the number of drug distributors and users.

The use of and experimentation with narcotic substances is also rather widespread in universities. 29 per cent of university students are involved in drug use, and 8.3 per cent are active users. Young qualified professionals and 'white collar' workers also show high levels of involvement in drug use (26.8 and 21 per cent respectively).

The survey data show that school students have a relatively low drug use level (9.7 per cent) because they are only in the beginning of their drug addiction route.

The survey data show that the use of and experimentation with narcotic substances is widespread in many social groups of Russian society. It would be quite logical to think that the higher the level of education (and culture), the lower the level of drug use. In practice the correlation between these two factors is not so simple, and depends on the indirect influence of many other socio-cultural and socio-structural indices. According to the Samara area survey data, 'educational type influence on the level of use of and experimentation with narcotic substances can be characterized as weak and contradictory' (Keselman 1998, 56). The Tatarstan survey shows that there is some correlation between education and the use of and experimentation with narcotic substances, but that it is very specific, and can be observed only at the level of definite socio-territorial communities. The level of the use of and experimentation with narcotic substances is the highest among the youth with only secondary education (30.7 per cent, with 7.9 per cent active drug users). They are over 17 years old and have graduated from a secondary school. The youth graduated from or attending a university show a drug use level of 26.7 per cent (with 3.7 per cent active drug users).

The first possible conclusion is that people with no higher education are more involved in drug use than those who have graduated from or are presently studying in a university. However, analysis of the Kazan city data makes it possible to draw an opposite conclusion.

Young Kazanians with higher education show a drug use level of 34.9 per cent (with 7 per cent active users). For those whose educational level is lower, the same figure is 29.3 per cent (8.6 per cent active users). This phenomenon can perhaps be understood by examining some social and socio-cultural factors that are more dominant in the regional centre than in peripheral territories. In provincial communities, the social and demographic structure and mentality are somewhat different than in urban environments. Empirically defined differences can be explained by the influence of the following factors, including (1) relatively high proportion of Kazanians under the age of 30 with higher education; (2) prevalence of 'major' drug use among well-to-do youth; (3) higher anonymity of drug use and better availability; (4) growing prevalence of double standards among the youth. Provincial and rural uneducated youths are to a lesser extent drug-addicted than their educated peers. This dependency provides a more general picture of drug use in the region.

One of the research objectives was to test the hypothesis about the correlation between the general drug use level of the youth, and the average per capita family income. It was discovered that these two factors are indeed interrelated, but not as straightforwardly as it was assumed. Drugs are expensive in Russia, and available only for those whose economic status is high enough, or who can get money illegally.

The received data show that the proportion of young people involved in drug use grows with the increase in average per capita income and economic status of families. Among those respondents whose average per capita family income is less than 1,500 rubles (about $50 in 2000), the general drug use level is 23.7 per cent (with 3.8 per cent active drug users). If the average per capita income exceeds 4,500 rubles ($150), the drug use level is 33–37 per cent (11 per cent active drug users).

The higher economic status to some extent adds to drug usage. Although this relation is very complex and mediated by other social factors, the milieu of well-to-do young people shows many examples of the so-called 'major' drug usage.

The use of and experimentation with narcotic substances among young people has rather complicated social co-ordinates. This is evident not only among those young people whose social position is less favourable, but also in case of economically advantaged families. However, the prevalence of drug-addiction is higher among the socially disadvantaged youth than those from well-to-do families.

Under the conditions of market economy, all employers need qualified professionals, and sustainable future is guaranteed only to those who can be successful in professional competition. The transition towards market economy has changed the youth's values, and stimulated their economic aspirations. Realisation of ambiguous plans and orientation towards economically successful life strategies is not unproblematic for the majority of young people. This is mainly caused by the fact that economic transformation processes have deprived many youths of the available channels of vertical social mobility needed for the development of socially favoured careers. Most professional activities are not profitable or attractive enough for the youth. Social experience of the disadvantaged

parents has stopped being a guiding line for them. Their own choice of profession is very often unsuccessful. As a result they are faced with diminishing life prospects, disappointment in life, lack of faith in their own vigour. Often such a situation leads young people to the use of and experimentation with narcotic substances and illegal activities.

Failure of socialisation, broken families and the consequent lack of social control are the main reasons for the increase in the use of and experimentation with narcotic substances among young people. It is not surprising that the lowest drug use level is registered in extended families (19.8 per cent). In single-parent families (father or mother with children) the general drug use level does not exceed 30 per cent. The figure climbs to 35.7 per cent if children are brought up by grandparents. If the youngster lives outside any kind of family structure, the drug use level reaches its maximum—38.2 per cent. The disintegration of family structure leads to decreasing parental influence and diminished ability to prevent youth's or teenagers' drug use.

In conclusion, the social research of the use of and experimentation with narcotic substances among young people in Tatarstan allowed the description of the main social co-ordinates of the phenomenon typical of the central Russia. Its results prove that actual drug usage is approximately 11 times more common than what official statistics indicate. The use of and experimentation with narcotic substances spreads rather quickly but irregularly in the youth milieu affecting those parts of society where socialisation and social control have weakened, employment is replaced by unemployment and crime, and where social consciousness is experiencing a prolonged normative anomie and deprivation of values.

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Organized Crime and Smuggling Through Abkhazia and South Ossetia

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General Description of the Situation

Georgia is located in the Caucasus on the eastern coast of the Black Sea. The length of its total land border is 1,461 km, and the coastline—310 km. Its border countries are: Russia in the North (723 km), Azerbaijan in the East (322 km), Armenia in the south-east (164 km), and Turkey in the south-west (252 km).[1] Due to armed civil conflicts at the beginning of the 1990s, two of its secessionist regions—Abkhazia and South Ossetia—are outside the jurisdiction of the Government of Georgia, and parts of Georgian border are thus uncontrolled and transparent. Both Abkhazia and South Ossetia border on Russia. The Abkhaz part of the Georgian-Russian border is 197 km long, and its sea border 200 km. The South Ossetian part of the Georgian border with Russia is only 66 km long (see Map of Georgia below).[2]

Map of Georgia.
Smuggling Routes Through Abkhazia and South Ossetia

1 Georgia. *The World Factbook*, August 1, 2003; http://www.odci.gov/cia/publications/factbook/geos/gg.html
2 Interview with representatives of State Border Guards of Georgia, October 2003.

By 2003, contraband trade had become a severe problem in Georgia. Its catastrophic growth started in 1998, and in five years time it began to threaten the very national security of the country. It stimulated corruption, creation of powerful criminal clans, and association of the criminal world with political groupings, representatives of central, regional and local authorities, and law enforcement structures of the country. It also led to the involvement of the poor part of the population in criminal activities.

The problem of contraband trade through Abkhazia and South Ossetia is worsened by the fact that it is closely connected to the problem of separatism, unresolved armed conflicts, violence in these regions, and transparency of borders.

As it is known, there were armed conflicts in South Ossetia in 1991–1992, and in Abkhazia in 1992–1993. They led to heavy casualties (one thousand and ten thousand lives respectively) on both sides. With Russia's military support, separatists of both regions won their wars, and declared *de facto* independence, while remaining *de jure* part of Georgia. In Abkhazia, more than two hundred thousand refugees and internally displaced persons (IDPs) (mostly of Georgian ethnicity) have been expelled from their homes, and those who have stayed are living in beggary and nakedness.[3] Most refugees and IDPs living outside Abkhazia have it even worse.

Self-proclaimed republics increased the concentration of weapons among the population, especially in the criminal world.

Sanctions Against Secessionist Government of Abkhazia

Three years after the end of the war in Abkhazia, a decision taken by the Council of the Heads of States of the Commonwealth of Independent States **on M easures for Settlement of the Conflict in Abkhaz i a,G eorgia** (19 January, 1996), declared, that:

> *"6. Confirming, that Abkhazia is an integral part of Georgia, the member-states of the Commonwealth of Independent States, without consent of the government of Georgia:*
>
> *a) will not exercise trade-economic, financial, transport or other operations with the authorities of the Abkhaz side;*
>
> *7. Member-states of the Commonwealth of Independent States will not permit the functioning of representations of the authorities of neither the Abkhaz side in their territories, nor the persons in a capacity of official representative of those authorities."*[4]

According to this statement, all import-export operations, which are not agreed upon or approved by the Georgian government, are illegal and contraband trade. This seriously hinders the ability of the secessionist government to develop offi-

3 *UN: Abkhazia Within Georgia Still The Basis of Talks, Says Envoy*. By Robert McMahon; http://www.rferl.org/nca/features/2002/12/11122002222246.asp; Radio Free Europe / Radio Liberty, Inc.

4 Regional Conflicts in Georgia—the Autonomous Oblast of South Ossetia, the Autonomous Republic of Abkhazia (1989–2002). The Collection of Political-Legal Acts. Tbilisi 2003, p.170.

cial foreign economic relations. As a result, instead of respectable international companies, shadow businesses with possible money laundering schemes have established links with the territory of Abkhazia. In addition, Russian state and private companies are often directly involved in business operations in Abkhazia. This is in violation of the Russian government's own obligations based on the 19 January agreement. On November 7, 1997 Mr. Chernomyrdin, the Russian Prime Minister, signed a Decree issued by the Government of the Russian Federation **on Importing of Citrus Fruits and Some O ther Agricultural Products to the R ussian Federation**, and on June 24, 1998 the State Duma issued a Decree of the Federal Assembly of the Russian Federation **on N ormaliz ation of B order and Customs R egimes along the Abkhaortion of the B o rder of the R ussian Federation**. This marked a new strategy on the part of the government of Russia, aiming at the economic integration of Abkhazia into the Russian Federation. It consisted in the development of economic relations with the secessionist regime, the introduction of a non-visa system for the secessionist territories of Abkhazia and South Ossetia, granting Russian citizenship to population in the secessionist parts of Abkhazia and South Ossetia, and opening a railway connection between Sochi and Sukhumi. All this was done without consulting the Government of Georgia, which caused the aggravation of Georgian-Russian relations, and gave an incentive to the secessionist government of Abkhazia to proclaim independence in 1999 after a referendum on independence in which the Abkhazian exiles (mostly ethnically Georgian) did not participate. Further negotiations with the government of Georgia on the political status of Abkhazia were effectively blocked.

The Impact of Sanctions

Some Western experts argue that any sanction imposed on the secessionist government of Abkhazia contribute to the development of smuggling. Such sanctions only help the local authorities in Abkhazia to make money, and hurt the population. On the one hand, due to these sanctions, various political-criminal groups are able to make illegal trade and profit, and on the other hand, such sanctions help the regime in Abkhazia increase its power and legitimacy as a result of the "Georgian blockade."[5]

Sanctions have created an extremely favourable setting for smuggling through Abkhazia, especially when there are almost no relations and agreements between the secessionist Abkhaz government and the Government of Georgia, or the Abkhaz government in exile. Poverty and personal relations between ethnic Abkhazians and Georgians, who wish to establish economic relations and improve their lives, have led many of them to pursue the only means of co-operation left by their governments—participation in the smuggling network. It is the only way of survival. This has created a broad social base for the smuggling network, which stretches far beyond the border of the demilitarisation zone in Gali

5 Interview with Western representative of an international organization working in Abkhazia and based in Tbilisi.

and Zugdidi districts from Gagra to Tbilisi. People who live in Gagra and Sukhumi often visit the biggest market in Tbilisi–Lilo—another trans-shipment point of smuggled goods which mostly come from Azerbaijan, and take them to Abkhazia for sale. In turn, ethnic Georgians visit Abkhazia for commercial purposes.

Uncontrolled territories as crime zones

The current situation demonstrates that the conflicts in Abkhazia and South Ossetia are not simply in deadlock. They have gradually transformed into crime zones that nobody is able to fully control—not the Government of Georgia, the Abkhaz and South Ossetian governments, or the international community.

On the one hand, Georgian authorities declare that they cannot establish Border Guard and Customs Service checkpoints on the Inguri River and the Roki tunnel because secessionists would immediately interpret it as an attempt to establish a new border. The border remains open for smuggling into Georgia and for the movement of criminal groups from one side of the conflict zone to another.

On the other hand, *de facto* governments in Sukhumi and Tskhinvali are not able to control their territories and prevent activities of the different (Abkhaz and Georgian) crime groups. Frequent assassinations and kidnappings have become usual practice in these regions.

As in many other conflict situations, the criminal world always fills the vacuum in official and legal relations. Crime groups are flexible and quickly-built criminal networks that are often international, and which bring in representatives from both sides of the conflict. The examination of the situation in Abkhazia and South Ossetia confirms this general trend, and any observer can easily see how successfully the Georgian, Abkhaz, and Ossetian crime groups and law enforcement bodies co-operate in smuggling through secessionist territories.

In Abkhazia, crime groups operate in Gali and Kodori Gorge, and in Zugdidi district of Samegrelo, while in South Ossetia—mostly in Tskhinvali and Gori districts. They collaborate with each other regardless of their ethnic origins and political orientation. They have different, sometimes paradoxical partnerships with other crime groups, law enforcement bodies and governmental structures (or individual government officials) in other parts of Abkhazia and Georgia. If one link of this "smuggling chain" is broken, the whole chain falls apart. Goods, which flow from Russia, Turkey or any other country through the territory of Abkhazia to Georgia, or in the opposite direction, are protected through a system of bribes, mutual sharing and "roofs" of influential government officials outside and inside Abkhazia.[6] The main actors (law enforcement bodies, crime groups, and Russian peacekeepers) in the Gali, Zugdidi, Tskhinvali, and Gori districts, along with the co-operative groups or individuals, compose a smuggling network which successfully operates and expands its influence, involving more and more poor people in contraband trade.

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6 A "roof" is a personal patron or clan—usually identified with a state organization—which protects criminal activity.

There are many questions, which arise in such circumstances. How dangerous is the criminal situation and smuggling for the population living on both sides of the Inguri river, and for the international community? What kind of impact does it have on the economic, political and military situation? What forms of contraband trade and mechanisms exist, and which are the dominant contraband goods? Which political actors benefit from the situation, and—most importantly—are there any possible solutions to the problem?

Routes and Types of smuggling: potential and real threats

During the Soviet period, Georgia was adjacent to NATO (Turkey), and armed troops with sophisticated weapons—including strategic and tactical nuclear weapons—were maintained on the entire Georgian territory. After the Soviet collapse and the withdrawal of nuclear weapons and a major part of these troops, there have been 197 discoveries of radioactive materials abandoned by Russian troops on Georgian territory. They include both weak and strong sources of radiation.[7] Experts have concluded that the international community is exposed to real danger if such radioactive materials are smuggled abroad, making it possible to use "dirty bombs" in potential terrorist attacks against the West and Russia. Uncontrolled territories are the best places for smuggling such materials.[8]

The smuggling of nuclear materials through the territory of Abkhazia is a real possibility, but smuggling in weapons and drugs is already a reality. The scale of illegal trade in weapons dropped dramatically after the end of military action in 1993, but demand from criminal groups inside and outside the region has continued to stimulate supply.

In 1997, the criminal police department in Moscow discovered an extensive crime network which for two years had supplied illegal weapons (pistols, machine guns, grenades, and grenade-guns) from Abkhazia to organised crime groups in Moscow.[9]

In the summer of 2002, a Russian criminal leader, Artur Liudkov (nickname—Iasha Astrakhanskyi) and Mchelidze, a major in the Georgian Ministry of State Security, were arrested by Georgian law enforcement representatives for transporting anti-tank rocket launchers ("Fagot"), hollow-charge shells and other weapons. They claimed that they had been bought in South Ossetia from Russian peacekeepers. There were strong suspicions that these weapons were intended to be transported from South Ossetia to Chechen separatists in the Pankisi Gorge. David Shengelia, leader of a Georgian partisan group, the "Forest Brothers," declared that he had asked for these weapons to defend the Georgian population in the Gali district of Abkhazia. Despite a significant controversy, the investigation was unsuccessful. Arthur Liudkov insisted that he was just an "accidental traveller" in the Land Cruiser carrying the weapons, and was released

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7 George Kolbin, *Environmental Aspects of Former Soviet Military Sites in Georgia.* NATO CCMS Workshop on Reuse and Cleaning of Former Military Sites, Bishkek, May 27–29 2002.

8 Ken Stier. *Missing Radioactive Generators in Georgia Raise "Dirty Bomb" Concerns*. 6/28/02, http://www.eurasianet.org

9 Alexander Strogin. *Banditam privezli iz Abkhazii tselyi arsenal*. Kommersant-daily, Moscow, September 30, 1997.

after three month's detention. The Land Cruiser belonged to a well-known professional criminal called Shakro Kalashov. In April 2003, Liudkov was killed in Moscow under suspicious circumstances[10].

Until a political resolution to the conflict in Abkhazia and South Ossetia is reached, local crime groups and their political allies will have an ongoing excuse for illicit trade in weapons under the pretext of either "struggle against separatists" or "struggle against terrorist groups." Assassinations, kidnappings, taking hostages, and abuse of human rights will also continue.

Another form of smuggling through Abkhazia and South Ossetia is the illicit trade in drugs. Smuggling in either direction, i.e. to or from Georgia, manifests itself in a variety of ways. Much depends on who is smuggling, where it takes place, on the type of drug, and how much is being transported. Some narcotics are grown for domestic consumption. Any country in decline, with a very high unemployment rate and deep poverty among young people, usually faces explosion in drug consumption. Some smuggling routes cross the North Caucasus through mountain passes or across the Psou or Inguri rivers. Marijuana and hashish are produced locally, while such drugs as cocaine and heroin are imported from Turkey for transit either to Russia, or by Turkish boats to Spain and other European countries. New drug routes are concentrated around major drug trafficking centres such as Sukhumi, a major seaport, and Gudauta, a former Russian military base.[11] Russian army and navy, which use the airdrome and port in Gudauta, are useful conduits for drugs. Russian air force can easily transport drugs from Central Asia to the Gudauta airdrome. After that, the drug route continues to Europe. Neither the Abkhaz nor Georgian customs officers or law enforcement bodies are allowed to check Russian military cargoes.[12] Other parts of Georgia are also used for trafficking in drugs, especially South Ossetia and the Pankisi Gorge. The latter has decreased in influence due to the introduction of the Train and Equip programme and anti-terrorist operations there. It has become too risky for drug smugglers to use the Pankisi Gorge.

Abkhazia has become one of the routes for trafficking local and Russian women to Turkey. Usually they are transported by Turkish boats in groups of 5–6.[13] There are also recorded cases of people being smuggled in the opposite direction, i.e. from Turkey to Abkhazia. For example, the Georgian Coast Guard once stopped a boat carrying 4 persons who had escaped from a coal mine in Tkvarcheli district of Abkhazia. Turkish smugglers had promised them well-paid jobs in Russian coal mines, but had transported them to Abkhazia instead, where they had been forced to work in poor conditions with no pay. After a month they had escaped. The Kutaisi City Court investigated the case.[14]

All of the above-mentioned types of smuggling are illegal anywhere in the world, including Abkhazia. Unfortunately, the political resistance in the region

10 *Gangstera rasstreliali za svias s lesnymi bratiami?* Newspaper Moskovskyi Komsomolets, April 22, 2003.
11 Georgian sources claim there is still a Russian military presence there.
12 Interview with officers of the Department of Intelligence of Georgia.
13 Ibid.
14 Based on materials from the Department of the Border Guard of Georgia.

creates uncontrolled zones that jeopardise the security of the international community, and leaves few chances for a successful struggle against them.

There are also other types of smuggling through Abkhazia and South Ossetia which are economically damaging for Georgia.

Smuggled goods are mainly imported from Russia, while most exported goods go to Turkey. There are also other countries, from or to which smuggling takes place—notably Ukraine, Rumania, Bulgaria, Italy, and Spain. Most active are the private boats and ships under the Turkish flag—approximately 40 vessels in all—which handle up to 80 percent of all maritime smuggling, and up to 60 percent of all smuggling through Abkhazia. Every day 3–4 ships participate in smuggling to and from Sukhumi and Ochamchire, while smaller boats operate to and from Pitsunda and other towns. Most boats carry timber directed above all to the Spanish shadow market. State-of-the-art equipment situated in Abkhazia manufacture parquets that are then exported by Turkish boats to Spain. Expensive timber, such as box-tree, is used, which was not allowed in the Soviet period. Timber smuggling is one of the main sources of income for the Abkhaz secessionist government and local clans.[15] According to Abkhazian sources, in 2002 the production value of the Abkhazian timber industry was $1,723 million, of which logs constituted 82 percent.[16]

Another smuggled commodity is fuel. Its extent depends on world prices, but there is not enough reliable information and no reliable statistics to give exact estimates. For example, according to Georgian sources, the total population of Abkhazia is currently approximately 170,000, while secessionist sources claim that the correct figure is 320,000. This makes it difficult to calculate the average level of fuel consumption in Abkhazia. However, it is generally believed that there is a very small quantity of diesel fuel and gasoline imported to Georgia through Abkhazia—mostly for local consumption in the Samegrelo region, sometimes to Kutaisi and other regions of western Georgia. Smuggling from Azerbaijan and South Ossetia, however, is more significant. Of these, Azerbaijan is the primary source, because there is no railroad or sea connection from South Ossetia. Smuggling between Russia (North Ossetia) and South Ossetia is limited in wintertime because traffic for heavy trucks is difficult due to snowfalls and slippery roads in the mountains.

Changes in the taxation system of Georgia after 1998 aggravated the local business environment, and the difference between world prices and fixed Russian fuel prices on the domestic market increased after 1999. The resulting economic conditions boosted fuel smuggling through Abkhazia and South Ossetia. In 1998, world prices were very low and smuggling not so profitable. The following year prices started to climb, and with them smuggling from Russia.

Nowadays Russians can no longer compete with Azerbaijan fuel. Although the Azeri fuel is poor in quality, it is cheap and close to the Georgian market. Rail transport is cheaper and allows larger quantities than transportation from Russia. In addition, psychologically, the business climate between Azeris and Georgians

15 This information is based on interviews with officers of the Department of Border Guard, Department of Intelligence, and Ministry of State Security of Georgia.

16 Source: *ИА* REGNUM, http://www.abhazia.com/news/.

is better—Georgian–Russian relations are extremely tense whereas there are friendly relations between the two South Caucasian countries that share similar geopolitical goals. Even if the railway through Abkhazia is opened, hostile post-conflict relations and the high level of crime in the region will complicate commerce.[17]

Cigarettes are smuggled mostly from Russia ("Donskoi Tabak") and Turkey ("Parliament" etc.). Earlier "Vice Roy" was the most commonly smuggled cigarette through Abkhazia, but when a Georgian tobacco factory started to manufacture "Vice Roy" in Tbilisi, its smuggling practically stopped. There are two factories in Gudauta and Sukhumi which produce low-quality "Marlboro" cigarettes. Some are smuggled to Turkey, a small quantity to Russia, and the rest to Georgia. The d*e facto* authorities in Abkhazia have an excise license (issued in Russia) for domestic trade, but it is not valid in any foreign country.

The exportation of non-ferrous and ferrous scrap metal through Abkhazia peaked in 1999 (40,000 tons of non-ferrous metal, and 32 tons of ferrous metal), after which the activity largely exhausted. One of the smuggling routes ran from Zugdidi through the Gali district to ports in Abkhazia.

Coal from Tkvarcheli in Abkhazia is imported mostly to Turkey. Some foreign firms have even signed agreements for coal supply with the *de facto* government of Abkhazia. There are plans to produce up to 100,000 tons of Abkhazian coal per year. Today, three to four freight cars arrive daily from Tkvarcheli to Abkhazian ports.

Some foreign companies have also signed agreements with the *de facto* government in Abkhazia for fishing rights. The boats which participate in illegal fishing in Abkhazian waters are mostly Turkish. Both the secessionist Abkhaz authorities and the Georgian Border Guards have made some arrests.[18] The Georgian border Guard started regular coastal patrolling in 1999, and has since then apprehended 42 boats engaged in some type of smuggling.[19]

There is also seasonal trade in hazelnuts and citrus fruits from the Zugdidi and Gali districts to Russia or Turkey. These products, together with smuggling in cigarettes, scrap metal, timber, and fuel are the main activities connected with criminal disagreements, assassinations, kidnappings, and the taking of hostages.

Who benefits from unresolved conflicts?

Despite the extremely violent environment related to smuggling through Abkhazia, its negative impact on the Georgian economy is insignificant in comparison to the volume of smuggling through the Red Bridge (from Azerbaijan), the port of Poti (Black Sea), the Autonomous Republic of Ajara (from Turkey and the Black Sea), Kazbegi (from Russia) and Akhaltsikhe (from Turkey). According to expert assessments, of the total volume of smuggling to and from

17 Interview with Vano Nakaidze, Energy Committee Chairman, Member of the Board of Directors, American Chamber of Commerce in Georgia.

18 Сотрудники прокуратуры экологического надзора конфисковали 300 кг. камбалы и 130 кг. белуги. http://www.abhazia.com/news/.

19 Information is based on materials submitted by the Department of the Border Guard of Georgia.

Georgia, smuggling through Abkhazia and South Ossetia constitute 15–20 %, of which Abkhazia's share is perhaps only 3–5 %.[20]

It is of much more importance that the smuggling networks in Abkhazia increase the crime rate, create corrupt economic interests among powerful political groups, and contribute to the existing political status quo. Groups in power benefit from the situation both financially and politically. Smuggling and frozen conflicts are the two pillars which help political clans inside and outside Abkhazia to control material and coercive resources, limit democracy, and maintain political power for an indefinite time. There have been no elections for the head of the Government-of-Abkhazia-in-Exile for over ten years. In the meantime, the secessionist President of Abkhazia has held Soviet-type elections, receiving a fantastic 98 percent of the votes in the absence of rival candidates. While the leaders are hostile to each other, their grassroots level supporters and state organisations successfully co-operate through smuggling networks. Sometimes the situation is tensed by political orders from patrons, but the rest of the time people are occupied with making money by co-operation. It is not surprising that many people in Georgia wonder if the "Forest Brothers" are partisans or smugglers. There are similar concerns about the secession-supporting Abkhazian paramilitary detachments which frequently organise "cleansings" against Georgians in the Gali district but then continue their co-operation with Georgian smugglers.[21]

The government of Georgia has also benefited from the existing status quo. The constitution of Georgia does not regulate the administrative-territorial divisions within Georgia until the conflict in Abkhazia is concluded and the final status of Abkhazia determined. Instead of holding democratic elections for regional governments, governors and local government administrators, the President of Georgia appoints them, justifying these undemocratic measures by pleading to concerns about aggression from the separatist regimes. Gerrymandering and the interference of local and regional authorities in presidential, parliamentary and local elections has become an integral part of the electoral process in Georgia.

The limitation of democratic freedoms, especially at the grassroots level, leads to the formation of political clans which dispose of public property in their own interests and keep their citizens in abject poverty. They use militant ideologies, and corrupt coercive and criminal structures to keep citizens terrorised (for example, through a permanent irrational fear of war) or fill their minds with revengeful thoughts. Ordinary ethnic Abkhazians and Georgians are manipulated and victimised by these clans. Any democratic change is a serious threat to the power of the ruling groups. Democratic change can initiate conflict resolution and facilitate the transformation of smuggling activities into legal businesses. The deep political crisis of November 2003, and the consequent changes in political power give some hope that the situation in Georgia will eventually improve.

Georgian law enforcement bodies benefit from smuggling. Administrative enforcement is not effective in the current disastrous economic situation. Ac-

20 Interviews with experts of the American Chamber of Commerce in Georgia and officers from the Ministry of State Security.

21 The last time such "cleansing" took place was in the second part of May with the participation of 500 gunmen from the so-called "spetsnaz". http://www.abkhazya.org/server/-docs/news/.

cording to statistics from the Ministry of Internal Affairs of Georgia (the Department of Struggle Against Corruption and Economic Crimes), in 2000, there were 22 recorded cases of customs violation, in 2001: 23 cases, in 2002: 35 cases, and in the first quarter of 2003: 17 cases. In comparison to the volume of contraband trade, and the thousands of transport units which every day cross the borders of Georgia, this is a drop in the ocean. In the Samegrelo region, which borders Abkhazia, the corresponding figures are: 2000—0; 2001—0; 2002—2; 2003—12.[22] The General Prosecutor's Office very seldom conducts thorough investigations, and even if it does, only few cases are prosecuted.[23] In effort to justify the situation, high-ranking officials from law enforcement bodies say that since Abkhazia and South Ossetia de jure are Georgian territories, they cannot find legal evidence of smuggling from abroad because Georgian smugglers usually buy their goods from Abkhazian or Ossetian smugglers on territories which are Georgian, but outside Georgian control. Decree of the President of Georgia No. 434 permits law enforcement organisations to monitor transportation of goods inside Georgia, but in practice, rampant corruption foils any such efforts. Given the current situation, combating the problem of smuggling by administrative methods is almost futile. The monthly salary of law enforcement officials is only $25–50, but by taking bribes up to $100 per truck, they can increase their monthly income up to $1,000–5,000. In 2002, "Rustavi-2", an independent Georgian television programme investigated the connection between smuggling and the corruption of the customs and law enforcement agencies. Video records proved that administrative corruption is one of the main reasons for the failure to control smuggling.

There is also a broad social base for the smuggling networks: they involve many poor people and give them a chance to survive. Attempts by the "Extraordinary Legion" (an agency of the Georgian Ministry of Finance) to confiscate contraband cigarettes in Tbilisi from street vendors and kiosks caused massive protests and clashes.[24] In the present situation of continual political tension and very little support for the government of Georgia, authorities are not willing to use radical administrative methods and interfere in the operations of local clans in conflict zones, where smuggling has become one of the main sources of income. Despite its general destructive impact on attempts on conflict resolution, smuggling may, however, have one positive outcome: unlike Abkhazia, where a strong, hostile post-conflict atmosphere still prevails, the Ergneti contraband market in South Ossetia has played a positive role in creating economic co-operation between Ossetians and Georgians despite their participation in smuggling. This co-operation has resulted in hundreds of new jobs, and given parts of the local population a chance to survive. "Ossetians are smarter than Abkhazians," said one expert from the American Chamber of Commerce in Georgia, "because they understood to use the Roki tunnel to fulfil their economic goals, and now both Georgians and Ossetians can freely go to Tbilisi and Tskhinvali, have din-

22 Source: Ministry of Internal Affairs of Georgia.
23 Interview with Michael Machavariani, the former Minister of Tax Revenues of Georgia.
24 "Extraordinary Legion" is an armed unit which was specially created for combating smuggling. It is subordinated to the Ministry of Finance of Georgia.

ner in restaurants there, and more or less safely return to their homes. It is difficult even to imagine the same in any part of Abkhazia".[25] Any attempt to eliminate the market through administrative measures may cause a new conflict, and is pointless, because other markets will be created elsewhere.

Conclusions

The negative impact of smuggling through Abkhazia and South Ossetia on the Georgian economy is insignificant in comparison to the volume of smuggling through other parts of Georgia.

It is of much more importance that the smuggling networks in Abkhazia and South Ossetia increase the crime rate, create corrupt economic interests among powerful political groups, and contribute to the existing political status quo and "frozen conflicts".

The main reasons for smuggling through Abkhazia and South Ossetia are not transparent borders or secessionism, but institutional weakness and corruption in law enforcement bodies, and the absence of initiative among previous leaders of the supreme executive branch of the Government of Georgia to change the situation in the country.

Sanctions against Abkhazia only contribute to the development of smuggling and shadow businesses on its territory.

Recommendations

What to do in the current situation? In theory, there are several possible ways to solve the problem of smuggling through Abkhazia and South Ossetia:

Sanctions against the secessionist regime in Abkhazia should be lifted regardless of the conditions the Georgian side has thus far insisted on. This would reduce the level of mistrust towards Georgians among ordinary Abkhazians, and deprive Abkhaz secessionists of the possibility to use the sanctions for fuelling anti-Georgian ethnic hostility.

Attempts to forcefully destroy contraband markets may cause a renewal of armed conflicts or even social disorder in Georgia.

Ineffective Steps

Legal enforcement (1) against socially vulnerable people is dangerous in the current tense political situation in Georgia.

Legal enforcement (2) against local secessionist clans in conflict zones, where smuggling has become one of the main sources of income, is impossible due to danger of renewal of conflicts.

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25 Interview with experts from the American Chamber of Commerce in Georgia.

Effective Steps

Legal enforcement (3) against Georgian wholesale smugglers;
Legal enforcement (4) against corrupt law enforcement and government officials.

Most Effective Steps

Under the current conditions of tense relations with Russia and the "frozen conflicts" in Abkhazia and South Ossetia, economic incentives would offer the most appropriate and effective unilateral means for Georgia to minimise the level of smuggling through Abkhazia and other territories. Smuggling can most effectively be prevented by either economic measures or strong state and border control, but due to the uncontrolled borders in Abkhazia and South Ossetia, the latter is not at present a viable option for Georgia.

Economic steps could effectively minimise smuggling. It is necessary to rationalise the wage level of border officials, and to co-ordinate excise and other tax policy with neighbouring countries. Borders are porous, and they can always be used for smuggling if there are no economic incentives to promote the control of smuggling.

According to Mr. Michael Machavariani, former Minister of Tax Revenues, Georgia's current tax rates are the highest when compared to all its four neighbouring countries, i.e. Russia, Azerbaijan, Armenia and Turkey, with the exception of taxes on oil products where Armenia's taxes are higher. This makes smuggling from neighbouring countries a profitable business.

Acting legislation, such as the Tax Code and Law on Consumer's Goods, in fact promotes smuggling. Georgian legislation has created an environment where legal businesses cannot function and are squeezed out of the market. Smuggled goods cost less than those that have been legally taxed and imported. Legal importation makes no sense in such an inequitable competitive environment. Legal businessmen either switch to illegal operations or stay out of the market.

In most areas of trade, Western democracies have a much more effective control of smuggling than countries such as Georgia. In countries like Georgia, authorities know about the ongoing smuggling and often punish only those who fail to co-operate with corrupt officials. Usually those punished are petty individual smugglers.[26]

Additional measures that could also improve the situation would be to optimise the socio-economic conditions of the customs employees and to modernise customs infrastructure by, for example, implementing a programme for the computerisation of customs offices.

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26 Interview with Fady O. Asly, the President of the American Chamber of Commerce of Georgia.

Reform of the Border Guard from military unit into Border Police

The old philosophy of border control sees it as a defence of the State borderline—the Soviet type "Iron Curtain" defence. New philosophy regards it as an instance that controls borders of the whole territory of Georgia, including regions neighbouring to Abkhazia and South Ossetia. Mobile Border Patrol in the regions of Samegrelo and Shida Kartli would be a significant step towards more effective control of smuggling through transparent borders in Abkhazia and South Ossetia even in conditions of unresolved conflicts.

Main Problem

Before November 2003, authorities headed by Eduard Shevardnadze, the President of Georgia, demonstrated a lack of initiative and will to institute any of these steps in an effective manner.

Example:
Pressure of the International Monetary Fund and anti-smuggling campaign in Georgia in August 2003.

Fair elections of new Parliament and President of Georgia, and political leaders in Abkhazia and South Ossetia

Democratic change poses a serious threat to the power of the ruling groups both in Georgia and in its secessionist zones. It can initiate conflict resolution and facilitate the transformation of smuggling activities into legal businesses.

There are expectations among the Georgian public that the newly elected President of Georgia, Chairman of the Parliament, and State Minister will essentially improve the situation in 2004.

Long term perspective

Political resolution of the conflicts, and comprehensive co-operation among all interested parties. This would require the resolution of many highly complex problems such as: the relations between Russia and Western countries concerning the Caucasus region; relations between Georgia and Russia; relations between the Government of Georgia and the secessionist governments in Abkhazia and South Ossetia; relations between the government of Abkhazia-in-exile and the secessionist government of Abkhazia; and (most importantly) relations between ordinary ethnic Abkhazians, Ossetians, and Georgians through diplomacy and civic initiatives.

Despite the fact that the current "frozen" situation greatly diminishes the possibility that problems of smuggling and crime can be solved through political agreements and co-operation, they are in a key position if results are to be achieved.

Reassessment of the existing strategy on conflict resolution is necessary for breaking the deadlock.

Existing strategy:
Conflicting sides and mediators try to define political status of secessionist territories, but Georgian, Abkhaz, and Ossetian politicians are hostages of the existing situation. They are not able to satisfy each other's political claims connected to the definition of the political status. For example, if the president of Georgia agrees to recognise the independence of Abkhazia, he or she will immediately be impeached. The same happens if the de facto president of Abkhazia agrees to recognise Abkhazia as part of Georgia.

Result:
Both conflicts are in a deadlock with little prospect of resolution in the foreseeable future.

Proposed strategy:
1. Postponing the definition of political status to the indefinite future (probably to the future generation of politicians)—conflicting sides should announce a moratorium which means that secessionist governments would not declare independence while the Government of Georgia would not declare that Abkhazia and South Ossetia are parts of Georgia, until a formal procedure of unification with the European Union is topical. This will take several decades;
2. Following the strategy of Europeanisation. Both Abkhaz and Georgian politicians have already declared Europeanisation as their objective, and this is significant when a new strategy of conflict resolution is implemented. The European Union could elaborate a special programme of standardisation for further integration (as one of the means of conflict resolution) of those territories which have territorial disputes but wish to join the EU in future. Europeanisation is understood here as a long term process of meeting EU standards, which in the long run may lead to a formal procedure of unification with the EU, provided that there are grounds to expect that future politicians from all conflicting sides will be able to reach a compromise solution to resolve the conflict.

Expected results:
1. Based on European norms, immediate initiation of the processes of standardising legislation, customs and tax policy in Abkhazia and South Ossetia as well as in Georgia as a whole. Immediate elimination of any sanctions against secessionist regime in Abkhazia, and initiation of a repatriation of IDPs and refugees in Abkhazia, South Ossetia, and other regions of Georgia. Development of democracy and market economy within the context of policies aiming at eventual integration with the EU;

2. Defined political status by the time of formal procedure of unification with the European Union (either as one territory or two territories). New generations of Abkhaz, Ossetian, and Georgian politicians will define how they want to join the EU—as separate territories or as one territory. If today Georgian, Abkhaz, and Ossetian politicians are hostages of the situation, it is expected that by the formal unification with the EU (which definitely will take several decades) new generations of politicians will act in a better political, economic, and social environment—favourable to compromises and consensus on the definition of the political status of Abkhazia and South Ossetia. It is expected that the incentive of joining the EU will play a positive role in resolving this dispute.

Criminal Networks and Trust. On the importance of expectations of loyal behaviour in criminal relations

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It has become a truism to say that what holds organised crime together are bonds of trust. At the same time there is no clear understanding of the meaning of trust in the context of organised crime and how it affects the emergence and continued existence of criminal structures. And there is only little if any empirical research which specifically explores the presence or absence of trust in criminal relations.

The purpose of this paper is, first of all, to provide a tentative conceptualisation of trust in the context of organised crime. Starting with a brief review on the general sociological literature on trust we propose a typology of different types of trust in criminal relations, and, drawing from our own research on two illegal markets, the alcohol black market in Norway (Johansen 1994; 1998; forthcoming) and the cigarette black market in Germany (von Lampe 2002; 2003b), we present some anecdotal evidence on the empirical importance of trust when establishing and maintaining criminal relations. Finally, we consider constellations of criminal co-operation where trust is violated or absent in the first place.

With our discussion we try to emphasise that in the analysis of organised crime, different types of trust and different consequences of the violation of trust need to be taken into consideration, not to mention the possibility that there are criminal relations which are not based on trust at all.

Trust and Organised Crime

The issue of trust has been growing in popularity in the sociological and economic literature over the past 25 years. Trust has variously been identified as a prerequisite for economic development, as a necessary component of civil society or, more generally, of the continued operation of any social order (Fukuyama 1995; Gambetta 1988; Huemer 1998; Laucken 2001; Luhmann 1979; Misztal 1996; Seligman 1997). In a similar vein, the notion of trust is used in the organised crime literature to explain the willingness and capability of "organised criminals" to co-operate. Here, the need for trust appears to be even more pressing. On the one hand, many of the institutional safeguards designed to compensate for the consequences of deceit and betrayal, such as courts and insurance, are unavailable for illegal actors. On the other hand, with the threat of law enforcement

intervention and criminal sanctions, the consequences of disloyal behaviour are far greater than those to be expected in the legal sphere of society. Accordingly, trust is treated as an essential feature of organised crime, and organised crime, in turn, is placed in an inherent relationship with bonding ties of kinship, ethnicity, or ritual kinship within mafia-like fraternal organisations (Black *et al.* 2001: 58; Bovenkerk 1998: 122; von Lampe 1999: 220–1; 2001; Lupsha 1983: 65, 1986: 33–4; Paoli 2002: 84; Pearson and Hobbs 2001: 27–32; Reuter 1983: 116).

This conventional view has not remained unchallenged. Organised crime, it has been argued, is better characterised by a lack of trust (van Duyne *et al.* 2001: 99, 127), as people who tend towards criminality are unlikely, in the words of Gottfredson and Hirschi (1990: 213), "to be reliable, trustworthy, or co-operative". Even life in the Mafia, as Diego Gambetta (1996: 152) has stressed, is fraught with uncertainty, distrust, suspicion, paranoid anxiety and misunderstanding.

Conceptualisations of Trust

Trust has to do with how people cope with risk and uncertainty in interactions with others (Fukuyama 1995; Gambetta 1988; Huemer 1998; Laucken 2001; Misztal 1996; Seligman 1997). Trust implies reliance on another person's integrity in the absence of sufficient means to control this other person's behaviour.

There are at least two dimensions along which conceptualisations of trust vary. One dimension refers to the level of rationality or irrationality when a trusting person decides to trust. The other dimension, ranging from micro to macro level, refers to diverging views on the allocation of trust in society. In the spectrum from rationality to irrationality, trust takes up a space somewhere between purely rational calculation of probabilities and irrational blind faith (Coleman 1990: 99; Giddens 1990: 33). The micro-macro dimension ranges from trust placed in individuals to trust in abstract systems where individuals are recognised only as agents who perform certain institutionally prescribed roles (Misztal 1996: 72; Seligman 1997: 18).

Our conceptualisation of trust is based on the notion that the most appropriate frame of reference for discussing trust in the context of organised crime is a network approach. We view trust as a property of dyadic relations that form the basic elements of criminal networks. In turn, we regard criminal networks, defined as webs of criminally exploitable social ties, as "the least common denominator of organised crime" (McIllwain 1999: 304).

For reasons of simplicity we focus on dyadic relations between a trusting Person P, the trustor, and a trusted other person O, the trustee (Fig. 1). We specifically focus on the perspective of the trusting person, leaving aside the question of how the trusted person perceives and copes with the situation. Within this narrow framework, we define trust as the expectation of P, under conditions of uncertainty, that (1) O will not harm P, even though (2) O could harm P (see also Dunn 1988: 74; Gambetta 1988: 219).

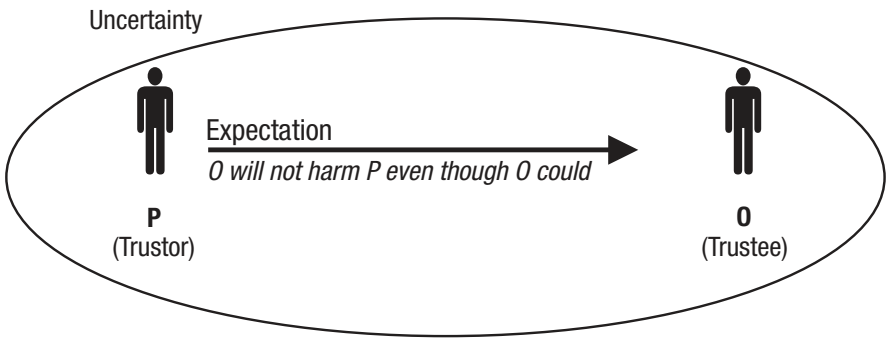

Figure 1. Basic Trust Relation.

The quintessential situation in which trust is an issue is that of a cooperative venture involving P and O. In this case trust means the expectation that O will stick to implicit and explicit agreements and will protect the secrecy of the venture vis-à -vis other criminals, the public and of course the police.

But there are other constellations where the notion of trust may come into play, even cases where O is a mere bystander who observes a criminal act committed by P. Here trust means P's expectation that O will not interfere or alert others, especially the police.

A Typology of Trust under Conditions of Illegality

In the analysis of a given criminal relation, the first question to be addressed would be: Is there trust at all? If not, the alternatives are either lack of trust or outright mistrust.

If there is trust, the crucial question becomes: On what basis does P expect O to be trustworthy? We believe that this question is heuristically of tremendous value because it opens the door to a systematic exploration of the myriad factors that may contribute to the emergence and continued existence of criminal networks.

In order to systematise the various potential constellations, we go back to the two dimensions of rationality-irrationality and micro-macro referred to above. We propose a typology of trust under conditions of illegality that rests on a distinction of different bases on which P expects that O will be trustworthy. In essence we define four categories of trust along the micro-macro dimension (individualised trust, trust based on reputation, generalised trust, trust in abstract systems) and within each category we emphasise variations in the rationality of the decision to trust. (Tab. 1).

Table 1. A Typology of Trust.

Micro – Macro	Level of Abstraction of Basis of Trust	Level of Rationality of Decision to Trust
		rational ↔ irrational
	Trust in Abstract Systems	
	Generalised Trust	
	Trust Based on Reputation	
	Individualised Trust	

Individualised Trust

The first category involves individualised trust. The expectation of agreeable behaviour relates specifically to the trustee as an individual. The motivation for trusting a particular individual can be rational. It may lie in previous observations of the trustee's behaviour and dispositions (Misztal 1996: 76), or in expectations of how the trustee will react to sanctions (Coleman 1990: 115). Or the motivation to trust may be irrational, resting on affections the trustor feels for the trustee (Gambetta 1998: 232; Huemer 1998: 121; Misztal 1996: 21).

Individualised trust can primarily be expected to emerge among criminal actors from continuous interaction in delinquent peer groups or in a prison setting, where affectionate bonds and a sense of predictability may develop.

It needs to be taken into account that trust—and especially individualised trust—can be mediated. In this case, P and O are connected through a chain involving one or more intermediaries who advise P on O's trustworthiness or even vouch for it (Coleman 1990: 180–182).

Trust Based on Reputation

The second category pertains to trust based on reputation. Here P places trust in O as a particular person but relies on publicly formed and held opinions about this person's trustworthiness (Dasgupta 1988: 54). Relying on reputation can be irrational considering the weak basis reputations may have. On the other hand, a reputation of trustworthiness can be a valuable asset that creates a strong incentive to actually be trustworthy. Thus, speculating on this mechanism can be quite rational.

Generalised Trust

The third category, generalised trust, comprises constellations in which trust is linked to social groups rather than to a particular individual. The trustor P places trust in the trustee O on the basis of the presumption that the trustee conforms to some more general norms or patterns of behaviour, for example codes of mutual support and non-cooperation with law enforcement that are internalised by members of a deviant subculture or a mafia-like fraternal association.

On a more mundane level, but perhaps with the most rational justification to it, a trust producing a sense of predictability may arise in routine situations. Harold Garfinkel (1963) has stressed the relevance of unspoken rules in daily life. This may be valid for conditions of illegality as well.

Trust in Abstract Systems

The fourth category refers to trust that is placed in abstract systems that set and maintain certain basic conditions. Of course, there are no direct counterparts in the sphere of illegality to abstract systems in legal society like government, the monetary system or the medical system (see Giddens 1990; Luhmann 1979; 1988). Still, where criminal groups manage to establish some level of control over a territory or market, and to set and enforce certain rules, as for example the Mafia in Palermo with regard to ordinary criminals (Gambetta 1993), then it can be assumed that such a framework will influence the behaviour of criminal actors and thus contribute to a sense of predictability and the emergence of trust.

Trust Producing Social Settings

It should be noted that the four categories are not mutually exclusive. On the contrary, it can be expected that a given trust relation rests on different bases of trust, and conversely, that there are social settings within which various trust building factors take effect.

In the following section, we briefly discuss four of these settings (family, local community, ethnic community and business) with reference to our empirical research on the alcohol and cigarette black markets to further illustrate the categories we have defined in our typology and to provide some insight into the actual relevance of different types of trust.

Family

According to conventional wisdom, there is a direct link between family and trust. Anthony Giddens (1990: 101), for example, suggests that "kinspeople can usually be relied upon to meet a range of obligations more or less regardless of whether they feel personally sympathetic towards specific individuals involved". Trust in family members, it is argued, rests on familiarity and conformity, i.e. on individualised trust growing out of continuous interaction, and on generalised trust based on a sense of similarity and shared norms and values (Misztal 1996: 39, 157, 171). However, the link between kinship ties and criminal relations may not be as straightforward. There is, first of all, the aspect of inner family conflicts. Secondly, the question of "borrowed loyalty" arises: It is not clear under what circumstances relations with no illegal connotation, such as kinship ties, can become the basis of trust for criminal co-operation.

In fact, our findings do not indicate a dominant role of family structures in the black markets we study. Among alcohol smugglers in Norway, the most common kinship-based patterns of co-operation are father and son relations, sometimes on equal terms. One interviewed Norwegian bootlegger explained: "Dad, who used to be a workingman, did start on his own in the 50s with tobacco and fruits, mostly black. Later on he went on with booze, and asked me to drive. He

had no driver's license. Here you see the coincidence of life." In some instances, bootleggers have been found to receive moral and logistical support from their wives and families. Another Norwegian bootlegger recollected in an interview: "My wife and I, we have always been together. I go nowhere or do nothing without her. We did our first deals in the 50s—went to the loan shark with our wedding rings to raise money for our first investment in cigarettes and booze... But my son, by the way, is a doctor." In other instances, family ties have turned out to be a source of risk when abused wives and disgruntled relatives have volunteered information to the authorities.

Local Community

Local communities and other homogeneous face-to-face groups, like family, can be expected to produce trust through familiarity and conformity (Giddens 1990: 101; Luhmann 1988: 94).

In the case of the illegal alcohol market in Norway, close-knit rural communities appear to be a more significant trust factor than the immediate family. In these communities, moonshining is widespread, and disloyal behaviour would be directed not only against a business partner but against the entire community. Similar mechanisms could be observed in the context of legal associations such as athletic clubs. One informant reported that his soccer coach used to sell liquor to his team on a regular basis. Another informant recalled: "We used to buy booze from a guy who was a member of our athletic club. Nobody grassed on him. That would be unthinkable"

Under such conditions, we hypothesise, family ties, to the extent they are criminally relevant at all, provide no added value.

Ethnicity

Ethnicity, probably more than anything else, has been assumed to provide a basis of trust for organised criminals (see Bovenkerk 1998). And indeed, the link between ethnicity and trust is fairly easy to establish where close-knit ethnic communities exist, because here the same notion of trust created by familiarity and conformity would seem to apply as in the case of family and local community. Moreover, marginalisation and discrimination tend to increase internal cohesion while self-chosen isolation may block alternatives.

Where intra-ethnic relations are not embedded in close-knit communities, however, the link between ethnicity and trust is less clear. What would have to be assumed is that a sense of similarity is generally present in the interaction between people of the same ethnic background, and that their behaviour will therefore be predicted with greater confidence (Hardin, quoted in Misztal 1996: 134).

In our research we have found a significant difference in the importance of ethnicity between the bootleg liquor market in Norway and the cigarette black market in Germany. In Norway, members of ethnic minorities play a marginal role at best in the black market. In contrast, in the cigarette black market in Germany, the procurement and wholesale levels tend to be occupied by Polish smugglers and dealers whereas the street sale is dominated by the Vietnamese. It ap-

pears that illegal entrepreneurs can operate within their respective ethnic networks with ease and without fear of being reported to the authorities.

The most striking aspect of the dominating role of certain ethnic groups in the cigarette black market is not, however, that they facilitate criminal co-operation, but that there is an apparent ease with which the ethnic cleavages between these groups are bridged, namely in the relation between Polish whole-sale suppliers and Vietnamese dealers, and between Vietnamese dealers and German customers.

This is remarkable because in legal business, ethnic and language barriers are generally believed to hamper the establishment and maintenance of business contacts due to the great potential of misunderstanding and conflict when members with different languages, cultural backgrounds and belief systems meet (Good 1988: 45–46; Neubauer 1997).

In the illegal cigarette market in Germany (see Fig. 2) quite the opposite might be true. From the available evidence it seems that Polish smugglers initially took the risk of directly approaching potential Vietnamese customers without any prior connection. The cigarettes were randomly solicited in front of housing projects known to be occupied by the Vietnamese. We can hypothesise that the equivalent status of a foreigner, minimising the possibility of co-operation with the authorities, provided sufficient grounds for co-operation.

The same may be true for the relation between German customers and Vietnamese street vendors. But yet another trust building factor may be at work as well: the routinisation of the street sale of contraband cigarettes. These exchanges are publicly repeated in the same fashion over and over again so that a given customer will most likely not anticipate any deviation from this norm when he or she approaches a vendor.

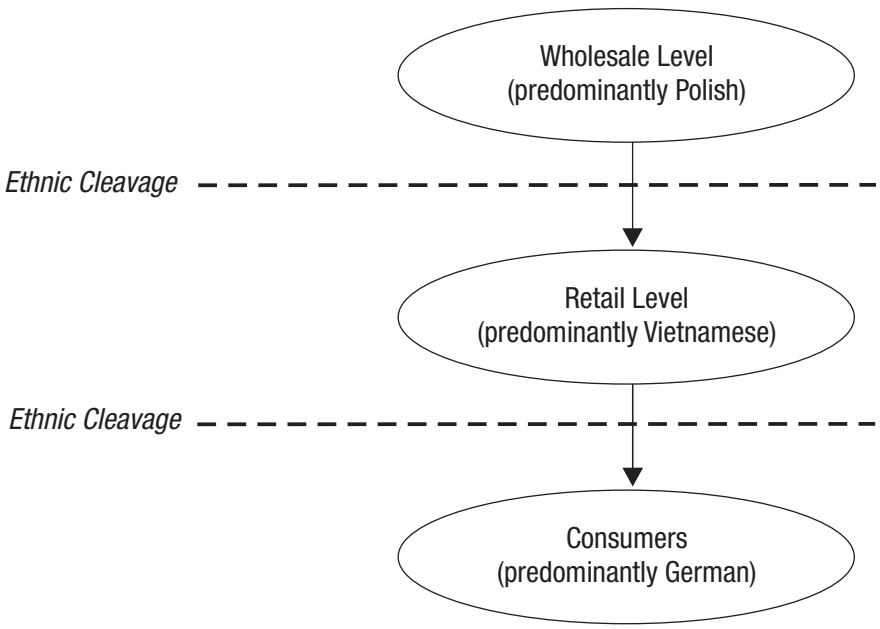

Figure 2. The Ethnic Factor in the Cigarette Black Market in Germany.

Legal Business

While ethnicity cannot be ruled out as a trust building factor, at least in the case of the cigarette market in Germany, there is one social setting that appears to have a much greater significance for the emergence of criminally relevant trust: legal business.

The issue of criminogenic business cultures and criminal relations growing out of business relations has been raised in the literature on white-collar crime (see e.g. Coleman 1987; 1989; Waring 1993), but it has received little attention so far in the literature on criminal networks. Like the other settings, networks of legal business relations and relations within a firm tend to be characterised by a high level of cultural cohesion, patterns of repeated interaction, and transparency through social and geographical proximity. In such an environment, trust can be expected to be the result of a combination of factors like affectionate bonds, observations of personal conduct, reputation, and the reliance on shared norms and values.

Our findings suggest that this kind of trust can facilitate criminal co-operation. Both bootlegging in Norway and the trafficking in untaxed cigarettes in Germany are closely linked to legal business, namely the transportation sector. In our research we have found criminal relations growing out of existing or previous employer/employee relations, relations between employees of the same firm, and between independent business partners. One Norwegian alcohol smuggler stated that when obtaining credit in the bootlegging business, he was able to take advantage of the reputation he had gained as a legal entrepreneur who pays his debts on time.

Violation of Trust

It is a matter of further research to explore how the different social arenas relate to the emergence of trust relations and different levels of trust. What seems clear, however, is that no basis of trust is strong enough to rule out the possibility of betrayal. That is why the analysis of trust would be incomplete without a look at the consequences of a violation of trust. Our research suggests that the violation of trust can have very different consequences.

No Consequences

In some instances, the violation of trust may not entail any consequences, for example, because the trusting person remains unaware of the disloyalty. In one illustrative case, the members of the network of one of the big-shots of Norway's bootleg business continued to cooperate despite poor results. They failed to realise that the reason for their failures was that the big-shot himself occasionally informed on accomplices to fend off criminal investigations directed against him.

In some instances no consequences will follow because the trusting person has no motivation or resources for retribution. Several instances have been documented where participants of the bootleg business in Norway remained untouched although they had been known grasses for years.

Responses

When the trusting person does react to disloyal behaviour, the response needs not be drastic. Instead of using violence, the cooperation may be continued on a lower level. Overall, neither the bootleg liquor market in Norway nor the illegal cigarette market in Germany is marked by widespread violence.

Just as there are patterns of criminal co-operation that endure violations of trust, we also find co-operative relations among criminals that either seem to lack an initial basis of trust or appear to be characterised by outright mistrust.

At this point it must be stressed, however, that the presence or absence of trust is a matter of the subjective perspective of the trusting person. Trust may exist even though a rational objective observer would feel that there is no sufficient basis. One has to take into account that decisions under uncertainty, such as the decision to trust, are prone to be influenced by biases and misleading intuitions (Tversky and Kahnemann 1982). Therefore, trust-based co-operation may occur on a very precarious basis and without much of a past history (Gambetta 1988: 232; Good 1988: 45).

This may explain, for example, the on-the spot recruitments on the wholesale level of the cigarette black market in Germany. In several cases, persons have been recruited in the course of chance meetings in bars to transport considerable amounts of contraband cigarettes (von Lampe 2003b). It can be hypothesised that these encounters have been sufficient for both sides to form an opinion about the other's trustworthiness.

Co-operation Without a Basis of Trust

These constellations notwithstanding, there seem to be instances where co-operation occurs without a basis of trust. Four types of cases in particular can be distinguished:

(1) Cases where trust is placed to explore the other's trustworthiness, typically beginning with an initial co-operative move on a low level of risk which is gradually increased to develop individualised trust;
(2) Cases of adverse conditions where the trustor has no choice but to place trust in another because not to trust would lead to greater harm (see Coleman 1990: 107–108; Gambetta 1988: 223–224; McCarthy et al. 1998: 174);
(3) Cases where the risks of co-operation are simply ignored, fatalistically accepted as a fact of life, or even welcomed to thrill gambler's adventurous mind (Adler 1985: 85).
(4) Cases where the risks of co-operation are minimised by functional alternatives to trust in the form of precautionary measures such as anonymity and segmentation.

Conclusion

In conclusion we would like to argue that trust is an empirically and theoretically significant variable but it provides no exhaustive explanation for the emergence and continued existence of criminal networks. To fully understand the importance of trust it is necessary to acknowledge its many forms and micro- and macro-social contexts within which it is rooted. Kinship and ethnicity are just some, and not necessarily the most important trust variables that need to be taken into consideration. It may well be that criminal co-operation is not founded on trust at all: empirical evidence suggests that under certain circumstances, criminal relations can exist in the absence of trust and even despite mistrust.

Analysing organised crime with regard to the presence or absence of trust promises new insights from a combination of psychological and sociological perspectives.

Numerous questions remain to be answered through future research, including:

- how trust developed in legal contexts can be used for criminal purposes,
- to what extent the strength of trust-relations varies with different types of trust,
- to what extent the need for trust in criminal relations varies with the hostility of the environment and the general levels of trust in society.

It needs to be stressed that the illegal markets we are studying exist in relatively non-hostile environments and in societies that are characterised as "high-trust cultures" (Fukuyama 1995). It can be hypothesised that the picture is different in illegal markets in hostile environments and/or embedded in "low-trust societies".

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Trafficking in Women and Children in Europe

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Concerning trafficking in women and children, Europe is divided into two parts: the member countries of the European Union serve as a destination area, and Eastern Central Europe, the Balkans and the CIS-countries as source and transit areas. Illegal immigration as a whole has six main routes to and inside Europe: 1) from Moscow through Lithuania, Poland and/or the Czech Republic to Germany and Austria; 2) from Ukraine through Slovakia, Hungary, the Czech Republic and/or Poland to Austria and Germany; 3) from the Middle East and Turkey to Greece and Italy; 4) from North Africa to Spain and Italy; 5) from Turkey through the Balkans to Italy and Austria, and 6) from South and Central America to Portugal and Spain. These routes also serve as the main routes of trafficking in human beings (NCIS UK, 34).

A. Trafficking in women and children for sexual exploitation

1 Overview

In Europe, the trafficking in women and children is dominated by trafficking connected with prostitution and other forms of sexual exploitation. A recent study shows that more than 80 percent of the victims from south-eastern Europe (one of the main source areas) end up as prostitutes, and about 10 percent as suppliers of other erotic services. Approximately 10 to 30 percent of the victims are under 18 years of age; mostly 15–18-year-old girls, but also younger children are involved (Hajdinjak 2002, 51; Omelaniuk 2002).

Precise information on the volume and turnover of the crime is not available. This is mainly due to the following:

1) The absence of comparable statistics on reported crimes, indictments and court cases, as well as on the number of victims involved (on the whole, national statistics indicating the number of victims in reported crimes are available only in a few European countries);
2) The heterogeneous criminalisation of the crime of trafficking in women in the national legislation of European countries;
3) The characteristics of trafficking (as organised transnational crime), which result in a high dark figure and make trafficking hard to control and to prevent;

4) The poor legal status of the victims in the legislation of the European countries, which makes them unwilling to report the crimes or to co-operate with the authorities during investigation and court proceedings;
5) The heterogeneous use of the concept of trafficking in women in both international and national contexts.[1] This is partly due to the heterogeneous national legislation in Europe, and partly to the different ideological and moral attitudes to prostitution. At its largest, trafficking in women is understood to include all (international) female prostitution, and at most limited, only certain crimes against personal freedom criminalised in national legislation.

Hence the current extent of trafficking in women in Europe is subject to rough estimates, and in most cases it is unclear how these estimates have been reached. Furthermore, due to some of the definitional grey areas involved, very accurate estimates would be impossible to make even in theory.

As far as the whole continent is concerned, the Swedish NGO Kvinna till kvinna estimates that every year approximately 500,000 women and children are trafficked for sexual exploitation to the European Union member countries. According to the latest estimate of IOM, the volume of trafficking to the European Union from and through the Balkans is 120,000 women and children a year, and from the whole of Eastern Europe about 200,000 women and children. In addition to the trafficking directed at the European Union, trafficking in women and children for sexual exploitation is common also to, in and between the countries outside the EU, as well as from Europe to other continents (North America, the Middle East, Japan and Southeast Asia). Estimates of the extent of this activity are even more vague than those of trafficking to the EU, but the volume is probably smaller. According to the latest estimate by the US Drug Enforcement Administration (DEA), the annual volume of all forms of trafficking in women and children all over the world is 500,000 victims, of whom 200,000 go through the Balkans. According to the US State Department, the corresponding figure is 700,000. All the above mentioned estimates must be considered as indicative only, for there are no exact data (and, for definitional problems, it is doubtful if such data will ever exist) on the actual volume of trafficking in women either in Europe or on other continents (Hajdinjak 2002, 51; Laczko etc. 2002, 4; Organised crime situation report 2001, 41; fpmail.friends-partners.org; www.janes.com; www1.umn.edu/humanrts/usdocs).

It is, however, evident that in Europe, the volume of trafficking has increased rapidly over the last ten years. Two plausible explanations are to be found: Firstly, the demand for prostitution and other sexual services has increased in Western Europe. Secondly, the former Socialist countries in Eastern Europe with their current economic and social problems form a source area from which traf-

1 The term trafficking is used in this report as defined in the UN Palermo Protocol on Trafficking in 2000: "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

ficking in humans to Western Europe can be organised far more easily and more economically than from the old source areas (Southeast Asia, West Africa and Latin America). Estimates of the yearly turn-over of the crime vary from 100 million Euros to several billion euros (Hajdinjak 2002, 51; Organised crime situation report 2001, 41; fpmail.friends-partners.org).

The majority of the victims of trafficking come from Albania, Lithuania, Moldavia, Romania, Russia and Ukraine. Of the victims of coerced prostitution assisted by IOM over the last few years, about half have been Moldavians, one-fourth Romanians, and one-tenth Ukrainians. Trafficking in women to Europe from other continents is most common in the Mediterranean countries and in Western Europe. The main source areas are Southeast Asia (Thailand), Latin America (Columbia, Brazil, and the Dominican Republic) and North and West Africa (Morocco, Nigeria and Sierra Leone). According to Europol**,** the extent of this trade has remained about the same over the last decade. The increase in the total volume of trafficking in women in Europe thus originates from Eastern Europe (Organised crime situation report 2001, 41; fpmail.friends-partners.org).

2 The characteristics of trafficking in women and children for prostitution in Europe

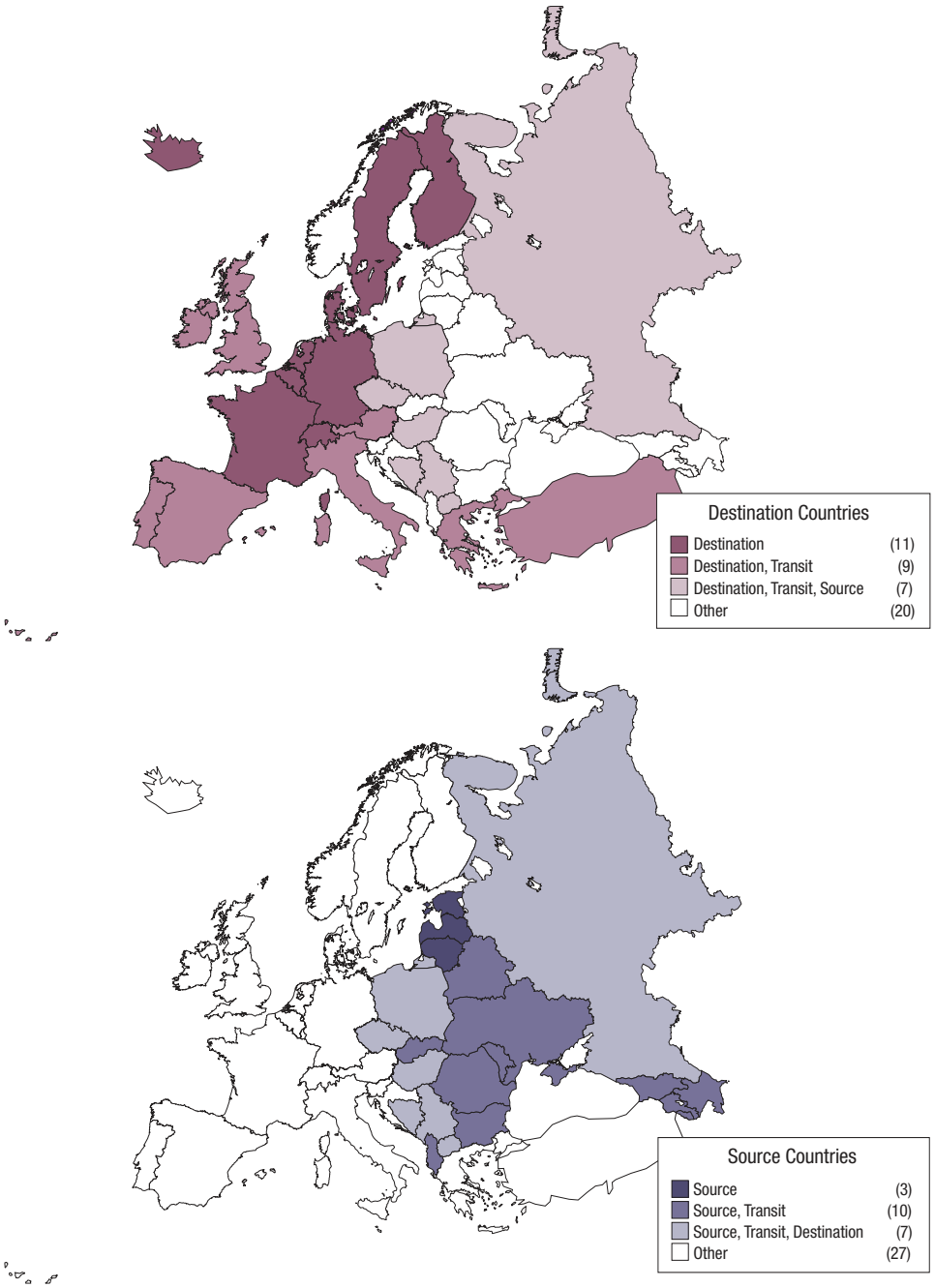
On average, the victims of trafficking for prostitution in Europe are not only from the economically most depressed, and socially and politically most unstable areas of the continent, but also belong to the most disadvantaged social and ethnic groups of those areas. They are usually also very young: teenagers, or in their early twenties. When seeking better opportunities in life, they fall easy prey to criminals promising good jobs and high wages abroad. For the criminals and organised crime groups, trafficking offers an opportunity to make very high profits with minimal risk and low capital requirements.

Trafficking operations are usually carried out in co-operation by several, relatively small local criminal groups. This makes the activity both flexible and difficult to prevent, since the elimination of one group does not usually affect the activity of the whole network: the missing link will only be replaced by another (NCIS UK, 34–36).

The relations between the groups are normally pure business relations, and each groups can act in several networks simultaneously. The women are transported either directly to the ultimate destination country, and engaged in prostitution after arrival, or they are moved in stages, in which case they are exploited at each stage. The first method is common in trafficking from the Baltic countries and Russia to Western Europe, and the co-operation between the recruiters, transporters and exploiters is usually close. The latter method, on the other hand, is frequently used in the trafficking through and from the Balkans; the co-operation networks are loose and change from operation to operation (NCIS UK, 34–36).

The victims are recruited in the source countries through newspaper and Internet advertisements, by individual recruiters (often female), or by front agencies offering legal or illegal employment opportunities in the EU member countries as, for example, maids, nannies, waitresses, models, striptease-dancers or cleaning women. Some of the women are recruited knowingly into prostitution,

but even in their case the conditions of their employment often differ from what has been agreed. In the actual trafficking, the recent trend, at least in the Baltic countries, has been towards personal recruiting instead of general advertising. In some countries, women are also recruited by abduction; from Albania and Kosovo, there are even reports on families selling their daughters to traffickers (Hajdinjak 2002, 51; NCIS UK, 35; Sipaviciene 2002, 14).



Once recruited, the victims are controlled during the transport and in the destination countries by a variety of means, but violence (implied and actual) is common and ever-present. There are more and more reported cases of extreme forms of coercion, assaults, rapes and even homicides. Especially the trafficking from and through the Balkans is reported to be exceptionally violent by nature, and the invasion of the Balkan groups on the West European prostitution market has had a brutalising effect on the working methods also outside the Balkans. A common trend of the last few years has been the increasing use of forced addiction of women to hard drugs, which ties the victims to the traffickers in a very effective manner. This method is especially popular among those traffickers who are also involved in the drug trade, and in Finland, for example, where foreign prostitution is mainly mobile, prostitutes are regularly used as drug smugglers/couriers and dealers. In most European countries, the groups trafficking women are usually also involved in other forms of trafficking and smuggling (Laczko etc. 2002, 15; Lehti & Aromaa 2002, 87–92; NCIS UK, 35, 38–39).

The traffickers also exploit the economic, social and cultural vulnerabilities of the victims. Debt is one of the most common means of control. The women usually agree to pay their travelling and recruiting expenses from the future earnings. This debt is passed from one trafficker to the next until it ends up in the hands of the exploiter in the destination country. Together with the inflated housing and living expenses charged from the victims, the debt soon becomes impossible to handle. The earnings of the victims are then directed at the pockets of the exploiters, and the women become totally dependent on their abusers because they have no financial means to escape. It is also normal to confiscate the passports and other identity documents of the victims, and to threaten them with local authorities, deportation and detention. The effectiveness of the threats is increased by the fact that they are often at least partly real: in most European countries, it is almost impossible for the victims to avoid immediate deportation, and that effectively prevents the women from approaching the authorities even in the most aggravated cases of abuse (NCIS UK, 36).

B. Other forms of trafficking in women and children

As mentioned above, presently 80–90 percent of the trafficking in women and children in and to Europe is serving organised prostitution and other forms of sexual exploitation. As far as the other forms of trafficking in human beings is concerned, the lack of information, and the confusion of concepts are even greater than in the case of trafficking for sexual exploitation (Forced Labour 2002; Omelaniuk 2002).

Trafficking in women and children for forced or slave labour seems to be fairly rare in the EU member countries, even if the recruiting of employees for, for example, hotel and catering business and of domestic servants and nannies from the Balkans and the Baltic countries sometimes meets the criteria. In several European countries, the staff of a few African and Asian embassies have caused problems by trafficking domestic servants from their home countries to work for their employees in conditions resembling slave labour. Trafficking for industrial work is found in Italy, for example, where 30,000 foreign children

(mostly from China) are estimated to work in small-scale clothing and other industry in conditions similar to slave labour. In Greece, some 3,000 children, mostly Albanians, are estimated to work in corresponding conditions as window cleaners and in other similar occupations. On a larger scale, children are trafficked and made to work for organised crime in begging rings, or as pickpockets and thieves. This practice is exercised in the whole of Europe; the victims usually come from Eastern Europe, and the proportion of Roma is considerable (www.globalmarch.org).

The evidence of trafficking connected with the international trade in human organs is almost non-existent in Europe. It is true that in Russia, for example, there are rumours and allegations of kidnapping street and orphanage children for this purpose. However, the only known case is from the year 2000, when a Muscovite grandmother sold her grandchild for 90,000 USD to police officers, acting as traffickers, to be used in organ trade. Since the events of this case were triggered by a trap laid by undercover police, its value as evidence is questionable. As far as is known, other cases with concrete evidence of this kind of trade have not been reported from Europe in the last few years (www.globalmarch.org).

Apart from trafficking for prostitution, the most important forms of trafficking in humans in Europe are at present the illegal trade of children for adoption, and the trafficking in workers for the shadow labour market existing between the legal market and slave labour.

The source areas of trafficking in children for illegal adoption to Western Europe are the Eastern European countries and the third world countries. In addition, children are trafficked from Eastern Europe to industrial countries outside Europe, especially to North America. There are no estimates available on the extent of the trade (www.globalmarch.org).

Trafficking in workers for the shadow labour market serves mainly the recruiting of seasonal labour force for agriculture. In addition, there is demand for such labour force in the construction industry and other business sectors where large numbers of unskilled workers are employed, the turnover of labour is high, and the official control weak. The destination for grey labour in Europe are the EU member countries, whereas the Balkans and the Eastern European countries serve as source areas. Workforce is smuggled into the European Union also from outside Europe, especially from North Africa as well as East and South Asia; one of the primary individual source countries is China. If the smuggled employees are minors, this kind of activity must always be regarded as trafficking. The Palermo Protocol on Trafficking states quite explicitly that the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation is to be considered as trafficking in persons, regardless of whether coercion and deception are involved. In the case of adults, it is somewhat more difficult to determine if the terms of recruitment, employment and working meet the criteria of trafficking in humans. When compared with the legal labour market, the terms and conditions employed on the shadow market are generally considerably worse, and various malpractices are common. On the other hand, the workers usually know this already when they are recruited and make the contract with the traffickers more or less voluntarily; it seems that in many cases, the immigrants rather tolerate working conditions that resemble forced labour, than the

impoverished freedom in their home countries. In spite of this, there can be no justification for any forms of forced labour, and both the governments and civil society groups should show more political will in order to tackle the problem. The majority of the grey labour force smuggled into Europe are men; women are mostly recruited to the hotel and catering sector, or work as domestic servants. There are no estimates available on the volume of the trade (Forced Labour 2002, 5; Plant 2002).

C. Prevention, crime control, and witness protection legislation

The main reason behind the rapid increase in trafficking in women and children in Europe after the collapse of the Iron Curtain at the beginning of the 1990s is the deep difference in the standard of living between the Western European countries and the former Socialist countries. It is not a coincidence that four of the most important source countries for the trafficking (Albania, Moldavia, Romania and Ukraine) are also the poorest countries in the continent, one (Lithuania) is the poorest country in the Baltic Sea area, and that in Russia (sixth most important source country), there are large areas where the standard of living is exceptionally low and the social problems enormous. Thus, it is improbable that any fundamental positive changes in the situation can be achieved before the internal differences in the standards of living have been levelled down throughout the continent. The point is illustrated by the recent development in Poland, Hungary and the Czech Republic, where the positive social and economic development has significantly and rapidly reduced trafficking.

The most effective means to improve the situation and to prevent trafficking is to support and facilitate the social and economic development in the Eastern European countries. In this respect, the enlargement of the European Union can be expected to produce significant positive results. However, the most problematic countries will be disregarded at least in the first phase of the enlargement, and especially Moldavia and Ukraine have been left to play second fiddle in EU-Eastern European relations.

In the actual crime control policies concerning trafficking in women, the most crucial questions are presently:

1) creating extensive and reliable systems for collecting comparative data on the whole continent;
2) criminalising the trafficking in women in all European countries with relatively uniform criteria and sanctions;
3) developing and increasing the co-operation in crime prevention both internationally and between the European countries;
4) improving the status and rights of the victims in the legislation of the European countries, and
5) creating efficient witness protection legislation and programmes applicable to the victims of trafficking.

For the time being, there is no reliable, comparative information available on the extent of trafficking in women in Europe, or on the numbers and the nationalities of the victims; not even concerning the reported and prosecuted crimes. In order

to improve the situation, the European countries should invest in gathering national statistics on reported trafficking crimes which would employ relatively uniform criteria and comparable standards. In addition to the relevant authorities, important sources of information are NGOs that assist and provide support for prostitutes and the victims of trafficking. Means should also be created in order to make an efficient and extensive collection of their information possible in each country as well as all over the continent. Mere statistics would, however, produce only indicative information at best. In order to obtain better knowledge of the situation, and to create a basis for more efficient data collection systems, it is of utmost importance to increase basic research concerning trafficking and organised prostitution in Europe and in each European country. Much valuable knowledge has already been produced within the STOP and STOP II programmes, the IOM research projects, and some national research programmes. The need for additional research is, however, urgent.

The legislation concerning trafficking in women is still fairly heterogeneous in the European countries, but in recent years, harmonisation in regard to the criteria of the crime, sanctions, and the status and rights of the victims has been achieved. Activities of the Council of Europe (COE), the Organisation on Security and Co-operation in Europe (OSCE), and the European Union have been crucial.

Several conventions of *the Council of Europe* are relevant to combating trafficking in women (for example, the Conventions on Human Rights; on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; on the Compensation of Victims of Violent Crimes; and on Extradition). However, so far all the special COE regulations concerning the trafficking in women are mere recommendations. The most important of these is the R (2000) 11 (Recommendation on Action against Trafficking in Human Beings for the purpose of Sexual Exploitation) which proposes that:

1) trafficking should be made a special offence;
2) courts of law should have the right to seize assets belonging to convicted traffickers, and
3) victims of trafficking should receive help and protection; governments should set up agreements to facilitate the victims' return to their native countries if they so wish, and victims should be granted, if necessary, temporary residence status on humanitarian grounds.

Other relevant COE recommendations include: R (91) 11, R (96) 8, R (97) 13, R (80) 10, R (85) 11 and R (87) 21. Their objective, at least indirectly, is to harmonise the legislation of the member countries, and to improve the legal status of the victims of trafficking.

According to the 2002 data, in 28 of the 52 European countries and other de facto independent jurisdictional areas, the trafficking in women is criminalised as a separate crime, and in at least three others an amendment for this purpose is being drafted. Not a single European country has at the moment specific legislative witness protection programmes designated specifically for the victims of trafficking. Of the EU member countries, Belgium, Denmark, Finland, France, Luxembourg and Sweden do not have any formal witness protection programmes; in the remaining member countries, witness protection for victims

of trafficking is provided on the basis of either general legislative witness protection provisions or non-legislative protection programmes, and the entry criteria are by default so strict that they are not attainable by standard victims of trafficking. Of the Central and Eastern European countries, at least the Czech Republic and Hungary have general witness protection programmes applicable to the victims of trafficking (Holmes & Berta 2002).

As mentioned, there currently is no special European Convention on trafficking. There is, however, a convention under discussion which aims at a binding regulation concerning the legal status and protection of the victims of trafficking in humans. The convention would focus specifically on minors, and include an efficient monitoring system (CM (2002) 129; Trafficking in Women, 42).

The Organisation for Security and Co-operation in Europe is a regional organisation, and another source of non-binding regulations on trafficking. The OSCE and especially its Office for Democratic Institutions and Human Rights (ODIHR) have become increasingly involved in the issue over the last ten years. In 1999, the OSCE Parliamentary Assembly adopted a Resolution on Trafficking in Women and Children, in which the member countries were called upon to make sure that they have the necessary legislation and enforcement mechanisms to punish traffickers. Country reports requested from the member countries presently form the most extensive source of information on the extent of trafficking, and on the existing legislation concerning trafficking in the European countries (Trafficking in Women, 42–43).

The European Union legislation concerning trafficking in women and children is variable and constantly developing. The three most important pieces of special legislation with regard to combating trafficking in women and children are the *Council framework decision on combating trafficking in human beings* (2002/629/JAI), the proposed *Council framework decision on combating the sexual exploitation of children and child pornography*, and the proposed *Council directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who co-operate with the competent authorities* (COM (2002) 71). The framework decision on combating trafficking in human beings obligates the member countries to ensure that trafficking in humans for forced labour as well as for sexual exploitation are criminalised, as are the instigation, aiding, abetting and attempt of such activity. The decision also includes stipulations on the maximum penalty (six years of imprisonment) and on aggravating circumstances. The criminal liability of corporate actors is addressed, as well as issues of jurisdiction and co-operation between the member states. The proposed framework decision on combating the sexual exploitation of children is intrinsically linked with trafficking in children because at the moment, prostitution and other forms of sexual exploitation dominate trafficking in children in Europe. The proposed decision defines a child as a person under 18 years of age.

The proposed directive on short-term residence permits includes regulations on the conditions and procedures for issuing short-term residence permits for victims of trafficking in human beings. The objective is that the victims who in

the course of a certain reflection period consent to assist the authorities in the investigation and prosecution of the crime, would on certain conditions have the right to a temporary residence permit in the EU member countries. At request, the permit could be renewed according to the needs of the investigation and the court proceedings, but it could not be renewed after the proceedings have been concluded. The conditions for the permit are strict, and the whole procedure is always dependent on the victim's willingness to co-operate. Nonetheless, the directive would improve the present situation in which the victims are as a rule deported from most EU member countries (similarly to the other European countries) immediately and without exception. If the changes brought about by the directive are able to make the victims more co-operative towards the investigation and prosecution of the crimes, there are hopes that the clearance and conviction rates will improve, which in turn would have a significant invigorating effect on the prevention of trafficking. This is not, however, self-evident, for even if the stipulations of the directive are implemented, the factual position of the victims still remains rather insecure.

At present, the day-to-day protection and support of the victims of trafficking in Europe depend mostly on the activity of various NGOs. The European Union has supported and supports their work within the STOP, STOP II and Daphne programmes. However, the main responsibility as well as the financing of the activity are shouldered by voluntary citizens' organisations and volunteer workers.

At the moment, only the Netherlands, Belgium, Spain, Italy and the Czech Republic have promulgated special witness protection legislation applicable to the victims of trafficking. In some countries, such legislation is under preparation. All of the above mentioned laws are relatively new, and there is not yet much experience on how they work in practice. They all include the possibility of issuing temporary residence permits for victims of trafficking; in Belgium and the Netherlands, the consent of the victim to co-operate in the investigation and prosecution is required, in Italy all victims have similar rights whether they co-operate or not. In Spain, the stipulations of the general witness protection law apply also to the victims of trafficking. Presently, only Italy and Spain offer the victims actual, active police protection that continues also after the court proceedings have ended (by establishing a new identity, for example), but even here the right for this kind of protection is to a large extent only theoretical. It is questionable how effectively the victims' willingness to co-operate with the authorities (which is crucial to combating trafficking in humans) can be improved by granting mere temporary residence permits; on the other hand, a great many European countries do not presently have any kind of efficient witness protection programmes, and the population in many countries is so small that it would be virtually impossible to create such programmes without some kind of common programme covering the whole of Europe (Pearson 2001, 10–13).

Since trafficking in humans is a transnational crime, it is necessary to have effective international police co-operation to combat and prevent it. In Europe, the co-operation is both bilateral and international (Europol). In addition to the everyday co-operation, several large-scale special operations have been conducted

in the last few years, usually with good results. For example, during the Sunflower operation in 2002, more than 80 suspects were arrested in an operation carried out by the Europol and nine national police forces (news.bbc.co.uk).

The routes of trafficking in Europe are so manifold, and the organisation of the crime so flexible that it is not possible to close all the routes and eliminate all the trafficking networks. It is more practicable to concentrate the crime prevention efforts and combating operations on the main source countries and the most important junctions of the trafficking routes. When the Eastern Central European countries join the European Union, the possibilities to control the transit trafficking carried out via them will improve significantly; but there is still a need for a more efficient police and intelligence co-operation both inside the EU, and in particular between the EU member countries and the non-members. It is also crucial for the effective prevention of trafficking in women and children to continue and invigorate the combat against corruption in border controls, police forces, and on all levels of government which is rampant not only in many source countries but also in many of the main destination countries of trafficking in Europe, both inside and outside the European Union (NCIS UK, 34–36).

D. Conclusions

Exact information about the volume, characteristics and organisation of trafficking in women and children in Europe is still so scarce, and most of the programmes and legislative changes aimed at combating the crime so new that it is hard to say how they work in every-day crime prevention, and what practises of countering are the best and most effective. On the whole, it seems that the measures taken should be many and varied, comprised of legislative measures, police operations as well as different awareness campaigns, support programmes and media actions.

In several European countries, the implementation of even the basic legislative and other recommendations of the COE, OSCE, EU and UN concerning trafficking in women and children is still deficient. Thus, the most urgent short-term task in Europe should be the adoption and implementation of compatible and appropriate legislation concerning the crimes of trafficking, as well as the developing and strengthening of effective protection and assistance mechanisms for victims of trafficking in all European countries. This should be combined with the strengthening of socio-economic support programmes and awareness-raising activities in both the source and the destination countries. The urgent need to collect and exchange comparative information on trafficking throughout the continent, and to allocate sufficient funds to monitor trafficking, create databases and carry out further research on this issue should also be underlined.

In the long run, the best and most effective way to prevent trafficking is to support and facilitate the general social and economic development in the Eastern European and third world countries.

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Развитие межнациональной экономики и углубление интеграционных процессов как криминогенные факторы и пути их минимизации

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1. Постановка проблемы.

Объединение экономик различных государств Европы, усиление процессов интеграции на территории последней, как правило, оценивается в мире, в целом, позитивно. Но эти процессы, затрагивающие любое государство, объективно влияют и на все присущие ему явления. С высокой степенью вероятности, поэтому, можно прогнозировать существование точно таких же интеграционных тенденций внутри преступности разных стран. В частности, этот прогноз отчасти оправдался при анализе результатов проведенного нами совместного российско-грузинского исследования по контрабанде и приграничной торговле[1] Межнациональная экономика и разные виды благоприятной интеграции выступают, таким образом, в качестве факторов, порождающих транснациональную преступность и ее новые, не известные ранее отдельным государствам, виды преступности, т.е., в качестве криминогенных факторов. Очевидно, исключить полностью подобное крайне негативное явление, - невозможно, следовательно, задача состоит в том, чтобы минимизировать его. Обо всем сказанном, а также о некоторых возможных путях уменьшения побочных следствий позитивных процессов интеграции и пойдет речь ниже.

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1 Исследование проводилось совместно Саратовским Центром по исследованию проблем организованной преступности и коррупции (Россия, TRACCC), созданным по договору между Саратовской государственной академией права и Американским (Вашингтонским) университетом, с подобным же Тбилисским Центром (Грузия) в апреле – сентябре 2003 г.

2. Развитие межнациональной экономики и углубление интеграционных процессов – современные позитивные реалии.

А. Почему это реалии?

Собственно, этот вопрос особых аргументов не требует. Вот только некоторые наиболее зримые свидетельства развития межнациональной экономики и интеграции: 1) широкое присутствие иностранного капитала в любом государстве мира, вне зависимости от того, относится ли оно к развитым или развивающимся, в виде иностранных инвестиций в промышленность; предприятий с иностранным капиталом, или принадлежащих собственникам других государств; и т.д.; 2) введение единой валюты для разных государств (евро, или рубль, который, по прогнозам, станет единой валютой для государств СНГ, начиная с Республики Беларусь)[2]; 3) создание международных организаций для решения сообща различных проблем (экономических, экологических, проблем безопасности, борьбы с преступностью, культурных, медицинских, и др.); 4) установление полной прозрачности границ, вплоть до полностью беспрепятственного и безвизового их пересечения в отдельных регионах (например, в государствах Западной Европы); 5) стирание языковых барьеров (знание английского языка становится международной нормой, равно, как знание русского – для большой территории стран СНГ); 6) развитие телекоммуникационных связей, Всемирной сети Интернет, дающей великолепную возможность международного общения; и т.д.

Другое дело – что здесь первично: развитие ли экономики, или углубление иных – неэкономических – процессов. Однако решение этой проблемы не входит в мою задачу; впрочем, едва ли в принципе возможен однозначный ответ на этот вопрос. Он - из разряда вечных.

Б. Почему это неизбежно?

Стремление различных государств к интеграции – процесс неизбежный и закономерный. При этом для государств с разным уровнем экономического и политического развития причины этого стремления, в

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2 Следует отметить, что процессы перехода на единую валюту успешно решают для себя как жители приграничных районов различных государств, так и лица, совершающие в этих районах межгосударственные преступления, например, контрабанду. В процессе упомянутого выше российско-грузинского исследования нами было установлено, что названные лица используют валюту США и России; валюта Грузии успехом не пользуется. Больше того, валюта является приоритетным контрабандным товаром. Так, например, в марте 2003 г. на таможенном посту МАПП Адлер, при осуществлении таможенного контроля, у гр-ки России З., следовавшей из России в Грузию, изъято незадекларированных письменно и сокрытых от таможенного контроля в белье $ 6323 на сумму 200422 рубля и 224.000 рублей. Возбуждено уголовное дело по признакам ч. 1 ст. 188 УК (контрабанда), которое впоследствии было прекращено, «поскольку виновная пересекла белую линию по неосторожности». В 2002 г. там же, при осуществлении личного досмотра, у гр-ки Грузии М., следовавшей из России в Грузию, изъято незадекларированных письменно и сокрытых от таможенного контроля $ 10800 на сумму 343707 рублей. Возбуждено уголовное дело по признакам ч. 1 ст. 188 УК. Всего же за период 2000 – 4 месяца 2003 г. на российско-грузинской границе (абхазский участок) было изъято 125,8 тысяч долларов США.

общем, совпадают, хотя порядок приоритетов, безусловно, отличается. Так, для экономически сильного, развитого государства, по мере его развития, все острее и острее встает вопрос о рынках сбыта, поскольку возможности собственного государства исчерпаны. Точно также, и в связи со сказанным, значительно ограничиваются объективно возможности для развития и увеличения капиталов, как государственных, так и частных. Поэтому выход на межгосударственный уровень здесь становится жизненно необходимым.

Для развивающихся государств, напротив, от прихода в них иностранного капитала в значительной, а иногда – и в определяющей – степени зависит их выживание и сохранение себя как государства.

Развитие экономики, между тем, неизбежно приводит к эпохе глобализации. И хотят они того, или нет, все государства оказываются существующими в ней, а, следовательно, опять-таки, вне зависимости от их желания, вынуждены жить по новым правилам, для того, чтобы жить. Поэтому, со временем встает вопрос о межгосударственном управлении. Он решается постепенно, медленными шагами, начиная, например, с локальных межгосударственных организаций и межгосударственных, международных соглашений в одной, отдельно взятой, области.

В. Почему это хорошо?

Процесс межгосударственной, в том числе, экономической, интеграции – это, конечно, позитивный процесс. Очевидные преимущества интеграции: 1) усиление экономического развития всех государств, вовлеченных этот процесс; 2) соответственно, повышение уровня жизни государств и населяющих его граждан; 3) появление возможности, решать те проблемы, которые не под силу одному, или даже нескольким государствам (например, освоение космического пространства, создание новых прогрессивных технологий, или лекарств от ранее неизлечимых болезней, преодоление последствий экологических бедствий, и т.д.); 4) международная интеграция дает много шансов для того, чтобы избежать по спорным позициям не только открытого противостояния, локальных и масштабных конфликтов, но и войны, так называемой, «холодной». Вырабатываются навыки межнационального и международного компромисса; и т.д.

3. Оборотная сторона медали. Плата за сближение.

А. Подводные камни: маленькие и большие.

К сожалению, не все так безоблачно, как хотелось бы. Позитивное и негативное составляют собой диалектическое единство, и присутствуют в каждом явлении. Об этом, на примере свободы и несвободы, пишет известный не только в России, но и во всем мире российский криминолог В.В. Лунеев: «Свобода не может быть позитивно избирательной. Будучи непреходящей ценностью человечества, она

может одинаково служить не только добру. С не меньшим успехом она может быть использована во зло, в нашем случае – для совершения преступлений. И в этом узком понимании … вполне допустим вывод: свобода более криминогенна, чем несвобода, если только не принимать во внимание накопительный криминогенный процесс последней…»[3].

Явление, тем более, такое сложное и объемное, как межнациональная и межгосударственная интеграция, тоже не может быть выражено одной краской, и не может нести одно только благо. При общей положительной характеристике и, безусловно, прогрессивных, результатах, интеграция и экономическое развитие влекут за собой массу побочных негативных последствий, отличающихся различной степенью вредоносности и совершенно разным характером.

Прежде всего, эти последствия носят экономическую окраску. Злоупотребление одними государствами преимуществами своего экономического развития, или даже просто, игнорирование экономической слабости международного партнера, приводит к тому, что сильные экономически государства становятся еще сильнее, а слабые – еще слабее. Таким образом, вместо того, чтобы получить обоюдную пользу от сотрудничества и интеграции, одни из участников интеграционного (в этом случае, в кавычках) процесса подвергаются разрушительному иностранному влиянию, фактически, порабощению. Разумеется, это – крайняя ситуация, но она, к великому сожалению, существует, и примеры подобного рода дает и демократическая Америка, и стремящаяся к демократичности Россия.

От экономики – один шаг, или даже, меньше, до политики. Кроме описанного выше порабощения, теперь уже политического, развивающегося государства более сильным, появляются возможности, путем международной интеграции, нескольким развитым государствам диктовать свою волю всем остальным государствам мира, и в том числе, навязывать определенный политический режим. Думаю, нет нужды объяснять, что даже благие намерения (например, превратить какое-то государство из оплота зла в демократическое) не могут оправдать насилия над волей проживающих в государстве людей. И опять-таки, я говорю здесь о России (политика в Чечне) и об Америке, Великобритании и других сильных государствах (политика в отношении Югославии, и в отношении Ирака).

Отсюда напрашивается единственный вывод: правила игры (международной интеграции) – еще не сложились, и нет действенного механизма (применение военной силы, конечно, не может быть отнесено к нему), гарантировать их соблюдение участниками.

Разумеется, в рамках этой статьи все негативные последствия развития международной экономики и интеграционных процессов не могут быть названы, да это и не является моей целью, более того, анализ

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3 См.: Лунеев В.В. Рыночная экономика и экономическая преступность в России. – Экономическая преступность / Под ред. В.В. Лунеева, В.И. Борисова. – М.: Юристъ, 2002. – С. 15.

большинства этих последствий и поиск выходов из них – прерогатива специалистов – политиков, социологов, экономистов, юристов, занимающихся позитивным правом, и т.д.

Есть, однако, в числе негативных последствий такие, которые могут и должны быть оценены, в первую очередь, криминологами. Речь идет, конечно же, о преступности. И здесь принципиальны два момента: 1) межнациональная экономика и межгосударственная интеграция обладают криминогенными свойствами: они продуцируют преступность, порождают ее, причем, в том числе, такие ее виды, которые ранее человечеству были неизвестны, или неизвестны в столь крупном масштабе; 2) преступность как относительно массовое и присущее всем государствам явление, также подвержена тем переменам, которые происходят на межнациональном уровне; она неизбежно стремится к интеграции.

Б. Криминогенные свойства межнациональной экономики и интеграции: почему они существуют и в чем проявляются?

Прежде всего, следует напомнить, что криминогенными свойствами обладает любая экономика, а рыночная – в особенности. В.В. Лунеев справедливо отмечает, что рыночная экономика, как всякое сложное явление, «социально противоречива, а следовательно, и криминогенна»[4]. Ему вторит директор Санкт-Петербургского Центра по изучению организованной преступности и коррупции Б.В. Волженкин: «Рыночная экономика с ее беспощадной конкурентной борьбой подчас за выживание, погоней за прибылью и сверхприбылью неизбежно порождает преступность»[5].

Зарождающаяся межнациональная экономика, или экономика в условиях глобализации, тоже, разумеется, не безупречна в этом отношении и не может быть безупречна. Нил Шовер и Эндрю Хохстетлер (Университет Теннеси, Ноксвилл) пишут: «Рост мировой экономической системы открывает новые возможности для совершения преступлений. Простое мошенничество, основанное на завоевании доверия жертвы, или коммерческое мошенничество могут пересекать границы государств, благодаря широкому распространению новых средств связи»[6]. И далее: «Торговые соглашения, заключаемые между различными государствами, порождают новые производственные и торговые предприятия, растущий свободный поток товаров и услуг, также открывают новые криминальные возможности»[7].

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4 См.: Лунеев В.В. Рыночная экономика и экономическая преступность в России. – Экономическая преступность / Под ред. В.В. Лунеева, В.И. Борисова. – М.: Юристъ, 2002. – С. 14.

5 См.: Криминология / Под ред. д.ю.н. В.Н. Бурлакова, д.ю.н. Н.М. Кропачева. – СПб.: Питер, 2003. – С. 255. Автор главы – Б.В. Волженкин.

6 См.: Криминология / Под ред. Дж. Ф. Шелли / Пер. с анг. – СПб: Питер, 2003. – С. 372. Авторы главы –Нил Шовер и Эндрю Хохстетлер (Университет Теннеси, Ноксвилл).

7 Там же. – С. 373.

Следует иметь в виду и то, что межгосударственные интеграционные процессы не просто порождают отдельные преступления, они воспроизводят преступность как некую систему криминальных массовых явлений. Точно об этом пишут питерские криминологи и экономисты В.М. Егоршин и В.М. Колесников: «…Если экономически современное рыночное хозяйство и доказало свою эффективность, то криминологически оно остается крайне далеким от совершенства – ему изначально присущи противоречия, предопределяющие наличие и воспроизводство экономической преступности как масштабного асоциального явления»[8].

В основе криминогенных свойств межнациональных экономики и интеграции лежат, например, следующие их признаки и характеристики:

1) *конфликт интересов, и, прежде всего, экономических, участников этих процессов*. Даже при наличии общих целей деятельности сохраняется, на мой взгляд, всегда ряд противоречий, более или менее выраженных: между разными участниками деятельности; между общей целью и конкретным интересом отдельного участника; между ожидаемыми результатами деятельности и прогнозируемыми, но побочными результатами, и т.д. Существующий конфликт провоцирует участников отношений на поиски путей его разрешения с получением, разумеется, своекорыстной выгоды. Один из криминальных примеров разрешения подобного конфликта приводят уже упоминавшиеся Нил Шовер и Эндрю Хохстетлер: «…Сельскохозяйственные субсидии в Европейском Союзе были призваны обеспечить качество и достаточное количество продукции, а также стабильные доходы фермеров. Однако на практике это привело к тому, что искажение данных о качестве, происхождении и назначении товара стало прибыльным предприятием. В рамках самой простой схемы виноделы используют субсидии, выплачиваемые для изъятия избытков вина с рынка. Они закупают дешевое вино за рубежом, обозначают его как свою продукцию и получают субсидии как за то, так и за другое. Криминальные возможности открываются и для поставщиков мяса, с которых взимается меньший налог, если они экспортируют продукцию, а не продают ее на внутреннем рынке. Одним росчерком пера на упаковочном листе мясо, произведенное и проданное внутри страны, как бы пересекает границу и приносит незаконную прибыль»[9]. Последние схемы сегодня прекрасно знакомы и России, и другим государствам. В ходе проведения российско-грузинского исследования нами было установлено, например, что для периода до 2000 г. для российско-грузинской контрабанды было

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8 См.: Егоршин В.М., Колесников В.В. Преступность в сфере экономической деятельности. – СПб: Фонд «Университет», 2000. – С. 190.

9 См.: Криминология / Под ред. Дж. Ф. Шелли / Пер. с анг. – СПб: Питер, 2003. – С. 373. Авторы главы –Нил Шовер и Эндрю Хохстетлер (Университет Теннеси, Ноксвилл).

характерно использование способа «перегона воздуха». В соответствии с ним, коррумпированные работники таможенных, пограничных и иных органов, действуя в сговоре с преступниками, желающими уйти от налогообложения, «помогали» им оформить документы, якобы, на вывоз товаров из России, или, наоборот, на ввоз. Таким образом, документально подтверждался лжеэкспорт или лжеимпорт товара, позволяющий уходить от налогообложения государства. Однако, в связи, во-первых, с ужесточением контроля за подобными операциями, и, во-вторых, благодаря положительным тенденциям в налоговом законодательстве России, описанный способ потерял в последние годы свою былую актуальность. Однако, приведенные выше схемы, действительно, относятся к числу простейших и далеко не исчерпывают используемых для совершения преступлений, ставших возможными, только благодаря развитию межнациональной экономики и углублению межгосударственной интеграции;

2) *правовая неурегулированность развивающейся межнациональной экономики и иных интеграционных процессов*. Несомненно, что названные новые позитивные процессы требуют нормативного регулирования по каким-то общим правилам, признанным всеми без исключения участниками международных отношений. На сегодня их нет;

3) *разница в законодательном урегулировании экономических, налоговых, таможенных и иных правовых позитивных отношений в разных государствах, участниках интеграционных процессов*. Одни и те же отношения по-разному, иногда кардинально, регулируются в праве государств, участников интеграционных и межнациональных экономических процессов. Очевиднее всего указанное положение демонстрирует налоговое законодательство: ставки налогов бывают принципиально различными, а иногда налоговое законодательство одного государства предусматривает ряд налоговых послаблений и льгот, неизвестных другому государству. Само собой разумеется, государство с мягкой налоговой системой более притягательно, нежели то, в котором установлены строгие налоговые нормы. Кроме того, вполне реальна не очень добросовестная игра крупных участников межнациональных экономических отношений на разнице законодательных норм. Верно отмечают Н. Шовер и Э. Хохстетлер: «Владельцы и менеджеры корпорации могут пригрозить перевести свою компанию в страну с более мягким нормативным климатом, тем самым лишив страну, в которой компания расположена в настоящее время, рабочих мест и налоговых поступлений. … Желание привлечь промышленность в свою страну является мощной побудительной причиной для развития физической и правовой инфраструктуры, благоприятной для деятельности корпораций. Наиболее привлекательными ресурсами являются дешевый труд и мягкие административно-законодательные нормы»[10]. Указанная разница в законодательном регулировании усиливается многократно еще и

отмеченным С.П. Глинкиной нарастанием «противоречий между глобальным характером производства и сохраняющимися национальными формами его регулирования, в частности, налоговым законодательством»[11];

4) *разница в криминализации и пенализации стран – участников интеграционных процессов*. Другими словами, уголовно-правовая политика разных государств не совпадает, иногда – принципиально. Разница обусловлена существующими различиями в экономических и политических системах, историческими традициями, разницей в менталитетах, и т.д. Соответственно, одно и то же деяние, чаще – экономического характера, в одном государстве может считаться преступным и влечь строгое наказание, в другом – признаваться преступным, но наказываться гораздо менее строго, в третьем – быть административным деликтом, в четвертом – вообще не наказываться, а то и расцениваться как позитивное явление. В качестве примера можно привести спекуляцию, которая до сих пор преступна по законодательству Республики Беларусь, и считается нормой экономического поведения в других государствах. Кардинально по-разному также оценивается и совершение некоторых валютных операций гражданами или частными организациями разных стран. Разную оценку дают незаконному перемещению товаров и иных ценностей через таможенную и государственную границу российский и грузинский уголовные кодексы. В последнем, например, отсутствует само понятие контрабанды (хотя незаконное перемещение товаров, разумеется, наказуемо); в российском оно есть. Примеры подобного рода можно продолжать до бесконечности. Коль скоро они существуют, есть и примеры злонамеренного использования законодательных межгосударственных коллизий. Поэтому совсем не случайны вопросы, которыми задаются те же Нил Шовер и Эндрю Хохстетлер: «… Какие законы и нормы следует применять при установлении стандартов поведения… Может ли считаться преступлением нарушение международных соглашений, если оно не нарушает уголовного закона всех государств? Если экономическая деятельность проводится в странах с несопоставимыми законами и нормами, в соответствии с каким стандартом следует определять криминальное поведение? К производителям или к импортерам должны относиться нормы регулирующих органов? …»[12].

Разумеется, выше перечислены только самые очевидные причины криминогенных свойств развития международной экономики и интеграционных процессов. На деле их гораздо больше, при этом

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10 См.: Криминология / Под ред. Дж. Ф. Шелли / Пер. с анг. – СПб: Питер, 2003. – С. 374. Авторы главы – Нил Шовер и Эндрю Хохстетлер (Университет Теннеси, Ноксвилл).

11 См.: Россия в фокусе криминальной глобализации. – Владивосток, 2002. – С. 59. Автор главы – С.П. Глинкина.

12 См.: Криминология / Под ред. Дж. Ф. Шелли / Пер. с анг. – СПб: Питер, 2003. – С. 374. Авторы главы – Нил Шовер и Эндрю Хохстетлер (Университет Теннеси, Ноксвилл).

конкретное отклоняющееся поведение определяют обычно сразу несколько причин, вступающих между собой во взаимодействие. Еще на Всемирной конференции по организованной транснациональной преступности на уровне министров (Неаполь, Италия, 21-23 ноября 1994 г.), в справочном документе к п. 4 повестки дня, были приведены факторы развития мировой экономики и политики, обусловившие возникновение транснациональной преступности:

- увеличение взаимозависимости государств;
- формирование мирового рынка, для которого характерны тесные экономические связи, взаимные инвестиции;
- формирование международных финансовых сетей, систем международных расчетов, позволяющих быстро осуществлять сложные финансовые операции, с задействованием банковских учреждений нескольких государств;
- развитие мировых систем коммуникаций;
- развитие международной торговли, чему особо способствовало введение системы свободной торговли в послевоенный период;
- широкое развитие технологии контейнерных перевозок;
- увеличение масштабов миграции, образование многонациональных мегаполисов (это, например, характерно, для России и Грузии. В Россию из Абхазии и Южной Осетии (Грузия) въехало большое количество людей, и поток беженцев от бедности и тяжелых условий жизни, к сожалению, не иссяк, хотя и стал меньше);
- «прозрачность границ» между государствами, входящими в Европейский союз и Содружество Независимых Государств[13]. Мы имели возможность убедиться в достаточной прозрачности границ между Россией и Грузией, проводя собственное исследование по контрабанде. Не смотря на то, что между государствами ныне введен визовый режим, он, фактически, не действует для жителей приграничных районов – Краснодарского края и Северной Осетии (Россия) и Абхазии и Южной Осетии (Грузия). Больше того, этот визовый режим не сильно применяется в России и для жителей из других грузинских районов (мы видели в России свободно перемещающиеся автомобили с тбилисскими номерами); свободно, без всяких виз, побывали на территории Абхазии и мы, проживающие далеко за пределами Краснодарского края.

Как видим, и сегодня указанные факторы активно действуют, вызывая к жизни преступность различных видов.

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13 Цитируется по: Меркушин В.В. Борьба с транснациональной организованной преступностью. – Минск, 2003. – С. 18.

В. Межнациональная интеграция преступности.

Процесс объединения характеризует не только позитивные межнациональные отношения; он, безусловно, затрагивает и преступность. Последняя тоже организуется и интегрируется, и происходит это часто по тем же самым причинам, по которым осуществляются и позитивные процессы, выше они назывались. Консолидация преступности дает новые возможности для получения криминальных прибылей и сверхприбылей, и это, пожалуй, главное в интеграционных процессах, характерных для преступности. Преступность разных государств удивительно легко находит общий язык, даже, не смотря на сложные политические отношения государств. Это стало нам очевидным в процессе российско-грузинского исследования по проблемам контрабанды. Прекрасно известно, что Россия и Грузия переживают не лучшие времена в своих взаимоотношениях, обоюдно нарушая межгосударственные договоренности. Однако политическая напряженность совсем не мешает, договариваться российской и грузинской преступности и даже грузинской преступности из разных регионов. Сложные, проблемные для Грузии ее регионы Южная Осетия и Абхазия, которые не контролируются из Тбилиси, совсем не оторваны от остальной Грузии, если посмотреть на интеграцию преступности. Так, прекрасно договариваются между собой, по нашим данным, российские, южно осетинские и грузинские преступные группировки. Контрабандный российский груз беспрепятственно, через всю Южную Осетию, идет в центральные районы Грузии, растворяясь там на всевозможных рынках.

Межнациональная интеграция преступности – самая опасная, на мой взгляд, тенденция современной преступности. Прежде всего, она касается наиболее опасной, вредоносной разновидности преступности, а именно – преступности организованной, поскольку само понятие интеграции предполагает наличие системы управления, системы организации объединительного процесса. Ее в полной мере имеет только организованная преступность.

Помимо сказанного, интеграция преступности приводит к возникновению новых качественных ее характеристик, затрудняющих борьбу с ней. Появляются, например, не существовавшие ранее возможности, спрятать «грязные» деньги в том уголке земного шара, где менее всего есть опасность их обнаружения. Сверхлегким, благодаря новейшим технологиям, становится и мировое управление отдельными, наиболее экономически эффективными, разновидностями преступности – наркобизнесом, торговлей людьми, торговлей оружием, и др. Преступность достигает высокой мобильности, позволяющей в считанные часы использовать для совершения преступления образовавшийся в любом конце Земли повод.

Парадоксально, но факт: преступность проще и быстрее организуется в рамках интеграционных процессов, поскольку она – вне закона, и процессу интеграции законодательные коллизии не мешают.

4. Разновидности порождаемой межнациональной преступности. Степени риска.

Говоря о криминогенных свойствах межгосударственной экономики и интеграции, нельзя, в то же время, их преувеличивать. Прежде всего, они порождают далеко не все разновидности преступности. Думаю, понятно, что, например, так называемая, семейная преступность или преступность неосторожная, хотя и могут испытывать на себе влияние объединенной экономики и интеграции, в то же время продуцируются иными причинами. В отношении других видов преступности криминогенность межгосударственной экономики и интеграции различна – от минимальной до сверхмаксимальной.

Следует, на мой взгляд, выделять ***шкалу рисков криминогенности межгосударственной экономики и интеграции***, которые олицетворяют средние показатели степени риска обозначенных позитивных процессов. Она может иметь не только, и даже, - не столько научное, сколько практическое значение. Показатели криминогенности должны приниматься во внимание при создании нормативной базы межгосударственной экономики и интеграции; они же должны учитываться при планировании и реализации мер противодействия транснациональной преступности.

Шкала выглядит следующим образом:

1. Посягательства на личность – риск минимален.
При этом, по бытовой преступности против личности, включая половые преступления, посягательства на честь и достоинство, на семью, на конституционные права граждан, риск криминогенности практически отсутствует, сведен к нулю. Однако, например, по таким видам типично организованной преступности против личности, как заказные убийства, или похищения людей, торговля людьми, он достаточно высок.

2. Экологические преступления – риск существует.
Поскольку природная среда – межнациональна и принадлежит всему человечеству, постольку интеграционные процессы могут оказывать негативное воздействие на нее, которое, в том числе, выражается и в экологической преступности. Внутри экологической преступности межнациональная интеграция приоритетно, с повышенной степенью риска, провоцирует совершение таких преступлений, как международное браконьерство, уничтожение природных богатств ради преследования каких-либо целей (например, строительства каких-либо объектов). Думаю, что межнациональная экологическая преступность сейчас находится на минимальных показателях, но у нее, к сожалению, большое будущее.

3. Политические преступления – новые возможности.
Собственно, выше об этом уже шла речь. Объединение преступного капитала, рано или поздно, но всегда, приводит к стремлению получить доступ к политике, к власти на территории какого-либо региона, государства или нескольких государств. Возможно, поэтому участие

международной организованной преступности в национальных избирательных кампаниях, да и просто, применение силы для захвата власти.

4. Коррупция – риск высок.
Коррупционные преступления тоже относятся, на мой взгляд, к числу политических. Можно воздействовать на власть в своих интересах, не применяя силы, используя различные виды подкупа. Именно поэтому степень риска в отношении коррупции достаточна высока.
Интеграционные процессы, с одной стороны, дают новые возможности для коррупции, поскольку появляется новый – межнациональный – вид управленцев. С другой стороны, интегрированная преступность обладает повышенными экономическими возможностями для оказания воздействия на коррупционеров разных государств, так называемых, национальных коррупционеров.

5. Экономические преступления, преступный бизнес[14], терроризм – высочайшая степень риска.
Об этом пишут В.М. Егоршин и В.М. Колесников: «Наблюдаемое в современном мире умножение хозяйственных связей и усложнение социально-экономических отношений, наряду с развитием новейших информационных технологий, а также усилением позиций организованной преступности, обусловливают потенциальную возможность совершения в сфере хозяйствования все большего числа правонарушений и опасность появления новых разновидностей делинквентного (преступного) экономического поведения»[15].

Однако, следует признать, что экономический хаос в соседствующих государствах тоже влечет резкое усиление межгосударственной экономической преступности. Примеры дает проведенное нами российско-грузинское исследование. В конце 90-х годов большой проблемой для России была контрабанда спирта из Грузии, который тек к нам непрекращающимися потоками. На российско-грузинской границе (осетинский участок) скапливались километровые очереди большегрузных автомобилей, ввозящих спирт в Россию. Имели место прорывы границ. В настоящее время все изменилось с точностью до наоборот. Контрабанда этого товара занимает достаточно скромное место среди прочих предметов контрабанды; и скорее, вскрываются факты контрабанды спирта с территории России на территорию Грузии. Этому есть простое объяснение: в Северной Осетии в настоящее время – переизбыток производства спиртных напитков; этим бизнесом официально занимаются не менее 20 фирм.

Повышенная экономическая криминогенность межнациональной экономики и интеграции еще более усиливается криминогенными свойствами самой экономической преступности (она, как известна,

14 Имеется в виду наркобизнес, преступный бизнес оружия, и т.п.
15 См.: Егоршин В.М., Колесников В.В. Преступность в сфере экономической деятельности. – СПб: Фонд «Университет», 2000. – С. 189-190.

способна порождать саму себя), развитием высоких технологий и телекоммуникационных связей (соответственно, риск в отношении компьютерной преступности тоже велик), и очевидной неспособностью национальных правоохранительных систем справиться с нею (экономической преступностью). Н. Шовер и Э. Хохстетлер пишут по этому поводу: «Полиция и следственные органы в регионах и в развивающихся странах не имеют средств, экспертов и других ресурсов, необходимых для расследования подобных дел. Даже богатые страны вынуждены производить выборочное расследование преступлений. …Вероятность привлечь к ответственности мошенников, орудующих в Нигерии или в одной из стран – «изгоев», весьма мала. Еще меньше шансов вернуть деньги, которые беспрепятственно утекли на счет «беловоротничкового» преступника через один из многочисленных банков развивающихся стран. Война против торговцев наркотиками увеличила возможности прокуроров вести расследование дел и прослеживать путь международных денежных переводов, однако небольшие группы работников прокуратуры не в силах на равных тягаться с международными финансовыми экспертами созданными ими сетями), которых нанимают инвесторы, банкиры, бухгалтеры и коррумпированные чиновники в ходе своей деятельности в сфере международного бизнеса»[16].

5. Пути противодействия: существуют ли они?

Нарисованная выше картина довольно, если не сказать жестче, пессимистична. Однако уже тот факт, что мы эту картину полностью осознаем – является необходимым звеном или шагом для того, чтобы двигаться дальше и искать пути по ее изменению.

Возможны ли и существуют ли они? Другими словами, возможно ли влияние на криминогенные свойства межнациональной экономики и интеграции, при этом, влияние позитивное (здесь, как в медицине, главное – не навредить), и каковы его пределы?

1. Искоренение - борьба – противодействие – минимизация.

Прежде всего, определимся в терминах. Очевидно, совершенно нереально вести речь об *искоренении* криминогенных свойств межнациональной экономики и интеграции. Точно так же, как нельзя – невозможно – говорить об искоренении самой преступности. Это сверх желаемый, но совершенно недостижимый результат. Криминогенность экономики – ее неотъемлемое свойство в связи с присущими ей генетически внутренними глубокими противоречиями (частично о них было сказано выше).

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16 См.: Криминология / Под ред. Дж. Ф. Шелли / Пер. с анг. – СПб: Питер, 2003. – С. 372. Авторы главы – Нил Шовер и Эндрю Хохстетлер (Университет Теннеси, Ноксвилл).

Борьба и *противодействие* – это термины, которые используются в отношении преступности. При этом, в последнее время стал больше применяться термин «противодействие», его считают более корректным[17]. Думаю, что противодействие преступности, порождаемой позитивными интеграционными процессами, в том числе, экономическими, должно обладать некоторой спецификой, обуславливаемой спецификой причин преступности.

В отношении же последних (причин преступности), видимо, речь должна идти о *минимизации*, т.е. об уменьшении выраженности, сведении к возможному минимуму криминогенных свойств межнациональной экономики и интеграции.

2. Национальные возможности минимизации – эффективность со знаком минус.

Полагаю, что минимизация названных криминогенных свойств на уровне национальном, или на уровне отдельного государства, практически не возможна, поскольку: 1) условно говоря, нельзя обезвредить яд, растворенный в одном сосуде, только с одной стороны, в одной части напитка. Для того, чтобы пить его, не опасаясь за свое здоровье, нужно предпринять меры по обеззараживанию всего содержимого сосуда. Можно в этой же связи вспомнить известную басню И. Крылова про слона и моську. Точно также, принятие национальных мер к криминогенным свойствам межнационального явления, т.е. явления совсем другого уровня, с другими отличительными чертами и системными проявлениями, едва ли может быть эффективным в деле их минимизации; 2) больше того, к сожалению, это может привести к совершенно противоположным результатам, в связи с неприятием осуществленных мер другими сторонами межнациональных процессов (в России говорят: «то, что русскому хорошо, немцу – смерть»).

3. Межнациональная интеграция в деле минимизации криминогенности объединительных процессов: перспективы отдаленные и ближайшие.

Соответственно, остается только один путь – путь межнациональной, межгосударственной интеграции в деле минимизации криминогенных свойств межнациональной экономики и иных разновидностей мировой интеграции. Уменьшить, ослабить криминогенность позитивных

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17 Следует согласиться с С.С. Босхоловым, что парадигма «борьба с преступностью» имеет существенные дефекты. – См.: Босхолов С.С. Основы уголовной политики. – М., 1999. – С. 38 – 41. Правильнее поэтому говорить о политике противодействия преступности. Это понятие – понятие противодействия преступности – включает в себя как пресечение подготавливаемых и совершаемых преступлений, так и адекватные меры реагирования на совершенные преступления, а также и меры по предупреждению преступности.

объединительных процессов можно, действуя в отношении всего этого явления сразу, по договоренности и сообща со всеми его участниками.

Это, в свою очередь, можно сделать, через новую – *межнациональную или мировую - систему управления,* о которой любят рассуждать писатели -фантасты и создатели фантастических фильмов. Впрочем, все мы знаем, что многие их находки и предсказания со временем претворяются в действительность. Сразу хотела бы оговориться, что речь не идет о современных международных организациях; они являются лишь прообразом, и далеко не всегда, совершенным (вспомним многочисленные нарушения норм, принятых ООН, ее же участниками) будущей и уже реально необходимой сегодня мировой системы управления. Именно ей должен быть передан отдельными государствами целый ряд типично государственных функций, в том числе, по управлению мировой экономикой, по сохранению природной среды для всего человечества, по противодействию транснациональной преступности, и некоторые другие.

Сегодня все сказанное выше кажется совершенно нереальным, в связи с теми процессами, которые происходят в мире, наряду с интеграцией и развитием международного сотрудничества (повсеместное обострение национальных и межгосударственных конфликтов, распространение международного терроризма, усиление позиций преступности, и т.д.). Думаю, однако, что уже сейчас все цивилизованные государства должны задуматься над тем, как может быть претворено в действительность мировое управление. Путь к цели – далек, но «дорогу осилит идущий».

Что можно сделать уже сегодня?

Во-первых, известные межгосударственные законодательные коллизии должны быть преодолены. Верно пишет С.П. Глинкина: «На повестку дня встает вопрос о выработке единых международных норм регулирования экономической деятельности…»[18]. И хотя далее она, опять-таки, совершенно справедливо, отмечает, что это, «однако, будет иметь принципиально разные последствия для различных групп стран и будет сопряжено с нарастанием противоречий между ними, а также в рамках отдельных групп»[19], создание единых – и не только экономических – регулирующих норм – необходимый этап и в процессе минимизации криминогенных свойств объединительных процессов, и в процессе создания системы мирового управления.

Во-вторых, необходимо усиление координации межведомственной деятельности всех государств и правительств[20]. Проводя исследование приграничной российско-грузинской контрабанды, мы убедились, например, в том, что взаимодействия таможенных, пограничных или правоохранительных служб России и Грузии практически не существует.

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18 См.: Россия в фокусе криминальной глобализации. – Владивосток, 2002. – С. 59. Автор главы – С.П. Глинкина.
19 См.: Россия в фокусе криминальной глобализации. – Владивосток, 2002. – С. 59. Автор главы – С.П. Глинкина.
20 Об этом же пишут Нил Шовер и Эндрю Хохстетлер (Университет Теннеси, Ноксвилл). См.: Криминология / Под ред. Дж. Ф. Шелли / Пер. с анг. – СПб: Питер, 2003. – С. 372.

Более того, даже если случается обращение каких-либо органов одной страны к подобным же из другой страны, оно выполняется очень медленно, долго, что практически сводит на «нет» смысл такого обращения.

В-третьих, для противодействия новым негативным межнациональным явлениям нужно принимать те меры, о которых говорит Ю.В. Голик: «Мы вплотную приближаемся к моменту создания международно-правового акта прямого действия, не требующего инкорпорации в национальное законодательство. …Речь сегодня идет о создании системы наднациональной юстиции»[21].

Роль международного права, часто находящегося сегодня на задворках у национальных правовых систем, должна быть переосмыслена[22].

6. Некоторые выводы.

1. Развитие межнациональной экономики и международной интеграции – естественный, неизбежный и, в целом, позитивный процесс на пути развития мировой системы цивилизации.
2. Вместе с тем, его характеризуют и некоторые негативные моменты, одним из которых, едва ли, не самым серьезным, является наличие криминогенных свойств, т.е. таких качеств, которые порождают новые разновидности преступности или увеличивают вероятность появления уже известных.
3. Криминогенность межнациональной экономики и интеграции – неизбежна и присуща им имманентно в силу существующих внутри позитивных процессов глубоких противоречий.
4. Криминогенные свойства межнациональной экономики и интеграции различны в отношении разных видов преступности. Степень криминогенности может быть выражена соответствующей Шкалой рисков, имеющей следующие усредненные значения: 1. Преступления против личности – риск минимален. 2. Экологические преступления – риск существует. 3. Политические преступления – новые возможности. 4. Коррупция – риск высок. 5. Экономические преступления, преступный бизнес, терроризм – высочайшая степень риска. В любом случае, речь идет, в основном, об организованной преступности.

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21 См.: Россия в фокусе криминальной глобализации. – Владивосток, 2002. – С. 23. Автор главы – Ю.В. Голик.

22 Интересно, что даже современные криминологи, осознавая нарастание интеграционных процессов и необходимость интеграции и на нормативном уровне, тем не менее, сомневаются в легитимности международных договоренностей. Так, Нил Шовер и Эндрю Хохстетлер пишут: «Ясно, что государства движутся в сторону установления кооперации между контролирующими органами. Это отражается в международных правилах и договоренностях, основной целью которых является защита транснационального рынка. Вопрос, который вызывают такие инициативы, а также все усиливающееся доминирующее положение крупных организаций, можно поставить так: а не находятся ли они «по ту сторону закона»?» См.: Криминология / Под ред. Дж. Ф. Шелли / Пер. с анг. – СПб: Питер, 2003. – С. 374-375.

5. Криминогенные свойства межнациональной экономики и интеграции должны быть минимизированы. Минимизация, в свою очередь, неэффективна на национальном уровне, и должна осуществляться на межнациональном и межгосударственном уровнях.
6. Одним из самых действенных путей минимизации криминогенности межнациональной экономики и интеграции является создание новой мировой системы управления, аккумулирующей переданные ей отдельные государственные управленческие функции. Это, однако, дело ближайшего будущего, к которому нужно готовиться уже сейчас.

К числу возможных сегодня путей минимизации криминогенности межнациональной экономики и интеграции следует отнести: 1) преодоление межгосударственных законодательных коллизий; 2) усиление координации межведомственной деятельности всех государств и правительств; 3) переосмысление роли международного права путем создания международно-правовых актов прямого действия и межнациональной юстиции.

English summary

The Intensification of Inter-State Integration and the Rise of Inter- State Economic Integration as Factors Enabling Criminalization, and Methods of Minimizing this Criminalization

The development of the international economy and the integration of states is a natural, unavoidable, and—as whole—a positive process in the development of world civilization. The evident advantages of such integration include: 1) rise in the economic development of the states involved; 2) as a result, a rise in the standard of living in these states and their populaces; 3) ability to find solution to the problems that cannot be solved by individual states or smaller unions of states; 4) opportunity to avoid not only open confrontation, local and large-scale conflicts, but also the so-called "cold war." With this integration come skills, international and inter-state compromise, and other forms of conflict resolution.

However, there are certain negative characteristics of this integration, not the least serious of which is that crime within these states is also tending toward integration. This point is exemplified by the following two key issues: 1) the international economy and inter-state integration possess criminogenic qualities: they provoke crime, and in fact give rise to it in forms that human kind has not witnessed, or at least on such a scale; 2) crime undeniably favors integrative processes, as it is a phenomenon that is particular to all states and is affected by those changes which occur on an international level.

Criminality of the international economy and inter-state integration is inevitable due to the deep contradictions that are inherent to any positive process. The fundamental qualities and characteristics inherent to the criminality of the integrative processes include: 1) conflicts of interest—primarily economic—of the states party to these processes; 2) lack of well-established legislation to govern the development of international economy and other integrative processes; 3) differences in laws and norms that regulate tax, fiscal, customs and other legal affairs in the states party to the integration processes; 4) differences in criminalization and penalization in the states party to the integration processes.

4. The criminogenic qualities vary depending on the type of crime. The degree of criminality can be reflected in the following Risk Scale: 1. crimes against individuals—minimal risk; 2. environmental crimes—a certain degree of risk; 3. crimes for political reasons—the risk lies with the rise in new political opportunities; 4. corruption—high risk; 5. economic crimes, criminal business, terrorism—the highest degree of risk. Inasmuch as these are organized crimes, the degree of criminalization should be considered when preparing legislation that will regulate the international economy and integrative processes, as well as when preparing and implementing programs aimed at combating organized crime.

The criminogenic characteristics of the international economy and integrative processes must be curtailed. However, this can only be effective if done on the inter-state and international levels; it will not be effective on the national level.

One of the most effective ways to decrease criminality in the international economy and integration is the creation of a new world governance system that will absorb certain governing functions from the states. The model used by international organizations nowadays can serve as a prototype for a future model of the world governance system; it is as yet imperfect since there are many examples of member states violating UN norms. Such a system should absorb a number of state functions, including governing the world economy, protecting the environment, combating organized crime and others. This is a task for the near future, for which preparation must be made now.

Ways of minimizing the criminality of the international economy and integration include: 1) overcoming the incompatibility of the states' legal systems; 2) improving coordination among various state agencies; 3) rethinking the role of international law through creating both overarching international legal acts and the system of international justice.

The Main Weaknesses of the Management System in the State Administration of Georgia as Supporting Factors for Corruption and Money Laundering

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As a country of transition economy, Georgia is characterised by a kind of disorder in the governance system, which acts as the main reason for the growth of corruption.

In the Annual Report (2000) of Transparency International (Coalition against corruption) (Transparency International 2000), Georgia took 84–86th place together with Albania and Kazakhstan among 99 countries in terms of corruption level. 2 years later Georgia had moved to 127th place (Transparency International 2003, 5), indicating a tendency to corruption growth.

In 2000, 2001 and 2002 (The State Department of Statistics of Georgia 2000, 28–30; The State Department of Statistics of Georgia 2001, 102–105) local entrepreneurs named the following as the main obstacles to business development:

a) Corruption in public services, 62.7%, 52.6% and 63.6% of respondents respectively;
b) Dependence of business on government, 50.6%, 59.5% and 61.4% of respondents respectively (Figure 1).

Particularly, corrupt public servants and dominating private interests have resulted in the growth of the shadow economy. According to the International Monetary Fund, in the countries of transition economy, the share of the shadow economy of the Gross Domestic Product varies between 21–30% on average. In Georgia, the situation is worse: the State Department of Statistics of Georgia has estimated that one third of total production is not accounted for, and according to the International Monetary Fund, the proportion of the shadow economy is as high as 64% of the GDP (Schneider and Enste 2002).

The large-scale shadow economy results in a low level of tax revenue. The share of lost revenue is 13.7% of the GDP, and this figure is among the highest in CIS countries (Georgian Policy and Legal Advice Centre 2002). Tax collection is further impeded by corruption. Reduced tax income has a negative impact on state economy, which in turn restrains infrastructural development and economic growth. According to a well-known specialist, Daniel Kaufmann, low level of economic development, poor governmental structures and corruption are interrelated concepts (Kaufmann 2001).

In Georgia, the main reasons for inefficient public services are:

Inertia and inflexibility

In spite of the ongoing changes, public agencies—in terms of their form and substance—have still retained certain qualities typical to "Soviet" structures, like autocratic style of governance, which expresses itself as 900–1,300 presidential decrees each year (Figure 2). It seems that officials of different sectors try to avoid personal liability by preparing normative acts which transfer responsibility to the president. Inefficiency is further caused by low qualitative and quantitative levels of decentralisation, failure to perform governing functions in a proper manner, etc. It also seems that public agencies are not interested in solving problems of national importance, but rather in serving their particular and immediate interests.

Disorganisation

Disorganisation is expressed in numerous non-implemented orders (Figures 3, 4, 5). In fact, their number increases (on average 3.5–6%) each year.

At the present stage of transition, the disintegration of public service structures is caused by:

1. Public agencies no longer suffer from excessive control from superior State bodies, and the administrative apparatus is no longer dependent on political power. On the other hand, a new, democratic system of governmental control has not yet been built. As a result, the almost fully autonomous public agencies have found themselves in a "control-free" environment. The existence and manifestation of social control (ideological, political, religious, work-related etc.) is very important in modern society, ideally providing an effective tool for fighting economic crime and corruption. It is possible that Georgia succeeds in this goal.
2. As a result of the ongoing process of denationalising public property, the formerly government-owned enterprises have been liberated from its control. The old-fashioned public servants have been deprived of their habitual managing tasks, and instead of implementing directives and instructions of the state organs, they are now expected to devise means for creating and implementing sectoral development policies and strategies. An overwhelming majority of them lack the necessary know-how and skills.
3. Heavy administrative machine is maintained by overlapping functions at all levels: the different governmental agencies, different subdivisions of those agencies, different public servants working for those subdivisions. Such an organisational model is characterised by limited responsibility for outcomes, imbalance between official duties and responsibilities, structural overloads, and excessive functions.

Lack of proper development programme

There is no public service development strategy, nor coherent implementation programmes which would define the most optimal solutions to existing prob-

lems, including methods for building an appropriate structure. There is obvious disrespect for a key principle of management; the structure, as an implementing mechanism, is being constructed and/or perfected without any consistent strategy or objectivity, although proper attention to both external factors and potential changes are prerequisites for any good development programme. Thus it is impossible to shape a long-term development strategy and build appropriate organisational structures to implement such strategies. Experiences of developed countries should be taken into account and possible changes forecasted on the basis of current circumstances. In reality, however, executive authorities react "today" to events that took place "yesterday". Such an approach only encourages the survival of old-fashioned, non-problem-oriented and complacent structures.

Underdevelopment of legal framework regulating public service

Major problems are associated with regulations and standards, their inconsistency with each other and with current developments. Without coherent legal framework, the normal functioning of public agencies and public servants is impossible.

Poor motivation

Public servants need both effective financial and moral incentives. Unfortunately, the average wages of public servants are below the minimum level of subsistence (Figure 6), and there are no social guarantees provided. The latter should be established without delay. If nothing is done, the normal functioning of public service, and addressing the facts connected to economic crime is impossible.

Lack of modern management style, organisational culture and proper code of conduct

A public servant is a representative of the State, whether inside or outside the country. Public agencies can portray the image of national statehood. The higher a public agency is in the governmental hierarchy, the more strict ethical requirements should be imposed on its staff. Each governmental agency should be required to formalise such requirements to a code of conduct. Such a code, consisting of both universal and national values, as well as ethical norms acceptable to any democratic society, would pave the way for harmonious relationships inside the agency, and create a very positive image of that agency in the eyes of the public.

Poor staff management

This results primarily from the lack of modern approach to staff management. Presently, there are no precise job descriptions, duties or responsibilities defined for any offices of the hierarchical or horizontal public service sector. In other words, it is not clear which professional skills and personal qualities the candidates for public offices should have. Without such criteria, it is impossible to ensure objective selection and promotion processes.

Lack of government's uniform staff training and retraining policies

Staff training and retraining policies should be consistent with the job descriptions, duties and responsibilities of each particular office. Only those with proper professional skills and personal qualities should be recruited for public services. Staff training and retraining programmes should be implemented in accordance with curricula based on uniform national standards.

These requirements have been met by more or less all developing countries that are willing to build modern governmental institutions. It should be remembered that if proper solutions to the above-mentioned problems are not found, it may increase corruption and undermine the prestige of the national government. This emphasises the need for a fundamental reform of governmental structures.

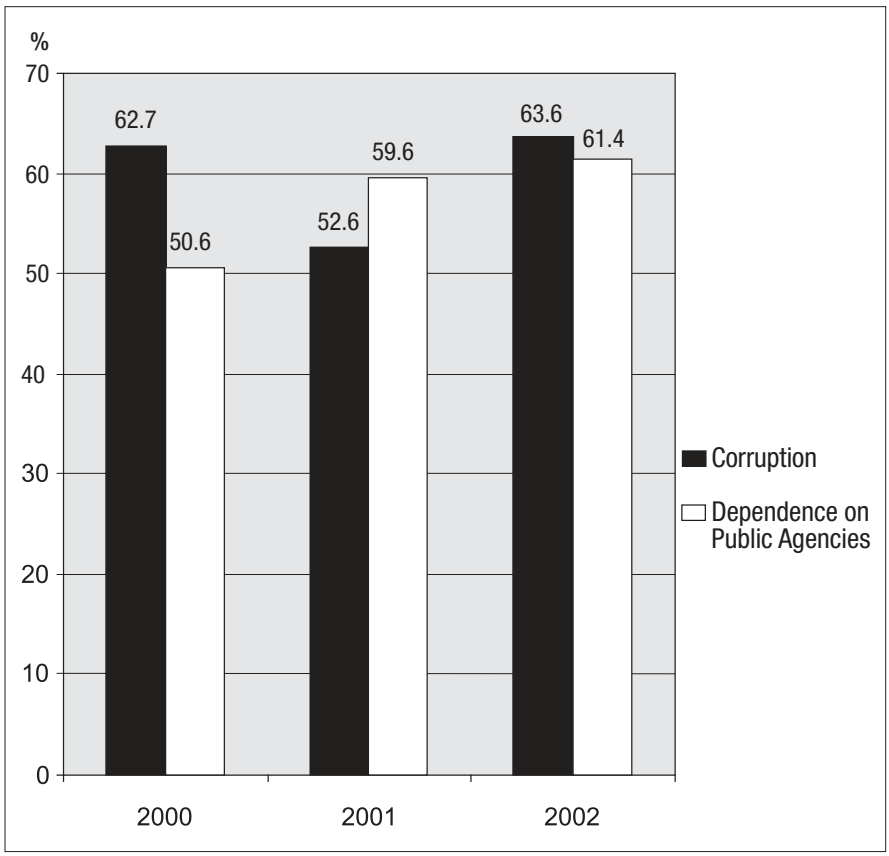

Figure 1. Primary obstructing factors for development of business (source: survey for businessmen).

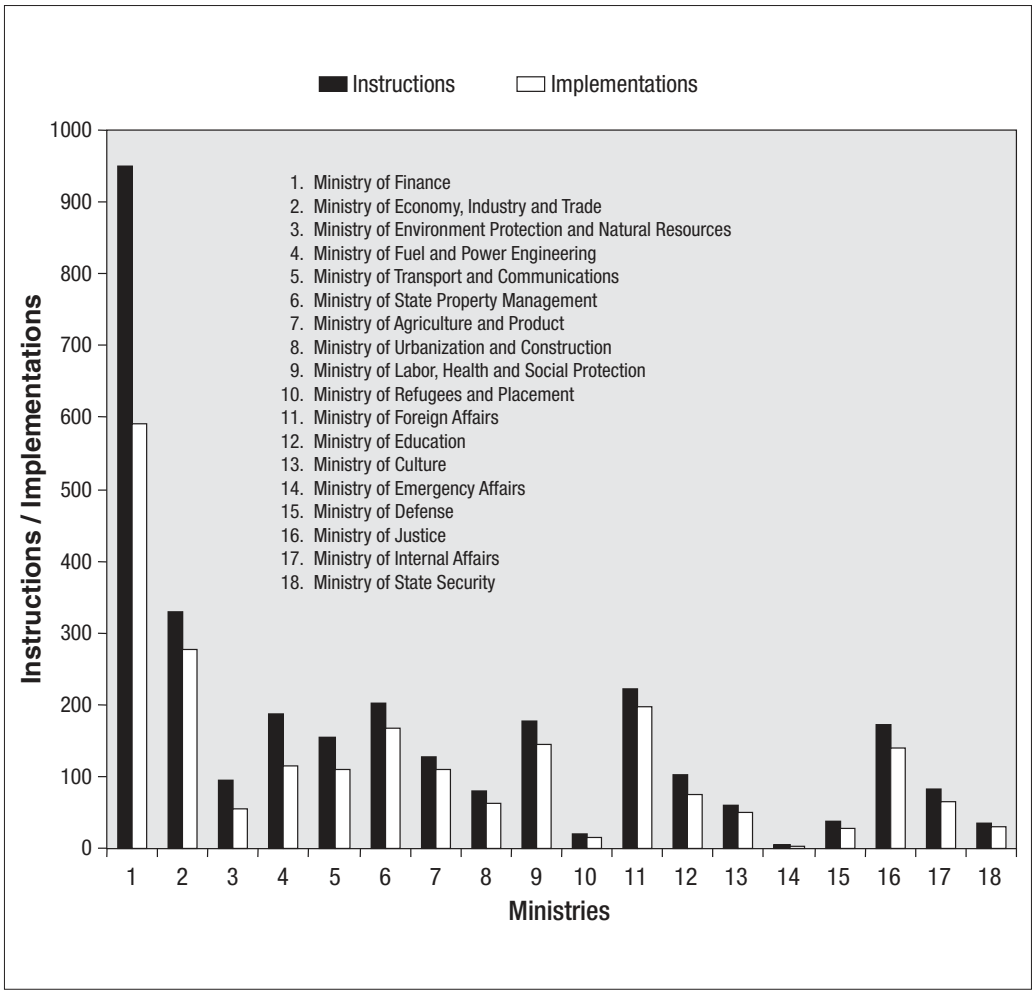

Figure 2. Implementation of instructions in Ministries (January 1, 2003).

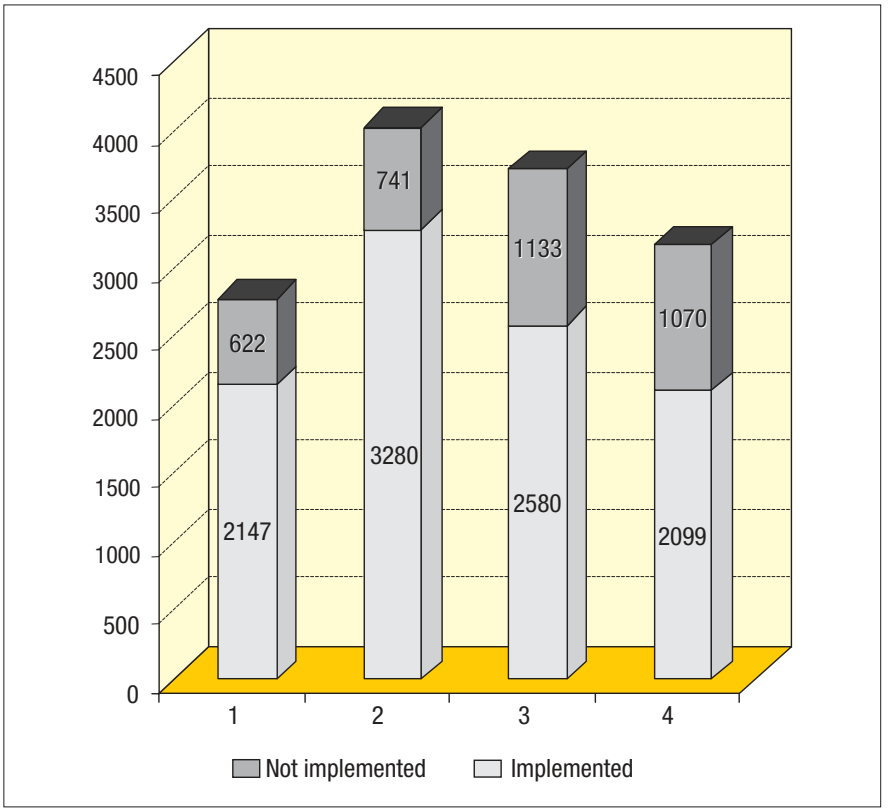

Figure 3. Dynamics of instructions for governmental structures during 1999–2002.*

Instructions issued during the first 6 months of the current year amount to 85.2% of last year's instructions. 2,299 were implemented, which is 1.5 times more than a year before, but still the percentage of implemented instructions has sunk. In 28.6% of the cases, the designated execution time was extended.

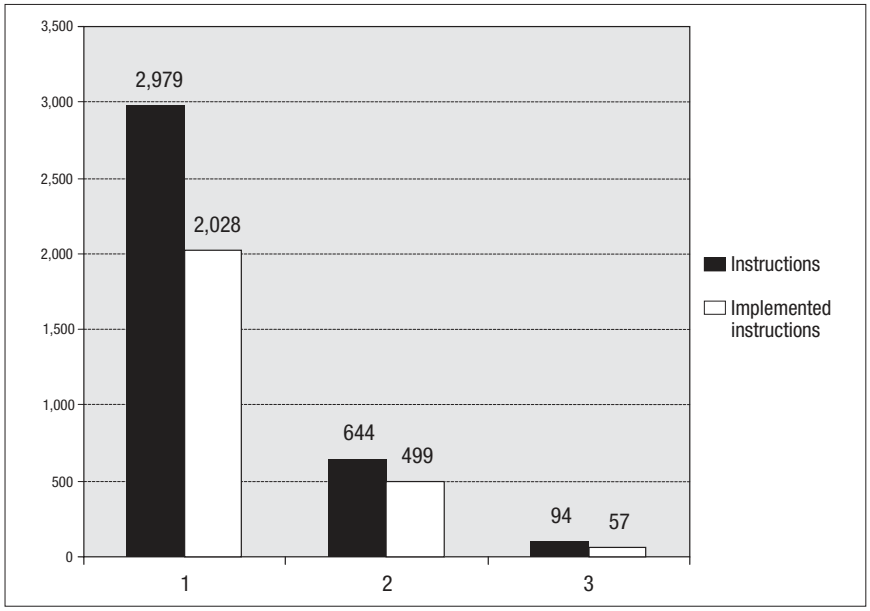

Figure 4. Implemented instructions in ministries, other agencies and governmental commissions (1.01.2003).*

* Source: research conducted with prof. Gela Grigolashvili

- 3,855 instructions were supervised by the State Chancellery. 20.4% of them were related to economic issues, from which 9% to financial-credit policy, functioning of economy and budgetary control.
- 11.5% of the instructions were related to culture, education and science, 7.5% to health and social welfare issues, 4.9% to defense, justice and corruption issues, etc.

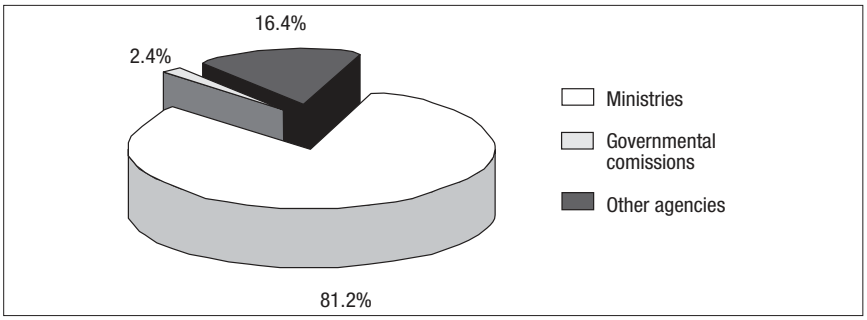

Figure 5. Instruction performance rate of all accomplished tasks of ministries, other agencies and governmental commissions (July 1, 2003).

Owing to the low volume of cases, the satisfactory performance of governmental commissions does not improve the poor overall situation. However, improvements in management and the determination of the leaders of institutional level give hope of a successful reform of the governmental management system.

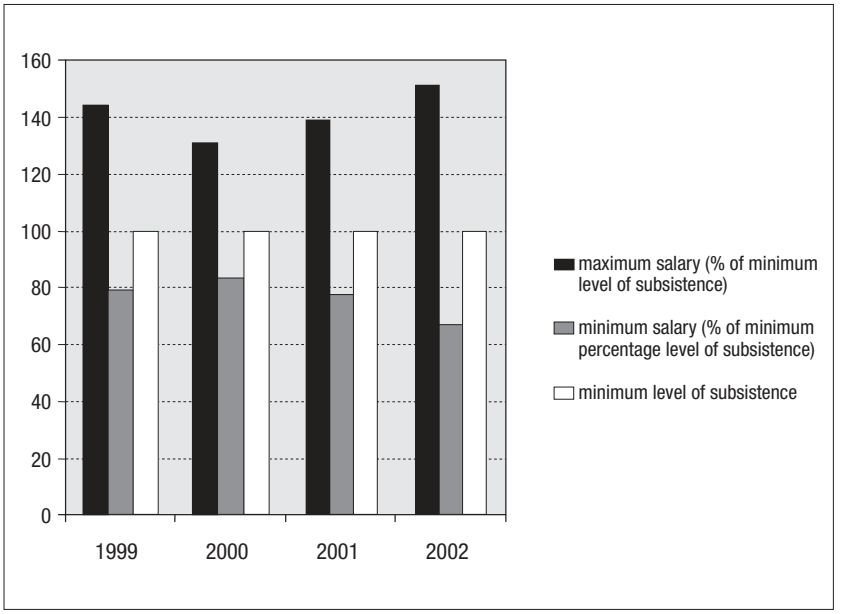

Figure 6. Maximum and minimum salary of public servants compared with minimum level of subsistence.**

** Source: research conducted with Lali Gigashvili

Recommendations

1. To achieve radical improvement in the coordination of executive governmental agencies, a coherent action plan—national social/economic development strategy should be developed.
2. The structuring of executive governmental agencies should be implemented in line with the national development strategy. This would, on the one hand, orient the agencies to solving existing problems and, on the other hand, stabilise operations and prevent functional overlaps and duplication.
3. When forming executive governmental structures, one should take into account EU requirements associated with the efficiency, transparency and cost-effectiveness of governmental structures.
4. Institutional-level agencies of executive branch should focus on conceptual issues, associated with policy implementation, action planning, prognostication, monitoring and the like. They should altogether relinquish economic functions which should be delegated to lower-level structures (regulatory agencies, legal entities under public law).

5. Within the executive branch, a strict control of sub-institutional agencies should be ensured. The need of such agencies should be determined by the following principle: how effectively can they assist the superior agencies in achieving their goals and objectives. Performance of public agencies and public servants should be measured by clearly defined criteria (Efficiency, Effectiveness, volume of work).
6. To ensure the introduction of modern governance approaches to executive governmental agencies, as much power as possible should be delegated to lower levels; in addition, job descriptions and job requirements should be prepared in accordance with the new organisational techniques; all this requires the introduction of a brand new role-based organisational discipline.
7. All executive governmental agencies should focus on the improvement of staff management procedures and practices that meet modern requirements. In particular:
   - all decisions on the recruitment, testing and promotion of staff should be based on job descriptions, job requirements and clearly defined procedures;
   - staff training and retraining needs should be assessed in accordance with the requirements of specific jobs;
   - some objective criteria for staff evaluation and promotion should be specified;
   - a database of actual public servants and reserves should be compiled;
   - radical steps should be taken to improve the quality of staff managers.
8. An effective incentive system for public servants should be developed. Adequate financial reserves for this could be found. Specifically, the legal framework for the effective use of non-budgetary incomes should be improved.
9. To overcome the existing shortcomings in financial and economic sectors, the budgeting process should be based on target funding.
10. To ensure consistency of the reform of the executive branch, the functions and responsibilities of the Public Service Bureau, which is a structural unit of the State Chancellery, should be redefined.
11. To ensure the proper operation of the executive branch, its legal and regulatory framework should be improved for the purpose of consistency and harmonisation of all legal acts with each other and with current developments.

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Representations of Organised Crime in Estonian Printed Media

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Abstract: This discourse analysis of newspaper publications over a one-year period on organised crime provides an insight into the ways in which the media constructs the said phenomenon. It reveals that organised crime is being presented as an extremely dangerous social phenomenon existing outside the community and state of Estonia. In the available publications, the existence of a large Mafia-type criminal organisation in Estonia is taken for granted. However, the idea of organised crime and criminals is strongly associated with the ethnic background of those involved in crime. The prevalent presentation of the phenomenon of organised crime in mass media is characterised as an alien conspiracy.

Introduction

Since the late 1980s–early 1990s, the problem of organised crime has been widely discussed. With the fall of communism the world faced a novel situation where there were no more clearly defined enemies. Paddy Rawlinson points out that "the end of the Cold War and the opening up of borders in the former Soviet Empire spawned a new area of international concern, that of global/ organized/ transnational/ cross border/ crime. The variety of terms betrays a lack of consensus (and, arguably, understanding) as to the nature of this new menace while the response to it displays an interesting homogeneity. … Organized crime has replaced Soviet communism as the new enemy of democracy and free market" (Rawlinson 2002: 295). Despite the ambiguity of the concept (or probably due to it), the amount of financial, intellectual etc resources channelled to study and combat this phenomenon was—and still is—enormous. Numerous commissions, conferences, international journals, think tanks, special foundations and institutions—all resources have been committed to this new "war". In just a few years, Russian organised crime has become as famous as Sicilian Mafia or La Cosa Nostra.

As a rule, analytical papers try to solve the ambiguity of the given concept by providing a suitable phrase expressing the essential nature of organised crime. This has resulted in numerous new definitions and has compounded the confusion. Letizia Paoli (2002), discussing the paradoxes of organised crime emphasises that the concept of OC incorporates two notions: the provision of illegal goods and services on the one hand, and criminal organisations on the other.

According to her, what is more important is that these notions are superimposed, which produces an ambiguous, conflated concept.

In Estonia, a criminal alliance is defined as a collusion of "a stable group of three or more persons with division of labour, associated for the purpose of committing offences of the first and second degree". This legal definition enables the law enforcement bodies to target at small-size and loosely organised illegal enterprises as well as members of big criminal organisations. Since the introduction of the definition in 1996, there has been only one case where a group of people was prosecuted for establishing and belonging to a criminal alliance. In 2001 a group engaged in trafficking in stolen cars from Europe to Estonia was brought to justice. Although there previously had been several attempts to charge groups under the criminal alliance clause, this was the first time that sufficient evidence was collected to actually do so. It is also worth mentioning that the said alliance included both law enforcement officials and car thieves.

Although organised crime is defined as a criminal enterprise by Estonian law, rather than a conspiracy of aliens, media discourse paints quite a different picture. The case discussed above generated several newspaper articles. While the official presentation of the news was rather neutral, the comments demonstrated disagreement with such an understanding of organised crime. An excerpt from a Päevaleht article below serves as an illustration of the point:

> *ESTONIAN MAFIOSI*
> *Since yesterday there have been three persons in Estonia who you can call Mafiosi without the fear of being sued for libel. Who are they, the first Estonian Mafiosi?*
> *Let me introduce to you, Merike Soots: a young woman, a border guard who, driven by banal greed, helped some rogues for 10,000 kroons to bring stolen cars over the border. In all other respects, she is a respectable family person, mother of two.*
> *Hillar Grünbaum: For years, he was a medium-calibre actor in the world of criminals. He contrived a simple scheme, based on clear and direct bribing of a senior border guard.*
> *Margo Liiva: an errand-boy of the former, who did not need to do any thinking himself.*
> *Do they really befit the image of organised crime? Ironically, the capture of these small-time offenders is considered a manifest achievement of the police and the court. Seemingly, to reach high, one has to start from the lowest rung of the ladder….*
> *(13 December 2001)*

The author of the newspaper article evidently disagrees with the idea that either a "respectable family person", "mother of two", a "medium-calibre actor" or an "unthinking errand-boy" could be considered organised criminals. The question follows: what kind of image of organised crime and criminals does the Estonian mass media have?

Discourse analysis

The most appropriate method of looking for meanings of organised crime in the printed news is the discourse analysis. The term 'discourse analysis' is connected to a variety of approaches, but all of them share one common feature: discourse analysis rejects the idea that language is a neutral means of reflecting the reality. Instead, it holds that discourse has pivotal importance in constructing social life (Gill 2000). As said by Gill, "it is useful to think of discourse analysis as having four main themes: a concern with discourse itself; a view of language as constructive and constructed; an emphasis upon discourse as a form of action; and a conviction in the rhetorical organisation of discourse (ibid. 174)." Discourse analysis is not interested in finding out "how things really are". Instead, it looks for answers to different questions. In case of the above-mentioned article, the author is not interested in what organised crime and criminals really are, but what they are not. The more important question, however, is how organised crime is constructed in mass media, and what is meant by organised crime.

According to van Dijk (1989a), news represent a special kind of discourse. Traditional content analysis of texts concentrates on economical, political, social or psychological aspects of text processing. This orientation allows the identification of factors involved in the processes of news production and reception, as well as those influencing the news messages. In such an approach, attention is paid to the message itself, in so far as it provides information about the different contexts of its usage. The discourse analysis, in contrast, concentrates on the core of the process of mass communication. All media texts, and news texts in particular, are analysed as a special case of language use and a special kind of text. It means that news should be analysed from the point of view of its organisation. This analysis, alongside with the linguistic analysis of morphology, syntax and semantic structures of words and phrases, involves more complicated analysis of relationship between sentences, general schematic structure of the whole text, rhetoric, and style. And since discourse is not only a textual structure but a more complicated communicative act (phenomenon), the analysis of news discourse should also include the social context of communication actors and the process of news production.

In an approach like this, many factors and conditions of the production of mass communication (such as the economic context or institutional procedure of news production) could be brought into association with various structural characteristics of texts. This holds true also with the process of how news are perceived. How news are understood, memorised and reproduced should be studied by taking into account the textual and contextual properties of the communication process.

The newspaper discourse, like other genres of discourse, should be analysed at different levels. Such properties of texts as word order, clause structure, sentence meanings, local coherence, global topics, lexical style, semantic moves, disclaimers, metaphors, levels and completeness of descriptions and so on,

should be taken into account. It is clear that all categories cannot be addressed in one go. The most important question is what structures should be attended to within the limited framework of one project. The choice of categories primarily depends on the research question, and the problems and aims of the project. (van Dijk 1998)

The problem and categories of analysis

As mentioned before, the choice of structures to be analysed depends on questions one wishes to answer. My goal is to understand the meaning of organised crime as presented in Estonian newspapers. Another issue under scrutiny will be political corruption. In recent statements of high-level Estonian law enforcement officials it has often been suggested that in Estonia, organised crime has attained a new level of development: the metastases of organised crime have now reached politics and legal business. Analysis of how these processes are understood and presented by the mass media contributes greatly to the understanding of the image of organised crime in general.

Obviously, within the framework of one project, only a few structures can be analysed. In this paper I will focus on such categories of analysis which deal with meaning, and are general enough to characterise the discourse as a whole. These include the analysis of topics, lexicalisation, and the analysis of rhetorical devices (metaphors, hyperboles, euphemisms, irony etc.)

Topics. Topic is defined as the general proposition that constitutes the global meaning of a text. Topics represent what the writer (member of a dominant group) regards as the most important theme of the text. The main topics determine, in broad outlines, how people understand and remember the text. Topics influence the agenda, i.e. what people think and talk about. (van Dijk et al. 1997). The research of the structure of discourse (van Dijk 1989b) has shown that the lead and heading of a newspaper article often contain/summarise the most important information in the text. Previous research based on analysis of topics has demonstrated that topics express and reproduce major stereotypes (van Dijk et al. 1997).

Lexicalisation. One thing that can be quite easily examined is the lexicalisation of the underlying conceptual meanings. The words chosen to describe organised crime, its members and actions immediately reveal properties of discourse. Whether the group of criminals is described as "gang", "network", "criminal enterprise", "Mafia", or just "tumour" refers bluntly to the understanding and models of organised crime in discourse.

Rhetorical devices. As van Dijk (1998) suggests, rhetorical structures "regulate effective comprehension and especially opinion formation and change". Rhetorical devices such as metaphor, irony, etc are designed to call attention, help memorising author's point of view, and in this way, change people's minds. Similarly to the choice of words used to describe the organised crime phenomenon, rhetorical devices contribute heavily to the construction of meaning. Since metaphors and other rhetorical features do not appear in every sentence, this kind of analysis is appropriate when analysing large fragments of discourse.

Sample

Using the search engine of the on-line version of the daily Pä evaleht, I selected all newspaper texts where the keywords "organised crime" (organiseeritud kuritegevus), "underworld" (allilm, allmaailm), "Mafia", "criminal alliance" (kuritegelik ühendus), "gang" (jõ uk), "grouping" (grupeering) appeared. After sieving the material obtained, 195 newspaper articles were selected for analysis. Not all of them had organised crime as their main topic, but all of them gave some consideration to the theme. The articles where the organised crime-related words just appeared in a list (for example, "After re-gaining independence Estonia has faced several problems like unemployment, inequality, organised crime etc") were excluded from the sample, as were articles that discussed organised crime abroad. Although being aware of the fact that any discussion on organised crime could contribute to the construction of the phenomenon, we decided to exclude the said texts for two reasons: Firstly, our aim was to deconstruct the meaning of organised crime in Estonia and, secondly, we wanted to reduce the amount of material to be analysed by assessing and weighing it from the viewpoint of quality. Eventually, 104 articles were approved for analysis.

Articles on organised crime appeared regularly. Some of the events like apprehension of law-breakers or gang trials were reported in one or two articles, while others triggered a series of writings. Most often such series of articles addressed the issues of corruption. The cases which aroused keen interest among the public are especially rewarding to the researcher, and worth studying in greater detail. The material available being rich, we decided to limit the question and concentrate on examining how organised criminals were constructed in the selected articles.

Three series of articles were selected for the analysis at hand. Firstly, the series on links between the Tallinn City Administration and the St. Petersburg organised crime; secondly, the articles dealing with the murder of the businessman Vitali Haitov. Although different, both series have similar features: persons involved are prominent businessmen, allegedly tainted by their affiliation to organised crime; some politicians are referred to in both cases. The ethnic background of the actors is, however, different. The third series of articles was set off by a paper on organised crime by the leading expert in Estonia, Director of the Board for Security Police (in Estonian KAPO).

"The notorious Lao sets a trap to his buddy Mõis": articles concerning the links between organised crime and the Tallinn City Administration

The first of the selected series (13 articles in total) started with an article titled "FBI: Lao is a middleman of St. Petersburg's underworld" (EPL 21 April 2001). In contrast to the series of writings on Vitali Haitov's death, to be discussed later, the first article in this series was an outcome of investigative journalism, rather than information casting light on the event. The events described took place in March 2001, and the article was published in the end of April 2001. The said article, an event in itself, will be studied in greater detail; in order to understand what

a story recounts, its discourse structure needs to be analysed (Bell 1998; van Dijk 1985).

> *FBI: Lao is a middleman of St. Petersburg's underworld. The Reformist Party finds that Mayor of Tallinn, Jüri Mõis, should resign if the data provided by the FBI, alleging that Mõis' bosom friend Meelis Lao is the stooge of St. Petersburg organised crime in Estonia, should turn out to be true. (21 April 2001)*

The lead and heading of a newspaper article are used to express the main theme or topic of the text (van Dijk 1985). As suggested by van Dijk, if there are several topics, the one that is most important or most recent is expressed in the heading while others are presented in the lead. (van Dijk 1985, 242). The message of the topic in the above piece of writing is that the FBI has information on Lao's connections with the St. Petersburg organised crime. The lead adds political dimension to this information. The reader learns that Lao is a good friend of Mõis, Mayor of Tallinn. The lead also refers to the subsequent action (also called the follow-up), i.e. what should be or will be done in the future as a consequence of the given event. This idea is further emphasised in the comment (direct quotation) of the Head of the Tallinn City Council, supporting the resignation of the Mayor, provided the FBI information should be found true. The main idea behind the resignation is actually the innuendo that the Mayor of Tallinn has connections to organised crime or, in other words, to political corruption. However, this innuendo is not expressed explicitly. Instead, by excluding the topic of Mõis' resignation/corruption from the headline, the main attention is turned to the question of Lao's possibly criminal background.

The thematic structure of the article helps to reconstruct what the story says. Thematic structure is a set of formally or subjectively organised topics. Each section of the newspaper text is organised around these topics. The reader learns that during his visit to the USA in March 2001, the Estonian Minister of the Interior received information about money laundering and economic activities of the St. Petersburg organised crime in Estonia. According to that information, the connections between the Tallinn City Administration and organised crime had made those murky activities possible. The person who allegedly had helped to establish contacts between the City Administration and the organised crime was Meelis Lao, buddy of the Mayor of Tallinn. The Minister did not inform the Government about the issue.

The text of the article does not always follow the linear structure of the topics. Instead, journalists assign different relevance value to each of the topics. This relevance is reflected in the order in which the topics appear in the text (van Dijk 1989b, 246): the later a topic appears in the text, the lower relevance value it has. In this particular text, topics appear as follows:

a) Organised crime is involved in large-scale real estate operations in downtown Tallinn
b) FBI's warning should be taken seriously
c) No government official wanted to comment on the issue
d) Minister claims he did nothing wrong when (not) processing / forwarding the FBI information
e) Minister claims no particular names were discussed.

f) There is no official FBI report on the issue
g) Meelis Lao claims the information is a slander (libel)
h) Pro Patria party (the one the Mayor of Tallinn belongs to) believes what the Minister says.

The first two topics, (a) and (b) are newspaper commentaries or additions to the main event. The general information about the economic activities of organised crime is supplemented by providing more precise description of the organised crime activities in the real estate sector (a). The next comment regarding the seriousness of the FBI information (b) actually further stresses the topic presented in the lead. Lower in the hierarchy are topics concerning the official reaction to this information. Topics (c)–(f) elaborate on the Minister's vacuous reaction. In no uncertain terms, the Minister is being accused of "shielding" Mõis. The Minister's explanation of the usual procedure of recording and forwarding the content of formal talks is presented (d), by which he claims that he did nothing wrong. Additionally, he claims no particular names were discussed (e) during his meeting with the FBI officials. This paragraph explicitly expresses the idea that the information presented in the newspaper article is not true. Further on, in the last paragraph (h), an official representative of the Pro Patria party claims they "trust what the Minister says". This is quite intriguing, because what is actually believed is the implicit message.

It is worth noting that the idea of Mõis' resignation, or in other words, of Mõis' connection to organised crime, does not appear anywhere in the text except for one sentence in the end of the article, where it is mentioned that Mõis was not available for a comment.

Significant for this article is the use of sources. The story has an author by-line. The heading attributes the information to the FBI, but there is no indication that information was directly received from the FBI. All in all, the following sources of information or comments can be identified in the text:

- FBI
- Director of FBI
- Head of the Tallinn City Council
- Anonymous governmental source
- Police source
- Minister of the Interior
- Public relations officer from the Ministry of the Interior
- Meelis Lao (the alleged OC figure)
- Head of Tallinn Chapter of the Pro Patria party.

Each claim made in this article is attributed to some source. Such precise and even obsessive indication of sources makes sure that each claim presented in the article has a strong factual basis (asserts that the information is genuine). All sources mentioned (probably with the exception of Meelis Lao) are incumbent officials, holding high positions. As already mentioned, the core story is attributed to the Director of the FBI. The newspaper writes that the Director "drew the Minister's attention", "mentioned", "warned" about the issue. The selection of

verbs is characteristic to informal advice, rather than to official statement. Direct quotation is not used, which implies that the journalist did not get the information "straight from the horse's mouth" (the FBI), but via other channels, which is further indicated by the phrase "according to *Päevaleht's* data".

Perhaps the excessive reference to supporting claims seeks to make up for the weakness of not having direct FBI reports. The seriousness of the primary statement is underscored by providing background information on the authority of the FBI Director, who is "number four figure in the USA" and "if he draws attention" to an issue, "the matter is volatile". Moreover, the expertise of the USA source is emphasised not only by the journalist herself, but by additional reference to an anonymous "police source".

The Minister of the Interior is given a much stronger voice when compared to the suggestive character of the FBI claims. First, he is quoted directly. Second, while commenting on the issue, he "assures" the journalist (and through direct quotation also the reader) of the correctness of his actions during and after the visit to the USA. The minister also "stresses" that concrete names—implication to "Lao"—were not specified.

As a follow-up to this article we have an opinion of a high-ranking politician (representative of the Reformist party), that the Mayor of Tallinn, Mõis, should resign. Follow-ups usually concern the future, and state the consequences of an event, or an opinion of "what should be done". As Bell notes, a follow-up is a prime source of subsequent updating of stories, that themselves are called 'follow-ups' by journalists (Bell 1998: 69). As I will show later, several subsequent publications were concerned with Mõ is' resignation.

On the same day, the newspaper published a comment by another expert, Koit Pikaro, the former Commissioner of Police. This comment was not included in the article "FBI: …" but was presented as a separate piece. It is worth pointing out that the Estonian mass media hails Koit Pikaro as a legendary figure in the law enforcement landscape. Formerly the Vice-Director of the Central Criminal Police, he is considered a lone fighter against organised crime. Such a status is highly valued among the public, and explains why Pikaro, and not some incumbent police official, was asked to comment on the event. Pikaro confirmed the FBI information and stressed that this was not the first time that suspicions regarding the connections between Meelis Lao and the leader of St. Petersburg's organised crime had been aroused. The latter's nickname is Mogila ('grave' in Russian). By calling the organised crime figure by his nickname, and thereby adding savour to the whole story, Pikaro demonstrated sophisticated knowledge of the subject. Pikaro, however, refused to comment on the question whether or not Mõis could be linked to organised crime.

In sum, the article makes claims of a political corruption case and stresses the credibility and importance of such a statement by referring to high-ranking authorities. However, the accusation is made in a clear-cut fashion. This "not beating about the bush" makes it possible to shift the focus from links between the Mayor of Tallinn and organised crime to the question of whether the information about criminal links of Meelis Lao is valid or not. The follow-up articles pursue both possible tracks. Articles discuss the issue of resignation, but at the same time weigh the (in)validity of the information about Meelis Lao's criminal background.

The headings of articles, which to some extent trace the "resignation" path, are listed below:

TALLINN CITY ADMINISTRATION DID NOT DISCUSS THE ACCUSATIONS AGAINST MÕIS. (23 April 2001)

PRO PATRIA DECIDES MÕIS SHOULD CONTINUE AS MAYOR OF THE CITY. (23 April 2001)

PRO PATRIA WILL NOT DISMISS MÕIS BY DEFAULT. (23 April 2001)
COALITION PARTNER INITIATES MÕIS' RESIGNATION (3 May 2001)

Especially interesting are the articles that shift attention from Mõ is to Lao, the alleged puppet of organised crime:

MEELIS LAO – MAFIOSO OR BUSINESSMAN? (26 April 2001)

Despite the high credibility of the sources of the original allegation (FBI, government source, police source, and legendary former police commissioner), referred to in the first article, the subsequent articles downgrade this information by explicitly expressing disbelief. Mõ is is the first one to voice doubts.

JÜRI MÕIS DOES NOT BELIEVE THAT LAO HAS LINKS WITH MAFIA (23 April 2001)

In addition, the authority of the FBI is overruled by two even higher authorities (as if one would not have been enough), i.e. by two Estonian Ministers who downplay the importance of the FBI report:

TWO MINISTERS DO NOT CONSIDER THE REPORT ON LAO AS IMPORTANT. Minister of Justice Märt Rask and Minister of Social Affairs Eiki Nestor do not regard the report concerning the Tallinn City Administration's alleged connection with organised crime as important. (24 April 2001)

In the whole series of articles, the juxtapositioning of "us" and "them" is conspicuously outstanding. "Us" are represented by concrete figures: ministers, politicians, and Mayor Mõis. Mõis' personal qualities, both those of a politician and a successful businessman, are repeatedly highlighted. In addition to these "tokens of success", by which Estonians assess the man's achievements, his inner positive virtues such as the capacity for friendship ("a buddy of Mõis") are presented. Mõis is referred to as a victim of the developments, unbeknown to him:

The notorious Lao sets a trap for his buddy Mõis. (24 April 2001)

"They" are vaguely represented, described in general terms of "organised crime", "underworld", "Mafia". Only one trait is disclosed—"they" are from St. Petersburg, they are the "Russian organised crime". The only exception is the nickname "Mogila" ('grave') of an organised criminal. This macabre *nom de plume* aside, the reader learns nothing about the said underworld figure.

Between these clearly marked borders, between "us" and "them", is the person whose true identity remains a mystery, Meelis Lao. The question about his stature is stated point-blank: "Meelis Lao—Mafioso or businessman?" Implicitly, however, Lao is presented as one of "us". He is characterised as "notorious" rather than criminal. Newspaper reports abound in reference to his high social position: the prominent businessman Hannes Tamjärv and the Mayor of Tallinn Jüri Mõ is are his friends, his legitimate annual earnings are about one million Estonian kroons (well above the average), he receives fixed income from shares he holds in businesses, he is unable to remember how many cars he has had over the past ten years. The phrases "sinewy, light-haired sportsman" with "strong chin" allude to his sporty appearance, in stark contrast to the standard definition of Russian "mug-headed" (derivative of "mugger") racketeers. As Meelis Lao is identified as one of "us", he is also cleared of suspicions regarding his criminal behaviour. The tacit inference is that his friendship with Mõis is not a problem, really, and that there is no evidence of political corruption.

Before moving to the next group of articles, I would like to point out that here, "political corruption" is used to refer to alleged relationship between the city administration and organised crime. The word "corruption " is not mentioned in any of the 13 articles, which as such is interesting.

"It's like soap opera": Murder of Vitali Haitov

The second group of articles slightly differs from the first one, evolving around high-ranking officials' statements on organised crime. The articles analysed in this section are concerned with the murder of a media businessman, Vitali Haitov on 10 March, 2001. The tentative analysis revealed that a subset of articles related to Haitov's death did not contain the original news about the murder. Therefore, additional selection was made from 2001 Eesti Päevaleht publications. This time "Haitov" was used as the keyword. The search resulted in 11 additional articles. The newspaper published 23 articles in total to cover the event.

This gangster-movie-like event would be extremely attractive to any journalist. In 2000, one year before the assassination of Vitali Haitov, his son Marian Haitov was killed. The crime went unsolved. From the very beginning, the two deaths were associated; it was claimed that even the motives coincided:

VITALI HAITOV MURDERED YESTERDAY. Yesterday afternoon an offender not yet apprehended shot VitaIi Haitov in front of his home, killing him. The victim, whose son Marian was murdered in spring last year was a publisher, head of the Vesti media group […]. (12 March 2001)

EDITORIAL: BLOOD OF BUSINESSMAN HAITOV. It is too early to make conclusive statements concerning the motives for the murder of an eminent Russian businessman Vitali Haitov. However, the reason for his murder could be that he was too close to dispel the murky shadows obscuring the mystery of the murder of his son, Marian, in April last year. (12 March 2001)

ACCORDING TO POLICE DATA, THE UNDERLYING REASON FOR KILLING BOTH MARIAN AND VITALI HAITOV FOLLOWS THE SAME RATIONALE. (13 March 2001)

The murder was immediately put into the context of organised crime. Although the headlines did not explicitly reveal any linkage between these murders and organised crime, in the following texts the association was made. This was done in two ways. When describing the background of the two victims, the press claimed that they had had connections with organised crime. The following quotation serves as an example:

"However, until the end of last year Haitov, who held the position of director of the underworld-related Russian Cultural Centre, was involved in never-ending conflict with media business" (Editorial: Blood of businessman Haitov, 12 March 2001)

The majority of publications devoted to that event described the crime scene, played back Marian Haitov's murder in 2000, deliberated on suspects etc. Two articles, however, looked at the organised crime (Mafia) phenomenon in general. One of them, published 5 days after the murder, mentioned Haitovs' name in the lead, unequivocally relating them to Mafia.

WHAT IS MAFIA? We talk about the Haitovs and the other dénommé businessmen of Jewish descent, sporting Russian names, and call them Mafia. This is just rubbish. Do we have an inkling of what Mafia is? (15 March 2001)

The prevailing theme of the article is nicely presented in the title, and repeated in the last sentence of the lead: it sets out to define Mafia. The missing "correct" understanding of Mafia is contrasted with the entrenched idea of what "we" mean by Mafia: "the dénommé businessmen of Jewish descent, sporting Russian names", father and son Haitov serving as an example. In the lead of the other article, one notices that once again the two murders are mentioned in the context of general discussion about Mafia. No arguments, no proofs are presented. Haitovs' affiliation to Mafia is regarded as an obvious fact.

WHY DO WE LIKE MAFIOSI? It is a catastrophe when in one family father and son die within one year, a 9-year boy deprived of father and grandfather, in a series of related dramatic events. For the Haitov family it's a tragedy. For someone else, it is a standard solution to a problem. For media, the unsolved murder cases are just means to boost circulation and gain profit. For the public it provides interesting reading material. It's like a soap opera. (15 March 2001)

The topic re-appeared in the newspaper again in August, when two suspects were arrested and charged with murder.

POLICE CAUGHT SUSPECTS OF VITALI HAITOV'S MURDER. (3 August 2001)

LITHUANIAN NEWSPAPER: SUSPECTS OF VITALI HAITOV'S MURDER ARE PERMANENT RESIDENTS OF LITHUANIA (7 August 2001)

HAITOV'S MURDERER WAS CHARGED WITH CRIME (9 August 2001)

Eventually, the motive for both homicides was claimed to be the stock of the Russian language newspaper Estonija:

ESTONIJA'S SHARES PROVIDE MOTIVE FOR HAITOVS' DEATHS (24 August 2001)

Estonija's stock was acquired by Gennadi Ever, a local politician, and member of a political party associated with the Russian-speaking population. Due to Ever's personality, the murder was again linked with organised crime. Being the one who benefited from Haitovs' murders, Ever was implicitly accused by the newspaper long before he was officially charged. In two articles focusing on Ever's background, his ethnic roots were especially stressed. In both cases, Ever's nationality was revealed already in the headline.

GENNADI EVER ALIAS GENNADI GRIGORJAN - UNOFFICIAL BIOGRAPHY (24 August 2001)

TRANSITION FROM SHISH KEBAB BAR TO SEAT OF MEMBER IN THE CITY COUNCIL (20 September 2001)

The first headline tells the reader the "authentic" name of Gennadi Ever. One learns that Ever comes from Armenia. The second title reveals how Ever started his career. The shish kebab bars in Estonia are often operated and visited by Georgians, Armenians, or Azerbaijanis. As a rule, the places are small, far from resplendent, and tend to have a shady reputation. The reference to a person working in a shish kebab bar is likely to produce an association of a fishy stranger.

Later Gennadi Ever was arrested as a suspect in Haitov's death, but was eventually released. Ever's arrest was used as a proof of what the newspaper had earlier called "Pihl's exceptional statement about the involvement of organised crime in politics" ("Underworld fastens its grip", 24 May 2001).

IS THE CONNECTION OF UNDERWORLD WITH POLITICS NOW PROVED? (20 September 2001)

Thus Haitovs' deaths and the subsequent events are linked to another series of publications, the analysis of which is necessary if we wish to understand how the meaning of "organised crime" is created.

"Carcinoma is growing deeper": statement of Director of Security Police on organised crime

The series started with the publication of a full-length analytical paper by the Director of the Estonian Security Police, Jüri Pihl, titled "Security Risks Jeopardise Economy and Businesses". The article is uncommonly long (over 3,000 words)

for newspaper format. The style and structure of the article are also unusual. The paper was prepared to be delivered at the Conference on Security of Enterprise, held in Pärnu, Estonia 3–4 May 2001. The newspaper, however, provided a specific angle to its publication:

> *JÜRI PIHL'S REPORT ON INVOLVEMENT OF CRIME IN POLITICS. (24 May 2003)*

Pihl's paper mainly deals with organised crime in Estonia as a security risk. It discusses many aspects of organised crime like drug trafficking, smuggling of alcohol, tobacco and oil products. It also discusses corruption, the investments of organised crime in legal economy and white-collar crime, political corruption, and money laundering. Due to its format, the paper itself will not be discussed here. However, the title of the publication was chosen by the newspaper with a specific purpose in mind, and therefore deserves closer attention. Involvement of organised crime in politics was the only theme (accounting for only 12% of the space of the report) the daily picked from several possible alternatives. Follow-ups on Pihl's paper mostly discussed the seriousness of the given problem and the correctness of Pihl's claims. They, too, were solely concerned with the involvement of organised crime in politics. Later that year, however, on 13 September 2001, in the wake of the September 11 terrorist attacks in the USA, another part of Pihl's report was published: his evaluation of the risk of terrorism threat in Estonia.

Here is the heading and lead of the Päevaleht editorial published on the same day as the first report:

> *UNDERWORLD PENETRATES DEEPER. The development of the criminal world and the society have progressed neck and neck. This cancer spreads deeper and wider, the proof to it being Jüri Pihl's sensational statement in today's Eesti Päevaleht, boiling down to the plain assertion that the criminal world has penetrated into politics of Estonia. (24 May 2001)*

Since the article is an editorial, the first in a chain of publications, it will be analysed in greater detail. Its topics are presented as follows (arranged in chronological order)

1. Organised crime emerged in 1980s; at that time, its main business was racket
2. Estonia re-gained independence, legislation and economy were put in place
3. Organised crime accommodated itself to the new economy due to loopholes and lacunae in legislation
4. Organised crime attained its financial objectives, developing a smoothly operating system
5. Some prominent businessmen became cover-ups (puppets whose function was only nominal, to cover someone else's activities—"tankist" in Estonian) for organised crime
6. The need for corruption emerged for OC to function
7. Criminal world took one step further: penetration into politics

8. Penetration into politics was effected through politicians, active in financing
9. The emergence of criminals on political scene jeopardised constitutional order
10. The linkage of organised crime and politics undermined Estonia's credibility abroad
11. Possibility of sudden changes and the consequent uncertainty reduced the flow of foreign investments
12. Instability started to endanger the joining of Estonia to Western economical and security structures

Organised crime as presented here by using the expression "criminal world" suggests the size and complexity of the phenomenon. Again, "otherness" is accentuated: "our" society is contrasted with the criminal world. The editorial is built as an overview of the history of organised crime in Estonia. Basically, it says that organised crime has succeeded in getting the upper hand in all sectors of social life, and has now come close to the top—the level of politics. Especially interesting are topics 9–12, focusing on threats organised crime poses to Estonia. Of the four suggested consequences, three deal with Estonia's reputation abroad, rather than with domestic issues. A similar tendency was noted by Lagerspetz (1996, 122–124) when analysing the Estonian prostitution debate in 1993–1994: extensive references to international policies and practices were made, the West European ones being the standard against which Estonian practices were validated.

The follow-ups to Pihl's report and the editorial, presenting the said report, were mostly worried about the volatility of the situation. The following headline, for example, stresses the same idea of the force and power of organised crime:

> *JÜRI PIHL WARNS: UNDERWORLD FORCIBLY THRUSTS INTO POLITICS (24 May 2001)*

The danger exuding from organised crime is added preponderance by the use of war rhetoric and cancer metaphors. However, the main emphasis is laid on the source of the information. The importance of the "organised crime in politics" message is stressed by the authority of the Director of Security Police. A selective extract from a conference paper is called a "sensational statement" in order to emphasise the extraordinariness of the information. The news carry the message that Pihl's position authorises him to warn this country about the impending threat. Pihl's competence is stressed in the following story, in particular:

> *MYTHS AND MAFIA STORIES. Tony Soprano and Vito Corleone are the embodiments of the Evil on Earth. But they are artificial, fiction, the common fantasy of media and writers - film directors. Jüri Pihl is real. The dangers spelled by him are not fictitious. He is the Chief of Intelligence in a real country. When a high official like him makes a statement, society should take it seriously.*
>
> *In today's Eesti Päevaleht Pihl states that criminal underworld has penetrated into Estonian politics.*

If it had been said by somebody (e.g. the proverbial Auntie M.) calling the Vikerraadio phone talk show, it would have sounded like grumbling of a stupid woman. But since it (a well-known fact by itself) is announced by the head of security police, we should pay close attention and think what he means by it.

The head of Security Police is not the press guru Daddy Jannsen from the 19th C, whose ambition was to tell educating stories to the common people. …(24 May 2001)

The importance of Pihl's statement is emphasised three times. Comparison between fictional characters and the chief of security police gives particular prominence to realism. Contrasting the annoyingly stupid talk of Auntie M. and the facts provided by a high ranking police expert accentuate the truthfulness of the story. The third contrast to the tales of Daddy Jannsen underlines that the said information should be taken seriously. Thus the article conveys the message that the involvement of organised crime in politics is a real, true and serious threat, by no means vicarious or virtual.

Similarly to the series of articles described above, one will not find the word "corruption" here. Originally, Pihl never used that term in respect of politics in Estonia. In his paper, "corruption" is applied to cases where organised criminals establish contact with clerks (officials). He distinguishes two types of corruption: On the one hand, there is "direct corruption" meaning arrangements between the clerks (officials) and the criminals or their close relatives in order to give some companies unfair advantage over others. On the other hand, "collusion with officials" facilitates tax evasion (tax fraud) or smuggling.

However, when politicians are engaged in similar practices with similar goals of unjust enrichment, it seems not to be corruption any more, but rather "involvement of organised crime in politics", or that is at least how the newspaper presents the issue:

UNDERWORLD HAS CHANGED SWEAT SUITS TO BUSINESS SHIRT. (21 May 2001)

UNDERWORLD IN POLITICS (20 September 2001)

In sum, the series of publications on Jüri Pihl's report assert that organised crime in Estonia has reached a new level of development. That level, involvement in politics, is considered to be extremely dangerous, especially in the context of Estonia's integration into Europe. By not using the term "corruption", emphasis and responsibility are shifted towards organised crime, while the Estonian political scene remains an innocent victim, unawarely caught in the turmoil. There are striking similarities in the way the alleged criminal connections of the Mayor of Tallinn, and the general issue of politicians and organised crime are presented.

Conclusion: Organised crime and criminals in media

In all three series of publications there are common features that help to reconstruct the meaning of organised crime and criminals in Estonian media. Firstly, organised crime is presented as a dangerous phenomenon that exists and develops on its own, parallel to the development of the Estonian society. The phenomenon is presented as existing outside the society and state, somewhere in the "twilight zone". This is done by using war metaphors (words like involvement, penetration, underworld etc) on the one hand, and metaphors of fatal sickness on the other (cancer developing metastases). Such presentation of organised crime highlights its dangerousness. The seriousness of the danger is then accentuated by using high ranking officials as sources of reference. To put it in a nutshell: organised crime is an extremely dangerous phenomenon that threatens Estonian society from the outside.

Secondly, the concept of organised crime is extremely vague. It is presented in general terms. The existence of organised crime, or rather of some large criminal organisation, is taken for granted. For example, when talking about "underworld in politics", "director of underworld-related Russian Cultural Centre", "Mafia" or a "representative of organised crime", one tacitly presumes that all those activities are well-orchestrated. However, no organisation, nor its activities are described. The accusations levelled against a given person are not conclusive, but confined to castigating him for being "affiliated" to the said organisation.

Thirdly, the notion of organised crime and criminals is strongly connected to the ethnic background of the latter. Even when the context of ethnic background is not explicitly voiced, as for example in the paper by the Director of the Board of Security Police, implications of such context are slid in by the newspaper. Discussions on Ever's personality with reference to Pihl's statement about organised crime, or the prevailing self-explanatory "knowledge" that Mafia consists of "Russian speaking businessmen of Jewish origin" are just a few examples. People with a familiar ethnic and cultural background are considered "one of us" and perceived as businessmen (e.g. Meelis Lao), while others are more likely to be organised criminals (e.g. Haitov, Ever).

In legal discourse, organised crime is defined as criminal activities, but the mass media defines it as a big and vague organisation or a network based on kinship ties. These ties are based on common ethno-cultural background. In literature this kind of model of organised crime is called an alien conspiracy model, which in Paddy Rawlinson's (2002) opinion reduces the complex situation to simplistic dichotomies which identify the problem as "outside" and "other". Such a model and construction of Russians as dangerous strangers may harm the process of integration of the Estonian society. According to Rawlinson (ibid), such a model is also supported by large international bodies. US and EU officials target Russian organised crime as a high-level threat to Estonia. Owing to such prioritisation, the limited resources of the Estonian criminal justice system are invested in tightening the Estonian-Russian border, while other problematic areas, such as trade in steroids and amphetamines run by Finnish dealers and local Estonians, have been left without proper attention.

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The Last Resort in Action: Initiatives to stop the diffusion of white-collar crime and corruption in transitional countries

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Abstract

This paper considers the feasibility of reducing the diffusion of white-collar crime and corruption in emerging markets by strengthening the international financial regulation regime. The authors analyse recent changes in legislation provided by the international and national regulatory systems, such as FATF and OECD, and evaluate the dialogue and co-operation between developed and emerging markets in handling this problem. As a case study the authors outline the Ukrainian experience with policing white-collar crime, including the help it has received from the international community, and assess the results of this collaboration.

Introduction

Over the last ten years a lot of studies have been published discussing the problems experienced by transitional countries (Fleming, Chu, Bakker 1996; Shelley 2000). A number of studies have concentrated on corruption and its impact on the development of the emerging markets (for the discussion of the so-called relationship banking see Siegelbaum, 1997; highly politicised process of loan issuing discussed by the International Bank for Reconstruction and Development & World Bank, 2001; for the case study of corruption in Ukraine see Markovskaya, Pridemore, Nakajima, 2003). All transitional countries aim to achieve sustained economic development and to establish transparent financial institutions to allocate resources and provide productivity enhancing investments. While almost all transitional countries have underdeveloped financial markets (Claessens, Djankov, Klingebiel 2000; Coffee 2001), it seems that the countries experiencing problems with political and judicial reforms tend to have a very low level of major financial indicators (De Melo, Denizer, Gelb, Tenev 1997).

Following the recent events and continuous threat of international terrorism, the global financial community has become increasingly worried about the ef-

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fectiveness of financial supervision and financial policing. The USA legislation regulating the financial sphere has experienced dramatic changes. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act) of 2001 imposed strict rules on US and foreign banks and financial institutions (Alexander 2002). A number of countries and international organisations, such as FATF and OECD have introduced new regulations to address the issues of international financial control and corruption of foreign state officials. Different projects have been organised in attempt to help transitional countries. For example, in February 2003, the European Commission and Council of Europe Against Money Laundering in Ukraine (MOLI-UA) launched a project aiming to support the efforts of Ukraine in establishing a fully functioning system against money laundering.

Understanding the difficulties experienced by transitional countries in fighting corruption, how feasible is it to expect that countries such as Ukraine can comply with the new rules? How easy is it to transfer the laws and regulations adopted by one country to another, and not to be delusioned by the results? These questions present a serious problem to the outside world. This is partly caused by the political sensitivity of the issue.

In this paper the present authors attempt to provide a basis for discussing the impact of the requirements of the international financial regulations on the development of the financial system in transitional economies such as Ukraine.

The paper starts with a brief introduction to the banking system in Ukraine, then discusses the recent changes in the international financial regulation, and the attempts of the Ukrainian authorities to comply with the changes.

A brief overview of the banking system in Ukraine

During the Soviet time, savings were allocated through government's budget and a largely passive banking system. In 1991, with the collapse of the Soviet Union and the establishment of the independent state, Ukraine decided to use the banking industry as a tool to allocate resources to help advances in the economy. The banking system in Ukraine consists of the Central Bank—the National Bank of Ukraine, with its functions of monetary policy and banking supervision, and of commercial banks. The adaptation of the new approach towards banking allowed Ukraine to increase the number of banks from only a few in 1989 to more than 70 in 1991, and 230 in 1995 (National Bank of Ukraine 2003)[3]. However, rising quantity was not followed by improved quality. The creation of the 'new banking' mechanism manifested itself in an extremely liberal policy adopted by the Central Bank of Ukraine.

Many new private banks were established by enterprises and functioned as pocket banks (Kurkchiyan 2000; Siegelbaum 1997; World Bank 1999). Ukrainian banks failed to play the role of a major mediator enhancing long-term in-

3 To understand such a sharp rise in the number of banks one has to bear in mind not only the pure economic factors, but also the cultural ones. For the rich living in a transitional society, it is 'cool' to own a bank. Secondly, it is an undeniable fact that "the best way to rob a bank is to own one" (Calavita, Pontell, Tillman 1997, 58).

vestments. A study conducted by the International Bank for Reconstruction and Development in 1997 suggests that only 5% of the active enterprises succeeded in obtaining loans from the financial sector (Siegelbaum, 1997).

From 1995 to 1998 the legislation allowed the opening of anonymous accounts in foreign currency without identifying the beneficial owner. In 1995, the official view[4] was that the legal framework for these accounts was sufficient enough to provide for anti-money laundering measures. A few years later, the use of anonymous accounts was banned in Ukraine as a result of the influence of the international community and ratification of the international treaties by Ukraine. It is easy to see that the 1990s were marked by the absence of financial regulation in the country. However, there was an attempt to regulate the financial sphere. The problem was that banking regulations were constantly changing, sometimes confusing the users and creating loopholes for the abuse of the system (purposefully in order to obtain financial gain, or by mistake due to lack of knowledge).

Transitional literature identifies the following systemic factors which led to the criminalisation of the banking industry: poor regulation and supervision, poor accounting and excessive taxation, an inadequate legal infrastructure for lending, and pervasive corrupt practices coupled with weak banking skills and mismanagement on a significant scale (Fleming, Chu, Bakker 1996).

The international financial community (in particular, organisations such as FATF, OECD, the Council of Europe), and recently, the initiatives undertaken by the United States, have all contributed to the so-called 'westernisation' of the Ukrainian standards of the financial regulation. As a study of the law on corruption (Markovskaya, Pridemore, Nakajima 2003) suggests, the biggest problem to address is the enforcement of the 'Western style' financial regime.

The following sections deal with the developments in the international financial regulations and identify the changes these developments brought to the regulation of Ukrainian banking.

The Patriot Act: international response to terrorism and its implications for international financial regulation

USA Patriot Act 2001

The attack on the USA on 11 September dramatically changed the international approach to dealing with terrorism and its financial aspects. The US Government has adopted extraterritorial financial controls on foreign banking and financial

4 Presidential Decree issued in August 1995 allowed the use of anonymous accounts in foreign currency. The idea behind the degree was that it would help liberalising the foreign currency market and improve the investment situation, so that grey money would leave 'grey economy' and be legalised. With the Ratification of the Council of Europe convention in 1990, Ukraine had to adapt measures to prevent the use of anonymous accounts, and that is why in July 1998 the President issued a decree "On some issues of the banking secrecy", prohibiting the opening and use of anonymous accounts. However, the National Bank of Ukraine adopted the instruction (Instruction No. 469, 9 October 1998) on the rules and functioning of the so-called coded accounts, where the owner of the account could restrict the number of people aware of the existence of the account, although the rules did allow the identification of the owner to the official authority in case of criminal investigation. In March 1991 National Bank of Ukraine revoked the Instruction No. 469.

institutions that facilitate transactions with, or assist designated terrorist groups. In October 2001, the US Congress enacted legislation entitled 'the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism' (the Patriot Act 2001). Title III of the Patriot Act deals with the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001. It concerns US and foreign banks and financial institutions. Among the other provisions, Title III provides authority to take targeted action against countries, institutions, transactions, or types of accounts that the Secretary of the Treasury finds to be of prime money-laundering concern. It contains high standards of due diligence for inter-bank correspondent accounts and payable-through accounts opened at US financial institutions by foreign offshore banks and banks in jurisdictions that have failed to comply with international anti-money-laundering standards (Alexander, 2002).

Provisions of US Executive Order 13224 on 24 September 2001 together with the USA Patriot Act impose extra-territorial jurisdiction on foreign banks, companies and individuals who conduct, facilitate or assist transactions involving US-designated terrorist organisations and provides a framework to establish a set of new reporting requirements and due diligence standards for US and foreign financial institutions designed to combat international money laundering and to stop terrorist financing (Alexander 2002).

Title III of the Patriot Act is called the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001. It contains the major provisions addressing not only US banks and financial institutions, but foreign financial institutions as well. Section 312 of the Patriot Act requires financial institutions to establish due diligence programmes for correspondent accounts of foreign financial institutions and private banking accounts of "non-US persons". With regard to correspondent accounts for foreign banks, the proposed regulation requires that a due diligence programme must: first, assess whether the foreign institution presents a significant risk of money laundering; second, consider information from US government agencies and multinational organisations with respect to supervision and regulation of the foreign institution; third, review guidance from the Treasury and federal regulators regarding risk associated with particular foreign institutions; and fourth, review public information to decide whether the foreign institution has been the subject of any criminal or regulatory action relating to money laundering (Alexander 2002). Special attention is given to certain foreign institutions that operate under licenses issued by countries regarded as non-co-operative with international anti-money laundering principles (i.e. FATF).

With regard to due diligence programmes for private accounts of non-US persons, the proposed regulation requires that such programs must: establish the identity of all nominal holders and beneficial holders of the accounts, including information on their lines of business or source of wealth; identify the source of funds deposited into the account, identify whether any holder may be a 'senior political figure' (if it is established that account holder is a senior political official further due diligence is required), and report any known or suspected violation of law conducted through or involving the account (Alexander 2002).

The due diligence regulation is believed to be the 'further-reaching' regulation issued under the Title III (Gimbert 2002). If suspicious financial transactions are discovered, the institutions must report to federal law enforcement agencies and the Treasury. The reports are then entered into a confidential database. The FBI uses this database to create a list of suspicious persons and bodies, which is available to all financial institutions.

Section 313 (a) of the Patriot Act prohibits some financial institutions from establishing, maintaining, administering or managing correspondent accounts with foreign banks that have no physical presence in any jurisdiction (known as 'shell banks'). Section 315 entitled 'Inclusion of foreign corruption offences as money laundering crimes' recognises bribery and other foreign corruption offences as unlawful manifestations of money laundering.

The definition of financial institutions is expended to include foreign banks or other financial institutions operating outside the USA (Alexander 2002). The regulations issued by the Department of Treasury determine the financial institutions subject to anti-money-laundering laws. New regulations also apply to concentration accounts to prevent the financial institution's customers from anonymously directing funds into or through these accounts.

Section 326 of the Patriot Act sets up the following rules: "all financial institutions must have a Customer Identification Program detailing its Identity Verification Program; all new accounts need to be screened against the OFAC and other published lists of suspected terrorists and terrorist organisation; any documents used to identify the new account holder, such as, driver license, passport, social security card, etc, need to be verified against a third party database to determine that the identity is valid to extent reasonable and practicable; a database of all accounts needs to be maintained that includes the account name, date of account opening, identifying information presented, and the items used to verify the identity. This information needs to be time and date stamped and maintained for 5 years following the closure of the accounts" (Penley 2002). A new obligation to identify the 'foreign beneficial owners' of certain accounts at US financial institutions may in some jurisdictions lead to conflicts with the privacy protection provisions.

Section 311 of the Patriot Act gives the Secretary of the Treasury the authority to designate a foreign jurisdiction, a foreign financial institution, or a type of account or transaction as a primary money laundering concern. Once designated, the secretary can require U. S. financial institutions to take appropriate countermeasures. In December of 2002, Treasury made the first designations under Section 311, identifying both Nauru and Ukraine as primary money laundering concerns. However, as a result of the important steps undertaken by Ukraine to address deficiencies in anti-money laundering legislation, the Treasury Department announced on 15 April that it had rescinded the designation of Ukraine as a primary money laundering concern pursuant to Section 311 of the USA Patriot Act.

The international response

The USA initiatives to strengthen anti-money laundering control has been regarded as highly controversial, but long-awaited in terms of establishing world-wide understanding of the danger of the abuse of financial institutions. The Patriot Act 2000 received a wide international response. Below are just a few examples of the consequent initiatives, undertaken by two international organisations, United Nations and FATF, and one country, the UK.

The United Nations adopted resolution 1373 which identifies some extra measures that need to be taken into account to prevent future terrorist acts. In Article 2 (c) it is stated that countries are required to prevent and suppress the financing of terrorist acts and to refrain from providing any type of support, active or passive, for terrorists and to deny safe haven to those who finance, plan or participate in terrorist acts.

FATF issued "Special Recommendations" on terrorist financing to establish the basic framework for detecting, preventing and suppressing the financing of terrorism and terrorist acts. Special recommendation II asks each country to criminalise the financing of terrorism and associated money laundering. Alexander (2002, 320) writes that "The 'Special Recommendations' supplement and reinforce the measures already adopted by the UN and create a more comprehensive international regime for interdicting the financing and commercial support of terrorists and terrorist activities."

The UK Government adopted a number of measures to combat the financing of terrorism. Anti-Terrorism, Crime and Security Amendments to the Terrorism Act 2000 adopted in November 2001 create new offences, including offences of international terrorism, stipulating that it is illegal for a person to solicit, or to receive, money or property on behalf of terrorists if the person knows or has reasonable cause to suspect that such money may be used for the purpose of terrorism.

It is difficult to predict the implications of these new rules for the developing nations. What is clear is that financially advanced countries such as USA and UK take the issue of the abuse of financial system very seriously, and that they are willing to impose a set of strict regulations allowing the financial system to identify the terrorist finances at a very early stage. It is also important to remember that corruption of foreign state officials is now considered an offence by the US legislators. In countries where corruption is endemic these changes can cause a lot of difficulties.

Financial stability in emerging financial markets: Ukraine at the international agenda

FATF black list: the image of Ukraine

On 7 September 2001, FATF added Ukraine to the list of non-co-operative jurisdictions. Non-cooperative jurisdictions are those, which have not made adequate progress in addressing the serious deficiencies in anti-money laundering legislation identified by the FATF. In September 2001, Ukraine was deemed to meet the following FATF criteria: 4, 8, 10, 11, 14, 15, 16, 23, 24, and 25. These criteria de-

scribed are: (4) existence of anonymous accounts or accounts in obviously fictitious names; (8) secrecy provisions which can be invoked against, but not lifted by competent administrative authorities in the context of inquires concerning money-laundering; (10) absence of an efficient mandatory system for reporting suspicious transactions to a competent authority, provided that such a system aims to detect and prosecute money laundering; (11) lack of monitoring and criminal or administrative sanctions in respect to the obligation to report suspicious or unusual transactions; (14) regulatory or other systems which allow financial institutions to carry out financial business where the beneficial owner(s) of transaction is unknown, or is represented by an intermediary who refuses to divulge that information, without informing the competent authorities; (15) laws or regulations prohibiting international exchange of information between administrative anti-money laundering authorities or not granting clear gateways or subjecting exchange of information to unduly restrictive conditions; (16) prohibiting relevant administrative authorities to conduct investigations or inquiries on behalf of, or for account of their foreign counterparts; (23) failure to provide the administrative and judicial authorities with the necessary financial, human or technical resources to exercise their functions or to conduct their investigations; (24) inadequate or corrupt professional staff in either governmental, judicial or supervisory authorities or among those responsible for anti-money laundering compliance in the financial services industry; (25) lack of centralised unit (i.e., a financial intelligence unit) or of an equivalent mechanism for the collection, analysis and dissemination of suspicious transactions information to competent authorities (FATF 2000).

FATF criterion 11, lack of monitoring and criminal or administrative sanctions in respect to the obligation to report suspicious or unusual transactions, needs to be explained in greater detail. According to Article 64 of the Law on Banks and Banking Activities, banks are required to identify persons involved in substantial or suspicious transactions. Pursuant to the law, the threshold for a substantial transaction is 50,000 euros, and in cash transactions 10,000 euros. Suspicious transactions are defined to have the following characteristics: (1) carried out in an unusual or unjustifiably complicated conditions; (2) are not economically justified or are against the legislation of Ukraine. Some Ukrainian researchers (Neelov, 2001) argued that observing the law would mean that a major part of transactions of legal and physical persons undertaken in Ukraine would have to be reported.

Arguments did not help. Ukraine was given till the completion of the third round of the FATF's evaluation to work on the serious deficiencies identified. Otherwise if would have to face FATF's counter measures.

The deficiencies relate to problems on various areas: financial regulations, international co-operation, and recourses available to finance public and private sector. The last-mentioned obviously derives from the poor state of the economy and state budget deficit. It has to do with the general lack of resources, while the other problems tend to be characterised by the lack of political will in the country. For example, the draft law on Anti-Money Laundering legislation was discussed in the Parliament for almost a year after FATF had identified the problem and warned Ukraine about possible sanctions.

Law of Ukraine on Prevention and Counteraction of Legalisation ("Laundering") of the Proceeds from Crime

On 7 December 2002, Ukraine enacted the "Law of Ukraine on Prevention and Counteraction of Legalisation of the Proceeds from Crime". According to the FATF, this legislation did not, however, address the main deficiencies detected in 2001 during FATF's anti-money laundering review in Ukraine. In mid-December 2002, Members of the FATF decided to impose counter measures on Ukraine. Then on 14 February 2003, the FATF informed: "FATF members have decided to withdraw the application of additional counter-measures with respect to Ukraine as the result of a recent enactment by Ukraine of comprehensive anti-money laundering legislation that addresses the main deficiencies identified by FATF in 2001 and reaffirmed in December 2002. Ukraine will remain on the list on NCCTS until it has implemented effectively its new anti-money laundering legislation" (FATF 2003, downloaded from http://www1.oecd.org/fatf/FATF withdraws counter measures with respect to Ukraine, 14 February, 2003).

As it was already mentioned, Ukrainian Parliament discussed the draft law for more than a year. The law was finally approved by the Parliament and signed by the President only a couple of weeks before the FATF's deadline in December 2002. This law consists of 16 articles, described under 6 sections. Section I: The General Provisions consists of three articles: Article 1 provides definitions, Article 2 gives an account of activities related to money laundering, and Article 3 describes the scope of the law. According to Article 1, the primary definitions are: profit, illegal activity which leads to money laundering, money laundering, types of financial activity, compulsory financial monitoring, and local (internal) financial monitoring. Profit is defined as any economic advantage criminally acquired and then legalised; profit shall mean money or securities, movable and immovable property, property rights, any other items covered by property rights. Illegal activity which is followed by money laundering shall mean activity which according to the Criminal Code will lead to three or more years imprisonment or activity which is considered to be criminal according to the criminal code of another country (and the same activity is prohibited under the Criminal Code of Ukraine), and as a result of which the profit is illegally obtained. Financial transaction shall mean any transaction aimed at making or assisting in transaction by means of: bank account transaction; foreign currency exchange; assisting in issuing, buying or selling of securities; giving or receiving a credit; insurance (reinsurance); giving or receiving financial guarantees; managing the securities portfolio; issuing a state or other money lottery; assisting in issuing, buying or selling of securities, payments, postal cash transaction or other means of payment; opening an account. Section II describes the system of financial monitoring in Ukraine. Article 4 of the Section II identifies two levels of financial monitoring in the country: primary and state. The primary financial monitoring units are: commercial banks, insurance and other financial institutions, agencies authorised to receive, pay and transfer money; commodity or stock or other exchanges; professional players at the securities market; investment trusts; commissions shops, gaming houses and organisations which hold lotteries of any kind; post offices, telegraph offices and legal entities that provide, in conformity with the law, services of receiving, paying, conveying, transferring money or

management of investment funds or non-state pension funds. The state financial monitoring units are represented by governmental agencies and the National Bank of Ukraine, and authorised under the law to regulate and monitor financial operations. Article 5 describes tasks and duties of the primary financial monitoring agencies. These duties include identification of the initiator of a financial transaction, detection and registration of any doubtful transactions, reporting financial transaction under financial monitoring to a special unit (reporting shall occur not later than three days from the day of transaction registration); assisting the special financial monitoring units in the financial transaction analysis; at request of the financial monitoring agencies provide additional information regarding a particular financial transaction, even if this information constitutes banking and commercial secret (information shall be provided no later than three days after the request is received); keep the financial monitoring in secret from the client. The primary financial monitoring units shall keep the file of identification of the initiator of a financial transaction under financial monitoring for five years. Article 6 states the details of the information used to identify physical and legal persons, including residents and non-residents of Ukraine. According to Article 6, identification is not necessary if the transaction is initiated by someone who has already been identified before. Article 7 gives a right to the financial institutions to refuse financial transaction. Article 10 identifies the duties of the state financial monitoring agencies, such as the National Bank of Ukraine and the authorised bodies, to control that the primary financial monitoring institutions act in compliance with the obligations prescribed by the law, and to inform a special unit of the violations discovered by financial operators.

Section III describes the financial operations subjected to compulsory and internal financial monitoring. Article 11 states that a financial operation is subject to control if its value equals to or is more than Hrv 300,000[5], or if its value in foreign currency equals or is more than Hrv 300,000, or in case of a cash transaction, if its value equals or is more than Hrv 100,000, or if its value in foreign currency equals or is more than Hrv 100,000, and if the financial transaction has one of the following characteristics: payment is due to be made to an anonymous account abroad or is due to be received from an anonymous account abroad, and if the payment is due to be made to a financial institution situated in a country listed by the Cabinet of Ministers as off-shore zone; buying or selling travel cheques or other means of payment; financial transactions conducted with countries which do not co-operate with international organisations tackling money-laundering; transfer of money abroad with the purpose that the receiver receives the money in cash; opening account to a third person; foreign transfers conducted despite the absence of a foreign trade agreement between the parties involved; cash payments for securities purchased; lottery or casino payments; foreign currency exchange.

According to Article 12, financial operations shall be monitored if they are unnecessarily complex, or the information obtained cannot be checked (for example, changes made by one of the parties in regard to money re-allocation, etc.);

5 £1=Hrv 8.45 as on 15 December 2002, The National Bank of Ukraine exchange rates.

if the financial operation does not correspond with the business activity of the client described in related documentation; if there is a reason to suspect that the client has conducted financial operations to avoid financial monitoring. Section IV states the tasks, functions and duties of the authorised authority.

Section V of this law is of particular importance to this research because it aims to regulate international co-operation in regard to the anti-money laundering measures. Article 15 identifies the grounds for and forms of international co-operation for prevention and counteraction of legalisation (laundering) of the proceeds from crime and terrorism financing. The article states that international co-operation for the prevention and counteraction of legalisation (laundering) of the proceeds from crime and terrorism financing shall be based on the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990) and other international treaties of Ukraine, this Law and other Ukrainian laws and regulations. Refusal and postponement of co-operation shall be handled on the grounds and in the manner prescribed by the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990).

Article 16 describes the agencies involved in international co-operation. According to Article 16, the central agencies to carry out international co-operation for the prevention and counteraction of legalisation (laundering) of the proceeds from crime shall be the Ministry of Justice of Ukraine with regard to judicial decisions, and the Office of Prosecutor General of Ukraine with regard to investigating criminal cases. The information or evidence provided by the said agencies within the framework of international co-operation for the prevention and counteraction of legalisation (laundering) of the proceeds from crime shall not be used by authorities of a foreign state for the purposes of investigation or judicial proceedings not mentioned in the judicial request, without a prior consent of the Ministry of Justice of Ukraine or the Office of Prosecutor General of Ukraine. The authorised agency shall co-operate with appropriate authorities of foreign states for the purpose of exchanging information on legalisation (laundering) of the profits, shall co-operate with the Financial Action Task Force (FATF) and other international organisations aiming to prevent and counteract the legalisation (laundering) of the profits. Section VI states the consequences of breaching this law.

The adoption of the above-described legislation is considered to be a very important step towards international co-operation in fighting money laundering.

Discussion

The above-described law can be regarded as a victory of the international community, and FATF in particular. Without pressure from the international community, the adoption of this law in Ukraine would not have been possible. However, there are still deficiencies to be addressed to 'clear' the country's name.

Despite the achievements made in the area of international financial regulation, some researchers argue that international pressure is not always good (Porter 2001; Ward 2002). Common tendencies can be observed by considering international organisations dealing with financial regulation. These organisations

tend to represent a number of developed countries that get together and establish new regulatory arrangements which are then imposed on emerging markets. Concerns have also been voiced about the democratic principles involved in an international attempt to regulate the globalised financial services. There is a tendency to exclude developing countries from the international collaboration. Porter (2002) argues that the Basle Committee's bank regulations do not match the needs of the microfinance industry in developing countries. Ward (2002, 4) criticises the New Basel Accord, stressing the differences between countries and arguing that if "the New Accord is implemented without major adjustments it is likely to fail in developing countries". Ward (2002, 4) provides reasons for this: "greater macroeconomic volatility, greater volatility of external flows and greater vulnerability to external stocks, weak institutions, and lack of skills in developing markets."

It is important to address the special character, and social and cultural traditions of each individual country when attempting to impose regulations or laws borrowed from another country. Discussing this aspect of the international financial regulation, Rider (2002) argues that while it is understandable that leaders and politicians wish to develop ways to fight organised crime worldwide, it is by no means sensible to transport the laws and legal procedures of one jurisdiction to the legal system of another (at least not without adaptation). "The need to establish a convincing and workable balance is all the more important in the context of small, developing and transitional economies. These highly vulnerable states may well find themselves effectively deprived of the advantages and services of those more developed and stable countries that are able to espouse the sort of measures found in legislation such as the Patriot Act" (Rider 2002).

It is important to understand the complexity of international standards and regulations. Developing countries often face an interesting dilemma: If they do not implement the international standards, they will perhaps be punished. If they do implement them, they may face the risk of wasting resources, and sometimes extend the roots of corruption (Rider 2002; Porter 2002). Following the international pressure, Ukraine will shortly introduce the new structure for financial supervision that stresses the role of financial supervisors. Ward (2002) warns that supervision is a difficult issue in advanced financial markets, because it, among other things, involves personal relationships. The National Bank of Ukraine as the main supervisory body of the country has to try to create a transparent framework for supervision that guarantees equal treatment to all financial institutions. That is why the Financial Service Intelligence Unit, the foundation of which was suggested by the President of Ukraine in January 2002, has to be an independent body. Otherwise, there is a great danger that another corrupt unit will be created inside the already corrupt structure. If, as suggested, the Financial Service Intelligence unit will be established as an internal structure managed by the Ministry of Finance, it will be subjected to direct political influence and political supervision. In this case, the equality of treatment of the financial institutions in the country will remain problematic. The Financial Intelligence Unit should thus not be a punitive organisation, but a preventative one capable of providing examples of best practices.

Concerns about imposing the standards provided by a group of countries with advanced economies have been voiced before the attack on America and subsequent changes in legislation (Porter 2001). It seems as if the critical discussion of the role of the authoritative supranational decision-making has been postponed to more peaceful times. It is also difficult to provide an answer to the following questions: will the strengthening of the international financial regulation lead to better/faster response from the Ukrainian officials? If not, what measures should be provided to insure the enforcement?

Despite the criticism towards the approach adopted by the USA authorities, one thing is obvious: for a country where corruption is endemic, and where the financial institutions have not been supervised on the basis of transparent and equal rules, current changes in the international environment can provide an opportunity for reforms.

Conclusion

The last two decades of the 20th century witnessed enormous technological advances. This influenced not only the way the financial market works, but also the way high profile criminals conduct their business. Adamoli (2001, 187–188) noticed "…just as legal businesses are expanding internationally in response to the globalisation of market, so are the crime enterprises seeking to develop both their structures and crime trade internationally in order to gain access to new markets, taking advantage of the discrepancies between the national legal system".

If allowed to participate in a modern international financial market system, emerging financial markets find themselves in an advantaged position: more experienced financial markets can provide financial and technological assistance. However, at the same time emerging markets can easily be abused by corrupt officials, criminals, etc. That is why the primary goal of a democratic government is to develop the framework for transparency of the financial institutions. Experience suggests that while some governments are not willing to accept the need for reforms, others are too eager to reconstruct the financial sector of the country. That is why it is important to establish international mechanisms to control financial institutions in emerging economies. A great number of international organisations have already been created to carry out functions of supervision by issuing recommendations and warnings to non-co-operative jurisdictions. An international agreement has been reached as to the policies each country needs to adopt to provide for laws to confiscate the proceeds from serious crime, or at least those associated with the illicit trade in drugs, the investigation and interdiction of the proceeds from such offences, the criminalisation of money laundering, the reporting of suspicious transactions, the imposition of reporting and due diligence requirements on those most likely to confront money laundering, and facilitation of international mutual assistance. However, what still needs to be considered are the most suitable ways of imposing the new rules on the developing and emerging markets, that is, to make sure that these markets will not suffer from artificial rules and standards. It needs to be remembered that international co-operation in such issues as financial regulations is very complex: if problems are ignored, there is a chance that a financial monster is created inside

the emerging financial system. On the other hand, if there is too much pressure, it is possible that the system is denied an opportunity to develop. However, research also suggest that legal framework without an appropriate enforcement mechanism can create delusions of reality. In Ukraine, the pressure of international financial community is necessary to get rid of corrupt state officials and to set a framework for good practices. Ukrainian experience suggests that reforms should start from the financial sector, and be as de-politicised as possible.

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To Counter Effectively Organized Crime Involvement in Irregular Migration, People Smuggling and Human Trafficking from the East. Europe's Challenges Today.

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Migration is nothing new. On the contrary: we have witnessed constant migration throughout human history. It is definitely *not* a crime *per se*. In recent years, however, migration has been understood more and more as a global challenge. The alarming manifestation of *irregular* (*illegal*) migration, as well as some specific interrelated phenomena—most of all people smuggling and trafficking in human beings—have without any doubt become a crucial security issue. In particular trafficking in minors and young women for the purpose of sexual exploitation has become an issue of major concern, due to its brutality and rapid expansion during the past decade. These phenomena are increasing and becoming more transnational in scope and organisation.

Particular concern is caused by the *growing link* between *irregular migration*, *people smuggling* and *human trafficking* on the one hand, and *Organised Crime (OC)* on the other. We understand that these phenomena are "not a question of a few isolated cases of border crossing and smuggling—it is a serious organized crime problem threatening the majority, if not all, developed countries around the world."[2] The specific danger to the State and society derives from the *OC nexus* with the legal world—including the State apparatus and the economy—through corruption and infiltration.

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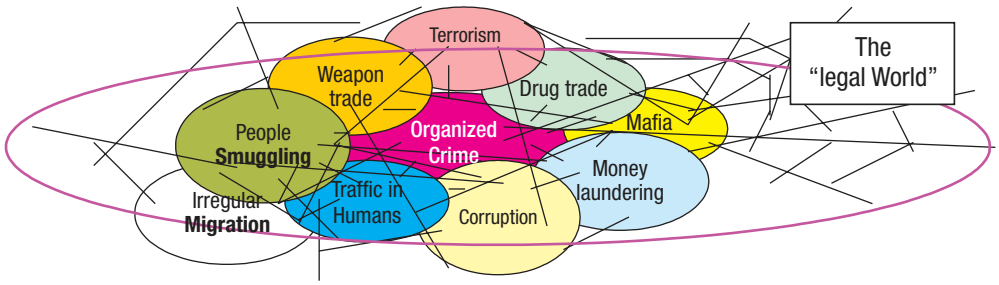
2 International Criminal Police Review, No.489–490/2001, p. 3.

The OC-Nexus – a dangerous cobweb[3]



Especially the people smuggling and organised human trafficking from the Balkan and the Baltic areas to Central and Western Europe challenge security in a complex and comprehensive way. These regions play an important role not only in terms of the origin of the involved humans but also regarding the major routes and active crime syndicates. Germany, Austria and Switzerland are definitely among the favourite destination countries.

Main Routes and Nodes for the Central European Context: Illegal Migration, People Smuggling and Trafficking in Human Beings

3 Graphic: *Oberloher*, cf. *Oberloher*: Transnational Organisiertes Verbrechen, Munich 2001.

According to national statistics[4], citizens from Asia, Russia, the Balkans (namely Yugoslavia, Ukraine, Moldova and Romania) and the Baltic countries have in the past few years been continuously present on the list of the 10 nationalities that dominate illegal migration, people smuggling and human trafficking into Germany, Austria and Switzerland. According to IOM (2001), the Ukrainian Ministry of Interior has estimated that in Ukraine alone, some 400,000 women have been subjected to trafficking during the past decade While the value of such roughly estimated numbers remains, of course, always somehow limited, the figures may give an idea of the dimensions behind these phenomena. OC is attracted by the businesses' potential for huge profits on the one hand, and the internationally still relatively low risk[5] of detection, prosecution and arrest on the other. The OC-link produces a more sophisticated, aggressive and lucrative exploitation network for both the illegal migration and the sex business.

OC manages these criminal businesses regardless of any ruthless violations of the fundamental rights of the victims. Eastern and South-eastern European OC-syndicates are reported to be increasingly involved in smuggling of persons and trafficking in human beings, especially for sexual exploitation. Trafficking in young women and girls from Eastern Europe has—as found by intelligence and investigative sources, such as the German Bundeskriminalamt[6]—grown to be the biggest source of females to be exploited in the European sex industry. According to Interpol findings, OC groups are involved in the entire spectrum of activities associated to it. Local crime gangs operating in various Eastern and South-eastern European countries manage the recruitment of the victims, technical issues (from false passports and visas to transport facilities and logistics) and the transnational trafficking connections with their international counterparts. The various gangs own a lot of brothels, dancing clubs and hotels, and play a major role in prostitution rings and business. The business continues to increase—in terms of victims involved as well as in turnover and profits. A recent Europol 18-case study (in the framework of the "Falcone" programme) showed the importance of major routes emerged and developed for human trafficking from the East. Official national crime statistics from Germany and Austria[7] confirm these findings. Apart from the important "Balkans routes", irregular immigrants (a significant number of whom are women for sexual exploitation) that are

4 Cf. Bundeskriminalamt (Germany): Lagebild Menschenhandel 2000, 1999; Bundesgrenzschutz (Germany): Unerlaubte Einreise und Schleusungskriminalität, 2001, 2000, 1999, 1998; Bundesministerium für Inneres, Generaldirektion für die Öffentliche Sicherheit (Austria): Organisierte Schlepperkriminalität, 2001, 2000, 1999, 1998, 1997; Eidgenössisches Justiz- und Polizeidepartement, Interdepartementale Arbeitsgruppe Menschenhandel (Switzerland): Menschenhandel in der Schweiz, 2001. Cf. also U.S. and Ukrainian Research results, Hughes, Donna M. / Denisova, Tatyana A.: The Transnational Political Criminal Nexus of Trafficking in Women from Ukraine, in: Trends in Organized Crime, Vol. 6, No. 3&4, 2001, p. 53.

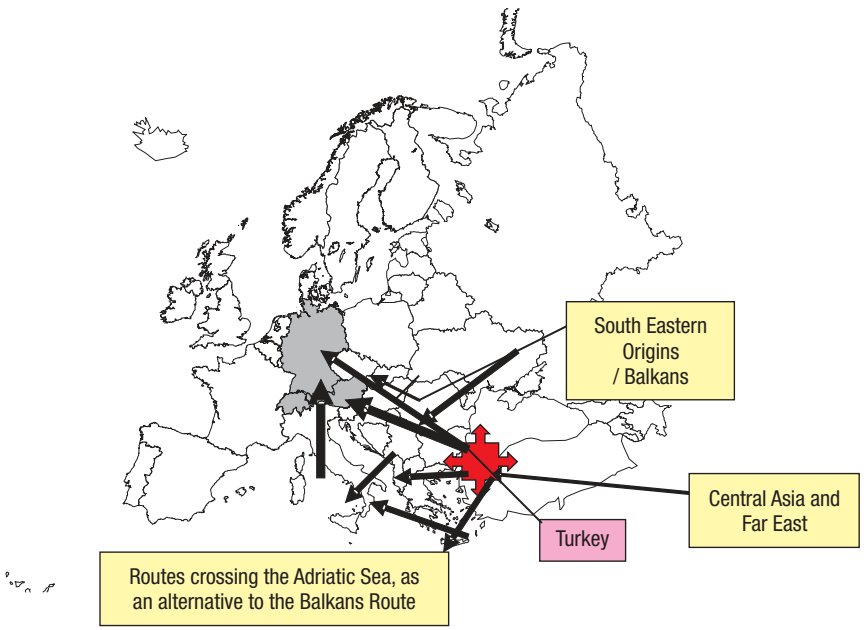
5 Cf. also Interpol, International Criminal Police Review, No.489–490/2001, p. 2; IOM: "New IOM figures on the globale scale of trafficking", Trafficking in Migrants Quarterly Bulletin, No.23, April 2001; OSCE Economic Forum on "Trafficking in human beings, drugs, small arms and light weapons: national and international economic impact", Prague, 20–23 May 2003.

6 See Annual Reports on human trafficking into Germany.

7 German Bundeskriminalamt, the German Bundesgrenzschutz, the Bavarian Police Department and the Austrian Interior Ministry.

North Eastern Routes (Baltic origins and Russia)

South Eastern Routes (Balkans)



stopped at the Austrian or German borders come over the "Eastern routes" (among which "North Eastern Routes").[8]

In Europe, smuggling and trafficking in people and in other "commodities" (such as drugs, weapons) are mostly organised and run by the same criminal networks. They basically follow the same routes and show significant similarities in some "typical" OC-methods. The German BND (secret service) warns that crime in general and transnational organised crime in particular spread along the migration flows. According to the findings of the different security agencies, a very important role in this context is played by the larger ethnic communities which are concentrated on preferred locations, and more and more present in certain European metropolises.[9] OC directly and indirectly profits from migrant flows. On the one hand, ethnic communities are used by transnational crime syndicates as local bases for their criminal activities, and for infiltration. On the other hand, as national law enforcement agencies in different countries have observed, there is a growing trend of migrants turning to professional organisations and networks for illegal border-crossing and entering the EU—which makes the business big and lucrative for the organised criminals.[10] In addition to that, illegal migrant flows form huge and uncontrolled black *markets* for illegal goods, commodities and services, and meet the demand for informal or black labour.[11] Smuggling activities as well as transportation, distribution and logistics are heavily interlinked and often provided or organised by the same criminal actors and networks. Some crime syndicates (but also a number of looser networks) operate as drug and human traffickers, or as people and arms smugglers *at the same time*. Linkages are highly developed when it comes to money laundering activities, but also to customs or border police bribery. As a consequence, logistics, organisations and the routes that supply Europe with illegal drugs and illegal migrants are basically the same.[12] For example, the Albanian OC-groups, as has been found by the Italian "Antimafia" agency, use similar routes and logistics when trafficking drugs, smuggling migrants or trafficking human beings.[13] Also the German authorities have identified significant parallels in the routes of illegal migrants, smuggled people, trafficked humans, refugees and asylum seekers on

8 Cf. Homepages www.bundeskriminalamt.de, www.bundesgrenzschutz.de, www.polizei.bayern.de, www.bmi.gv.at.

9 Cf. *BND*-Observation, according to *Lange*: Kriminalität, p. 7; furthermore: *Bernasconi*: Kriminalität, pp. 267f; 270–272; *Ciconte, Enzo*: Mafie al Nord. Nel Salotto di Milano, in: *Narcomafie*, No.9, VIII., September 2000, pp. 21–28; *IOM*: Trafficking, pp. 4–6, 8, 19f., 25. BND: Bundesnachrichtendienst (Germany).

10 Cf. *BKA* (Germany): Lagebild Organisierte Kriminalität 2001, pp. 21f.; *BMI / ETB* (Austria): Organisierte Schlepperkriminalität. Jahresbericht 1998, p. 21; *Hughes / National Institute of Justice (NIJ)*: The "Natasha" Trade, p. 10.

11 Cf. *Oberloher*: Schleusungskriminalität, Munich 2004; *Lange*: Kriminalität, p. 7; *Hughes / NIJ*: "Natasha", S.10; *Violante, Luciano*: Preface, 12.7.1999, in: *Jamieson*: The Antimafia, New York 2000, S.ix–xi.

12 Cf. *Öffentliche Sicherheit*, No.7–8/01, p. 21; *Storbeck*: Kriminalität, in: *Kaiser / Schwarz*: Weltpolitik, pp.173–185; *Martinetti*: Il Padrino di Mosca, Milano 1995, pp.102–105; *Deen, Thalif*: Rights, in: *Global Information Network, Interpress Service*, 13.12.2000; http:www.br-online.de/politik-wirtschaft/terror/taliban.shtml (as per: 29.10.2001, showing also the links to terrorism activities through financial and material supply); *BKA* (Germany): Situation Report on Organized Crime in the Federal Republic of Germany 1999 (May 2000), pp.16f. and *CIA,* www.cia.gov/ (as per: 10.8.2000): Annual Report 1999: International Organized Crime.

13 Cf. *O'Neill / CSI*: Trafficking (2000), p. 61.

the one hand, and other "commodities" such as drugs on the other.[14] This may to a certain extent result from the fact that a part of the illegally brought-in migrants—as cases in past years have proven—find themselves in a hostile exploitive relationship in which they are even forced to commit crimes, for example to smuggle or deal drugs for the local destination market, in order to pay off their "debts" to the organised traffickers/smugglers.[15] Drug crimes are often related to nightlife crime, prostitution and illegal migration. An explanation for this may be the fact that OC-groups involved in specific illegal or criminal businesses have not only established links of cooperation and commerce, but a lot of them are active in *several* fields.[16] Parallels seem even more obvious when local geographic, economic and social opportunities for the criminals are also taken into account. These parallels and linkages need to be taken into consideration when strategies to "combat" the individual OC-phenomena are developed.

Europe's borders within the EU are today open, the exchange of goods has risen enormously over the past decade between West and East, North and South, and the volume of migration flows towards Europe has reached unprecedented levels. All this poses, without any doubt, an *increasing challenge* to internal security politics in Europe. Experts warn about underestimating the dangers the illegal migration flows and other crime phenomena pose to the State and society.[17] The high social and economic costs for society, dangers to internal security deriving from the spreading of informal, illegal and criminal practices, corruption, as well as the rise in criminal assets (and therefore *power*) and the growing shadow economy with its various black markets are not to be ignored, either. In addition to the more "traditional" fields such as drugs and arms smuggling, OC has created well-established and more and more sophisticated means for smuggling and trafficking people. The turnover of these is estimated to be as high as that of the illegal drug market, ranking them among the most lucrative OC activities.[18] The real size of these criminal businesses, the dimension of illegal migrant flows, and the annual number of people smuggled or trafficked can—if at all—only be roughly estimated (based on the cases annually detected—mostly by chance—by customs or the police).

Even then, one can safely assume that these phenomena have reached a level which can be regarded as significant. The existence of a huge *black market* is crucial to most border-crossing crimes; sufficient demand is a necessary prerequisite for any lucrative business, legal or illegal. Once again these markets and businesses are linked through the actors and structures involved, through the illegal flows of dirty capital, and, in some cases, through forms of *barter-trade*: some criminal groups collaborate at times by exchanging "goods" to serve their

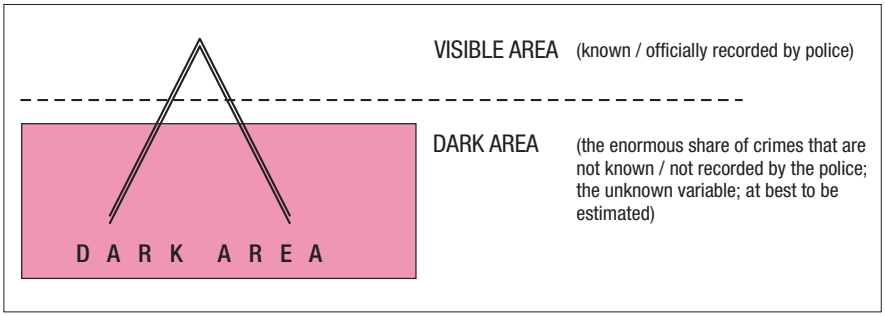
14 Cf. *Bundesamt für die Anerkennung Ausländischer Flüchtlinge* (Germany): Reisewege von Asylbewerbern, in: www.bafl.de/ (update: 16.6.2003); *Salzburger Nachrichten*, www.salzburg.com/sn/, 17.6.2003; *BMI* (Germany), www.bmi.bund.de/: press release "Lagebild 'Organisierte Kriminalität 1999"; *BKA* (Germany): Situation Report (…) 1999 (May 2000), p. 17.

15 Cf. www.diepresse.at/, 7.12.2001; *Rupprecht*: Freiheit, p. 90; *Wocon*: Implications, pp. 1–15, 27–30; *ODCCP*: Drug Nexus, pp. 26–29, 47–49, 93f., 104–108.

16 Cf. *Lebed*: Observations (1999), in: *La Strada*, www.brama.com/lastrada/.

17 Cf. *BKA* (Austria): Organisierte Schlepperkriminalität. Jahresbericht 2001, p. 57.

18 However, when it comes to trafficking in human beings, we face a crime against humanity and as such also an important human rights issue.



clientele—drugs for young women, weapons for drugs, etc.[19] *Strategic re-investments* of illegal profits are another relevant element in the OC-picture: buying key-businesses such as import-export companies, transport enterprises and travel agencies (for covering smuggling of illegal migrants, drugs, etc.), hotels, bars and pubs (for storing drugs, for illegally accommodating and hiding people, for dealing drugs and for offering illegal prostitution), as well as foreign exchange businesses for *money-laundering*. Police raids into certain city quarters of various cities in Europe have shown these connections.[20] As important are the parallels between the various smuggling and trafficking fields related to *corruption*. The spreading of corruption in general can be seen as a fertile breeding ground for the development and growth of OC. Corruption—together with infiltration—intertwines criminal world and legal businesses (e.g. banks, transporting) as well as the State apparatus (police, customs, administration, politicians). There have been some cases in Europe where even the police have been involved in local drug business and illegal prostitution.[21]

Primary routes for smuggling drugs and people to Europe follow important migration and trade routes. Significant "plaques tournantes" for drug trafficking and illegal migration are i.a. Russia (Moscow), Turkey (Istanbul) and the Balkans. Besides Greece, Italy (especially its Southern territory) plays a key role as a "Gateway to the EU", with "motoscafi" and ferries bringing illegal migrants, drugs, weapons and other "commodities" ashore, arriving via Tunisia / North / Western Africa, or Albania / the Balkans. Other important routes run through the Balkans or from Eastern Europe via Hungary, Slovakia, Czech Republic and Poland into Germany and Austria—countries which are attractive for their economic potential and developed markets, and which to date have been most exposed to the famous East-to-West smuggling routes.[22]

All this, explained by necessity in a few lines, demonstrates the complexity of the existing OC-network structures, and gives an idea why the linkages between

19 Cf. *Narcomafie*, VII, No.6, June 1998, pp. 4–19; *US Department of State*: Trafficking in Women and Girls (fact sheet), 10.3.1998; *Stoudman, Gerard* (Director of ODIHR), in: www.unhcr.ch/, 22.7.2002.

20 Cf. *BKA* (Austria): Organisierte Schlepperkriminalität (2001), p. 53; *U.S. Department of Stae (DOS)*: www.usinfo.state.gov/: ARIAT (2000); *AIC*, www.aic.gov.au/: Trafficking, 7.7.1999; *OSZE*, www.osce.org/: Trafficking in Human Beings, 1999/3; *O'Neill / CSI*: Trafficking (2000), p.1f.; *Da Pra Procchiesa*: Fenomeno, in: *Narcomafie*, No.6/1999, pp. 4–6. BKA: Bundeskriminalamt.

21 Cf.*Ö ffentliche Sicherheit*, No.3–4/01, p. 26.

22 Cf. *Le Monde*, 20.2.2001, p. 9; *The Times*, 31.8.2000, p. 14; *Corriere della Sera*, www.corriere.it/, 26.4.2002.

the different OC-fields are indeed so relevant. If we really intend to *combat* phenomena such as irregular migration and drug trafficking, it is necessary to understand that we will have to focus on the *prevention* of the phenomena—and thus on their root causes Effective countering of Organised Crime involvement in irregular migration, people smuggling and human trafficking therefore requires, as a prerequisite, focusing on the *parallels*, *linkages* and *interrelations* among and between these fields and other crime phenomena, as well as between criminal actors, structures and networks operating at different levels of the criminal world, and in the grey area between criminality and legality.[23]

There seems to be a global consensus of the need for action. With the supplementary protocols to the Palermo 2000 Convention against Transnational Organized Crime—the protocol against smuggling of migrants and the one against trafficking in persons—the international community has reached some important common minimum standards in addressing these challenges in the future. However, there is still much to do. Many actions have been initiated, while coordination and cooperation are still insufficient. There are many national and international, governmental and non-governmental organisations, agencies, groups and individuals actively engaged in countering the aforementioned businesses with numerous initiatives, and an even larger number of those who claim to do so. However, the current initiatives planned or launched by the different governmental and non-governmental actors at national and international levels seem to great extent underestimate the role of the OC-links[24], and comprehensive initiatives focusing on this aspect are thus needed. Despite the many initiatives, the fight against organised illegal migration, people smuggling and human trafficking is wanting in many aspects. Besides the failure to use clear definitions of these phenomena (which partly derives from the non-standardised criteria for collecting information),[25] there are other problems resulting from an inadequate system to exchange information between actors involved in the anti-trafficking field, as well as from a lack of a multi-level[26] vision of joining knowledge, forces and strategies to confront the challenges. It is no longer sufficient to tackle such issues only at local or at national level, nor is it very effective to concentrate solely on the international level and by so doing dismiss the indispensable national and sub-national input. Thirdly, there is not sufficient knowledge of the role of OC, and of its logistic and structural aspects. Gathering information is, of course, unlikely to be simple because, apart from the smugglers and traffickers themselves, the people who know the most about the subject are the police, and

23 Cf. *Oberloher*: The Network Connection, in: *UNICRI* Journal, 2003/II (December).

24 Which, in fact, is responsible for the fact that year after year tens of thousands of people become victims of inhumane and exploitive treatment through these phenomena. While other institutions and initiatives focus on aspects (such as awareness-building for potential victims, victim protection and assistance, shelter, repatriation and reintegration), which, from humanitarian point of view, are without any doubt indispensable in tackling specifically human trafficking, we should not fail to address also the root cause driving the mass phenomena of all three, organised irregular migration, alien smuggling and human trafficking as well as many other serious crimes—in other words, we should not fail to address *OC*!

25 While the important connections and relations have to be studied and taken into consideration when elaborating counter-strategies, it is also crucial to make the necessary distinctions.

26 *Oberloher*, Robert F.: Moderne Sklaverei im OK-Netz. Effiziente OK-Konfrontation mittels koordiniert-kooperativer Mehrebenenpolitik, Vienna 2003.

they may refuse to share some important data and knowledge with others (sometimes still even among themselves, due to restrictions, especially in sensitive subjects such as these). As a result of the lack of data available, effective strategies and measures to counter OC-involvement in these fields still need to be developed, and the existing analyses and assessments of the problem are far from being comprehensive.

We will have to bear in mind that human trafficking and people smuggling are only a small part of organised crime. Criminals will probably always smuggle and traffic any type of "goods" and "commodities" that proof to be lucrative. Despite the fact that everything should be done to decrease the humanitarian misery connected with these crime fields, we should understand that if we really want to "combat" OC, we have to focus more on the criminal networks, and less on their victims. We also need a better definition of 'organised crime' and means to distinguish it from criminals who are organised, as well as from groups operating at an unsophisticated level. If we want the police to be effective, specific training is needed to enable them to better confront these issues with special skills. Furthermore, appropriate legislation has to be in place and, most important of all, there has to be undivided political will supporting the efforts.

Initiatives that try to address such complex and important challenges will require a lot of time, a multi-level strategy and cooperation among an interdisciplinary spectrum of key actors. This may sound too much of a vision. However, improvements require visions and despite all these difficulties, efforts to improve insight into these phenomena and their crucial links and methods, as well as the elaboration of more effective, advanced and comprehensive strategies—based on sound knowledge—should remain our priority.

Impact of Transnational Organized Crime on Law Enforcement

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Global Attention on Transnational Crime

Six years before delegates gathered in Palermo in December 2000 to sign the United Nations Convention on Transnational Organized Crime, representatives to the UN focused their attention on transnational organized crime. Completion of the convention was a bold statement by the world community. It announced that this form of crime is growing in scale, scope and degree of sophistication and it showed a new commitment by nations to prevent and combat this problem.

One look at the list of countries which have ratified the convention makes it clear that transnational organized crime affects all corners of the world.[1] Yet, transnational organized crime remains difficult, if not impossible, to measure in quantitative terms. There are no statistics which measure incidents of most transnational crimes.

For example, in the area of human trafficking—there are many estimates of how many people are trafficked.[2] Other estimates attempt to calculate the cost of human trafficking in currency, certainly not in terms of human suffering. But these are only estimates. And those who compile the estimates will often confess, in the strictest of confidence, that the estimates are only guesses. Recently, as Federal cases on trafficking are being prosecuted in the U.S. under the Victims of Trafficking and Violence Protection Act of 2000, we have begun to see some national statistics for human trafficking in the U.S. But certainly they are not a complete picture of a single transnational crime problem in one country.

In the United States, the debate may be more basic than developing or maintaining reliable statistics on transnational crime. While transnational crime is an international issue, it takes place at the local level in the villages, towns and cities where law enforcement officers must, first, identify what they are seeing as transnational crime before they can respond. Transnational crime is often difficult to identify, particularly at the local level. It is more difficult to learn if transnational crime has any impact on these local law enforcement agencies. And, we have discovered in the U.S., it is most difficult to measure what that impact might be.

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1 United Nations Office on Drugs and Crime, "United Nations Convention against Transnational Crime", www.unodc.org/unodc/en/crime_cicp_signatures_convention.html, (July 2, 2003).

2 Jay Albanese, "Nature & Scope of Human Trafficking in the U.S.", slide presentation, (May 2003).

Impact in the U.S.

While the UN was deliberating and negotiating the convention on transnational crime, the National Institute of Justice (NIJ), began to look at these crimes in the United States to determine whether and how they impact law enforcement there. Such measurements in the U.S. are complicated by the complex criminal justice system. Rather than one National police force, the United States has more than 17,000 Federal, state and local law enforcement agencies across the country. Not only does this complicate collecting and analyzing quantitative data, but it also creates definitions that vary from one jurisdiction to another.

During informal conversations with law enforcement officers, we discovered a lack of awareness about transnational crime. When asked about the types of transnational crimes they encountered in their jurisdiction, officers would ask if we meant drug trafficking. They seemed to have little, if any, awareness of the other types of transnational crime which have been defined for decades in international criminal justice circles.[3]

Initially, NIJ took advantage of several captive audiences and conducted a convenience sample of New Jersey prosecutors and law enforcement officers in Orange County, California, to determine how much and what type of transnational crime they encountered.

This convenience survey gave us very mixed signals. For example, the respondent might have indicated there was NO transnational crime in their jurisdiction, but that 50 foreign nationals had been arrested. Certainly, not all 50 were involved in international crimes, but it is safe to assume that some might have been.

Nationwide Survey

Because the convenience survey produced no clear results, NIJ contracted with Abt Associates, Inc., a well-respected research firm to conduct a nationwide exploratory survey to determine if and to what extent transnational crime impacts law enforcement agencies at the state and local levels.

Method

One objective of the survey was to achieve a high response rate, since poor response rates can undermine the validity of survey results with even the best instrumentation and sampling. Several alternative methods of data collection were considered and rejected. A telephone survey was selected as the primary mode of data collection to be augmented with use of mail, email and phone communication to contact, schedule and follow-up to the phone survey. This method of data collection was most likely to capture busy, mobile, upper level law enforcement managers and it was feasible to collect the data within a six month time frame.

Developing a nationally representative sample involved several steps. A literature review was conducted to identify key transnational crime problems most

3 Muller, G.W.O. "Transnational Crime: Definitions and Concepts" in Combating Transnational Crime. 1998.

likely to be of highest current and future concern to local law enforcement. Prior surveys of law enforcement agencies were examined for guidance on the most effective data collection procedures. As substantive issues arose, discussions were held with law enforcement personnel in police departments of large and small cities to gain clarification. A key set of transnational crime and relevant law enforcement issues, a prototype questionnaire and an outline of data collection procedures were tested on a small focus group with one Chief of Police, one Deputy Chief and one Head of Operations from representative departments. This provided critical feedback and helped refine the questionnaire and data gathering procedures. Following the focus group, a pretest of the procedure and data collection instrument was conducted with nine police departments from geographically diverse states. The revised instrument performed very well.

The questionnaire provided a working definition of transnational crime and contained instructions asking respondents to provide information only about crimes with international connections. Survey instructions were followed by a list of the more common types of transnational crime which the survey was intended to address:

- Illicit trafficking—including trade in humans (for forced labor or sexual exploitation), drugs, weapons (biological weapons, firearms, munitions, or components of weapons), stolen art or artifacts, endangered animals or animal parts and products, or stolen intellectual property (e.g., pirated CDs, counterfeit clothing, or trademarked materials).
- Illegal immigration
- Computer crimes—reaching across international boundaries, such as money laundering, identity and information theft, unauthorized access, sabotage, viruses ("hacking"), internet commerce in child pornography, or theft and illicit transmission of intellectual property (music, books, patented materials).
- Crimes related to homeland security—such as foreign organizations attempting to disrupt or destroy domestic infrastructure, threatening or killing American citizens and residents.
- Other transnational crime of local concern which respondents wished to address.

Sample

The sampling plan integrated three different sub samples to include state, county and municipal levels of law enforcement. This approach was chosen to obtain a descriptive, exploratory study to account for transnational crime not bound by geographical patterns or uneven geographical distribution among urban, suburban and small community areas and to obtain a high response rate. To maximize the information, the following sample plan of 250 law enforcement agencies was designed to incorporate three components:

- 175 local police agencies with 50 or more sworn officers
- 50 state police departments
- 25 main police departments of core cities of the 25 largest U.S. metropolitan areas

The centerpiece of this design was a random sample of 175 law enforcement agencies drawn from data in the Bureau of Justice Statistics Census of State and Local Law Enforcement Agencies. Given that relatively few truly large cities are likely to be captured in a random sample of agencies with 50 or more sworn offices, a set of 25 core cities was purposively drawn. Finally, all 50 state police agencies were included to ensure a wide geographic coverage and because state police often act as a conduit between the local and federal levels. Neither the purposive selection nor the total coverage of states will support generalizations.

Data Collection

Data was collected during a 10-week period through telephone interviews which took between 30 and 60 minutes. The survey interviews addressed the following issues:

- Perceptions of transnational crime at the local level;
- Level of transnational crime activity in their jurisdiction;
- Local resources devoted to preventing and responding to transnational crime;
- Extent of cooperation among local, state, federal, and foreign law enforcement; and
- Perceptions of resource needs.

The approach to data collection, emphasizing persistent follow-up procedures using multiple media, proved to be well suited for the extraordinary conditions under which the survey occurred. Survey interviews began on March 18, 2003, one day after and one day before events which impacted the workload and priorities of local and state law enforcement. The day before data collection began, the Department of Homeland Security Terror Threat Level was raised to orange, indicating a "high risk of terrorist attack" when President Bush declared Saddam Hussein must leave Iraq within 48 hours. The day after data collection began the U.S. military campaign against Iraq began. Local agencies' attempts to address homeland security during a time of war stressed state and local resources making data collection difficult during the first weeks.

Figure A. Sample

	Contacted	Responded	Response Rate
25 Largest Cities	25	12	48 %
State Police	50	20	40 %
Random Sample	175	152	87 %
Total	**250**	**184**	**74 %**

However, by May 30, when data collection ended, the total response rate was 74 percent. While the response from law enforcement among the 25 largest cities and state police agencies hovered below 50 percent, the response rate from local law enforcement was 87 percent. Geographically the survey covered agencies in 43 of the 50 states and included boarder areas, major ports of entry and interior states.

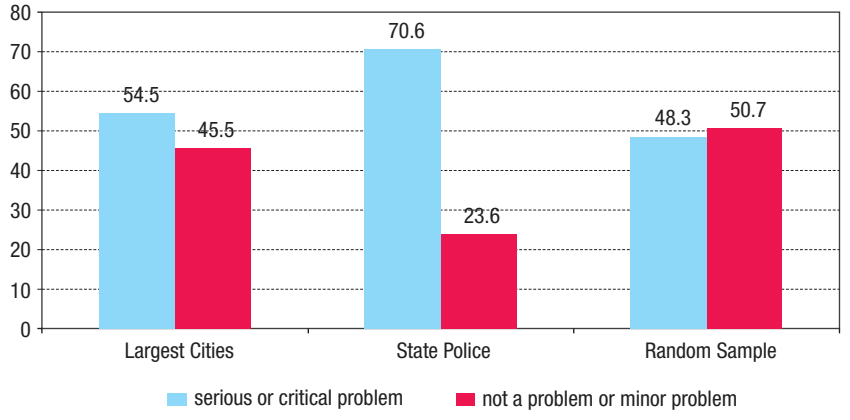
Figure B: States Represented in Sample

Survey Results

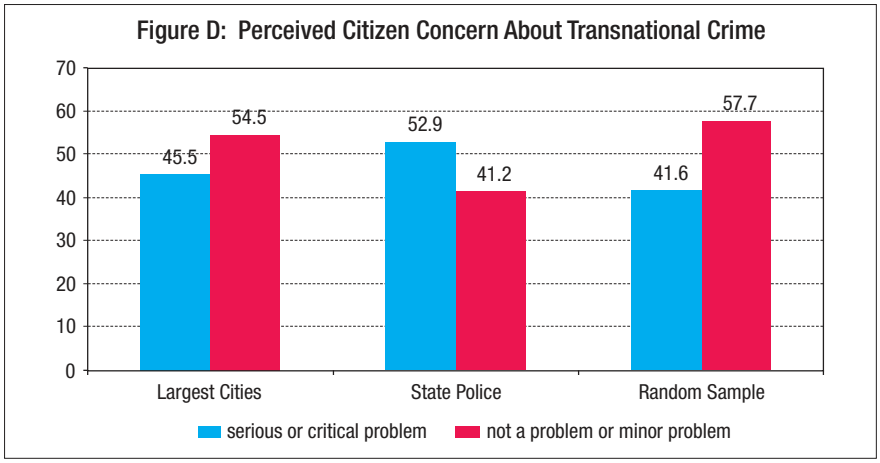
Perceptions at the Local Level

The survey indicated that law enforcement agencies believe crimes related to homeland defense and other transnational crimes are a serious or critical problem in their jurisdiction. Roughly half of respondents from the large city and random sample of departments expressed this perception (Fig. B). The remaining respondents considered transnational crime as "not a problem" or "a minor problem".

Figure C: Law Enforcement Concern About Transnational Crime

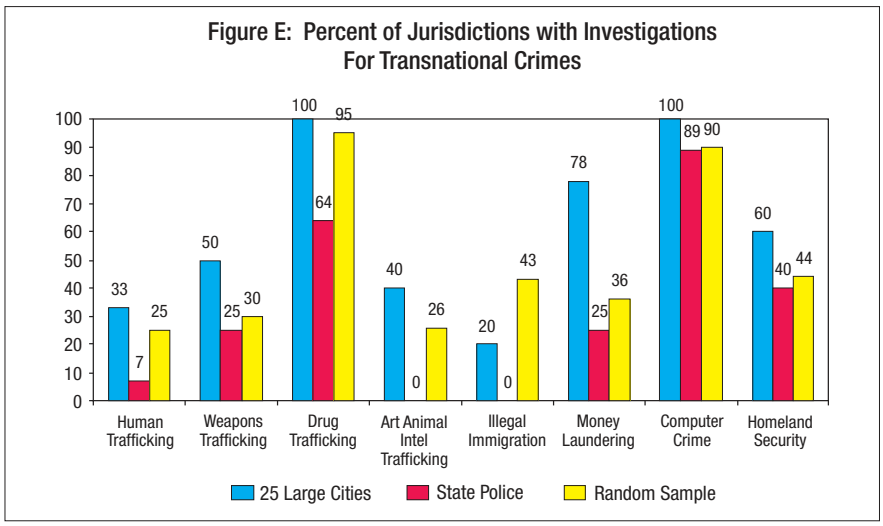


According to police surveyed, roughly half of the respondents across each sub sample said citizens within their jurisdictions view these crimes as "serious" or "a critical problem".



Level of Activity

The crime itself was the deciding factor as to whether law enforcement perceives transnational crime to be increasing, decreasing or remaining the same within their jurisdiction. The trends vary across sub-samples depending on crime types. For example, police believe drug trafficking, illegal immigration, money laundering, computer crime and, to some degree, homeland security appear to be increasing. About one-fifth to one-third of respondents believe that human trafficking is increasing in their jurisdiction, while respondents in large city police departments tend to believe this form of trafficking has increased.

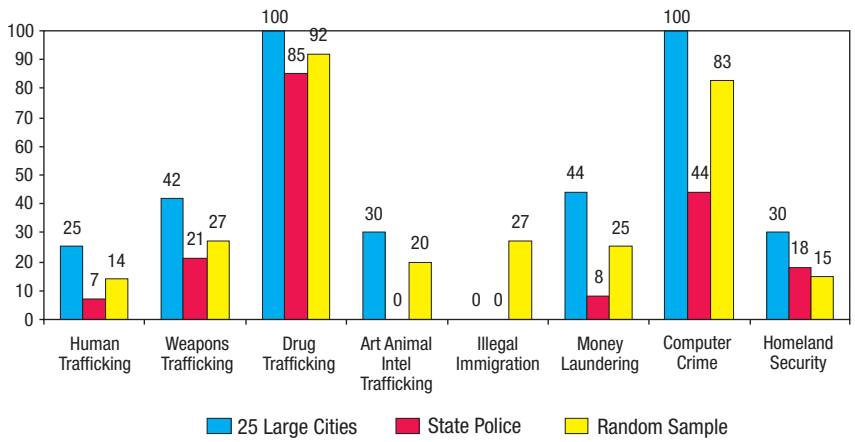


The data which was collected regarding the number of arrests, investigations, foreign organized crime and the country of origin for foreign nationals involved proved to be weak. The major obstacles to collecting useful data are structural and procedural. Some of the crimes addressed in this survey are not recorded by local law enforcement agencies, but are instead referred to federal agencies. Arrests and other data on these incidents are not always recorded locally. In other cases, criminal codes and data recording systems do not adequately distinguish transnational crimes from local variations of the same activity. For example, police in many locales record cases of human trafficking for sexual exploitation as prostitution, either because they have not established sufficiently that the illegal activity is part of a larger trafficking enterprise or because they are trained only to record the violation of local criminal codes and to leave the possible international connection to federal agencies. In some locations, prostitution by trafficked persons is referred to federal agencies such as the INS and the FBI and would not appear in local crime records at all. Even when the arrest data on transnational crime exists, it is not always easily accessible to staff or aggregated in a way helpful this survey. Finally, many agencies do not compile aggregate statistics on investigations, especially those categorized by crime type.

As a result of these limitations, the arrest and investigation data was collapsed into dichotomous variables, where agencies do or do not report instances of activity in each crime type. Respondents would say with confidence that there was a presence or absence of arrests or investigations into a particular type of crime, but could only guess about numbers or provide a wide range.

There were arrests and investigations for each of the major types of transnational crime across almost all crime types and sub samples. While it was not a surprise to see indications of widespread international drug trafficking, nearly all state and local agencies were conducting investigations into transnational computer crime. Other categories such as weapons trafficking, money laundering and even art, animal and intellectual property theft show a higher percentage of

Figure F: Percent of Jurisdictions with Arrests For Transnational Crimes



arrests than might have been anticipated. However, this reported activity, raises the question of how much more of these crimes go undetected. Do local and state police really know what they're seeing?

For example, a cigarette smuggling case in North Carolina (which ultimately linked the profits to the support of terrorists) began with a local sheriff's deputy observing people coming from long distances to buy truckloads of cigarettes at a discount warehouse.[4] In Canada, the RCMP received a complaint from a fraud victim, and while investigating this complaint, common elements surfaced linking it to on-going investigations in both Canada and the U.S. An ensuing joint international investigation ultimately led to a significant indictment for a "Nigerian Letter Scam" conspiracy.[5] In northeastern Italy, Russian businesses became active in the purchase of clothing and consumer goods for the Russian market. Suspicious law enforcement officials investigated bank and commercial records, revealing a criminal network of primarily Russian and Italian businesses, resulting in arrests of more than 30 people in five countries.[6] Are these cases simply "lucky breaks", or can practical investigative screening procedures be developed to look for potential transnational connections?

While the survey could not measure the amount of crime undetected, there was an attempt to determine country of origin of those foreign nationals who were arrested or investigated for transnational crimes. Unfortunately, the data collected regarding country of origin was very vague and in many cases the interviewees refused to respond saying that once the international nature of a crime became apparent the cases were referred to federal authorities and their own investigations would cease.

Similarly, when asked whether people arrested or investigated for transnational crime were associated with a known criminal organization or terrorist group, most respondents did not know, refused to answer or qualified their answers with expressions of doubt. The following is a list of those organizations identified:

Drug cartels from (country)	Al Qaeda
Gangs	Russian Mafia
Mafia	Israeli Mafia
Crime organization from (country)	Latin Kings
Bloods	KKK

Obviously the data do not support analysis that would provide a coherent profile of foreign countries or organizations linked to crime addressed by state and local law enforcement. However, enough anecdotes were gathered to suggest that transnational crime can originate virtually anywhere and reach nearly any part of the U.S. For example, one Western jurisdiction noted an ongoing problem with

4 David E. Kaplan and Monica M. Ekman, "How a Hezbollah Cell Made Millions in Sleepy Charlotte, N.C.", *U.S. News & World Report*, (March 10, 2003).

5 "RCMP, FBI and U.S. Secret Service Crumple 'Nigerian Letter Scam'", *Canada NewsWire*, (July 10, 2001).

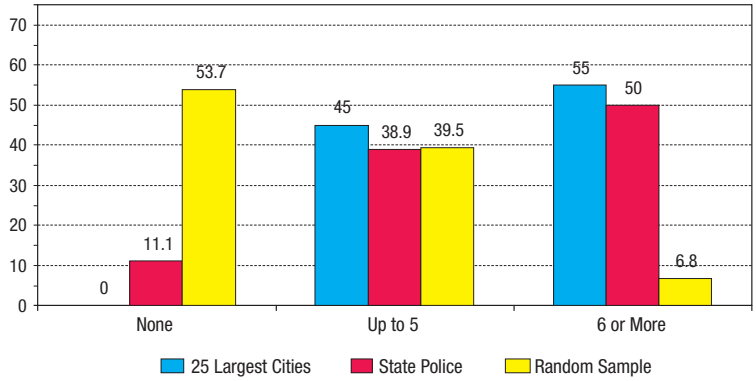
6 Bruce Zagaris, "Arrests in Europe Indicate Progress in Russian Transnational Crime Investigations", *Transnational Organized Crime*, vol. 18 (August 2002).

poaching to provide bear gall bladders to illicit markets in Asia. In one small, inland Southern city, police identified suspected Russian Mafia operatives engaged in local trafficking in stolen auto parts, with some of the illicit revenue sent abroad.

Local Resources

The survey also addressed the nature and extent of resources devoted to transnational crime within the jurisdictions participating. All large cities and state police surveyed have some dedicated personnel for transnational crime. Most state police agencies have at least one full time equivalent position focused on transnational crime and 55 percent have six or more. Only the departments with less than 50 sworn personnel do not have a significant number of positions dedicated to transnational crime.

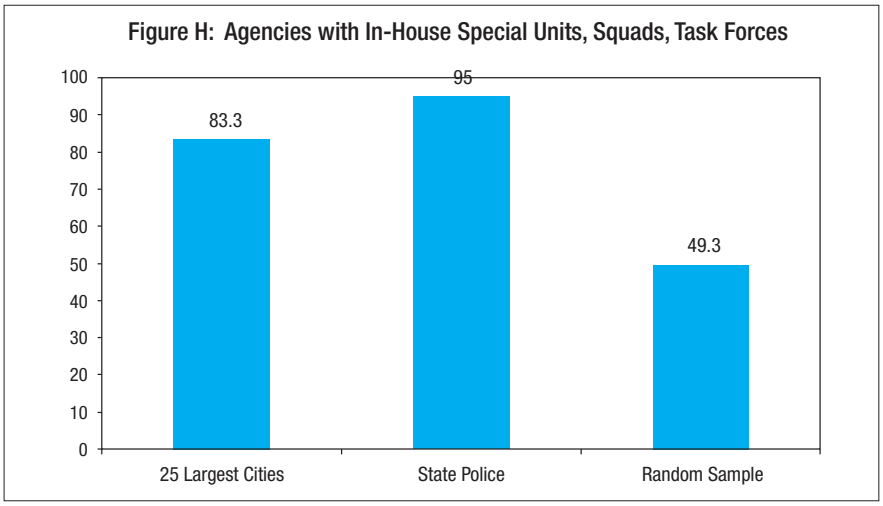
Figure G: FTEs Devoted to Transnational Crime



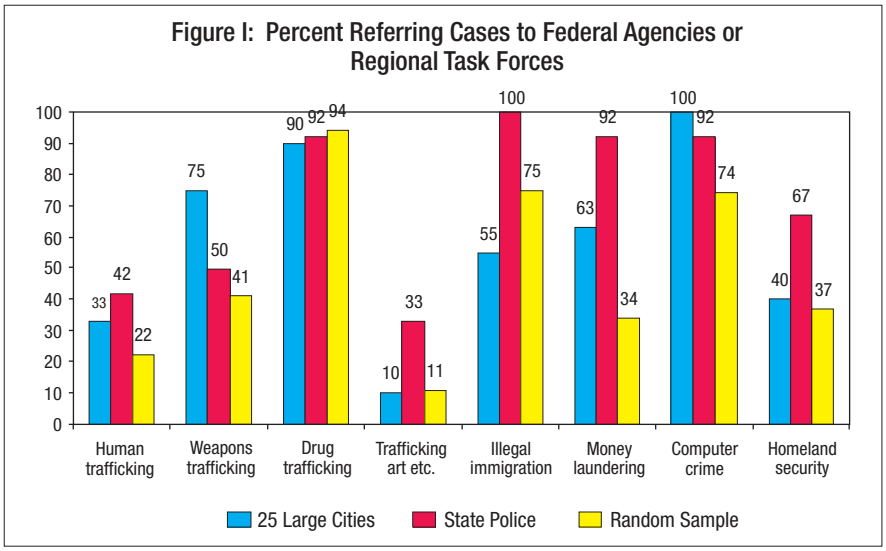
Cooperation

The vast majority of large cities (83 percent) and state police (95 percent) departments have special in-house units, squads or task forces devoted to transnational crime. About half of the random sample of the departments have special units. These units have a wide variety of names and focuses depending on the local needs and prevalent crime which include:

Domestic Security Task Force
Counter Terrorism Team
Terrorism Unit
Terrorist Intelligence Unit
Anti-Terrorism Unit
Homeland Security Task Force
Homeland Threat Assessment
Special Assistant for Homeland Security
Russian Organized Crime Unit
Port Security
Drug Task Force
Computer Investigations
Special Investigations
Special Operations
Special Tactics and Response
Weapons of Mass Destruction Preparedness



The survey indicated a significant amount of collaboration with federal law enforcement agencies takes place in the area of drug trafficking. Surprisingly, illegal immigration and computer crime also involve collaboration with federal law enforcement agencies. Then, in descending order we see local cases in weapons trafficking, homeland security, money laundering and human trafficking local being referred to federal agencies. Interestingly enough, the proportion of agencies referring cases to the federal and regional levels closely follows the proportion reporting investigations for most types of international crime type. This suggests that local agencies usually refer their international cases to at least one agency outside of the state.



In addition to the upward flow of investigation related information from the local and state level to the regional and national level, The only crime type in which the prevalence of downward alerts exceeded the prevalence of upward information flow was crime related to homeland security. Most state and local agencies indicated they had shared information about drug trafficking (84 percent) and computer crime (64 percent) with other local and state agencies in the previous year while sharing information on other transnational crime types were below 50 percent. Cooperation with foreign organizations is rare, ranging from two percent (trafficking in weapons, art, animal products, intellectual property) to nine percent (drug trafficking) of the state and local agencies sampled.

The level and quality of communication were attributed mainly to the personalities and working relationships between the individuals involved. In some cases, poor communication could be traced to past people and events and had become institutionalized.

Resources Needed

All respondents felt, to varying degrees, that they could use additional resources to prevent or respond to transnational crime. Respondents were ask to indicate the "percentage increase" necessary in each of the following categories to improve their response to transnational crime (1) personnel, (2) training, (3) equipment, and levels of cooperation with (4) federal, (5) state, (6) local, and (7) foreign law enforcement. Across most of the resource, respondents from large city agencies expressed the need for the greatest proportional increases, while state law enforcement indicated the need for the smallest increases. By a substantial margin, responding agencies cited the greatest need for personnel, training, and equipment to effectively address transnational crime, and indicated a need for relatively modest increases in additional inter-agency cooperation.

In Summary of the U.S. Survey

There are a number of general conclusions that can be drawn as a result of the data collected through this survey.

- Transnational crime is present and considered to be a substantial problem by local law enforcement in most U.S. communities.
- In most communities, one or two types of transnational crime stand out, cause concern and trigger investigations for local law enforcement.
- Most respondents felt computer crime is increasing and keeping up with technology is an increasingly important issue.
- There is a significant level of communication and cooperation among law enforcement at various levels—Federal, state and local—driven by the local crime issues and by relationships.
- Some large cities have started their own antiterrorism units in response to federal inaction.

- Most respondents felt their agency was at least adequately prepared to deal with transnational crime but 92 percent said they needed additional training and equipment.

While the results of this nationwide survey reported here present only summary tabulations and simple comparisons of responses to the survey, the data collected will support additional analysis. Nonetheless, these results do indicate a significant amount of transnational crime at the state and local level within the United States.

The next step is to bring law enforcement—local, state, federal—together with researchers to identify gaps and determine the next steps. These experts will analyze what we've learned, what we still need, where the critical gaps are and, more important, how to fill them to improve the response by local and state law enforcement to transnational crime.

What Are Other Nations Doing to Define and Measure Transnational Organized Crime

As NIJ conducted this survey, we learned there are other efforts in progress to address, and in some cases, measure or assess, transnational organized crime.

For example, the International Association of Chiefs of Police conducted a similar study and another component of the U.S. Department of Justice surveyed Federal, state and local law enforcement regarding the effectiveness of their regional terrorism task forces.

Other organizations have established programs, both formal and informal, to improve cooperation or facilitate operational investigations across national boundaries. These include:

- INTERPOL which has several operational level initiatives such as the Fusion Task Force to assist member countries in terrorism related investigations focusing on drug, human and weapons trafficking and financial crimes and the bridge project human smuggling and trafficking and the organized crime connection.
- The Financial Action Task Force on money laundering is a 31-country group to detect and prevent financing of terrorism.
- The 6-member Shanghai Cooperation Organization has a goal to strengthen regional security and stability against terrorism.
- OECD with its 30 members has a program to protect consumers from cross-border fraud through information sharing.
- EUROPOL hopes to improve cooperation in combating terrorism, drug trafficking and other international organized crime. Specific agreements have been made to that end with Estonia, Norway, Poland, Iceland, Hungary, the Czech Republic, USA, Slovenia, Bulgaria, and Interpol.
- International Money Laundering Information Network provides model laws against financial crime and tracks anti-money laundering legislation.

In addition there are a number of regional efforts underway and the United Nations Office on Drugs and Crime has a variety of programs. All are important and each is a step toward combating transnational crime.

How Are We Going to Respond?

Although this survey confirms the hypothesis that transnational crime does impact local and state law enforcement in the U.S., accurate records are not available and it is very probable that much transnational crime may go unnoticed, un-identified and unreported.

Is it possible that the situation in the United States is NOT unique?

Let us assume for a moment that law enforcement in other countries may also have difficulty in identifying transnational crime in our villages, towns and small cities. Let us assume that other countries share our difficulty in measuring transnational crime's impact and that no one really knows how much transnational crime there is or how it impacts our countries.

Should these assumptions be accurate the question is: What are we going to do about it? With the coming into force of the United Nations Transnational Crime Convention, questions about the nature and extent of transnational crime will inevitably follow. They may take the form of "how much", "what is the impact", or "is it increasing or decreasing?" But the questions will be asked. Whether the U.S. and other countries are prepared to answer is difficult to predict.

But now is the time to begin thinking about how to answer these questions and to initiate research that will provide valid and meaningful responses.

An Occupational Perspective on some Efforts to Fight Organized, Transnational Crime in the European Union[1]

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According to statistics from the Swedish customs, seizures of alcohol and tobacco have increased since the middle of the 1990s. It has been claimed that this increase is actual, possibly resulting from structural changes, for instance reduced control at the borders due to Sweden's membership in the European Union. For individuals who engage in the road haulage industry, the changes manifest themselves in terms of reduced time spent at border controls. However, when large-scale alcohol and tobacco smuggling is revealed, a lorry is often involved as a means of transport. Smuggling of these sorts of goods is, for different reasons, at times associated with so-called organised criminality. The smuggling phenomenon in itself is nothing new. The liveliness of the related (political) discussion, on the other hand, may well be. The paper is based on interviews with individuals convicted of smuggling, made within a collaboration-project between Norway and Sweden, aiming to explore economic crimes from an actor-perspective within the industry. The interviewees, therefore, had a work-related role in the road haulage industry.

Background

In year 2000, a research project was initiated with the purpose of analysing economic crime within the transnational road haulage industry. The project was qualitative, and during a two-year period we conducted in-depth interviews with individuals who worked in the trucking industry.[2] The economic crimes we focused our interest on varied in terms of type and seriousness; some were more typical for a specific industry, some related to a specific corporation.[3]

Besides the interviews with people who worked in the industry, we interviewed ten persons who, through their work, were somehow connected to the industry (policemen, custom officers, accountants, trade union representatives, etc). I also participated in some fieldwork, for instance in places associated with

1 This paper is a summary of a presentation made at the ESC-conference in Helsinki, Finland 2003. An extended and developed article is under progress.
2 The project was conducted together with Vanja Lundgren Sorli, at University of Oslo, Norway at the time. We also participated in some of the interviews together.
3 See BRÅ-rapport 2002:6 for a presentation on the various types of economic crimes.

the industry, like the harbour where drivers rest, truck stops and so on. Finally, I joined two drivers at work for short periods.

In this paper, I focus on a particular and limited group of this population. It consists of individuals who have been sentenced to prison for smuggling alcohol and tobacco.[4]

This paper

In the present article, I explore a particular group of interviewees who have been sentenced to prison for smuggling alcohol and tobacco. I will outline some reflections on the issue of organised crime from two perspectives. First, the "crime-policy" context and the efforts made to combat the crime-problem with which it is associated. I concentrate on the parallel development in Sweden and the European Union in terms of universal and transnational solutions to the transnational crime-problem.

Thereafter, the "criminal actor" perspective will be presented, where the occupational context and a viewpoint of the convicted individuals in relation to smuggling are explored. The analysis will focus on the informants' background and situation. In other words, the smuggling will be connected to a broader occupational context and the conditions surrounding the transnational, international trucking industry.

Before that I will present how the connections between the road haulage industry, smuggling and organised crime can be understood.

The road haulage industry, smuggling and organised crime

There are links between the trucking industry and smuggling of alcohol and cigarettes. The latter is often, in official reports, associated with so-called organised crime.[5] Therefore, one might claim that the political issues of organised crime affect individuals within the haulage industry since smuggling of alcohol and tobacco is often mentioned in the Swedish discourse as an example of the activities conducted by organised crime. The haulage business, in turn, has for different reasons a central position in smuggling these kinds of goods. Most often, when the customs or police detect smuggling, the driver is caught and convicted of the crime, since lorries often are used as means of smuggling. This is not to say that the actors within the industry are particularly criminal or that the industry is problematic as such. It is rather a matter of structural conditions. For instance:

1) The industry is characterised by international and transnational activities.
2) In contrast to other vehicles, long-distance lorries have a large capacity to carry goods.
3) The borders are open within the European Union—the control at the borders is reduced.

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4 The informants in focus are a small group. For ethical reasons, the information concerning these individuals will be presented in general terms.

5 RKP KUT rapport 2001:13

The criminal policy perspective

The first perspective is considered to be official and criminal-political. Two main issues will be shortly discussed: the development of measures against organised crime and the problems of clarifying what kind of phenomenon organised crime actually is.

Political discussion on the international, cross-border criminality has been vivid since the 1990s.[6] It is claimed that since 1995, the seizures of alcohol and cigarettes have increased remarkably[7], and that the increased levels are actual.[8] This kind of criminality can be regarded as an obstacle and threat to the principles of the Union. It can also be considered as a problem for the state. For instance, it has been estimated that a lorry loaded with smuggled cigarettes equals to 15 million Swedish kronas in lost taxes.[9]

Even though it is stated in official documents that organised crime still has a low impact on Swedish society, Sweden is involved in an adjustment process towards more universal and common solutions to combat the problem of organised crime. In other words, a new international and cross-border criminality is to be fought with international and cross-border measures.[10] From the Swedish point of view this means, for instance, changes in the organisational structures of the justice administration, the law and operative work as well.[11]

Measures—against what and whom?

There seems to be an agreement within the European Union and Sweden that new measures are needed, but the question remains—against what and whom? In effort to work towards a common policy for the union, most countries have adopted a common criterion-list to determine whether a criminal action should be considered organised crime or not. This list consists of 11 criteria of which four are obligatory (1, 3, 5, and 11). In addition to these four, two additional criteria need to be met for an act to be defined as organised crime.[12]

1. Collaboration of two or more people
2. Each with own appointed tasks
3. For a prolonged or indefinite period of time
4. Using some form of discipline and control
5. Suspected of the commission of serious criminal offences
6. Operating on an international level
7. Using violence or other means suitable for intimidation
8. Using commercial or businesslike structures
9. Engaged in money laundering

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6 BRÅ- rapport 2002:7
7 www.tullverket.se
8 Alkoholinspektionen 2001:1
9 Ds 1997:51
10 Ds 1997:51
11 Westfelt, 2001
12 RKP KUT rapport 2001:13

10. Exerting influence on politics, the media, public administration, judicial authorities or economy
11. Determined by the pursuit of profit and/or power.

Similar to the concept of economic crime, the concept of organised crime is somewhat vague, and the variety of criminal activities that are described as examples of organised crime indicate a lack of precision. The definition covers, for instance, a broad range of criminal acts and settings: smuggling of alcohol and cigarettes, trafficking, murder, theft and so forth. Despite these problems, the list is probably an important tool for political activities. For example, it provides a guideline to decide what kind of crimes, and who and what groups should be controlled and handled *as* organised crime.[13]

I have now outlined in a very broad and brief manner what can be considered as tendencies in the crime policy agenda in the European Union. The first perspective is seen as the crime-policy context in which this particular group of informants worked before the sentence, but also during their time in prison. I have focused on the political aspect of organised crime and emphasised that international, cross-border crime problems should be handled by international co-operation on several levels. A step toward this is the usage of the criterion-list. The list has an operative and essential function. It is likely to serve as a framework for both knowledge and political decisions.[14] Despite the vagueness of what to "act against", there is a clear ambition to act united and with common strategies against organised crime. Whether or not this in practice proves to be an adequate measure and action against smuggling and organised crime, remains an open question.

The crime-actors' perspective

I will now focus on the empirical material from two perspectives. The first deals with the haulage industry and describes some of the difficulties from a structural level. Thereafter, I will describe motives to smuggle.

None of the interviewees had entered the industry or established a business with the intention to commit crimes or to smuggle. The crimes had not been committed during the ordinary occupational duties, but rather alongside with the legal business. It should be noted that even though the informants were in prison, convicted of smuggling, this did not necessarily mean that they were guilty of the crime. Some informants claimed they were either innocent or unfairly sentenced.

Small-scale companies, with one or a few vehicles, dominate the road haulage industry.[15] Several informants described it as an occupation that has stayed in the family for generations. Most of the informants had small-scale companies, and described financial difficulties they had faced. A majority stated that Sweden's entrance in the European Union has had positive effects, but they also described the competition between many countries as tough. They believed that the situa-

13 See Bay, J (1998)
14 See Bay (1998)
15 SIKA-rapport 1999:5

tion derived, among other things, from the different cost and price levels: Sweden is more expensive in many respects than other countries, and, therefore, its competitive position is weak also in the haulage business. All informants discussed their strained financial situation. Even small expenses could lead to major difficulties. They also described a sense of lack of self-determination and not being able to control or handle their everyday working life.

These are some of the factors that the informants mentioned as affecting their everyday work, things with which they had to cope somehow. A strained financial situation was a common problem among the informants, especially those with small companies. In conclusion, all informants had experienced some sort of strain in relation to their occupation.

The smuggling procedure in itself is no different from ordinary and legal transport. Alcohol and cigarettes are legal goods in society and transported on a legal basis. In other words, there is a "normality dimension" to alcohol and tobacco in contrast to narcotics. All informants distanced themselves from smuggling narcotics. None of the informants said they were "out in the cold" or stigmatised among their colleagues because of the smuggling. They could, if they wanted, get back into the industry after prison.

When asking an informant about the motives to smuggle, I was told that "it wasn't for the excitement". The informants' descriptions reflect a financial dimension of smuggling. Some of them had, after a longer period of financial strain, committed a crime to remain in business. Some of them had smuggled because "hard work wasn't enough". A few of them had already experienced bankruptcy. Most informants expressed a sincere will to remain in the industry.

It seems that smuggling was regarded as a strategy to solve financial problems. Another aspect of financial motives was to smuggle in order to get money for a new vehicle, a vacation or something else that could be considered "extra". Respondents said that ordinary work had not provided those possibilities. The interviews indicate that in most cases, the motive was a financial one. I believe that for most, smuggling presented a strategy to cope with financial strain, rather than to satisfy "greed".

Conclusion

So far, I have concluded that there is a connection between the haulage industry, smuggling and organised crime, resulting from structural dispositions in the industry.

Crime political issues, and more specifically the problem of organised crime, can be analysed from different points of departure. I have chosen to relate tendencies in the political discourse to crime-actors' perspective. In other words, two perspectives on the *meaning* of organised crime are connected to each other. First, the political perspective, reflecting the development towards common definitions and measures within the union. Second, the actor perspective including descriptions of structural difficulties in the industry and motives to commit crime.

From a crime-political perspective, smuggling, as a form of organised crime, poses some form of obstacle and threat (threat to freedoms within the European Union, resulting tax losses to the Swedish state, etc.). On the other hand, from an actor's

perspective, the empirical material indicates that smuggling means something else. According to the interviews, the motives appear more complex. For instance, it is not possible to view the crimes as simple attempts to gain economic profit.

If we take the informants' descriptions seriously, new crime-political options emerge. A majority of the individuals have experienced different forms of strain in their everyday work, some of which have partly resulted from the situation on the European market. Hence, there are alternative and distinctive political means available, such as creating better structural conditions for people who wish to work in the road haulage industry.

Final remarks

In my future work, I will scrutinise the issues of formal control, law enforcement and regulation of the industry; including a number of institutions that play a significant role. One purpose is to examine what meaning the informants attribute to the different aspects of control, and what impact it has on their professional life. This is also linked to the informants' construction of meaning when it comes to economic crimes. The informants' experiences and descriptions are interpreted in relation to the occupational, structural and historical context of the road haulage industry.

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Organized Crime in Ukraine: Contemporary Situation and Methods of Counteraction

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Organised crime, rooted in the Soviet past, is a very serious problem for all post-communist countries, including Ukraine. The main trait of all post-Soviet organised crime is the combination of corrupt civil servants and their association with shadow economy and criminal structures. L. Shelley believes that post-Soviet organised crime represents a new form of non-state based authoritarianism (Shelley 1997).

Organised crime is a very complex phenomenon that reflects only the outward appearances of a more general process. It is directly connected with integral political, economic and social relations within our society.

In this paper, I first make several observations about the notion of organised crime. It is necessary to stress that organised crime is a criminological definition, and is formulated, as a rule, on the basis of legislation. There is no consensus over this term among Ukrainian scholars, nor among the international scholarly community.

There are two major approaches to classify organised crime. The first approach is to classify groups by the nature of the offences they commit. The legislation of the USA and some other countries stipulate categories of crimes, which identify criminals as being engaged in organised crime. For example, the RICO Act applies to any enterprise involving racketeering. Racketeering is defined as an act that demonstrates a pattern of criminal offences (West's Encyclopedia of American Law, 393).

The second approach is to sort groups by the nature of their organisation. The latter approach is dominant in Ukrainian criminology. Article 1 of the Law of Ukraine "*On the Legal Foundations of the Fight Against Organized Crime"* (1993) defines organised crime as an "aggregate of crimes, committed through the creation and operation of organised criminal groups", but provides no definition of "organised criminal group". Sections 3 and 4, Article 28 of the new Criminal Code of Ukraine (CC of Ukraine, 2001), passed on April 5, 2001 and thus one of the most recently adopted criminal codes on the post-Soviet territory, fills the gap by defining the terms "organised group" and "criminal organisation". I would next like to examine these definitions.

A crime is considered to be committed by an organised group (OG), if it is prepared or committed by three or more individuals that have previously established a stable association with the goal of committing this or any other crime with a single plan, which is known to all members of the group and involves role distri-

bution among the group members in order to implement the plan.(Section 3, Article 28 of the Criminal Code of Ukraine, 2001).

A crime is considered to be committed by a criminal organisation (CO) if it is committed by a stable hierarchic association of three or more individuals, whose members or structural components have in advance organised joint activities with the goal of committing serious or very serious crimes, or who have governed or coordinated the criminal activities of other individuals, or who have supported this or other criminal organisations (Section 4, Article 28 of the Criminal Code of Ukraine).

Serious crime is a crime punishable by imprisonment of no more than 10 years (Section 4, Article 12). Very serious crime is a crime punishable by imprisonment of more than 10 years or life (Section 5, Article 12).

It is necessary to underscore that the Criminal Code definitions include many subjective characteristics and lack precise criteria. The traits of a stable association or stable hierarchic association are determined by the investigative agencies and the court, and are sometimes very difficult to prove. This interpretive nature of the Criminal Code has resulted in more than one interpretation in terms of judicial practice, and in limited ability to fight organised crime as a whole. In practice, only individual members of criminal organisations can thus be prosecuted.

I would like to point out that Article 255 of the Criminal Code of Ukraine takes into account the successful experiences of foreign countries. It criminalises activities that aim at creating criminal organisations. However, in 2002, for example, there were only 17 registered cases of creating criminal organisations in Ukraine. In the Kharkiv region, one of the largest in Ukraine, only one case was investigated under Article 255 in the said year. The causes of this situation will be discussed later.

We may compare approaches of the Ukrainian legislators with those of the law enforcement agencies of the European Union (EU). The latter classify any crime or criminal group as organised crime if at least six of the following characteristics are present, three of which must be those numbered 1, 5 and 11 (Global Report on Crime and Justice 1999, 61).

1. Collaboration of more than two people;
2. Each with appointed tasks;
3. For a prolonged or indefinite period of time;
4. Using some form of discipline or control;
5. Suspected of the commission of serious criminal offences;
6. Operating on an international level;
7. Using violence or other means suitable for intimidation;
8. Using commercial or businesslike structure;
9. Engaged in money laundering;
10. Exerting influence on politics, the media, public administration, judicial authorities or economy;
11. Determined by the pursuit of profit and/or power.

We may conclude that the Ukrainian Criminal Code differs in that it does not require “organised group” or “criminal organisation” to be involved in activities that are organised for the explicit purpose of achieving gains in wealth or power.

The first and fifth characteristics, however, are present in the corresponding Article of the Ukrainian Criminal Code.

Many scholars think that the terms "criminal business" and "criminal enterprise" better reflect the essence of organised groups' activities. Thus a criminal organisation is to some extent a criminal enterprise. Additionally, the legislation of many foreign countries and international laws identify the purpose of "acquiring proceeds and excess profit illegally" as the major criterion that distinguishes organised crime from ordinary criminal activity.

The simplest definition of organised crime would be as follows: it is an aggregate of crimes, committed by organised groups or members of criminal organisations on a certain territory for a definitive period of time.

I will now briefly analyse the contemporary situation of organised crime in Ukraine. Official statistics from the Ministry of Interior of Ukraine depict the scale and scope of organised crime, including the number of known organised criminal groups (OG), their members and crimes committed (Department of Information Technology, Ministry of Interior, 2003, 5-1–5-13).

Years	Exposed organised groups	Registered crimes committed by organised groups
1998	1 157	9 273
1999	1 166	9 307
2000	960	7 744
2001	770	6 703
2002	721	6 463

Table 1. Organised crime in Ukraine.

Official statistics show that over the last five years, the number of exposed organised groups has declined from 1,157 to 721. This trend is consistent with the decrease in recorded cases of organised crime.

Table 2 contains more precise data on the structure of organised crime.

From the 2002 statistics, we see that 78% of the crimes committed by OGs and COs are of a general criminal nature. Of these 21% are economy-related. Only 3% of the groups are considered to have international criminal connections. Most prosecuted organised groups (75%) existed for one year, 18% committed crimes for two years and only 7% operated for more than two years (Department of Information Technology, Ministry of Interior, 2003). It is also noteworthy that in the Kharkiv region, for example, law enforcement agencies discovered only three drug-related organised groups in 2002, each with three members. Yet some experts estimate that there are as many as 20,000 drug addicts in the said area (Pitya, 2002).

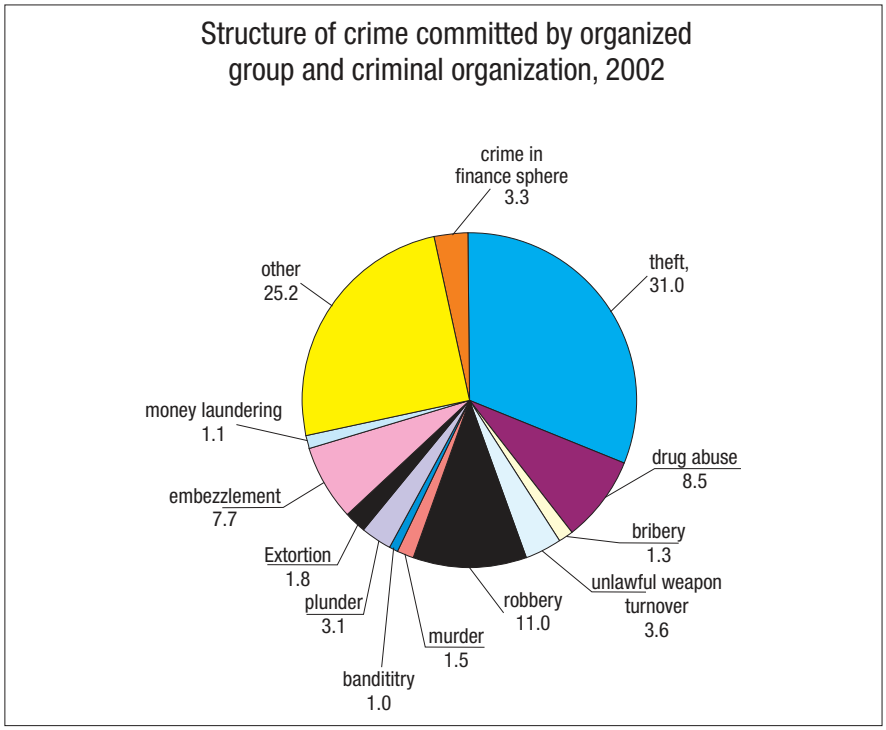

Table 2. More precise data on the structure of organised crime.

The data need to be interpreted with caution. 1. The decrease in the number of OGs and COs detected results from the following circumstances: a) before 2001, the Criminal Code of Ukraine did not clearly define these terms, and b) as a result, law enforcement personnel interpreted these terms broadly: their interpretation was based on subjective evaluation and approaches. Law enforcement agencies lacked precise guidelines for distinguishing organised criminal groups from traditional groups of criminals. For a long time activities carried out by two accomplices were considered to belong to organised crime, although hierarchy and role distribution are possible only when at least three persons are working together. (This number has been identified in many countries, such as Italy and Romania, and in international documents). It is very positive that the new Criminal Code of Ukraine reflects this definition and not the previous one. Earlier, crimes that had nothing to do with organised crime were often regarded to be committed by organised groups. Therefore, the decreased number of detected groups may be regarded as a positive tendency. 2. Ministry of Interior statistics do not contain any information concerning the number of disbanded organised criminal groups. 3. Crimes committed by the most dangerous organised criminal groups are still latent (Shostko 2002, 66). These criminal organisations have corrupt links with government officials, control shadow economy, and possess enormous amounts of criminal funds invested in legitimate, semi-legitimate and criminal business. Members of criminal associations use latest technology to prepare crimes and

cover their tracks. Such illicit activity is very hard to investigate, so only clearly visible crimes are investigated. 4. The primary criteria with which the efficiency of law enforcement can be determined are the number and percentage of crimes investigated. Therefore, law enforcement personnel who need to show results target mostly at poorly organised crimes.

Very often the activities of criminal organisations are carried out through ordinary commercial agreements, financial transactions, privatisation and legitimate business dealings. As a rule they are related to tax evasion. These activities are not included in official statistics.

Unfortunately, considering this analysis, we might conclude that the law enforcement mechanism does not work effectively

An additional problem is posed by the connection of organised crime with money laundering. Ukraine criminalised this kind of activity and began developing a legislative foundation for combating money laundering in 2001. Legalisation (laundering) of monetary assets or other assets acquired through criminal means is understood as using such assets for business and other economic activity, or as founding organised groups in Ukraine or abroad to legalise (launder) such assets (Article 209 of the Criminal Code of Ukraine)

The law *On Fighting Money Laundering* was passed in the end of 2002. The State Finance Monitoring Department was established at the Ministry of Finance of Ukraine in 2002. Money laundering comprises 0.8% of all crimes committed by OGs and COs.

The massive concealment of foreign currency proceeds in foreign banks and tax evasion worsens the economic situation in Ukraine. Although the CC of Ukraine criminalises evading taxes on currency proceeds, and illegally opening and using currency accounts abroad, in 2002 only 21 crimes committed by organised groups in the international economic sphere were investigated.

We may conclude that the most serious and sophisticated crimes and criminals go unpunished. This results from incontrollable corruption among those who are defending law and order, and from the fact that organised criminal groups often include employees of the militia, customs, tax and procuracy agencies. As a rule such crimes do not reach the trial stage.

Obstacles to counteraction

As a country in transition, Ukraine is suffering from a lack of solidarity on social and political issues and cultural values. Having democratically attained independence, the people of Ukraine are now experiencing its downsides, resulting in poverty, corruption and despair. Firstly, they are caused by the essentially totalitarian power structure in Ukraine that serves the interests of clans (influential financial and administrative groups such as those in Dnipropetrovsk, Donetsk, Kharkiv and other major cities). Law enforcement agencies often serve as tools

for such groups and act under the latter's instructions. In Ukraine there are two types of shadow groups: financial-political groups (FPG) and administrative-financial groups (AFG).

FPGs are informal shadow alliances that are comprised of representatives of government agencies, business and the criminal world. AFGs have arisen from the ruins of the Soviet administrative system and obtained access to financial resources by belonging to governmental control agencies. Belonging to AFGs gives civil servants stable and reliable income, as well as protection from audit and law enforcement agencies.

In Ukraine, the moral degradation of society has reached an apex. A survey conducted in 2003 by the Razumkov Centre shows that 21.5% of respondents under 18 and 13.7% of 40–59-year-olds ignore laws. 56% of interviewed citizens will always do their best to evade taxes (L. Shangina 2003).

The Soviet regime deprived citizens of their liberty and initiative. Unfortunately, the middle class, the foundation of a democratic society, has not become a major force in independent Ukraine. Selective justice and corruption are the main obstacles to overcoming organised crime. One peculiarity of Ukrainian corruption is that citizens have to bribe to realise their legitimate rights.

The acts of corruption are often veiled by nature. Thus it is necessary to draw attention to the following fact: At present we are observing massive building and reconstruction of court buildings, the prosecutor's office, the militia and tax agencies. In the early and mid-1990s, the lack of adequate funds and the resulting material and technical incapacity impeded law enforcement agencies' battle against crime. Now the situation has changed. Administrative buildings have been repaired, although in rural districts, the situation is not as optimistic as in large cities. How can we explain such a sharp change? Law enforcement bodies have found a method of financing their activities: they have begun to use "sponsors", mainly from business life. L. Kapelushny, an observer of the Ukrainian newspaper "Svoboda" (Freedom), argues that this type of official "white" bribery guarantees security for those who have "sponsored" law enforcement officers, and signals to others that "give money and you win". But it is the state that bears responsibility for this situation, because the level of its financial support to law enforcement agencies is so low (Kapelushny 2002).

There is a special fund in Ukraine that is separate from the budget. All donations are directed to this fund. It is very interesting that the most successful donation-collecting agencies are the Ministry of Interior with 310 million hryvnas (approximately $57 million) in 2001, the Security Service of Ukraine with 122 million hryvnas ($22.5 million), the State Committee on Border Guard Service—94 million hryvnas ($17.4 million), the Ministry of Defense—95 million hryvnas ($17.5 million), and the State Tax Administration—72 million hryvnas ($13.3 million) (Dim'yanchuk 2002).

The question, which arises, is whether organised crime is a force that opposes the establishment in Ukraine. Or, perhaps the establishment itself is mainly responsible for criminalising its own ways of working and for the fact that it has lost control over some processes (e.g. shadow economy).

Constant and persistent efforts in several areas are needed to solve this problem. The absence of civil society in Ukraine is one reason behind the inadequacy of measures to counteract organised crime. Anti-organised crime efforts should focus on reforming public policies and institutions with explicit high-level leadership and commitment.

Additionally, Ukraine still lacks appropriate measures to encourage fair business. As a consequence, criminal organisations are monopolising certain sectors. Some estimates state that 60% of Ukrainian economy is shadow economy. We may conclude that the state is in crisis. According to Freedom House, Ukraine has reached a development stage of "transit/hybrid regime" with its inherent autocracy and democracy. Government officials are still above social control. State functions are flagrantly excessive. Total licensing, various quota and permission systems have not yet been extirpated. As a rule decisions depend on individual officials whose actions can provide a fertile field for corruption. The economic difficulties of Ukraine attract foreign criminals, especially Russian, to legalise their profits in the most important sectors of the economy.

It is necessary to emphasise that fighting organised crime is impracticable unless provisions of the Criminal Code and other acts are applied adequately, and unless proactive activities, crime prevention in particular, are carried out.

It is also worth noting that Ukrainian criminology distinguishes two types of preventive practices: general (social) and special (criminological).

The first type—general (social prevention)—is a combination of political, educational, social and economic measures aimed at perfecting public relations. Major social measures include the reform of the political and economic system, the determination of a development strategy, and the formation of civil society able to gather "political will" to fight organised crime.

To achieve this objective it is of paramount importance to support independent press, to conduct journalist investigations, and to facilitate the widespread use of the Internet as a means of publication and communication. At present investigative journalism is impeded by offenders who use violence against journalists or bribe them.

Political censorship does exist in Ukraine. It has become the everyday reality of journalism. This is the view of 86% of the journalists surveyed by the Sociological Service of the Razumkov Centre in 2002. The 727 respondents represent various printed and electronic, state-run and private mass media agencies from all administrative regions of Ukraine. The survey demonstrates that it is very dangerous to write about criminal clans, local authorities, the President and his administration. Most of the interviewees have learned this first-hand (Yakimenko and Zhadan 2002).

In order to foster the transparency and openness of public officials, it is necessary to develop and adopt complex laws "On Civil Control of Public Activity" and "On Organized Political Opposition in Ukraine". It is also very important to develop a special law on parliamentary control over the activities of the President of Ukraine, Prime Minister, Cabinet of Ministers, departments, agencies, de-

fence and Prosecutor's Office. Constant and persistent efforts in several areas are needed to solve this problem.

First it is necessary to create an environment that is conducive to honest business, speed up the creation of a modern legislation on competition, price formation and contract making, and carry out a tax reform. Anti-organised crime efforts should focus on reforming public policies and institutions, with explicit high-level leadership and commitment.

The first step must be to develop and enact methods of general and social prevention which would encourage public officials to fulfil their duties honestly, such as moral and material stimulation, a system of privileges, and quicker career advancement in the case of honest fulfilment of one's duties. On the other hand, it is important to inform citizens about the legal ways of solving problems under Ukrainian legislation, including initiating court proceedings in order to protect violated rights. It is necessary to remove from peoples' minds the behavioural stereotypes which connect problem-solving with money. This should be executed through special school programmes. It would be difficult for public officials to commit misuse or abuse of office or power if people were willing to disclose all facts of such misuse or abuse.

Ukraine needs an independent judicial branch. Despite the general difficulties of the third power, statistics show that the citizens of Ukraine are placing an increasing amount of trust in the court system. During 1991–2000, the number of complaints against wrongful acts committed by public administrative agencies and officials increased from 1,043 to 29,952. When in 1991 courts decided 222 cases for the plaintiffs, in 2000 the corresponding figure was 18,260 (Bulletin of Supreme Court of Ukraine 2002, 44).

Special (criminological) prevention must be aimed at neutralising and decreasing the influence of criminogenic factors that produce crime, particularly organised crime.

On the grounds of Part 2, Article 5 of the Law of Ukraine *On the Legal Foundations of the Fight Against Organized Crime,* the following public agencies have been purposefully established:

a) Coordination Committee for Combating Corruption and Organised Crime of the President of Ukraine;
b) Special subdivisions for combating organised crime in the Ministry of Interior;
c) Special subdivisions for corruption and combating organised crime of Secret Service of Ukraine.

According to Section 1 Art. 8 of this law, the Attorney General's Office coordinates the fight against organised crime at the national level, and its counterparts at the regional level. But new circumstances require entirely different approaches for the organisation and functioning of law enforcement agencies that were created during soviet time.

We need to study international experience concerning the responsibility of legal entities in corruption and organised crime cases. We need to improve Ukraine's ability to combat organised crime by initiating a judicial reform which would have to include legal, administrative and organisational changes. For the

system and processes to be more efficient, they must also be made more transparent and accountable. Therefore, the creation of a transparency mechanism to enhance social control of law enforcement agencies is vitally important.

Current activities to combat organised crime in Ukraine are hampered by deficiencies in the criminal procedure laws, especially those concerning the collection and assessment of evidence. The increasing proficiency and technical capacity of the criminals dictates the necessity for legal regulation and implementation of new types of forensic technologies. International community considers the use of testimony by members of organised groups who have agreed to collaborate with law enforcement agencies as a key method of fighting organised crime. Although Section 2, Article 14, the Law of Ukraine *On the Legal Foundations of the Fight Against Organized Crime* provides such a possibility, this provision does not work in practice as long as there is no real mechanism to exonerate such individuals. At present, Part 2, Article 225 of the Criminal Code of Ukraine provides for the release of criminal groups' members from punishment, but it does not contain a similar provision for the members of organised groups. An appropriate mechanism to enforce the above-cited provision does not exist, as the Criminal Procedure Code still requires respective amendments.

Under the current Criminal Procedure Code of Ukraine, adopted 40 years ago, it is impossible to solve the investigative problems, as well as to guarantee an adequate procedure for counting the acts of organised crime. A new Criminal Procedure Code has not yet been passed.

It is necessary to specify more clearly the rights and duties of the various law enforcement and control agencies to avoid any unnecessary overlapping of their functions. We need to enforce complex laws necessary to prosecute large and sophisticated crime networks.

Conclusion

A number of systemic improvements should be brought about. However, I view this as impossible under the present government. Thus it is of primary importance for Ukraine, as a country in transition, to reach a new stage of political development, in particular to involve in public activity fresh politicians who are not burdened with the nomenclature past and who are able, first of all, to defend Ukrainian interests. Until this takes place one should not expect radical changes in law-enforcement activity against organised crime.

R. Kelly rightly states that criminal syndicates are successful "… in societies where political institutions are not particularly sensitive to or responsive to the needs of the public" (Kelly, 40). About 80% of Ukrainian citizens agree that they are not able to influence governmental decisions and actions.

If new forms of social and legal control over organised crime are created, most likely after the next presidential elections, Ukraine will be able to achieve and maintain a decrease in organised crime.

I believe that research and recommendations that take into account the experience of other countries can become an intellectual force facilitating qualitative changes in public relations.

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International Trafficking in Human Organs

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Introduction

The development of medical knowledge has given birth to new techniques which are the driving force of modern civilization.

Success in organ transplantation was one of the most powerful medical advances of the twentieth century. Continuous progress is clearly occurring, and future possibilities may exceed all expectations. In Italy, the development of medical technology has led to routine transplantation. Unfortunately, a concomitant reality casts a shadow over this scientific feat: there is a dramatic shortage of organs, and the situation worsens by the day.

This gap between demand and supply has opened a window of opportunity for criminal exploitation.

In the following, the authors will try to clarify the borderline between legend, myth and reality characterising this kind of crime. The focus is on kidney commercialisation since the medical skills needed for its transplantation are more elementary if compared with surgical procedures for other organ transplants.

The authors analyse organ commercialisation from a criminological and medico-legal point of view, and focus their attention on the possible difficulties which may emerge when combating the crime.

Current developments

The most consistent source of information about organ trafficking are the rumours spread worldwide with multimedia coverage; unfortunately, few of them are based on official reports or scientific analyses.

Of the official material, American literature is the most analysed since organ traffic has been thoroughly studied in the United States.

After a deep examination of the procedural protocol pursued and approved by the international transplantation societies, and considering the medical problems related to single organ traffic, it is plausible that the only possible way to surmount these obstacles is to create “medical tourism” for transplant surgery.

This “tourism” is realised through international trade routes between the would-be organ recipients, and the future vendors who to a large extent occupy the lower end of the socio-economic spectrum.

To best understand how this crime is constructed, the authors will now examine the situation in India, China and Iran.

India

India has been called a "warehouse for kidneys" or "the great organ bazaar". It has become one of the largest centres for kidney transplants in the world, offering low costs and almost immediate availability.

On 15 January 1995, customs officers in Delhi uncovered a kidney racket where the residents of a rehabilitation colony for leprosy patients in Villivakkam near Chennai (before known as Madras), capital city of Tamil Nadu in the south of India, freely donated kidneys for money offered by agents. Then, on January 29, 1995, the police busted a massive racket in Banglore, in which kidneys of nearly a thousand unsuspecting victims had been removed in the leading city hospital by prominent doctors. The "donors" had been lured with offers of jobs, and their kidneys removed under a pretext[1].

The official reports highlighted that the potential receivers, kidney patients from Occidental Asia, Malaysia and Singapore, were prepared to travel to India.[2]

After the exposure of kidney scandals in its major cities, Indian Congress passed Act 42, The Transplantation of Human Organs' Act, in order to block the trade in human organs. This law prohibits all commercial trading and allows organs to be removed only for therapeutic purposes. Furthermore, it bans all organ transplants, except those donated by relatives specified as spouse, son, daughter, father, mother, brother or sister. The Act, however, is far from watertight. Its biggest problem is the clause which states that an unrelated donor, for reasons of affection or attachment towards the recipient may donate his or her kidney provided that the donation is approved by the Authorisation Committee. Since the Act came into force, this clause has provided a cover for hundreds of illegal cash-for-kidney deals. End-stage renal disease patients in Karnataka and Tamil Nadu have claimed blatantly false emotional and altruistic attachment to prospective donors, and made misrepresentations to the Committee in order to secure approval for what are in fact outright commercial transactions in kidneys.

The Voluntary Health Organisation of India estimates that each year more than 2,000 people sell their organs for money (compared with 500 in 1985 and only 50 in 1983).

The kidney market in not subject to inflation: the receiver spends approximately $9,900–$23,000 of which a small percentage goes to the donor, and the remainder is shared between the doctors and the broker.

The possible long-term consequences of this illicit activity are dramatic: in Bombay, a number of HIV-patients tried to sell kidneys in order to earn a living. Doctor Kandela says that for every donor identified as HIV-positive, five slip through the net, putting many lives at risk[3].

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1 Rothman D.J.: The International Organ Traffic 10th Annual Conference on "the Individual vs. the State" Central European University, Budapest, June 2002

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3 Frontline Investigation Team: kidney Still for Sale. The Hindu India's National Magazine 14:25 1997

China

In 1997, a task force composed of transplant surgeons, organ procurement specialists, human rights activists, and social scientists, met at the Rockfeller Conference Centre in Bellagio, Italy. This group met to define ethical standards for the international practice of organ donation, especially in light of abuses that undermine the bodily integrity of socially disadvantaged members of society.

The report produced by the Bellagio working group underlines how the use of organs from executed prisoners is systematic, accepted and institutionalised in China.

The June 1977 Protocol One Additional to the Geneva Convention of 1949 bans the use of organs from prisoners. The rationale is that prisoners are thought to be incapable to give their consent.

The precise number of prisoners executed in China is not known. Some 2,000 cases are reported in the country's newspapers, but organisations such as Amnesty International believe that there may be as many as 8,000 to 10,000 executions each year.

Some anthropologists believe that physicians in Japan, Hong Kong, Singapore and Taiwan serve as "travel agents", directing their patients to hospitals in Wuhan, Beijing and Shanghai. Foreigners do not have to wait for an organ to be available; executions can be timed to meet the market needs, and the supply is more than adequate[4].

Descriptions of the event are dramatic: immediately before the execution, the physician sedates the prisoner. Then a breathing tube is inserted into his lungs and a catheter into a vein. The prisoner is then executed by a shot in the head; the physician immediately moves to stem the blood flow, attaches a respirator to the breathing tube, and injects drugs into the catheter to increase blood pressure and cardiac output. With the organs thus maintained, the body is transported to hospital where the receiver is waiting, and the surgery performed. The physicians have become immediate participants in the executions; instead of protecting life, they are manipulating the consequences of death.

Iran

At the beginning of the transplant programme in Kermanshah in 1989, the price per kidney was $340 (2.5 million Rials), ranking the so-called Kermanshian kidney as one of the cheapest in the world by any standard. But in ten years time the price has risen to $1,219 (10 million Rials)[5].

The current availability of cheap kidneys for sale is the greatest obstacle to establishing a cadaveric transplant programme in Iran[6].

In Iran, the Charity Association for Support of Kidney Patients (CASKP) performs all preparatory steps for arranging transplants. CASKP representatives

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4 Scheper-Hughes N.: Theft of Life: The globalization of Organ Stealing Rumours. Anthropology Today 1996

5 cfr 5

6 Zargooshi J.: Iranian Kidney Donors: Motivations and Relations with Recipients. The Journal of Urology 165:386–392 2001

have admitted that CASKP is involved in more than 90% of kidney transplantations in Iran: CASKP is like a real estate agency where sellers and buyers meet[7].

The potential donor contacts CASKP and is put on the donor list. In Kermanshah, the donor provides CASKP a promissory note of $244. If the potential donor refuses donation after the preoperative evaluations and laboratory tests, which are done at recipient's expense, the donor pays this sum. The system prevents potential donors from refusing donation after entering the preoperative phase.

There are two contracts regarding payment. One is the official contract stating that the donor receives the equivalent of $1,219 from the governmental budget. Payment is made immediately postoperatively.

The other contract is concluded between the donor and the recipient. Often, the recipient offers the donor extra money and, if unemployed, a job.

The emergence of this type of contracts has resulted in non-existent recipient waiting lists, open black market, extinction of living-related renal donor transplantation, and in the appearance of professional brokers.

Certain control should be imposed on any living-unrelated renal donor transplant programme for it to be even remotely acceptable. There should be no middlemen. Medical criteria should be given priority, and independent medical and psychiatric evaluations on both the donors and recipients conducted. There should be an independent team of surgeons and physicians caring for donors, long-term medical insurances for donors, external financial auditing, and ban on transplantation across countries. But there is no sign of any of this. Abject poverty, unemployment, and the lack of social security force people to sell kidneys, the only reserve they have.

According to a study of 310 Kermanshahian "donors" conducted by the University of Kermanshah, 38% of them had lost their job due to absence from work because of postoperative pain and disability. Vendors had also been rejected by their families because they were regarded as unable to earn money by other, more respectful means. 60% expected to be dialysis-dependent and eventually die of kidney failure since they were unable to pay and attend all required follow-ups[8].

The commerce on web

Over the last years traditional commerce has been coupled with a new kind of trading. Internet has opened a door to a truly global market area where anyone can trade anything from home, even organs.

The keywords "kidney for sale" presently produce 56,000 search engine hits. They take to discussion groups, suspicious money movements, and contrasting laws on organ donation. Few years ago, a kidney was sold at eBay, the most important online marketplace, registering the highest price ever offered for a good on sale[9].

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7 cfr 6
8 Zargooshi J.: Qualità of life of Iranian Kidney "Donors". The Journal of Urology 166:1790–1799, 2001
9 http://www.cnn.com/TECH/computing/9909/03/ebay.kidney/

The authors browsed Google hits, and tried to investigate which of the "kidney for sale" offers were genuine and which part of the many urban legends related to this issue. Of the thousands of web pages opened, most could be classified as belonging to the latter group. On the other hand, we found numerous announcements on virtual notice boards where web navigators from all corners of the world may leave messages to which others reply by e-mail.

These messages, sent from different countries, containing similar texts, seemed to have been written by desperate people for whom selling a kidney served as the only thinkable financial reserve. The notices underlined some medical information which was thought to be useful to the buyer.

After a thorough analysis of the messages, it was realised that the majority of e-mail addresses given were not easy to trace since they had been obtained from services that guarantee e-mail anonymity. For this reason, the investigation was brought to an end. Any further research would have crossed the line of illegality; contacting a kidney broker without being traced by the police requires particular authorisation and specialised technical skills.

The findings of the investigation do not necessarily correspond with reality.

There are no concrete data verifying the existence of this crime; at this moment we are not able to say if e-commerce on organs is a mere swindle.

However, if this crime really exists, it is obvious that the number of victims will increase unless a balance between demand and supply can somehow be achieved.

Final considerations

Considering the difficulties in maintaining an organ in perfect condition for an implant, and the risk of being caught by customs of states where it is forbidden to sell organs, it seems plausible to suggest that these kinds of transplants are carried out in countries where laws are not so strict.

The primary commodity on this market is the kidney, and the reason for this must be the relatively easy surgical approach.

In a follow-up to the Bellagio Task Force, Professors Scheper-Hughes and Cohen, with support from the Soros Foundation, created an "Organs Watch", a small, independent, ultimately self-supporting, human rights-oriented documentation centre that aims to track down global rumours on organ commerce. Anthropologist Scheper-Hughes talks about medical tourism:

> *"Medical centres propagate their medical services as tourist operators propagate their locations with beautiful golf camps and luxury hotels with excellent restaurants and convenient prices. These medical tour operators offer all-inclusive packets. For example, in Tel Aviv, with the collaboration of one of the most famous Israelian surgeon, an agency offers an all-inclusive trip for $120,000–$200,000. For this price, the Israel Medical Tour Operator offers private airplane, taxes for the custom officials, room in a private clinic, fee for the donor and transplant operation."*

Organs Watch's experts believe that the would-be organ recipients follow routes from those countries where organ commerce is a crime to those where these kind of transplants are legal.

In February 2001, a group of American researches obtained interesting results from Chennai, the capital city of Tamil Nadu (India). They interviewed 300 individuals who had sold a kidney there, and the results were unequivocal: Almost all participants had sold the kidney to pay debts. The amount promised for selling a kidney averaged $1,410, while the amount actually received $1,070. The majority of the donors reported a worsening of their economic status. 60% of the money received had been spent on debts, 22% for food and clothing, and only 11% was retained as cash equivalents. About 83% of the donors reported deterioration in their health status after nephrectomy[10].

Although we cannot yet be sure of the quantification of this crime, there are few doubts as to the existence of a parallel and illegal organ procurement. This obliges us to consider which methods should be put in use to achieve a containment of organ traffic.

Important implications regard developing countries where potential donors need to be protected against exploitation. Protection might involve education concerning the likely outcomes of selling a kidney. But there are many possible means of intervention through which a collective consciousness of the immorality and dangerousness of organ trafficking can be obtained.

On the other hand, there are experts who think that the legalisation of organ commerce and creation of market models for the procurement of transplantable organs would be the solution[11].

The main arguments supporting organ commerce, found in literature, are either libertarian or utilitarian. Libertarians claim that since selling oneself freely to another does not involve a violation of the right of self-determination, such transactions should fall within the protected privacy of free individuals on the basis of the principle of autonomy[12]. Utilitarians, on the other hand, say that as long as the current altruistic system of organ procurement is not making enough organs available, the benefits for the recipients by an overall increase in the supply of transplantable organs and the benefits for voluntary vendors would outweigh objections. It is claimed that insisting on the ethical superiority of an altruistic system of organ procurement will impose heavy costs on those patients who could benefit from the pragmatic and immediate solutions offered by a modern market system[13].

The proposals to introduce commerce in organ transplantation have been unanimously rejected by national and international medical organisations and parliaments. The World Health Organisation has published reviews of international and national legislation, codes and other measures to combat commercialism in the use of human organs and tissues for therapeutic purposes.

Nevertheless, some arguments against paid transactions with organs reveal their weakness if scrutinised. Selling an organ is not necessarily equivalent to a commodification of the donor's body, depersonalised view of human beings, and

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an offence against their dignity, because the question of self-degradation depends on whether the person who sells an organ evaluates his/her action as self-degradation or not[14].

There is, however, one argument against commercialism in organ transplantation that is beyond criticism: market models would inevitably mean the exploitation of the poorer in favour of the richer parts of society. Disparities in wealth and chances should mean that we have duties and responsibilities towards the less privileged, not that we have the right to exploit them.

The more general question of a financial *quid pro quo* for the donor of an organ constitutes one of the most controversial problems in the current ethical discussion of living organ donation. As the continuing analytic and documentary work of Daar[15] has shown, there are crucial differences between rampant commercialism on the one hand, and concepts of rewarded gifting on the other. The concept of compensation does not just include compensation for the living donor's loss of earnings, but also an adequate additional insurance scheme against the risks he takes. From an ethical point of view, this seems to be something the health system owes to living donors, and in this respect a lot still has to be done. Additional financial incentives must not be permitted. In fact, it seems possible that even direct financial incentives could be restricted in ways that would still permit altruism. The boundary between compensation and incentives could be drawn on the grounds of a legal term "Schmerzensgeld"[16], which is defined as pain money or smart-money, a compensation for personal suffering, and which originates from the context of actions for illegal damages. The idea would be to pay an official, unified compensation for the pain and troubles an organ donor has to endure. Such a reward would still be closer to removing disincentives than to providing financial incentives, and it would preserve the socio-cultural meaning of the act of donation. This idea seems acceptable for developed countries which have enough cultural and legal resources to provide sufficient control over such a system, and to prevent it from getting on the "slippery slope" towards commercialism which could undermine public trust in the transplant system.

In conclusion, we are aware of the fact that our work on this complex topic is by no means exhaustive. We have tried to get a general idea of the actual situation. There are only few certainties: the quest for organs is continuously increasing, and the legal routes to satisfy the demand are not sufficient. The concrete risk is that illegality will prevail in organ procurement, and that organs will become smuggled goods.

There is a need for further studies that are free from banal sensationalism, and which monitor the development of the phenomenon and analyse the motivations which undermine legal measures against this crime.

Our study represents the first humble step on this winding road.

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The Penal Legislation Concerning Illegal Drugs in the Czech Republic: The Right Time for Change Now?

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Introduction

After the fall of the Communist regime, there arose a need to change the legal order of the Czech Republic. The principles of democratic law were included in the new rules, from the Constitution to many laws, their amendments, and sub-laws (ministerial orders, municipal ordinances, governmental decrees). Penal law was not excluded from this development. However, freedom has been accompanied by negative phenomena, too. One of them, the interest in illegal drugs and their use, started to increase in the early 1990s, and this trend still continues. As a positive impact of this situation, the drugs and their use are no longer a taboo. Nevertheless, drugs have spread through the whole society—drug careers starting at the age of 12 or 13 and the flourishing drug market have become an integral part of Czech reality. Before 1990, the Czech Republic shared the same experience in the field of drug abuse as the other European Communist countries: there was no real drug market, "classic" drugs like heroin or cocaine were absent and substituted by popular home-made drugs (pervitin, braun), there was an enclosed drug subculture, and so on. The fall of the iron curtain led to the establishment of a similar organised and structured drug scene as in Western Europe. This development was strengthened by specific aspects like the country's strategic position in the centre of Europe, the initial high border permeability, and the developed legal chemical industry whose procurable raw materials experienced producers were able to use for drugs production.

The most recent evaluation of the Czech drug scene in the Principal Hygienic Station's Epidemical Report indicates that drug use is increasing. In 2002, the incidence of registered drug users (First Treatment Demand, FTD) was 4,719 persons (45.9/100,000 inhabitants), and prevalence 9,237 persons (89.9/100,000 inhabitants). The incidence of registered so-called problem drug users (PDU) was 3,472 persons (73.6 % of all FTD's), and prevalence 7,441 persons. As PDU is considered a person, who injects drugs and/or has been using heroin or other opiates for a long time and/or has been using cocaine for a long time and/or has been using amphetamines (except ecstasy) for a long time. The estimated prevalence of all PDU's was 34,300 persons (28,800 injecting users). More than half of the registered clients used ATS (especially pervitin, the No. 1 drug in Czech) as the primary drug. Opiates (esp. heroin) and cannabis (esp. marihuana) followed with a share of about 20 %. The male/female ratio was approximately 2.1/1. Most

FDT's were 15–19-year-olds, while the 20–24-year-olds formed the largest group among all users.

This central drug user monitoring system has been running since 1995. The figures have been on a steady rise, partially thanks to an increasing number of treatment centres included in the system. It can be stated that excepting a very small decline in the late 1990s, the incidence of ATS users has been increasing as well as that of the opiates users. These two tendencies show a mirror effect: increase in the number of ATS users has been attended by a lower number of opiates users, and vice versa. The average age of registered ATS or opiates users has been increasing (23 years), while with cannabis users it has remained permanently low (18–19 years). The increasing number of injecting drug users is considered especially worrisome.

According to the latest National Anti-Drug Headquarters' Annual Report[1], the availability of drugs is increasing on the Czech drug market, and drugs expand to smaller cities and villages. There are reports of great differences in drug quality depending on the distribution network level, and of the continuing trend of active substance quality and quantity lowering in the final drug. The Police have registered more cases of synthetic drugs consumption by young people on the dance scene and experimentation with volatile substances. The consumption of ecstasy has increased as well, partially due to its reduced price. There were also more recorded cases of hydroponic cannabis cultivation.

Drug-related crimes, including when connected to crimes against property, are a significant problem. Registered cases of medical products thefts and foreign drug-runners have increased. Multinational and foreign criminal groups are operating and trafficking drugs into the Czech Republic. Currently the Police are detecting more intensive activity among Asian criminal groups (in the framework of common goods smuggling) and deeper involvement of gypsies, women and children, in distributing drugs on the streets. At the level of organised crime, the Police have registered activity of Kosovo-Albanian groups (heroin), Arabian groups from North Africa (cannabis), Russian-speaking, Vietnamese and Chinese groups. The detection and investigation of crimes committed by these groups is more difficult because of cultural and language problems. Related illegal activities, such as money laundering through the purchase of cars, gold or foreign currency and their transfer abroad, have also been recorded. Pervitin, the traditional Czech drug, is manufactured by Czech citizens of ephedrine obtained illegally either from its official Czech producer, from medicines or from abroad, and also exported to neighbouring countries, especially to Germany. The acts committed by drug traffickers have become more and more violent, and their means more and more conspiratory. They try hard to make and maintain contacts with justice and administrative authorities, and to put pressure on crime witnesses.

1 for statistical data on drug crimes see Appendix 2

International and National Framework

The Czech Republic is a contracting party to the International Drugs Conventions (1961, 1971, 1988) and tries to keep its obligations, although their interpretation does cause ambiguous opinions among experts. This is the international aspect, the international source of Czech penal anti-drugs legislation. The legislation also has to follow general principles of law honoured in the Czech Republic, resting mainly on the principle of "ultima ratio" (principle of subsidiarity of penal repression). Some of them are explicitly expressed in the Constitution or in the Charter of Fundamental Rights and Freedoms that set constitutional limits for state intervention into the rights of individuals.

These aspects are reflected in the "National Drug Policy Strategy for the years 2001–2004" adopted by the Czech government, that is based on the comprehensive and well-balanced approach combining primary prevention, harm reduction, treatment and repression. The Strategy was drawn up by the Governmental Council for Drug Policy Co-ordination, and it follows the "Drug Policy Conception and Programme for the years 1998–2000". With this Strategy, the Government accepted the fundamental codes, principles and aims defined for the period 2000–2004 in the EU Action Plan on combating drugs, and expressed its will to their fulfilment. The Strategy is the key document defining the basic starting points and directions for solving the problems of drug use. It is the base for creating and implementing a drug policy for individual departments and local, district, and regional public administration bodies. Its functions are:

- to mark basic principles and goals, and to set priorities of Czech drug policy
- to delimit responsibility and competencies of relevant departments and individual units of public administration, and to bind them to fulfil the given tasks for achievement of defined goals
- to define institutions and organisations working in the area of drug policy, thus enabling them to find their place and role in fulfilling the drug policy
- to mobilise civic society and to strive for incorporation of responsible institutions on all levels, local government bodies, local communities, governmental as well as non-governmental organisations, volunteers, and self-help organisations,
- for the needs of international co-operation, to inform on the form, goals and priorities of the drug policy of the Czech government. Drug policy is one of the monitored areas in EU candidate countries.

The handling of narcotic and psychotropic substances is governed by Addictive Substances Act No. 167/1998 Coll. as amended. It defines, among others, what substances are deemed narcotic or psychotropic substances, preparations containing such substances, and precursors. Each breach of this law is an illegal act—either crime or misdemeanour. The elements of relevant misdemeanours are included in Misdemeanours Act No. 200/1990 Coll. as amended.

The current penal legislation concerning illegal drugs in the Czech Republic is contained in the current Penal Code No. 140/1961 Coll. as amended. This law, adopted in 1961, has from the beginning contained specific essential elements of drug offences. However, we can say that the framework for this penal anti-drugs

legislation was set out by the Opium Act adopted in 1938 (not valid anymore), since at least the main features are the same. These features are as follows:

- self-injury is not punishable, i.e. drug consumption as such is not penalised, and
- all illegal drugs are regarded the same, i.e. offence qualification does not depend on the type of drug in question.

These two principles are still implied in the Czech Penal Code. However, over the years new aspects have emerged, especially due to the changes after 1989. Main emphasis has been laid on fighting the most serious forms of drug criminality (especially organised crime related), instead of petty offences committed by drug users or experimenters where alternative measures and principles of harm reduction should be in key role.

Drug Crimes in the Czech Penal Law

Specific drug crimes included in Penal Code are "Illegal Production and Possession of Narcotic and Psychotropic Substances and Poisons" (provisions of Articles 187, 187a, 188) and "Propagation of Drug Use" (Article 188a). As mentioned above, the basic principles were set when the current Penal Code was adopted, but naturally they too have undergone some development, as has the whole Penal Code. The main features of this development concerning drug-related crimes through amendments to Penal Code are as follows:

- essential elements of crimes have been supplemented and adapted to correspond more with the real situation and international obligations (i.e. the enlargement of forms of illegal behaviour, the prohibition of illegal disposal of precursors and preparations containing narcotic or psychotropic substance, the extension of relevant aggravating circumstances)
- the severity of punishments has been increased, especially in cases of organised production and trade in drugs
- room for alternative solutions in individual cases has been created (i.e. diversion in criminal procedure, community sanctions and measures).

As far as drug offences are concerned, the significant change in Penal Code was made by amendment No. 112/1998 Coll. This Act introduced a new provision to Penal Code—Article 187a—containing the framework for crimes involving possession of drugs for one's own use (punishability of possession for one's own use had been included in the original version of Penal Code, but cancelled in 1990). To commit this offence, the perpetrator has to have in his/her possession a quantity of drugs that is "greater than small". The concrete specification of this quantity was left to judiciary. The Supreme State Prosecutor's Office issued a chart of "greater than small amounts" for most frequently used drugs as an accessory guide for police bodies and prosecutors.[2] Although the final court decision

2 See Appendix 3

has to follow individual criteria of each case and each person, this chart is in practice accepted even by courts. The possession of a small quantity of substance is considered a misdemeanour, and punished by a fine of up to 15,000 CZK.

First attempts to recriminalise possession for one's own use were made in the early 1990s. They were primarily motivated by the desire to fulfil international obligations and to facilitate police work in the process of evidence collection. The adopted amendment is a combination of the original proposal presented by the Communist deputy and of the following governmental version. However, it can be stated that the amendment was accepted by all parliamentary parties, Christian Democrats being the strongest supporters. Although President Vaclav Havel vetoed the law, the Parliament held its ground, and finally the amendment was adopted. From the outset this provision has had many opponents. In 1999, a proposal for its cancellation was made, unsuccessfully.[3]

The Penal Code contains many provisions related to and used in the prosecution of drug offenders. These include, for instance, provisions on protective treatment, provisions on insanity, provisions on community sanctions and so on. The non-thwarting of crimes described in Articles 187 and 188 is considered a crime punishable by imprisonment up to three years. Special provision exists for cases of repeated offence of possessing drugs for one's own use. The court has the right not to consider such a perpetrator a recidivist if he/she is a regular drug user. In some provisions the narcotic and psychotropic substances are put together with alcohol as "the addictive substances". This is the case with such crimes as "Threat under Influence of Addictive Substance", "Drunkenness" or "Evasion of Military Service", and with the provisions on insanity. Alternative aspects of criminal procedure are included mainly in the Code of Criminal Procedure No. 141/1961 Coll. as amended. Depending on the seriousness of the act, the prosecutor or the judge can for instance use the provisions on the conditional cessation of criminal prosecution, the out-of-court settlement or the discharge from punishment.

Recent Development

The Czech Republic is in the process of creating completely new criminal codices. They should be the culmination of the so-called Reform of Justice. It is generally acknowledged that the current codices are not in conformity with the changing social reality, and that they ensure the rights and freedoms of the individual only to a limited extent. First Commission for the re-codification was officially appointed by the Minister of Justice in 1995. In 1997, the Minister of Justice appointed a new commission of almost forty members. Its task is to complete the re-codification work within a reasonable period of time, preferably by the time the Czech Republic is accepted as a member of the EU. There are several clear reasons why the legal system of the Czech Republic must be brought into conformity with the system of the other member countries and the *acquis*

3 For current wording of relevant articles see Appendix 1

communautaire before it joins the Union, and becomes firmly established in both its concepts and practical application.

As mentioned above, the 1998 amendment to Penal Code elicited serious discussion on the consequences of criminalising drug possession for personal use in connection with the treatment of drug users, the police work, the impact on primary, secondary and tertiary prevention, and the possibly increasing level of "legal nihilism" in society. As a result, the former Governmental National Drug Commission (now Governmental Council for Drug Policy Co-ordination) carried out a three-year research "Impact Analysis Project (PAD)" on the new drugs legislation in the Czech Republic, focusing on the introduction of the punishment for possessing drugs for personal use. The project consisted in five main sub-studies and more than twenty particular sub-parts, and used the testing of five main hypotheses as a basic tool for evaluating amendment's impact. The hypotheses were elicited from or directly cited from documents and parliamentary speeches of the presenters of the amendment. The conclusions were briefly as follows:

- the intervention represented by the introduction of the punishment for possessing drugs for personal use had hardly had any impact on drug-related problems in the Czech Republic
- the expectations that the presenters of the intervention offered or promised to fulfil had not been met; on the other hand, it was not unambiguously proven that the legislative change had brought about or impaired negative development of some indicators
- during the first two years of the application of the amendment, penalizing possession of illegal narcotic and psychotropic substances for personal use had been enforced in a very selective manner, randomly and occasionally—not under the principles of officialdom and legality (however, it remains a fact that this was the only reason why the incurred social costs were not significantly higher)
- from the perspective of social costs, enforcement of the penalisation of the possession of illicit drugs for personal use had been disadvantageous.

As a response to PAD conclusions, Government passed a resolution in November 2001. This governmental resolution charged the relevant ministries, on the basis of the PAD findings, with preparing the legislative division of drugs into 2 or 3 categories pursuant to their medical and social dangerousness, and reviewing drug offences and related punishments for the purpose of re-codification. The medical division was prepared by an experts group of the Ministry of Public Health in March 2003. It proposed a three-category division from the least dangerous to the most dangerous as follows: 1) cannabis (products containing THC), 2) "right" ecstasy, psychedelic/hallucinogenic drugs, 3) ATS, heroin and other opiates, cocaine, "false" ecstasy. This marked an interesting development and the experts, as well as the public, wondered whether the legislative approach to drug offences would change.

In July 2003, the re-codification Commission completed its work, and the bill for the new Penal Code was circulated for comments. As for drug offences, the bill proposed new names for drug-related crimes, but maintained the current approach, i. e. there was no division between illegal substances. The relevant provisions were based on current text with some modifications in wording regarding aggravating circumstances and imposable sanctions. The bill charged the Government with drawing up the decree which would define, among others, the quantity of narcotic or psychotropic substance "greater than small". The bill's reasoned statement said that "the originally proposed division between 'soft' and 'hard' narcotic and psychotropic substances was not implemented due to its essential difficulty or rather impossibility"...

During the circulation for comments, some experts, institutions and politicians submitted their comments to the part related to drug offences. They stated that the current legislative approach which ignores distinctions between the different illegal substances seems groundless, and that on the grounds of medical knowledge, experts opinions and foreign experience, the outlook on illegal drug handling should be adjusted. The re-codification process would provide a unique opportunity to make fundamental changes and to persuade the public to accept them. The bill includes many amendments, for instance, the formal concept of a crime (instead of the current material concept), binary categorisation of indictable offences into crimes and transgressions, and the criminal liability of legal entities. The aforementioned division of drugs for the purposes of penal law could, and should, also be included. The dangerousness of the uniform view on illegal drugs is emphasized in connection with the above-mentioned introduction of the formal concept of a crime: At present, sufficient social dangerousness is one of crime's characteristics in the Czech Republic. When evaluating the committed act, the police, the prosecutor or the judge can take into consideration the nature of the different drugs. Interestingly enough, when Amendment No. 112/1998 Coll. was adopted, this was presented as a safeguard against unjust criminalisation of young first-time offenders. The bill would revoke this opportunity for consideration. There is a danger that the prosecution of drug-related offences will become entirely formal. This approach would be prejudicial to first-time users, experimenters and drug addicts, and omit the requirement of individualisation when prosecuting drug crimes.

The re-codification Commission took the comments into consideration and passed a new version of the bill to the Government Legislative Council in October 2003. This new text seems to be a compromise between the original version and some of the comments. It introduces a different regime of prosecution for illegal cannabis possession for one's own use, stipulating that a higher amount of such drug is needed for the possession to be qualified as a criminal offence. While the illegal possession of a "greater than small" amount of other drugs would henceforth be a criminal offence, the condition for prosecuting cannabis possession for one's own would be the possession "in larger extent". Moreover, the revised version acknowledges a new crime of illegal cultivation of cannabis

for one's own use in larger quantity (or the illegal cultivation of mushrooms or other plants containing narcotic or psychotropic substance for one's own use in quantity "larger than small"). These offences should henceforth be punished more leniently than the production of other drugs (even for one's own use, and regardless of the quantity of substance produced). The definitions of "larger than small quantity", "larger quantity" and "larger extent" are left to the governmental decree. The new bill's reasoned statement says: "... we implemented the division of narcotic and psychotropic substances into 'soft' and 'hard' for practical reasons ... the purpose is to maintain the criminalisation of the possession of psychotropic plants (especially the most frequently cultivated cannabis) and cultivation for one's own use, but at the same time exclude non-problem consumers of such plants from drug market, where significantly more dangerous drugs like heroin, metamphetamine and cocaine are available..." Thus, between July and October, the bill's authors' position on the possibility to distinguish drugs according to their medical and social dangerousness made a U-turn.

Although there is still a longish way to the adoption of the new Penal Code's final version, and we can expect strong opposition to this development in Parliament, it is obvious that the Czech Government and the re-codification Commission have made a significant attempt to introduce the current findings of medical, sociological and epidemiological research into the penal law. The proposal itself is not a revolutionary step towards the liberalisation of drug policy (as some suppose), but towards reality. It can be debated what kind of usage with what type of substance should be punishable, and how severe the punishment should be, but the different nature and impacts of the various narcotic or psychotropic substances should not be ignored. It is worth pointing out that the bill maintains quite severe punishments (in the framework of the Czech sanction system) for offences comprising drugs production, export, import or supply, especially with regard to organised trafficking in drugs or to supply to children and the youth.

Appendix 1.

Current Wording of Essential Elements of Drug Related Crimes

Article 187:

1/ A person who illegally produces, imports, exports, smuggles, offers, mediates, sells or otherwise procures for a second party or possesses for a second party a narcotic or psychotropic substance, a preparation containing a narcotic or psychotropic substance, a precursor or a poison, will be punished by imprisonment for one to five years.

2/ A perpetrator will be punished by imprisonment for two to ten years, if
a) he/she commits the act as a member of an organised group, or on a larger extent, or
b) he/she commits the act towards a person below the age of eighteen.

3/ A perpetrator will be punished by imprisonment for eight to twelve years, if
a) he/she gains a substantial profit from the act,
b) he/she commits the act towards a person below the age of fifteen, or
c) he/she causes through the act serious harm to someone's health.

4/ A perpetrator will be punished by imprisonment for ten to fifteen years, if
a) he/she causes through the act serious harm to the health of several persons or death,
b) he/she gains great profit on a large extent from the act, or
b) he/she commits the act in association with an organised group operating in several states.

Article 187a:

1/ A person who, without authorisation, possesses a narcotic or psychotropic substance or poison in a quantity greater than small will be punished by imprisonment of up to two years, or a fine.

2/ The perpetrator will be punished by imprisonment for one to five years if he/she commits the act on a larger extent.

Article 188:

1/ A person who produces, procures for him/herself or others, or possesses an object intended for the illegal production of a narcotic or psychotropic substance, or of a preparation containing a narcotic or psychotropic substance, or of a poison will be punished by imprisonment for one to five years, or a prohibition of activity, or a fine, or a forfeiture of item.

2/ A perpetrator will be punished by imprisonment for two to ten years, if
a) he/she commits the act on a larger extent,
b) he/she commits the act against a person below the age of eighteen, or
c) he/she gains significant profit from the act.

Article 188a:

1/ A person who entices anyone to abuse addictive substances other than alcohol, or who supports him/her in the abuse, or who otherwise incites or propagates the abuse of such substances, will be punished by imprisonment of up to three years, or a prohibition of activity, or a fine.

2/ A perpetrator will be punished by imprisonment for one to five years, if
a) he/she commits the act towards a person below the age of eighteen, or
b) he/she commits the act over the press, the radio, the television, or the computer system open to the public, or by other similarly effective manner.

Appendix 2.

Statistical Data

These statistical data show the development of drug-related crimes registered by the police, number of perpetrators and sanctions imposed. Data on the number of registered and solved crimes were obtained from the statistics of the Police of the Czech Republic, and the data on the number of prosecuted, charged and convicted persons, as well as on the sentences imposed, from the statistics of the Czech Ministry of Justice.

These data show some development trends. Above all, it is clear that the proportion of punishments not connected with the deprivation of freedom has increased, especially community service. Community service was incorporated in the Penal Code as of 1 January 1996. The changes in the number of those sentenced to community service clearly show the initial misgivings and mistrust on the part of the courts, resulting from the initially inadequate wording of the legislation and from the absence of implementing regulations.

Illegal Production and Possession of Narcotic and Psychotropic Substances and Poisons—Article 187 of Penal Code:

Table 1. Crimes

year	Crimes registered	Crimes solved	Solved %	Persons prosecuted	Persons charged	Persons convicted
1996	1 436	1 431	99.7	706	608	283
1997	2 303	2 290	99.4	920	789	357
1998	4 056	4 034	99.5	1 185	1 029	702
1999	6 100	6 064	98.9	1 300	1 102	765
2000	3 292	2 892	87.8	1 547	1 276	819
2001	3 198	2 968	92.8	1 640	1 418	905
2002	3 359	3 150	93.8	1 603	1 444	1 007

Table 2. Sentences

year	Total	Imprisonment	Suspended	Fine	Community Service	Other	Discharge
1996	283	116	149	7	-*	5	6
1997	357	145	192	9	6	2	3
1998	702	279	358	17	15	1	32
1999	765	279	432	4	23	0	27
2000	819	315	441	1	34	2	26
2001	905	365	474	3	41	5	17
2002	1007	347	540	3	77	6	34

* Community Service was not recorded separately in 1996, if imposed, it is included in "Other" category

Table 3. Sentences of Imprisonment

year	Total	Up to 1 year	from 1 to 5 years	from 5 to 15 years
1996	116	39	61	16
1997	145	56	75	14
1998	279	75	180	24
1999	279	63	192	24
2000	315	46	238	31
2001	365	65	257	43
2002	347	58	257	32

Illegal Production and Possession of Narcotic and Psychotropic Substances and Poisons—Article 187a of Penal Code

Table 4. Crimes

year	Crimes registered	Crimes solved	Solved %	Persons prosecuted	Persons charged	Persons convicted
1999	228	226	99.1	130	115	18
2000	212	207	97.6	187	158	63
2001	241	231	95.9	261	215	86
2002	285	257	90.2	244	206	103

Table 5. Sentences

year	Total	Imprisonment	Suspended	Fine	Community Service	Other	Discharge
1999	18	11	3	1	2	1	0
2000	63	17	30	2	6	4	4
2001	86	16	45	2	18	0	5
2002	103	18	60	3	17	2	3

Table 6. Imprisonment

year	Total	up to 1 year	from 1 to 5 years	from 5 to 15 years
1999	11	10	1	0
2000	17	13	4	0
2001	16	12	4	0
2002	18	10	8	0

Illegal Production and Possession of Narcotic and Psychotropic Substances and Poisons—Article 188 of Penal Code

Table 7. Crimes

year	Crimes registered	Crimes solved	Solved %	Persons prosecuted	Persons charged	Persons convicted
1996	156	155	99.4	181	165	27
1997	101	101	100	159	140	32
1998	101	101	100	184	159	55
1999	90	89	98.9	141	119	38
2000	122	122	100	228	190	29
2001	157	156	99.4	222	195	62
2002	216	206	95.4	247	223	58

Table 8. Sentences

year	Total	Imprisonment	Suspended	Fine	Community Service	Other	Discharge
1996	27	7	16	2	-*	0	2
1997	32	6	23	1	0	0	2
1998	55	8	41	1	3	0	2
1999	38	7	26	1	2	1	1
2000	29	3	22	0	4	0	0
2001	62	13	40	4	4	0	1
2002	58	10	34	1	12	0	1

* Community Service was not recorded separately in 1996, if imposed, it is included in “Other” category

Table 9. Imprisonment

year	Total	up to 1 year	from 1 to 5 years	from 5 to 15 years
1996	7	6	1	0
1997	6	4	2	0
1998	8	1	7	0
1999	7	3	4	0
2000	3	2	1	0
2001	13	4	8	0
2002	10	2	8	0

Table 10. Crimes

year	Crimes registered	Crimes solved	Solved %	Persons prosecuted	Persons charged	Persons convicted
1996	446	444	99.6	212	183	24
1997	449	441	98.2	256	223	30
1998	1 077	1075	99.8	407	342	45
1999	1 302	1298	99.7	513	429	70
2000	832	829	99.6	491	419	61
2001	613	607	99.0	396	332	41
2002	470	446	94.9	410	374	48

Table 11. Sentences

year	Total	Imprisonment	Suspended	Fine	Community Service	Other	Discharge
1996	24	5	17	0	-*	2	0
1997	30	4	20	1	0	0	5
1998	45	1	35	1	1	0	7
1999	70	6	46	0	6	0	12
2000	61	7	43	2	5	0	4
2001	41	10	23	1	5	0	2
2002	48	4	31	0	7	0	6

* Community Service was not recorded separately in 1996, if imposed, it is included in "Other" category

Table 12. Imprisonment

year	Total	up to 1 year	from 1 to 5 years	from 5 to 15 years
1996	5	3	2	0
1997	4	3	1	0
1998	1	1	0	0
1999	6	4	2	0
2000	7	4	3	0
2001	10	6	4	0
2002	4	4	0	0

Appendix 3.

Approximate Amounts According to Article 187a of the Penal Code of the Czech Republic

(Appendix 1 of the Supreme State Prosecutor's General Instruction No. 6/2000)

Drug Type	Weight (grams) of pure substance	
	"quantity greater than small" (Art. 187a)	"larger extent" (Art. 187a Par. 1, 2)
Heroin HCl	0.15 (approx. 5 doses/30mg)	1.5 (approx. 50 doses/30mg)
Morphine HCl	0.3 (approx. 10doses/30mg)	4.5 (approx. 150 doses/30 mg)
Methadone	0.3 (approx. 10 doses/30 mg)	4.5 (approx. 150 doses/30 mg)
Cocaine HCl	0.25 (approx. 5 doses/50 mg)	5 (approx. 100 doses/50 mg)
Tetrahydrocannabinol (THC)	0.3 (approx. 10 doses/30 mg)	7.5 (approx. 250 doses/30 mg)
LSD	0.0005 (approx. 10 doses/50μg)	0.006 (approx. 120 doses/50 μg)
MDMA - base and homologues	1 (approx. 10 doses/100 mg)	24 (approx. 240 doses/100 mg)
Amphetamine - base	0.5 (approx. 10 doses/50 mg)	10 (approx. 200 doses/50 mg)
Metamphetamine - base	0.5 (approx. 10 doses/50 mg)	10 (approx. 200 doses/50 mg)
Psilocybin	0.05 (approx. 5 doses/10 mg)	3 (approx. 300 doses/10 mg)

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