

# CHAPTER 3

## European approaches to organised crime<sup>1</sup>

3.1 The Delegation travelled to a number of European countries to meet with key European and international agencies. Where possible, the Delegation used its time in each country to also hold meetings with national law enforcement agencies or police.

3.2 The Delegation travelled to Italy and Austria at the request of the Minister for Foreign Affairs, The Hon Stephen Smith MP. The Minister specifically requested that the Delegation hold discussions with the United Nations Office on Drugs and Crime (UNODC) in Vienna and the United Nations Interregional Crime and Justice Institute (UNICRI) in Rome. The Delegation also travelled to The Hague, in the Netherlands, to hold discussions with Europol.

3.3 The meetings with the UNODC and UNICRI provided the Delegation with an international perspective on drugs and organised crime. The meetings with Europol provided a picture of organised crime, and successful measures to tackle crime, within the European Union.

3.4 In Italy, Vienna and the Netherlands, the Delegation also used the visit to hold a range of highly informative discussions with each national police force. These discussions provided an insight into the specific law enforcement issues faced within each jurisdiction and the administrative and legislative measures in place to address each country's most pressing issues.

3.5 The details of these meetings and the officials with whom the Delegation met are listed at Appendix C.

3.6 This chapter provides an overview of the agencies with which the Delegation met. It also briefly describes the nature of organised crime in Europe and key legislation targeting organised crime, and canvasses the key issues and findings of the Delegation.

### European agencies with which the Delegation met

#### *United Nations Interregional Crime and Justice Research Institute<sup>2</sup>*

3.7 The United Nations Interregional Crime and Justice Research Institute (UNICRI) was created in 1968 to assist intergovernmental, governmental and

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1 Many of these meetings required the use of an interpreter, therefore while the information provided in this chapter has sought to be as accurate as possible, errors may in part be due to the translation process and the difficulty in seeking clarification.

2 United Nations Interregional Crime and Justice Research Institute, <http://www.unicri.it/>, (accessed 9 June 2009).

non-governmental organisations in formulating and implementing improved policies in the field of crime prevention and criminal justice. UNICRI's goals are:

- to advance understanding of crime-related problems
- to foster just and efficient criminal justice systems
- to support the respect of international instruments and other standards
- to facilitate international law enforcement cooperation and judicial assistance.

3.8 UNICRI undertakes applied research and technical cooperation projects aimed at providing concrete assistance to requesting countries, in close collaboration with regional and national authorities, and in accordance with their self-perceived goals. UNICRI targets, in particular, regions and countries that for various reasons, including the comparative lack of intervention from other potential assisting entities, are most in need of support in the field of crime prevention and criminal justice. Cooperation projects often take a holistic approach, which tackles legislative, law enforcement and social aspects, and may include services provided by UNICRI, such as documentation, research and training.<sup>3</sup>

### *United Nations Office on Drugs and Crime*



Delegation Members with Mr Antonio Maria Costa, Executive Director, United Nations Office on Drugs and Crime, and HE Ambassador Peter Shannon, Australian Ambassador to Austria

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3 A power point presentation given to the Delegation by Ms Kangaspunta from UNICRI is provided at appendix D.

3.9 The United Nations Office on Drugs and Crime (UNODC) was established in 1997. It operates in 150 countries, and has over 50 field offices around the world.

3.10 UNODC assists member states in fighting illicit drugs, crime and terrorism. Its work consists of:

- field-based technical cooperation projects to enhance the capacity of states to counteract illicit drugs, crime and terrorism
- research and analysis to assist in evidence-based policy making
- assistance to states in the ratification and implementation of the international treaties on transnational crime and drugs, the development of domestic legislation and the provision of services to treaty-based and governing bodies.

3.11 UNODC relies on voluntary contributions, predominantly from governments, for 90% of its funding.

3.12 The UNODC's work is underpinned by six key international treaties and their respective optional protocols.

#### *UN Convention Against Transnational Organised Crime*

3.13 The key international treaty on organised crime is the *UN Convention Against Transnational Organised Crime* (Palermo Convention). The Palermo Convention is a multilateral treaty with 147 signatories. It entered into force on 29 September 2003.

3.14 The Palermo Convention aims to:

- Eliminate differences among national legal systems; and
- Set standards for national legal systems.

3.15 The Convention has 4 parts:

- criminalisation
- international cooperation
- technical cooperation, and
- implementation.

3.16 Under the Convention, member states agreed to implement four new offences (if they had not already done so):

- participation in an organised crime group (art 5)
- money laundering (art 6)
- corruption (art 8), and
- obstruction of justice (art 23).

3.17 The Convention defines an organised criminal group as:

[a] **structured group** of **three of more persons**, existing for a **period of time** and acting in concert with the **aim of committing one or more serious crimes** or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other **material benefit**.<sup>4</sup>

3.18 There are three optional protocols to the Convention:

- *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime*, which entered into force on 25 December 2003. There are 127 states parties (including Australia) to this optional protocol.

3.19 This optional protocol has the aim of facilitating a 'convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases.'<sup>5</sup> In addition, the protocol aims to set standards for the protection and assistance of victims of trafficking.

- *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United National Convention against Transnational Organised Crime*, which entered into force on 28 January 2004. There are 119 states parties (including Australia) to this optional protocol.

3.20 This protocol aims to tackle organised criminal groups who smuggle migrants by promoting cooperation amongst states parties and protecting the rights of smuggled migrants.

- *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime*, which entered into force on 3 July 2005. This optional protocol has 77 states parties. Australia has signed but not ratified the protocol.

3.21 The objective of this protocol is to 'promote, facilitate and strengthen cooperation among states parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. By ratifying the protocol, states make a commitment to adopt a series of crime-control measures and implement in their domestic law three sets of normative provisions: the first one relates to the establishment of criminal offences related to illegal manufacturing of, and trafficking in, firearms on the basis of the Protocol requirements and definitions; the second relates to a system of government authorisations or licensing intending to ensure legitimate manufacturing of, and

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4 *UN Convention Against Transnational Organised Crime*, Article 2(a) (emphasis added).

5 UNODC, *The United Nations Convention against Transnational Organised Crime and its Protocols*, at <http://www.unodc.org/unodc/en/treaties/CTOC/index.html> (accessed 31 March 2009).

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trafficking in, firearms; and the third one relates to the marking and tracing of firearms.<sup>16</sup>

### *Anti-Corruption Treaty*

3.22 The UNODC is also responsible for the *United Nations Convention Against Corruption*, which came into force on 14 December 2005 (to which Australia is a party).

3.23 The Convention Against Corruption requires states to criminalise a range of corruption activities such as bribery, embezzling public funds, trading in influence, the concealment and laundering of the proceeds of corruption and offences committed in support of corruption such as obstructing justice.

### *Drug-related treaties*

3.24 There are three major international drug control treaties which together aim to codify internationally applicable control measures to ensure the availability of narcotic drugs and psychotropic substances for medical and scientific purposes, and to prevent their diversion into illicit channels. The treaties also contain general provisions on illicit trafficking and drug abuse. The drug-related treaties are:

- The single Convention on Narcotic Drugs – 1961
- The Convention on Psychotropic Substances – 1971; and
- The Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances – 1988.

### *Europol<sup>7</sup>*

3.25 Europol is the European Union law enforcement organisation that handles criminal intelligence. Its aim is to improve the effectiveness of, and cooperation between, the competent authorities of member states in preventing and combating serious international organised crime and terrorism.

3.26 Under Article 3 of the Europol Convention, Europol's principal tasks are to:

- facilitate the exchange of information between the member states
- obtain, collate and analyse information and intelligence
- notify the competent authorities of the member states without delay...of information concerning them and of any connections between criminal offences

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6 UNODC, *The United Nations Convention against Transnational Organised Crime and its Protocols*, at <http://www.unodc.org/unodc/en/treaties/CTOC/index.html> (accessed 31 March 2009).

7 Europol, <http://www.europol.europa.eu/> (accessed 31 March 2009).

- aid investigations in the member states by forwarding all relevant information to the national units
- maintain a computerised system of collected information containing data about various criminal offences



Delegation Members with Federal Agent Peter Bodel, AFP and Federal Agent Ray Imbriano AFP, and Europol senior officers, Dr Laslo Salgo, Mr Robert Hauschild and Mr Carlo Van Heuckelom

3.27 The establishment of Europol was agreed in the Maastricht Treaty on the European Union of 7 February 1992. Based in The Hague, Netherlands, Europol started limited operations on 3 January 1994 in the form of the Europol Drugs Unit. Progressively, other important areas of criminality were added. As of 1 January 2002, the mandate of Europol was extended to deal with all serious forms of international crime as listed in the annex to the Europol Convention. The Europol Convention was ratified by all member states and came into force on 1 October 1998. Following a number of legal acts related to the Convention, Europol commenced its full activities on 1 July 1999.

3.28 Europol provides the following justification of its focus and activities:

In the modern world there are no boundaries for organised criminal groups. Because of current technology and access to huge illicit financial resources, these groups are illegally active worldwide. Therefore organised crime

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represents a threat to the structure and values of the democratic systems affecting European citizens' security and freedom.<sup>8</sup>

3.29 Europol mainly supports the law enforcement activities of the member states against:

- illicit drug trafficking;
- illicit immigration networks;
- terrorism;
- forgery of money (counterfeiting of the Euro) and other means of payment;
- trafficking in human beings including child pornography;
- illicit vehicle trafficking; and
- money laundering.

3.30 Europol's other priorities include crimes against persons, financial crime and cybercrime. This applies where an organised criminal structure is involved and two or more member states are affected. Europol is also active in promoting crime analysis and harmonisation of investigative techniques within the member states.

#### *Structure and governance*

3.31 Europol is headed by a Director who is appointed by the council acting unanimously after obtaining the opinion of the Europol Management Board. The board comprises one representative from each member state and has the overall task of supervising the activities of the organisation.

3.32 The Delegation heard that the European Parliament has just agreed to a new governance and funding model for the agency. Europol will now be directly funded from the European Parliament and from 1 July 2010 will become a European agency. Under the new management model decisions will need to be agreed by a two-thirds majority, preventing a single member state from effectively vetoing a decision as they can now under the requirement for unanimous agreement by the board.

3.33 There are 590 people working at Europol, including 90 Europol liaison officers (ELOs) representing a variety of law enforcement agencies (police, customs, gendarmerie, immigration services et cetera). The ELOs, together with the Europol officers, analysts and other experts, provide an effective, fast and multilingual service 24 hours a day.

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8 Europol, <http://www.europol.europa.eu/index.asp?page=introduction>, (accessed 20 February 2009).

*Strategy and powers*

3.34 Europol has no executive powers. It is a support service for the law enforcement agencies of the EU member states. This means that Europol officials are not entitled to arrest suspects or act without the approval of national authorities.

3.35 Europol only acts on request at present. However, a protocol of 28 November 2002 amending the Europol convention, which has not yet entered into force, will allow Europol to request that competent authorities of the member states investigate a case. Article 3(b) of the protocol states:

Member States should deal with any request from Europol to initiate, conduct or co-ordinate investigations in specific cases and should give such requests due consideration. Europol should be informed whether the requested investigation will be initiated.

3.36 For Europol to become involved in an investigation, two or more member states must first be involved. Second, there must be factual indications that an organised criminal network or terrorism is involved. Thirdly, the case must be within Europol's mandate.

3.37 Europol has neither the technical equipment nor the legal authorisation to wiretap or monitor members of the public by any technological means. Any information being analysed by Europol is provided directly by the cooperating law enforcement agencies. Europol's principal role is to gather, analyse and redistribute data.

3.38 Europol has the power to enter into intelligence sharing agreements with countries outside of Europe. A press release issued on 21 February 2007 by the then Federal Justice Minister, Senator Chris Ellison, announced the signing of an agreement between the AFP and Europol to help in the fight against 'terrorism and transnational crime'. The AFP was the first police force in the Asia-Pacific region to have such an agreement with Europol.

3.39 The AFP now have a liaison officer in Europol's Third Party State Liaison Bureau, allowing them to share specialist knowledge, information on criminal investigation procedures and crime prevention methods. The Delegation was told by senior Europol officers that 'Australia is a very close relative' and that the AFP's contribution to Europol is very highly valued.

*Italian law enforcement agencies*

3.40 In Italy there are three major police forces: Polizia di Stato, Arma dei Carabinieri, and the Guardia di Finanza. The Delegation met with the Guardia di Finanza, Direzione Centrale per Servizi Antidroga (The Central Directorate for Antidrug Services), Direzione Investigativa Antimafia (Anti-Mafia Investigations Directorate), Criminal Police Central Directorate and the Anticrime Central Directorate.



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*Direzione Centrale per Servizi Antidroga/Central Directorate for Antidrug Services*

3.41 The Central Directorate for Antidrug Services (DCSA) is a multi-agency organisation which coordinates the activities of the various police forces against drug trafficking. DCSA maintains and develops relationships with similar international bodies and manages the 'drug experts network' – currently in 17 locations in drug producing and transiting areas. DCSA is staffed with personnel from Polizia di Stato, Arma dei Carabinieri and Guardia di Finanza.



Delegation Members and Federal Agent Mark Dokmanovic, Australian Federal Police, meeting with officers from DCSA

*Guardia di Finanza<sup>9</sup>*

3.42 The Guardia di Finanza (Financial Police) (GdF) are responsible for safeguarding the economic and financial security of the state. The GdF plays a leading role in maintaining economic and financial security and works with the other police forces in maintaining order and public security. GdF's strategic directives include:

- fighting tax evasion and avoidance, economic control of the national territory, fighting undeclared trade and labour, fighting illegal gambling, tax and welfare fraud and illegal trafficking
- prevention and suppression of fraud in the financial statements of the state, local authorities and the European Union
- protecting the proper functioning of capital markets, consumer markets and the system of production

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9 Guardia di Finanza, Annual Report 2007, [http://www.gdf.it/GdIF\\_in\\_English/Annual\\_Report/Annual\\_Report\\_2007/index.html](http://www.gdf.it/GdIF_in_English/Annual_Report/Annual_Report_2007/index.html) (accessed 4 June 2009).

- fighting money-laundering and terrorist financing, the fight against economic crime (brand counterfeiting, audiovisual/food piracy), product safety control and the 'high cost of living' phenomenon.

3.43 GdF has its origins in monitoring of cross-border transactions and military defence. It retains its military status and, unlike the Carabinieri, is part of the Italian Armed Forces. The Guardia di Finanza maintains over 600 boats and ships and more than 100 aircraft to fulfil its mission of patrolling Italy's territorial waters. The Guardia di Finanza has around 68,000 officers made up of agents, non-commissioned officers and police officers.

*Direzione Investigativa Antimafia /Anti-Mafia Investigations Directorate*

3.44 The Anti-Mafia Investigations Directorate (DIA) is an interagency investigative organisation specialising in mafia investigations all over Italy. The DIA's mission is to coordinate all proactive investigations into organised crime in all its forms.



Members of the Delegation meeting with officers from Anti-Mafia Investigations Directorate

*Criminal Police Central Directorate and the Anticrime Central Directorate*

3.45 The Criminal Police Central Directorate and the Anticrime Central Directorate (CPCD) is a multi-agency organisation responsible for the coordination of criminal police investigations in Italy and international cooperation by sharing information and operational strategies. To ensure the sharing of information between all levels of Italian law enforcement, the head of the agency is rotated every three

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years and can be chosen from either of Italy's major three police forces. It is also responsible for organising cooperation between witness programmes and coordinating general prevention policies and control of territory at a national level.

The Directorate includes:

- International Police Cooperation Service (Servizio per la Cooperazione Internazionale di Polizia), an interagency service for international operational police cooperation. It also comprises the National Central Bureau-Interpol, the Italian Europol National Unit and the S.I.R.E.N.E. Division.
- Criminal Analysis Service (Servizio Analisi Criminale), an interagency service for strategic criminal analysis.
- Central Witness Protection Service (Servizio Centrale di Protezione), responsible for witness protection programmes.

### ***The Netherlands National Police Agency<sup>10</sup>***

3.46 The Dutch Police consists of 26 police forces, of which 25 forces operate on a regional level. Each regional force is responsible for carrying out policing tasks in its designated region. The 26<sup>th</sup> force, the Netherlands Police Agency (Korps Landelijke Politiediensten – KLPD) is a nationwide agency that includes police departments for patrolling water, road, air and rail traffic, as well as the diplomatic and royal security forces. The KLPD also provides criminal intelligence, specialist investigation expertise and crime analysis on a national level, and is responsible for dealing with international requests for mutual assistance.

3.47 The KLPD lists its main specialisations as:

- Addressing serious and organised crime.
- Combating violence and terrorism.
- Monitoring the Dutch main routes, information analysis, processing and intelligence back to them.
- Training of police horses and sniffer dogs.
- Organisation of members of the Royal House.

3.48 The KLPD has approximately five thousand employees within the Netherlands and abroad, including 30 liaison officers. Approximately half of the KLPD's work is combating serious and organised crime and terrorism.

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10 Interpol, *European Police and Justice Systems – Netherlands*, at <http://www.interpol.int/public/Region/Europe/pjsystems/Netherlands.asp> (accessed 30 March 2009).



Delegation Members meeting with the Netherlands Police Agency, The Hague, Netherlands.

## **The nature of organised crime in Europe**

3.49 The Delegation met with Mr. Antonia Costa, the Director General of the UNODC. Mr Costa expressed his very grave concern over the systemic and destabilizing effects of organised crime globally on civil society. In Mr Costa's view, the 'real climate change' facing humanity is the current social disintegration of civil society in many countries and the fact that many countries are not aware of the massive problems that organised crime will cause in the future.

3.50 In particular, Mr Costa highlighted the connections between failing states and organised crime. As nation states become weaker, governments are more susceptible to corruption and manipulation, and states with lower levels of governance and law enforcement and high levels of poverty and unemployment provide fertile recruitment grounds for organised crime groups.

3.51 Many small countries do not have the capacity to deal with the activities of organised crime and in some cases nations may depend upon the capital investment from organised crime. The Delegation heard about small island nations in the Atlantic which allow the daily transit of aircraft believed to be carrying large quantities of illicit drugs from Colombia into the United States.

3.52 Mr Costa argued that the UN's call for action against organised crime has not been taken up internationally and that it is often large, first world countries, that have not ratified key global conventions, such as the Convention Against Corruption.

3.53 The migration of large populations from North and West Africa into Europe, was identified as a key issue for law enforcement. The Delegation heard from a number of European agencies that nations in West Africa with weak and corrupt governments are becoming havens for serious criminal groups. In particular it was suggested that certain North African groups are involved in the importation, distribution and 'sale on the street' of illicit commodities, including drugs and arms. It was also suggested that in West Africa, some criminal groups fund private armies to protect their 'business interests'.

3.54 Migrant populations present a range of significant difficulties for law enforcement. Language was identified as a key barrier to tackling organised crime in migrant communities, as were high levels of official corruption, a lack of political will and limited law enforcement capacity and intelligence-gathering capabilities in many of the countries from which these migrant groups originate.

3.55 In Italy, the Delegation was told that mafia organisations are the most entrenched, and their criminal activities pervade all aspects of Italian society. Mafia organisations evolved in the second half of the eighteenth century, when prominent local families, through their patronage and support of local communities, became responsible for, and took control of, towns and regions. To maintain their power base these families engaged in violence and extortion and over time have increasingly become involved in profitable illegal activities.

3.56 Law enforcement officers identified four main Mafia groups operating in Italy. These are the Costa Nosa or Sicilian Mafia; the Camorra or Neapolitan Mafia; the 'Ndrangheta or Calabrian Mafia; and the Sacra Corona Unita or United Sacred Crown based in Puglia.

3.57 The Delegation was told that, like legitimate businesses, the mafia have forged international links with business partners, in particular in South America and Northern Africa. The relationship between organised crime groups in these geographic regions is symbiotic, with Italian crime groups placed at the centre of the supply and distribution chain of many illegal substances.

3.58 Throughout Europe the Delegation was consistently told of the global and transnational nature of organised crime. Ms Mari Hamalainen, an analyst at Europol, outlined that criminal enterprises are developing an operational model based upon legitimate international businesses and business hubs. Like legitimate businesses, organised criminal enterprises are establishing business hubs through which a range of illegal commodities can be distributed. The Delegation was told that a number of criminal groups from within the former Russian Federation have established links between international criminal enterprises and can source any illegal commodity and distribute it across the globe.

The scope of organised criminal activity has increased dramatically over the last ten years, and is now believed to present a significant threat to the economies and governance of states. The end of the Cold War and the creation of a Single European Market within the EU have resulted in fewer

barriers to trade, a shift which has encouraged illegitimate as well as legitimate economic activity. Correspondingly, organised crime has become more 'business-like', the structure of criminal organisations imitating international business to take advantage of the increased opportunities for higher profits from transnational illicit activity. A move away from strictly clan-based and localised models of operation has led to an internationalisation of criminal groups' activities, and to much greater cooperation between groups of different nationality and geographical remit to support this.<sup>11</sup>

### ***Illicit drugs***

3.59 While organised criminal groups are involved in any profitable commodity, illicit drugs were discussed as the major area of activity. The profits from illegal drugs are vast. Mr Costa told the Delegation that in 2005, the size of the global illicit drug economy was US\$320 billion (AU\$404 billion). At the time that equated to the 20<sup>th</sup> largest economy in the world.

3.60 The Delegation heard that in Europe organised crime groups make over €120 million each day in profit from the sale of cannabis (AU\$209 million). Another example told to the Delegation was that in a 2 year period, one Somali drug network made US\$850million (AU\$1.07 billion). It was suggested that funds from the drug trade were used in the purchase of arms in Africa.

3.61 Mr Bernard Leroy from the Organised Crime and Criminal Justice Section in the United Nations Office of Drug and Crime (UNODC), identified that the use of illicit drugs is part of a larger cultural problem in developed countries. He indicated that populations are increasingly turning to chemical solutions for a range of physical, emotional and behavioural problems. Mr Leroy told the Delegation that the consumption of tablets is widely accepted and consequently, it is more acceptable to take illicit drugs in tablet form. Mr Leroy contrasted this to the social stigma still associated with injecting illegal substances.

### ***Heroin***

3.62 Mr Robert Hauschild, Head of Drugs Unit at Europol, identified heroin as the most dangerous illicit drug in Europe.

3.63 The Delegation was told that Afghanistan is still the key source country, producing around 900 tonnes of heroin per year or 92% of global production. Different qualities of heroin are supplied to different markets, with high-grade heroin supplied to Western Europe and Australia, and poorer quality heroin going to China and India.

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11 Ian Davis, Chrissie Hirst, and Bernardo Mariani, *Organised crime, corruption and illicit arms trafficking in an enlarged EU. Challenges and perspectives*. Saferworld Arms & Security Programme, December 2001.  
[http://www.online.bg/coalition2000/eng/bilb/organised\\_crime.pdf](http://www.online.bg/coalition2000/eng/bilb/organised_crime.pdf), (accessed 9 June 2009).

3.64 The UNODC 2008 World Drug Report notes:

Market consumption patterns appear to have remained largely the same – with the majority of opiates on the market in Europe, the Near and Middle East and Africa continuing to come from Afghanistan, those on the market in Asia sourced from Myanmar and those on the market in North and South America from Mexico and Colombia. The largest seizures of heroin and morphine occurred in Pakistan, Iran and Turkey with seizure levels increasing in 2006.

Opiates remain the main problem drug in terms of treatment. This, combined with the enormous increases in production we are now witnessing, necessitate the rigorous monitoring of demand in the opiate market. While demand has been relatively stable at the global level, the countries surrounding Afghanistan continue to experience increasing levels of use. Increases were also recorded for most countries of East and Southern Africa. Consumer markets in Western and Central Europe seem to be largely stable. Opiates use also remains stable in North America.<sup>12</sup>

*Cocaine*

3.65 Europe has a rapidly growing cocaine market and it is now a major destination for both Mexican and Columbian cocaine. Compared to the US the penalties in Europe are lower and costs for the commodity are much higher.

3.66 The Delegation heard that one kilogram of cocaine in the US costs approximately US\$25 000 (AU\$31 600), whereas in Europe the cost is significantly higher at €50 000 per kilogram (AU\$87 000). Additionally, it is expected that China and India will become higher users of cocaine as these populations become more affluent and are targeted by organised crime.

3.67 It was also suggested to the Delegation that organised crime groups in West Africa are using gene technology to cultivate and grow the coca plant outside of its native South American climate.

3.68 The UNODC 2008 World Drug Report noted that:

The cocaine market is concentrated in the Americas, although increases in both distribution and use continue to occur in Western Europe and West Africa. The recent increases in both seizures and use in West Africa appear to reflect the development of new distribution routes through West Africa to Western Europe. This has led to a large increase in seizures in both regions. Consumption continues to increase both at destination and along the route. A contraction in the consumer markets of North America has led to a strong decline in seizures in North America. In the USA, the proportion of the workforce testing positive for cocaine declined by 19% in 2007, and

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12 UNODC, 2008 World Drug Report, p. 13.

by 36% since 1998. Cocaine use, however, continues to increase in South America.<sup>13</sup>

### *Amphetamines-type stimulants (ATS)*

3.69 Mr Cess Van Spierenberg, the Netherlands National Prosecutor for synthetic drugs, noted that since the 1990s, 3,4-Methylenedioxymethamphetamine (MDMA) was a growing problem in the Netherlands. Canada was identified as a major source for synthetic drugs. However, in recent years, large synthetic drug labs have been established in China and the Philippines with some producing as much as one tonne of ATS per month.



Delegation Members with Mr Robert Hauschild, Head of the Drugs Unit, and Federal Agent Peter Bodel, at the Europol Drug Laboratory in The Hague

3.70 It was suggested that while Indonesia, the Philippines and Malaysia have had limited success in the production of ATS to date, there has been a movement of experienced Dutch cooks to these regions.

3.71 The Delegation was told that Australia is a major consumer of MDMA products. The Australian market is extremely lucrative, and is consequently targeted by organised crime, with one table of MDMA selling in the Netherlands for €2-3 (approximately AU\$4) and the same table selling in Australia for AU\$20-30. The UNODC 2008 World Drug report noted:

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13 UNODC, 2008 World Drug Report, p. 13.



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ATS manufacture is regionally specific, related both to demand and to the availability of precursor chemicals. Methamphetamine is manufactured throughout East and South-East Asia, North America, and Oceania, where precursors are more readily available and demand is high. Amphetamine continues to be manufactured largely in Europe. Ecstasy is manufactured primarily in North America, Western Europe and Oceania, though there is some production in East and South-East Asia.<sup>14</sup>

### *Cannabis*

3.72 UNODC 2008 World Drug Report notes that:

Cannabis continues to dominate the world's illicit drug markets in terms of pervasiveness of cultivation, volume of production, and number of consumers. Cannabis production was identified or reported in 172 countries and territories. The broad levels of use of this drug and its increasing potency make the long term containment of the market especially important. Global cannabis herb production is estimated to have stabilized at around 41,400 metric ton in 2006. Production in 2006 was almost equal to that of 2005, and 8% lower than 2004. The decline in global cannabis herb seizures between 2004 and 2006 was even more pronounced (-27%).<sup>15</sup>

3.73 In the Netherlands, the Delegation met with members of the Parliamentary Joint Standing Committee on Justice. Since the 1970s the Netherlands has made the legal distinction between the users and suppliers of 'soft' and 'hard' drugs. In the 1980s coffee shops were established as venues to purchase and take 'soft' drugs such as cannabis. It was argued that coffee shops provided a safe environment for drug use.

3.74 The Delegation was told that support for this approach is declining. It was noted that people from Europe come to the Netherlands to source drugs and that this supply network is now being used for a range of other illegal commodities. The Delegation was told that the Netherlands has always been a trading nation, with Rotterdam the second largest port in the world. However, this trading infrastructure is increasingly being used by organised crime, and the Netherlands has become a hub for criminal activity.

3.75 The issue of legal 'front door' drug sales in the coffee shop and illegal 'back door' drug supply to the coffee shop was also discussed, as was the difficulty for law enforcement to police this arrangement. Attempts to close coffee shops are being met with opposition from the tourism sector.

3.76 During discussions with the Directorate for AntiDrugs Operations (DCSA) the Delegation heard that as a result of Europe's open trade borders, Italy faces a growing problem with the importation of illegal substances from other European countries with different law enforcement regimes. The Netherlands, Poland and

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14 UNODC, 2008 World Drug Report, p. 18.

15 UNODC, 2008 World Drug Report, p. 14.

Belgium were identified as the largest producers of synthetic drugs. DCSA officers noted that Italian organised crime groups regularly travel to these countries to source these illegal commodities.

### ***Counterfeit goods***

3.77 The Delegation was told about the growing trend in the manufacture and sale of illegal counterfeit goods. Ms Kristina Kangaspunta from UNICRI noted that there has been a growth in counterfeit medicines, and highlighted that 50 per cent of all medicines sold on the internet are counterfeit. Counterfeit medicines present a significant health risks. The following examples of adverse health outcomes from counterfeit medicines are provided by UNICRI:

- In 2007, a Canadian women died from metal poisoning after the ingestion of a counterfeit pill bought on the internet.
- In 2006, more than 100 people died in Panama because of a counterfeit cough syrup.
- In 2005, counterfeit Raki killed more than 20 people in Turkey.
- In 2001, counterfeit Vodka killed at least 60 people in Estonia.

3.78 It was noted that this trend is likely to continue, driven by increasing economic pressures on pharmaceutical businesses. The UNICRI website reports one case involving counterfeit pharmaceuticals.

Seventeen gang members were arrested in Northern China after authorities uncovered a counterfeit pharmaceutical operation; police confiscated 67 different types of counterfeit medication including rabies vaccinations. The imitation rabies vaccination, said to have been manufactured from starch and water, were given to 227 people, all of whom were put immediately under close observation by the local health departments. In addition to 10,000 doses of the rabies vaccine, 20,250 bottles of medicine used to treat cardiovascular diseases and 211 bottles of blood protein were also confiscated. Rabies is one of China's deadliest infectious diseases, according to official figures it killed over 2,000 people in 2006 alone.<sup>16</sup>

3.79 In Italy, the Delegation was told of the illegal trade out of China and Eastern Europe of counterfeit cigarettes. In the past these illegal goods were transported to Italy, but as a result of strong law enforcement action and penalties in that country, the trade was reported to have moved to countries with a lower risk of detection and conviction. Again, the harmful effects of counterfeit products were highlighted.

Counterfeit cigarettes from Eastern Europe and the Far East were reportedly being sold for as little as £1 a packet by shopkeepers in Leicester. The counterfeit cigarettes contained higher levels of tar, arsenic, nicotine and other carcinogens and were smuggled into Leicester and sold to

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16 United Nations interregional crime and Justice Research Institute, case study, [http://counterfeiting.unicri.it/org\\_crime.php?sec =C](http://counterfeiting.unicri.it/org_crime.php?sec =C), (accessed 9 June 2009).

shopkeepers in bulk at heavily discounted prices. Customs officials issued a warning to consumers as the packaging on the fake cigarettes was indistinguishable from the genuine variety. Organized criminal gangs were thought to be behind the scheme for huge profits to be made from selling counterfeit cigarettes. Officials who seized also a shipment worth millions of pounds analysed the ingredients with alarming results. The fake cigarettes contained extremely high levels of arsenic, cadmium, benzene and formaldehyde, a lethal mix of carcinogens.<sup>17</sup>

### ***Cyber-crime***

3.80 Mr. Antonia Maria Costa, the Director General of UNODC, told the Delegation that cyber-crime is a sleeping giant and consequently is of major concern to the organisation. The vulnerability of countries to this form of attack is increasing.

3.81 The Delegation was told by Ms Gillian Murray, from the Organised Crime and Criminal Justice Section, UNODC, that while cyber-crime is a growing international threat, there is currently little cooperation at the international level on areas of cyber-crime which do not involve children.

### **Key Italian and Dutch legislation targeting organised crime**

#### ***Italy***

##### *Criminal law*<sup>18</sup>

3.82 The Italians amended their Criminal Code a number of times between 1982 and 1992 to deal with Mafia-type associations. Each of the amendments was a response to specific incidents, and not 'part of a coherent law enforcement program'. The main amendments in 1982 are referred to as the Rognoni-La Torre law, after the Christian-democrat backer of the laws and the Communist Party leader whose death led to the creation of the laws. There are two aspects to the laws:

- the introduction of new anti-mafia legislation; and
- the ability for courts to seize the assets of those involved in the mafia and their families and business partners.

3.83 Article 416 (bis3) of the Criminal Code provides that:

1. Whoever is part of a Mafia-type conspiracy consisting of three or more people is punishable with three to six years imprisonment. Punishment may be increased by up to one third if the defendant has previously been subject to Mafia preventative measures.

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17 United Nations interregional crime and Justice Research Institute, case study, [http://counterfeiting.unicri.it/org\\_crime.php?sec =C](http://counterfeiting.unicri.it/org_crime.php?sec =C), (accessed 9 June 2009).

18 Umberto Santino, *Law Enforcement in Italy and Europe against mafia and organised crime*, available at <http://www.centroimpastato.it/otherlang/mcdona ld.php3>, (accessed 16 June 2009).

2. Whoever promotes or manages or directs such an association is punishable with four to nine years imprisonment
3. Conspiracy is of a Mafia type when whoever belongs to it uses the power of intimidation which arises from Association membership and uses the system of subordination and the omerta (code of silence) that arises from this in order to commit crimes or to obtain – directly or indirectly – control over economic activities, over activities contracted out to the private sector by the State or to obtain unfair profit for himself or for other people.

3.84 If the association uses weapons or threatens to use them, the punishment is increased.

3.85 Simple organised crime is defined in Article 416 based on three elements:

- the presence of association;
- an organised structure; and
- a criminal program.

3.86 Article 416 further defines mafia-type organised crime as having additional characteristics:

The organisation is of the mafia type when its components use intimidation, subjection and, consequentially, silence (omertà), to commit crimes, directly or indirectly acquire the management or the control of businesses, concessions, authorisations, public contracts and public services to obtain either unjust profits or advantages for themselves or others.

3.87 Following the murders in Sicily of mafia judges Falcone and Borsellino in 1992, legislation was passed altering the way mafia crimes were investigated and prosecuted in Italy. Previously, magistrates would guard the information they collected closely, to minimise the risk of invasion of 'their' territory by another magistrate investigating the larger ramifications of organised crime. This was counterproductive for combating organised crime. The legislative amendments included: changes to the way investigations were run, allowing them to be carried out in secret for two years before a target must be informed of the investigation against them; broadening the territorial reach of the central prosecutor to allow more systematic evidence to be obtained from all jurisdictions; and giving investigators wider powers to avoid the obstruction they were facing when investigating cases against political and economic elites.

3.88 The 1992 amendments also made important changes to evidentiary laws, allowing statements made prior to a court hearing to be admissible even if they otherwise would not be. This was intended to reduce the likelihood of witnesses 'disappearing' prior to trial and being unable to give evidence at trial.

3.89 Witnesses are the main source of evidence in organised crime cases in Italy, and they are mostly insiders. Therefore, there are a whole range of legislative

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provisions designed to encourage insiders to give evidence, and to protect them when they do. Those who disassociate themselves from other members of the criminal group and cooperate with police or judges are afforded lenient treatment, including:

- a reduction in punishment/expedited release from prison
- relocation and/or witness protection
- financial support
- special treatment while in custody and detention

3.90 Additionally, electronic surveillance and phone tapping may be used 'even if there is no reason to suppose that criminal activities are being pursued in such places' under Article 614 of the Code of Criminal Procedure. This is justified by the fact that alleged directors of organised crime groups are often well known to authorities, but it can be difficult to prove *prima facie* cases against them.

#### *Proceeds of crime laws*

3.91 The 1982 Rognoni-La Torre law also introduced proceeds of crime laws in Italy. The laws waive bank secrecy in the event of an investigation, and allow the courts to seize the assets of people involved in a 'mafia conspiracy' as well as the assets of any relatives or associates believed to be acting as a front for the mafia. Any person found guilty of a mafia conspiracy therefore loses their right to financial privacy and may have his or her assets seized without the police needing to demonstrate the person's participation in a criminal act.

3.92 Witnesses who cooperate with police are also required to specify their assets, and those which are derived from unlawful activities must be handed in to be formally seized by the judicial authorities.

#### *Administrative mechanisms to prevent organised crime*

3.93 A characteristic of the Italian mafia-type groups is that they use their power to infiltrate legitimate businesses and industries in order to control economic activities.

3.94 Italy was the first European country to implement a system of administrative checks to prevent organised crime groups from infiltrating legitimate businesses. Italian authorities conduct 'criminal audits' to determine whether an individual is likely to make use of a licence, government contract or subsidy for organised crime purposes.

3.95 The anti-mafia legislation that came into force in 1965 enabled the criminal court to prohibit convicted persons from contracting with government. The legislation also provides for a warning system which compels authorities involved in granting permits and contracts to check whether a person is registered on the anti-mafia list.

3.96 However, the system only became effective in the 1980s once the criminal law (discussed above) defined 'mafia organisation', and Italian authorities began to

distinguish the mafia from other organised crime groups and recognise that the groups posed different kinds of problems to authorities.

### ***The Netherlands***

#### *Criminal law*

3.97 Article 140 of the Dutch Penal Code states that:

1. Participation in an organisation whose object is the commission of crimes shall be punished by a term of imprisonment not exceeding six years or a fifth category fine of 100,000 guilders
2. Participation in the continuation of the activity of a legal entity that has been declared illegal by a final and conclusive decision of the courts and thus dissolved shall be punished by a term of imprisonment not exceeding one year or a third category fine [5,000 guilders]
3. In respect of founders or managers, the terms of imprisonment may be increased by a third

3.98 'Participation' requires proof that an individual takes part in or supports the acts of the organisation which are connected to its criminal purpose. Membership itself is not an offence.

3.99 The 'criminal organisation' must be shown to have a lasting and structured form of association that acts as a unit and whose immediate purpose is to commit crimes.

3.100 It is not necessary for criminal acts to have occurred, only that preparatory actions have been undertaken.

3.101 Some advantages of the way the offences in Article 140 are worded are that:

- the prosecution does not need to prove that an individual personally used violence, so it can be used to prosecute violent crimes committed by several people, and
- constructive participation is criminalised. That is, if a person is proven to be in charge of an organisation, they will be liable for failing to prevent persons within the organisation from carrying out illegal acts.

3.102 Article 140 has been criticised for being too broad, and punishing groups whose main purpose is not the commission of criminal offences. However the addition of this requirement would make the burden of proof much greater for the prosecution and would make the prosecution of corporate crimes much more difficult.

3.103 Article 140 also triggers the use of special investigative powers such as telephone tapping and pre-trial detention after arrest.

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*Proceeds of crime laws*

3.104 Article 36e of the Criminal Code, which came into effect in 1993, provides that the court can make a deprivation order if it is satisfied that a person's involvement in criminal offences has resulted in assets. It is not necessary for the person to be charged with the predicate offences. In this way the laws are similar to Australia's *Proceeds of Crime Act 2002*, as they are not reliant on criminal conviction, but are a civil confiscation regime, with seizure based on a burden of proof more similar to the civil standard used in Australia (the balance of probabilities), than the criminal standard (beyond reasonable doubt).

3.105 A deprivation order requires the confiscation of the amount of assets equivalent to those gained by illegal activity. A criminal financial investigation may be undertaken in order for the authorities to determine the amount of illegally obtained assets.

*Administrative mechanisms to combat serious and organised crime*

3.106 The Dutch screening and auditing approach under the BIBOB Act,<sup>19</sup> which began in 2003, aims to prevent organised criminals from infiltrating the legitimate business environment.<sup>20</sup> The BIBOB Act 'establishes grounds on which administrative authorities can refuse or withdraw permits and subsidies or exclude bidders from tendering procedures'.<sup>21</sup> It establishes a bureau which, at the request of an administrative agency, can conduct screening checks and advise the agency on whether a permit, subsidy or public contract is likely to be abused for criminal activities.

3.107 The reasoning behind the BIBOB Act is the fear that Dutch authorities could unintentionally facilitate criminal investments in businesses, for example by granting a permit for a person to operate a restaurant that is used for drug dealing.

3.108 The BIBOB Bureau has the authority to consult various sources of information, including police and judicial databases and tax information. It then advises agencies on whether an individual or company should be granted a licence, permit, subsidy or government contract.

3.109 Human rights have been codified in the Dutch constitution, so there are a number of safeguards within the regime to protect the privacy and other rights of individuals. For example, there is a requirement that decisions to refuse a benefit must

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19 A Dutch acronym for the title of the Act.

20 Cathelijne Rosalie Annemarie van der Schoot, *Organised Crime Prevention in the Netherlands: exposing the effectiveness of preventative measures*, PhD Thesis, Erasmus Universiteit Rotterdam, 2006, 97.

21 Cathelijne Rosalie Annemarie van der Schoot, *Organised Crime Prevention in the Netherlands: exposing the effectiveness of preventative measures*, PhD Thesis, Erasmus Universiteit Rotterdam, 2006, 97.

be proportional to the ends sought to be achieved. Therefore, the BIBOB Act is limited to sectors in which a threat of abuse by organised crime groups is present (including hotels, catering, brothels).

## **Key issues and findings**

### *The importance of political will*

3.110 Ms Kristina Kangaspunta from the United Nations Interregional Crime and Justice Research Institute (UNICRI) discussed the importance of international collaborative institutions such as the United Nations. However, it was noted that while at an international level member states may agree to adopt and ratify specific conventions there is often an inability to transport these conventions into legislation. Ms Kangaspunta gave a range of reasons for this, including financial or cultural constraints, and a lack of legal or judicial capacity. The issue of political will was raised in a number of discussions as being central to driving both domestic and international responses to organised crime.

3.111 The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime* was provided as an example of an international framework which has, to some degree, progressed slowly as a result of lack of political will. Ms Kangaspunta told the delegation that while 130 states have signed the protocol, only 45 per cent have adopted the offence of trafficking in people. It was acknowledged that in some jurisdictions, the protocol had had an impact on the establishment of legislation, but generally the use of this legislation is poor. Between 2003 and 2007, 32 per cent of member states recorded no prosecutions, 40 per cent recorded no convictions and 19 per cent, or twenty countries, had no specific offence in regard to the trafficking of people.

3.112 Similarly, the Delegation heard from officers from the Organised Crime and Criminal Justice Section in the UNODC, that although the Palermo Convention was signed 10 years ago, the UN is still unable to monitor the implementation of the convention due to the failure of many states to meet their reporting requirements. Mr Bernard Frahi, the Deputy Director, Division for Operations, UNODC, noted the need for the convention to be reflected in the domestic legislation of a number of member states.

3.113 In Italy, the Delegation was impressed with the level of political commitment to combating serious and organised crime and the activities of the mafia. A number of Italian police officers discussed the 1992 assassinations of Judge Giovanni Falcone and Judge Paola Borsellino. The murder, ordered by the mafia, of these two Judges was the catalyst for change in public opinion and declining support for the mafia. In essence, these murders galvanized public opinion which in turn produced the political will and action required to address both systemic corruption and organized crime.



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### ***Corruption***

3.114 In Italy, the Delegation heard that mafia corruption of political and public officials is a significant problem. Corruption occurs on two key levels: lower level public officials are bribed to 'turn a blind eye' or assist in the criminal activities of mafia groups, for example officials who allow shipments of cocaine to clear the docks; and high-level officials and politicians award government contracts, or use their political influence, to protect the business interests of powerful mafia individuals.

3.115 In other international jurisdictions criminal groups will often purchase telecommunications companies to avoid law enforcement surveillance of their communications. However, DCSA told the Delegation, that in Italy, organised crime groups have been able to infiltrate and corrupt individuals within these private telecommunications companies.

3.116 The DCSA described what Italian's refer to as the 'third power' in the Italian State. The third power is that of the criminal organisations, and its ability to influence politicians and the state. Mafia organisations recruit white-collar professionals to protect their criminal enterprises and to integrate their enterprises into the legitimate economy. Judges Borsellino and Falcone had claimed, prior to their murders in 1992, that the infiltration of organised crime into the legitimate economy was so significant as to affect the stability of the market itself, and that the Costa Nosta controlled 70 per cent of the Italian export market.

3.117 In an attempt to address this systemic problem, the Italian Government has established a new anti-corruption body which has significant powers. The Delegation heard that if, for example, a local council was found to be corrupt the Ministry of Interior has the authority to remove that council and appoint an administrator.

3.118 The growing potential for, and risk to, civil society of the corruption of governments and public officials was raised in a number of meetings. Mr Bernard Frahi, the Deputy Director, Division for Operations, UNODC, highlighted the importance of police and public sector integrity and noted that in many failing or corrupt states this is an area which is neglected. The Delegation was told about a large amount of cash found in the home of the President of a Latin American country.

3.119 Officers from UNODC also raised concerns regarding South Africa's recent legislative changes to suspend the need to declare the movement of currency into or out of that country.

### ***Confiscation of the proceeds of crime***

3.120 Throughout Europe the Delegation repeatedly heard that organised crime is motivated by profit. Mr Jan Boersman, the Head of the Crime Investigation Unit, from the National Police Service Agency (KLPD) in the Netherlands told the Delegation that 'organised crime is just about making money' and that the profits for organised crime are significant.

3.121 Colonel Omar Pace from DIA in Italy, told the Delegation that in order to fight organised crime at an international level, law enforcement has adapted its traditional approach to investigations: with the focus no longer on the individual crimes but upon the illegal movement and accumulation of capital.

3.122 The E.U. has developed a model approach which assists law enforcement to target the proceeds of crime. The approach involves:

- banning the use of cash payments
- the identification and control of all financial operators
- the creation of common databases with the obligation for financial operators to report all suspicious transactions
- strong cooperation between all involved authorities

3.123 Dirigente of the Italian National Police, Mr Raffaele Grassi, highlighted the importance of 'going after the money' and depriving criminal groups of their assets. He noted that:

Mafia members are prepared to spend time in prison, but to take their assets is to really harm these individuals.<sup>22</sup>

3.124 Similarly, DCSA officers told the Delegation that 'money gives criminal groups power, without money they have no power'. Colonel Adriano Pirazzi, of the DIA argued that in order to dismantle a criminal organisation, law enforcement and the state must go after assets and profits. By removing the financial assets, the organisation is unable to reinvest those assets in the criminal enterprise making it more difficult to continue the criminal activity.

3.125 General Russo from the GdF, also highlighted the symbolic value of taking the physical assets of the mafia, such as buildings, vehicles and boats, and using these assets for the benefit of the state. The Delegation was told that the GdF had successfully confiscated a luxury villa in Sicily, which was the home of the head of the Sicilian mafia. The villa is now used by the state as a police station.

3.126 Italy has, over the past decades, developed a range of law enforcement 'preventative' measures to seize illegally obtained assets from the mafia. Officers from the DCSA told the Delegation that Chief Police Officers and Public Prosecutors can undertake an investigation into suspected illegally gained assets without establishing a predicate offence. At the conclusion of an administrative investigation the matter can be sent to trial to establish the source of the assets.<sup>23</sup> During this process it falls to the individual to explain the source of their wealth. Prior to the trial process assets can be

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22 Mr Raffaella Grassi, Director of Division I, Operational Service Central Anti-Crime Directorate, Rome, Italy, 20 April 2009.

23 Italy has an inquisitorial justice system, so a judge will be inquiring into the source of the assets, unlike in adversarial systems where each side goes to court with a fully prepared case.

seized, and then they are confiscated at the conclusion of the trial. The Delegation was told that this process is both effective and efficient.

3.127 Italian approaches to the confiscation of the proceeds of crime have evolved to extend to the seizure and confiscation of assets which are held by family members or third parties. Additionally, if criminal assets are moved outside of Italy to avoid detection and seizure, a magistrate can order that funds and assets of an equivalent amount held in Italy be confiscated.

3.128 In the Delegation's discussions with the Netherlands Police (KLPD), Ms. Hennie Kusters, Head of the Financial Intelligence Unit (FIU), noted that there has been a fundamental shift in the way that law enforcement tackles organised crime in the Netherlands, with the focus now on the 'money trail'. The KLPD store information regarding unusual financial transactions on a secure database and law enforcement are able to target 'hot spots'. The KLPD have identified that 85% of suspicious transactions involve international money transfers.

3.129 During its discussions with Europol, the Delegation was told that it is generally more difficult to confiscate proceeds of crime in civil law jurisdictions (e.g. Italy and the Netherlands) than in common law jurisdictions (e.g. Australia, the UK, the U.S. and Canada). This is because most civil law jurisdictions have no or little distinction between the burdens of proof in civil and criminal cases – with a judge needing to be satisfied beyond reasonable doubt in both. Thus, in order to confiscate criminal assets, judges in civil law countries must be satisfied beyond reasonable doubt that the assets are the proceeds of crime. This can be contrasted to common law countries, like Australia, where legislatures have enacted laws to the effect that judges must only be convinced on the balance of probabilities (i.e. it being more likely than not) that assets are the proceeds of crime in order for them to be confiscated.

3.130 The Delegation heard, in a number of discussions, that those countries which had in the past had an issue with terrorism were more successful in developing or adapting a civil law legislative framework to tackle serious organised criminal groups. Spain has over a number of years developed legislation to deal with the ETA (Euskadi Ta Askatasuna), the Basque separatist movement. Mr Miravette, the head of the organised crime group unit within Europol told the Delegation that legislation to outlaw a terrorist organisation was now being used on organised crime groups with its lower burden of proof being used to seize and confiscate the assets of criminal organisations. Similarly, Germany has also adapted its terrorist legislation, originally developed to attack the Hamburg Chapter, to organised criminal groups, in order to use a lower burden of proof for assets seizure.

3.131 The Delegation was told that a number of countries have 'preventative' seizure measures. Officers from the Governance, Human Security, and Rule of Law Section, at UNODC highlighted the successful approach adopted in South Africa to target and recover the proceeds of crime.

3.132 The Directorate of Special Operations (also, DSO or Scorpions) was a multidisciplinary agency that investigated and prosecuted organised crime and corruption. It was a unit of the National Prosecuting Authority of South Africa (NPA), consisting of 536 staff including police, financial, forensic and intelligence experts. As a multidisciplinary agency, the Directorate investigated and prosecuted organised crime and corruption.

3.133 The NPA structure included the National Prosecuting Services (NPS), the Directorate: Special Operations (DSO), the Witness-Protection Programme, the Asset Forfeiture Unit (AFU) and specialised units such as the Sexual Offences and Community Affairs Unit and the Specialised Commercial Crime Unit.

3.134 The Delegation was told that despite the unit successfully prosecuting three out of four cases, DSO was disbanded in early 2009 by the new South Africa regime, some of whose members, including the current President Jacob Zuma, had been the subject of DSO investigations. The then South African President Kgalema Motlanthe officially disbanded the DSO late in January 2009.

### ***Special surveillance measures***

3.135 Italian law enforcement have available to them 'special surveillance measures' to restrict the movement and communications of mafia members. The Delegation was told that these measures can be used once an individual is indicted as a mafia member. The measures require that the individual report regularly to police, and remain in their place of residence between specified hours. The measures also restrict an individual's travel and their contact and communications with identified individuals.

3.136 These measures are policed by both the local police and the Carabinieri (national police), who are authorized at any time to visit the individual's residence. Any violation of the surveillance measures is a criminal offence.

### ***Witnesses protection***

3.137 Ms Kristina Kangaspunta from UNICRI noted the importance of effective witnesses protection in order to tackle organised crime.

3.138 In Italy, the Delegation heard that the mafia are secret hierarchical organisations, with membership often based upon family or geographic bonds and on a strict code of silence. Discussions with the GdF identified the importance of obtaining information from individuals within the mafia in order for law enforcement to prosecute offences.

3.139 Witness protection programs appear not to be universally popular with law enforcement officers, however the importance of the programs is widely accepted. Officers from DCSA indicated that law enforcement has been successful against the

mafia, in part, because of Italy's strong witness protection program. The Delegation was told by one senior officer:

I don't like it, but the program is very useful!<sup>24</sup>

### ***Informational and intelligence sharing***

3.140 All the agencies with which the Delegation met discussed the need for greater international cooperation, and intelligence and information sharing. The transnational nature of organised crime requires law enforcement to collaborate with other domestic agencies and international jurisdictions to a greater degree.

3.141 The value of information sharing is captured in a Nepalese proverb which was told to the Delegation:

If two friends exchange a gift, then they each have one gift. However, if two friends each exchange information, then each will have two things of value.<sup>25</sup>

3.142 Europe has a number of mechanisms to share law enforcement intelligence, information and resources. In particular, European member countries are well serviced and contribute to international efforts to target transnational crime through their membership to:

- Interpol – 187 member countries
- Europol – 122 member countries
- S.I.R.E.N.E. (Supplementary Information Request at the National Entry)

3.143 S.I.R.E.N.E. (Supplementary Information Request at the National Entry) was established to provide those countries, which opened their borders under the Schengen Agreement,<sup>26</sup> with a greater level of law enforcement information exchange. Schengen countries indicate a greater level of transborder crime and therefore the need for greater police cooperation. These countries have also set up the Schengen Information System (SIS), which is a full exchange database for those participating countries.

3.144 Mr Joop Siemers, Supervisor Programs and Postings Abroad, KLPD, also highlighted the value of multilateral E.U. treaties for law enforcement. The Delegation was told that Italy currently has 166 bilateral agreements with more than 65 countries and is currently negotiating 20 new agreements. These agreements cover areas of information exchange which are not covered by Italy's membership to Interpol, Europol or S.I.R.E.N.E. and in those areas which are not confined to the criminal justice system.

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24 Mr Raffaella Grassi, Director of Division I, Operational Service Central Anti-Crime Directorate, Rome, Italy, 20 April 2009.

25 Mr Antonio Sessa, Central Directorate for Anti-Drug Operations, Rome, 18 April 2009.

26 The Schengen Agreement was a 1985 agreement between 10 European states to remove border controls.

3.145 E.U. countries also have numerous agreements with non-EU countries. The Australian Federal Police were mentioned by a number of international agencies as a particularly good and highly regarded non-EU partner, as was the Australian Crime Commission for its work with UNODC.

3.146 Australia was identified in a number of the discussions as a destination in which proceeds of crime, particularly mafia funds, are being invested. It was reported to the Delegation that in discussions with the FBI and RCMP, Italian law enforcement were told that mafia funds had been sent to Australia to purchase legitimate businesses.

3.147 However, despite the efforts of law enforcement agencies to share intelligence and information and to develop greater levels of international and domestic cooperation, the Delegation heard of a range of barriers. Mr Miravette, Head of the Organised Crime Group unit in Europol, told the Delegation that international cooperation and information sharing is hampered by whether the jurisdictions or countries operate under common law or civil law. In particular, in civil law jurisdictions, all information and evidence is under embargo until after a case is finalised. This does not allow live information to be shared with other jurisdictions.

3.148 The Delegation also heard about administrative barriers to the sharing of information. In the Netherlands, Ms. Hennie Kusters, Head of the Financial Intelligence Unit (FIU), Netherlands Police Agency (KLPD), noted that while some countries kept a 'blacklist' on individuals involved in money laundering, this information was not shared. Consequently, 'blacklisted' individuals move to other countries within Europe to remit money.

3.149 Dr Laslo Salgo, Assistant Director Serious Crime Department, Europol, made the analogy that, while Europol seeks to assist member states with intelligence and analysis, Europol is like a kitchen: it provides the equipment and the chefs, but it can only prepare a meal on the ingredients (the information) that it is given. Dr Salgo commented that 'if member states want a good meal then they have to provide good ingredients'!

### ***Financial reporting***

3.150 Italian legislation prohibits the use of cash for transactions over €12 500 (AU\$21 800). Transactions over this amount are required to be processed through a financial institution. All transactions over €15 000 (AU\$26 000) require the collection and verification of personal details, with these records kept for ten years. Italian banks and financial institutions are responsible for ensuring that they are not involved in money laundering. Strong punitive legislation targeted at the financial sector ensures the cooperation of banks in this area. The Delegation was told of a case in which €160 million (AU\$280 million) of illicit funds was deposited into a bank account in China. The bank failed to comply with the relevant reporting requirements relating to this transaction. Accordingly, the bank was required to pay a penalty of 40% of the money transferred, and bank officials involved in money laundering or in the non-

compliance with financial record keeping and reporting were able to be charged under mafia association legislation.

### ***Technology and telecommunications access***

3.151 The Delegation was told that Italian law enforcement has access to two levels of telecommunication interception:

- Administrative interception, which can be undertaken on the suspicion of an individual being a member of the mafia or involved with the mafia. This type of interception does not require a warrant or judicial order and can only be used for information gathering purposes.
- Judicial interception, which is undertaken on the provision of a judicial order and the evidence gained in this process can be use in court.

### ***Charter of Rights***

3.152 During discussions with the Organised Crime and Criminal Justice Section in UNODC, the unintended consequences for law enforcement of a charter of rights was raised. It was noted that many countries are seeking to develop civil, non-conviction-based approaches to the confiscation of proceeds of crime. However for jurisdictions with a charter of rights, this can be more difficult, particularly if the charter includes property rights and provisions about court procedures and permits the judiciary to overturn legislation on the basis of inconsistency with human rights.

3.153 Officers from the Organised Crime Group Unit at Europol, further noted that the freedom of association protections in the Netherlands have had the effect of stalling the judicial process in that country, with one case running for over 6 years as the defence challenged the Parliament's ability to criminalise membership of a criminal group.

### ***Serious organised crime and terrorism: the balancing point***

3.154 Dr Salgo from Europol told the Delegation that after the 9/11 attacks in the United States, Europol received a great deal of funding to focus its analysis on terrorism. Terrorism is still considered the highest priority threat, with its effects on civil society being likened to a war.

3.155 Mr Robert Hauschild, Head of Drugs Unit at Europol, commented that the greater focus on terrorism was because its impacts were immediate, 'like a bleeding wound' whereas, organised crime was like a cancer, its effects are not obvious but in the long term are far more damaging as it can corrupt governments and whole societies. The Delegation was told that in this current period of global financial crisis, there will be greater opportunities for organised crime to infiltrate society. It was suggested that organised crime groups will launder money by funding public buildings such as hospitals and schools, and by investing in large manufacturing companies.

## Conclusions

3.156 The Delegation's discussions with international organisations and law enforcement agencies in Europe gave the Delegation an excellent insight into the importance of, and challenges inherent in, developing international cooperative regimes for sharing criminal information and intelligence.

3.157 The key issues arising from its discussions in Europe that the Delegation considers most relevant to Australia in developing effective ways to combat organised crime included:

- (a) The importance of global and regional approaches to combating organised crime. The Delegation was also made acutely aware of the enormous challenges that the world faces in developing international approaches to transnational crime, key amongst them the lack of political will and challenges posed by weak and corrupt governments.
- (b) The need for effective witness protection programs
- (c) The need for strong laws targeting money laundering and criminal assets. The Delegation was made aware of the necessity to stop the accumulation of criminal assets, and remove the financial motive of organised crime. The Delegation's discussions with European agencies presented a range of ways in which this may be done, including through:
  - Greater levels of financial reporting controls and penalties on banks for non compliance
  - Strong criminal assets confiscation laws, with civil burdens of proof
  - The need to freeze the assets of criminal groups/individuals prior to trial and conviction
- (d) The need to consider the balance between serious organised crime and terrorism in terms of the focus for law enforcement and level of resourcing.

3.158 The Delegation appreciates the informative, frank discussions it had with international, European, Italian and Dutch agencies. The Delegation is also grateful for the hospitality it received from the organisations with which it met in Europe.