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Combating Transnational Organised Crime and Money Laundering Phenomena. A Focus on Albania

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To my family

“Politica e mafia sono due poteri che vivono sul controllo dello stesso territorio:
o si fanno la guerra o si mettono d'accordo.”

Paolo Borsellino

“Politics and mafia are two powers that live in control of the same territory:
they can make war or make an arrangement.”

Paolo Borsellino

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ABSTRACT

From the 1990s the problem of organised crime groups has acquired even more importance in the international field. Organised crime groups are usually more powerful than the state, because states underestimated or did not worry about the phenomenon. Many criminal associations have now become transnational organised crime groups and have created international networks, not only inside a single organised crime group, but also among other organised crime groups. The presence of the phenomenon influences the economics of the state: organised crime produces alterations in the market trends and as a consequence alters the policy responses of governments. One of the activities that most influences the economics of the state is money laundering. Money laundering is a fundamental activity for organised crime to take advantage of the proceeds from crime and invest the money gained through illicit activities in the legal market without being recognised.

The presentation of the transnational organised crime phenomenon and its main characteristics and activities is only an introduction to the other important phenomenon: money laundering. Money laundering is analysed from the point of view of organised crime and describes the institutions criminal associations use to put into practice this fundamental activity for the exploitation of the proceeds from crime in the legal market. Both phenomena – organised crime and money laundering – are then tackled from the international instruments point of view: the dissertation analyses the international instruments to combat organised crime, such as the UN Convention against transnational organised crime and Interpol, as well as the international instruments to combat money laundering, FATF. Also the European regional instruments to combat money laundering are taken into consideration: a solid example of the functioning of the European instruments, alongside the 1990 Council of Europe Convention, the 2005 Warsaw Convention, the 2005 European Union Directive and Europol, is MONEYVAL. Albania is the country where both the phenomenon of transnational organised crime and money laundering are put into practice. MONEYVAL reports help with the definition of the phenomenon and the understanding of the engagement of the Albanian

government in the cause of combating organised crime and money laundering. Although Albania has made visibly progress in combating money laundering activities, the problem remains a high priority for the government, which cannot control all the operations in the informal economy. Fears concern also the possibility of financing terrorism due to the less effective controls on the money trail in Albania.

INTRODUCTION

Admitting the presence of the mafia in a country could seem to the population to be a way of giving a terrible image of themselves to the world. This leads to a contradiction: combating the organised crime groups in a country implies the admission of the phenomenon and the spreading of the same. It is impossible to combat such a phenomenon as the mafia without letting the people know about it. This is the difficulty that Albania is facing at the present time: the admission of such a great problem. Albanians fear that their name could be dragged through the mud and politicians as well, especially the not corrupt politicians. Also the judicial field is corrupted, as we can find judges and magistrates that make agreements with the criminal organisations, for instance. In this climate of abnegation, corruption and acceptance, organised crime groups can develop, grow and expand; nobody stops them and they reproduce and proliferate. They not only develop, grow and expand inside their borders, but also outside. They start to make connections with other organised crime groups in other countries, creating a unifying thread which grows stronger by the day. Interconnections become a chance for new investments and greater profits. It is said that the more you get the more you want, and the more criminal organisations get, the more they want. This is how they grow. However, not every organised crime organisation is so powerful as to have connections outside its borders, to acquire international fame, to be feared by more than one country: Albanian organised crime is.

It is with the question of what the power of organised crime is that I started to be interested in the capacities of a mafia, a specific powerful mafia at the international level, in order to understand their criminal games and their actions in relation to different countries. I wanted to focus on a mafia which lived near to the place I live and maybe that affected my country directly. The choice fell on the Albanian mafia. In order to analyse the Albanian mafia, it is worth knowing what is meant by 'mafia'. I also wanted to go deeper into their finances and understand why the Albanian mafia, and all the organised crime groups, are able to pursue

their illegal actions without being caught. The method they use to escape justice, at least at a first superficial glance, is another question which is answered in the dissertation. The method is money laundering and it permits criminal individuals to use illicit sums of money as licit. It has to be noted that if organised crime has connections outside its country's borders, it is no longer called organised crime, but it acquires the name of transnational organised crime.

The term 'transnational organised crime' was created only recently: it was in the last years of the 1980s that the concern for this phenomenon arose. The United States were the initiator of this fight, as it was for the fight against money laundering. The phenomenon was so worldwide that the concern for this phenomenon was shared by some countries. Among the countries that were directly affected by this huge problem was Italy. Italy was the country that started an effective fight against the phenomenon at the international level: it proposed in 1993, at the Economic and Social Council, the idea of a convention, the future UN Convention against Transnational Organized Crime, with the aim of regulating the fight against transnational organised crime at the international level. The idea was embraced by the Economic and Social Council and in 1994 the World Ministerial Conference in Italy on the issue took place; this was the first of a series of meetings on the matter and the series ended in 2000 with the signing of the United Nations Convention on Transnational Organized Crime in Palermo, Italy.

The other issue the dissertation examines is the method by which organised crime uses illicit profits for financing other illegal activities or legal activities without being caught. Money laundering is a practice that is used not only by organised crime, but is also practised by whoever does not want to declare large sums to the treasury, and hence not pay taxes to the state. Basically, money launderers are all tax evaders and this damages the state's revenues. As for transnational organised crime, the dissertation looks at the measures taken at the international level in order to eliminate or at least reduce the problem in the countries through a convention signed by them. The approval of the state is always necessary for an international organisation or whatever entity can indirectly intervene in the domestic affairs of the countries. In

international law the rule of sovereignty is in force and does not permit the interference of a foreign entity to intervene in the domestic affairs of the country without its permission. Thus, it is up to the state to choose whether to conform or not to international law – international law is the common law of humanity, despite the fact that humanity is politically divided (human beings belong to different countries with different political systems, which have their own laws), and regulates the coexistence of humanity. International law is enforced by one or more countries and the rules of law regulate inter-state relations (it has to be separated from private international law which regulates inter-individual relations). The rules of law of international law are two types: general international laws and international treaties. Many scholars believe that the fact that the rules of law have a compulsory character derives from general international law, namely peremptory norms. Peremptory norms are non-written rules created from the generality of the states and binding all the states. In particular it is the peremptory norm called *pacta sunt servanda* that unites the countries in respect of a ratified treaty: *pacta sunt servanda* means that agreements must be kept. Also the acts of international organisations can be binding and have to be respected, according to the statute of the treaty.

Thus, departing from the description of what transnational organised crime is, the dissertation wants to make clear what is meant by the term and what a standard organised crime group does, and the dissertation continues with the definition of the term ‘money laundering’. Money laundering is a very important activity for all organised crime with a considerable turnover: illicit earnings, in technical terms called proceeds from or of crime, are used again. This money is used for different purposes: it can be invested in in the same illicit activity or in other illicit activities that can benefit from it. The proceeds from crime are used to pay the organised crime men; they are invested in licit activities in the town in which the criminal individuals live; or it is simply used to buy essential goods, such as food, clothes and house expenses. Hence, the necessity for the organised crime groups to hide the proceeds from crime and make them appear legitimate: it has to seem that the lifestyle the criminal individuals can afford derives from a completely legal activity.

In order to analyse the situation in Albania in relation to the two phenomena, it is necessary to confront it with international law and in particular with the most important treaties Albania committed itself to, but also the most important treaties at the international level. Thus, the second chapter presents the international treaties and the regional treaties that are related with the issue. The treaties tackled in the chapter are, among others, the United Nations Convention on Transnational Organized Crime and the Financial Action Task Force (FATF). The first regulates the transnational organised crime phenomenon, defining the laws within the state that aim to outlaw the phenomenon, while the second is the organisation that is in charge of combating money laundering. Both give general rules on the issues they are concerned with and this is not sufficient in many cases. The reason the general rules in global treaties as the two just mentioned derives from the fact that there is the desire to unite the international community in the fight against the same issues in order to have a common front. Having a common front means making easier the task of combatting the same threats and means greater and more efficient collaboration among countries. On the other hand, general statements are not always useful because they are too vague; hence, the need for a regional agreement among countries which are part of the same region in order to implement the general rules with more specific elements adapted to that particular region, which is thought to share geographical, cultural and historical elements. The MONEYVAL is the example of a regional entity that has implemented the general statements present in the FATF mechanism. Then the country will further implement the regional obligations adapting it to its own country. Albania is part of the MONEYVAL.

The fact that the two phenomena are treated at the international level denotes their importance. Their importance is linked with the relationship of the two phenomena to the economies of the countries. In fact both have impacts on the economy of a country. Albania is really affected by them: the Gross Domestic Product of Albania has decelerated in the last years, maintaining at the same time a positive growth due to external demand. The growth is stimulated by low inflation – however, not sufficiently to be transmitted to the real economy. Furthermore, the budget deficit of the country remains high and the public debt

has increased further in the last few years. On the other hand, the current account deficit has narrowed, but it remains high. It is thought that Albania could do more and be more efficient if organised crime and money laundering were eliminated. Events demonstrate how organised crime is involved in the economy of the country: it has been reported that Albanian imports are largely controlled by organised crime and imports account for 75 percent of the total consumption of Albanians.

The third chapter tackles the fight against the two phenomena from the point of view of the state: government, the law enforcement institutions and agencies, police and other entities. Before this the situation in Albania is presented: the history of Albania has been considered of importance in determining the current situation and it has been thought necessary for the purposes of this dissertation to present the economic situation of Albania as well. The crucial event in the history of Albania was the fall of communism, which meant the opening of Albania to the world and the transition from a communist dictatorial regime to a democracy. Before Albania was an isolated country, ruled by a dictator, the opening up to new markets and the world in general meant the lack of preparation of the Albanian institutions in tackling the threats of the globalised world. The weakness of the state was exploited by men with bad intentions, at least from the point of view of the country. Organised crime groups started to develop easily in the country, making connections with organised crime groups present in surrounding countries, namely the Italian mafia, the Turkish mafia and Kosovo organised crime, just to cite some of them. The expansion of the Albanian mafia did not put a stop to the connections with other organised crime groups; over the years it went further, acquiring more power and influence in the traffic they managed, including the transplantation of the Albanian mafia outside the country's borders. Transplantation means the installation of the mafia in another country with the same rules and structure as the home organised crime: the Albanian mafia has a strong presence nowadays in Italy and in some countries in central Europe.

In support the research of this dissertation there are books of many important and renowned scholars in the field of international relations and in

particular international law. Websites of the treated organisations and texts of the treated conventions are another two sources used for the drafting of the dissertation. The first chapter is mainly based on books; the second chapter is mainly based on websites. The third chapter is based on another dissertation, on articles or chapters of some experts on Balkan organised crime and on reports of different organisations, most of all the MONEYVAL report. Thanks to this material I was able to develop my theme and describe the two phenomena from many points of views: scholars, international organisations and a concrete case-study. Putting together the facts in the first two chapters and the presentation of the current situation in Albania will enable conclusions to be drawn.

It has to be noted that the two topics of transnational organised crime and money laundering are related to other two issues, namely corruption and the financing of terrorism. These two issues will not be tackled in the dissertation in great detail, but it is worth mentioning the importance of corruption, which is related to both phenomena and the concern of the international community for the financing of terrorism, a topic that is tackled together with money laundering in the FATF mechanism. Corruption is to be considered to be the lubricating oil of a machine called organised crime; corruption gives criminals the opportunity of obtaining more easily what they aim to obtain by creating a permanent contact in the state agencies or banks, for instance. Corruption is thought to be so remunerative that some people look forward to obtaining state jobs in order to be paid by organised crime. However, corruption facilitates only bad habits, bad actions and bad people – corruption is never for the people but is always for the benefit of criminals, because the primary reason that motivates criminal individuals is, of course, self-interest. Corruption is never in favour of the country and the common people, as it reduces the possibility of ordinary people pursuing their own activities, because they have fewer funds in relation to the big criminal organisations that can count on bigger capital and the support of banks, due to the fact they appear as perfect clients with perfect accounts. People will then turn to criminal organisations in order to survive: a spiral that cannot be broken without the will on the part of the judges to eliminate it and the will of the population to aspire to a better life. The price for corruption is exploitation: in a

world without organised crime common people would earn more and live better. Nevertheless, it has to be specified that not all corrupt actions depend on organised crime.

The financing of terrorism, on the other hand, is the use of substantial sums of money for financing terrorist actions. Terrorists are individuals belonging to non-state entities that fight against the state in order to obtain power. International law considers these entities as illegitimate; however, they can acquire a legitimate status if they win against the state and are accepted by the majority of the population. A definition of the phenomenon is, however, not present in international law; neither is there a clear definition of which types of activities should be considered as terrorist, as the Security Council of the United Nations demonstrates. However, the financing of terrorism has been addressed by some treaties. It cannot be said what is really meant by terrorism, but it can be certainly affirmed that the financing is illicit. Resolutions 49/60 (passed in 1994) or 60/288 (passed in 2006) of the General Assembly of the United Nations are just an example. The financing of terrorism is being addressed alongside money laundering by some organisations, such as the FATF. However, most of the time, if for organised crime money is illicit and is “transformed” into licit, for terrorism most of the time the contrary is true, namely that licit sums of money are used for financing illicit activities.

The dissertation is organised in three chapters. The first chapter is divided into two sections: the first section explains transnational organised crime as a global phenomenon with its definition and its characteristics. Furthermore, the third paragraph of the first section presents the most important transnational organised crime groups, namely the Italian mafia, the Russian and Turkish mafia, the Chinese triads and the Japanese yakuza, and the North America Cosa Nostra and the drug cartels of Latin America. The section ends with the presentation of the different types of activities organised crime can engage in. Section B talks about money laundering: its definition, the phases and the implications of money laundering for the economy of a country. Then money laundering is presented from the point of view of organised crime and there is an explanation of why money laundering is so important for organised crime and

how it exploits different entities in order to obtain the result. The last part of the section talks about the fight against money laundering inside a country: which institutions are involved in the fight, and which laws, and it examines the significance of the confiscation of the proceeds from crime in order to block or at least slow down the phenomenon, because it should be emphasised that the fight against money laundering has a cost for the state, but it has also a cost for the organised crime group.

The second chapter of the dissertation presents the international instruments that combat money laundering and organised crime phenomena. The first part of the chapter looks at the international instruments that both phenomena are confronted by and this is found in Points 1 and 2, while the second part presents the regional instruments and in particular the instruments of the European region, found in Point 3. After citing the most important conventions at the international level depending on the United Nations and other major conventions outside the United Nations, the creation of the UN Convention on Transnational Organized Crime is presented, as well as its main points. Interpol is described as the main police agency of the world. The FATF mechanism is then presented in detail in Point 2. The importance of presenting the mechanism is also due to the fact that the general statements included in the Forty Recommendations are reported in the regional instrument, MONEYVAL. However, MONEYVAL is presented as the last paragraph of the chapter and the third point; before are the description of the 1990 Council of Europe Convention, the 2005 Warsaw Convention and the 2005 European Union Directive, and the European police agency Europol, with three of its programmes for combating organised crime.

The third chapter starts with the historical background of Albania before 1990 and after 1990, which is the crucial date for Albania. It continues with the economic background and the presentation of some of the economic agreements signed by Albania and some of the conventions related to the issues previously mentioned. The chapter continues with the presentation of the Albanian mafia: some clarifications, the causes, its characteristics, its activities and its expansion outside Albanian borders, pausing to examine the Italian situation. The last

chapter concludes with the fight of the Albanian state against the two phenomena: the evolution of the Albanian criminal code is analysed, together with the other evolutions in terms of law for the implementation of the requirements of the MONEYVAL, in particular in order to combat money laundering.

CHAPTER I – HOW TRANSNATIONAL ORGANISED CRIME LAUNDERS MONEY

A. TRANSNATIONAL ORGANISED CRIME

Contents

1.What is transnational organised crime? 2.The main characteristics of transnational organised crime 3.The most dangerous transnational organised crime groups 3.1.Italian mafia 3.2.East European organised crime 3.3.Asian organised crime 3.4.American organised crime 4.The activities of the transnational organised crime groups

1.What is transnational organised crime?

The first section of this chapter presents transnational organised crime. The first part of the section presents what is thought to be transnational organised crime, the second part of the section presents the characteristics, then the most important transnational organised crime groups in the world and finally the activities they are involved in.

Defining the term ‘transnational organised crime’ is not simple. Many definitions of this phrase have been given on the argument and many different papers talk about the phenomenon. To better understand what is thought to be transnational organised crime, it is worth noting that there is a difference between transnational organised crime, organised crime and transnational crime. Furthermore, inside organised crime there are other differentiations. By transnational organised crime is meant an organised crime group that operates outside its national borders and has connections with other countries or other criminal associations. Two possible definitions can be found in the “Transnational Organised Crime: Summary of a Workshop” of the US Commission on Behavioural and Social Sciences and Education. The first describes the transnational organised crime as “acts that are offences in one state that involve actions or actors in another state, requiring more than a single opportunistic

transaction between individuals”¹. The summary of the workshop also defines transnational organised crime as: “acts that entail avoidable and unnecessary harm to society, which are serious enough to warrant state intervention, and similar to other kinds of acts criminalized in some countries”². A US definition has been taken into account because the United States is the precursor of the fight against this phenomenon and the country which most of all has pushed for an international cooperation on the matter. On the other hand, transnational crime does not include the presence of organised crime behind it, it can simply be an individual that operates in more than one country with his/her illicit activities. If transnational crime lacks the organised criminal association element, organised crime lacks the transnational element, that is the fact that a particular criminal association is not involved in the commission of a crime outside its national borders.

Defining the transnational organised crime term is not simple, but enumerating some adjectives can help to frame the phenomenon. According to a commentator, organised crime is “complex, dispersed and invisible – forming networks more than gangs, invasive and progressive, subversive and self-protective – disabling and corrupting crime control systems, persistent, adaptive and durable, entrepreneurial and well-resourced, innovative”³.

Transnational organised crime cannot have a single definition. The fact that many papers and every country give their own definitions is not helpful for the international instruments, such as a convention, to give a single definition. However, the difficulty is to be observed in the fact that there are many types of organised crime groups, each of them with their own characteristics and with their different schemes. In a document of the United Nations “Problems and Dangers Posed by Organised Transnational Crime in the Various Regions of the World”, transnational organised crime is thought to be different in size, skills,

¹ P. REUTER & C. PETRIE Ed., *Transnational Organised Crime: Summary of a Workshop*, Washington DC, National Academy Press, 1999, p. 8. Available from: <http://www.nap.edu/openbook.php?record_id=9631&page=8> [Accessed 05/03/2015].

² P. REUTER & C. PETRIE, op. cit., p. 8.

³ P. EKBLÖM, Organised crime and the Conjunction of Criminal Opportunity framework, in *Transnational Organised Crime Perspectives on global security*, Oxon, Routledge, 2003, p. 241.

specializations, geographical domains, product markets, tactics and mechanisms, and structure⁴.

The United Nations Office on Drugs and Crime affirms that transnational organised crime can compromise the legitimate economy and have an impact on public processes, as well as being responsible for the death of many individuals⁵. The same office accuses transnational organised crime of “[permeating] government agencies and institutions”, undermining in this way the potentiality of the government and democracy; moreover, transnational organised crime is defined as flexible and sophisticated and due to the fact that it operates outside national boundaries, it can be said that it is not attached to its own culture and its society⁶.

The United Nations Office on Drugs and Crime (UNODC) is in charge of the UN Convention on Transnational Organized Crime. The UN Convention against Transnational Organized Crime is thought to be the most important convention ever concluded against this phenomenon. These diverse types of organised crime groups are considered a threat to world peace and human security⁷. An organised crime group is thought to be “a group of three or more persons not randomly formed; existing for a period of time; acting in concert with the aim of committing at least one crime punishable by at least four years’ incarceration; in order to obtain, directly or indirectly, a financial or other material benefit” – Article 2 of the Convention⁸. It is worth noting the importance of the formation of the group, which must not to be random: if the criminal association is randomly formed it is not considered a part of organised crime. Behind organised crime there is a structure and a system that cannot be put in place in a small period of time – further information on the structure and system of organised crime groups will be given in the following paragraphs. The Article 2 of the

⁴ W. C. GILMORE, *Dirty money The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism*, Council of Europe Publishing, 2011, p. 19.

⁵ UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Organized Crime*. Available from: <<http://www.unodc.org/unodc/en/organized-crime/index.html>> [Accessed: 05/03/2015].

⁶ UNODC, *Organized Crime*, op. cit..

⁷ UNODC, *Organized Crime*, op. cit..

⁸ UNODC, *United Nations Convention*, op. cit..

Convention specifies also the number of years of incarceration following the crime which has been committed, which has to be equal or superior to four: the gravity of the crime committed is underlined – if the crime concerns a small injury, it is not considered to be listed in the activities of organised crime. An organised crime group is also thought to be a threat “to sovereignty, to national authority and state control, to democratic values and public institutions as well as to national economies, financial institutions and individuals”⁹. Organised crime groups have been compared by some Australian scholars to economies of scale¹⁰: they try to decrease costs, gaining from the exploitation of their men and from the use of cheap materials, in order to increase the net part of the proceeds. An organised crime group has to present these characteristics: premeditation and planning with the aim of causing harm to someone/something; for the fact that they are a group, they can better own a large amount of money, so their crimes can be more ambitious than for a simple criminal association¹¹.

Transnational organised crime takes root in a precise geographical area. Traditionally, they come into the world or give life to a new base in strategic geographical areas: the most important communication means is water, so they easily grow near the maritime ports¹². Roberto Saviano denounces the massive use of ships of any kind, and submarines, for the trade of drugs¹³. These ports are also a good point of arrival for immigrants from their home land and settling in a new base in a port is the best way to keep in touch with their native land: as a consequence, they can keep their illicit and remunerative activities going – they are present in all of the world’s major ports¹⁴. Moreover, they have control not only of big areas, but also of small closed areas, such as prisons¹⁵: many bosses can continue and continued to direct the illicit trades of their own organised crime

⁹ W. C. GILMORE, op. cit., p. 19.

¹⁰ W. C. GILMORE, op. cit., p. 19.

¹¹ E. BAKER, The Legal Regulation of Transnational Organised Crime Opportunities and Limitations, in *Transnational Organised Crime Perspectives on Global Security*, Oxon, Routledge, 2003.

¹² J.-M. DASQUE, *Géopolitique du crime international*, Paris, Ellipses, 2008, p. 31ff.

¹³ R. SAVIANO, *Zero Zero Zero*, Bergamo, Feltrinelli, 2013.

¹⁴ J.-M. DASQUE, op. cit., p. 31ff.

¹⁵ J.-M. DASQUE, op. cit., p. 31ff.

from the prisons. Transnational organised crime organises the territory dividing it in different subsets¹⁶, such as, for example, provinces, regions and nations.

According to Jean-Michel Dasque, organised crime can be divided into three further groups. He separates the mafia-type organised crime groups, from the protomafias and cartels, and from the gangs¹⁷. According to Jean-Michel Dasque, the mafia-type organisations constitute the aristocracy of the criminal associations¹⁸. The mafia-type organisations are relatively old and their birth is often surrounded by a halo of myths and legends; they have a strong structure and strict rules, adopt rituals and distinctive signs¹⁹. They control a territory where they impose their own law; finally, they are characterised by their longevity and survive the arrests or the death of their bosses²⁰. The mafia-type organisations have to be distinguished from an ordinary organised crime group: while the first has a solidity over time and a consistency of membership, the latter does not have the same qualities²¹. The protomafias and cartels are defined as a looser criminal association which was formed to achieve some definite objectives: they have recently appeared in countries with political breakdown situation or in deep economic crisis²². They are closely linked with the personality of their bosses, and if he/she dies, they die as a consequence as well²³. They are remarkable for their capitalist character and the absence of traditions and rites²⁴. Finally, the gangs are completely different in volume from their previous colleagues, because they are small units, less powerful and less classified²⁵. Moreover, they control a less extended portion of territory – often it is only a district; however, they have borrowed from the mafia-type organisations some of their methodologies, such as racketeering, and they are usually more cruel and dangerous than the other two criminal organisations²⁶.

¹⁶ J.-M. DASQUE, op. cit., p. 31ff.

¹⁷ J.-M. DASQUE, op. cit., p. 9ff.

¹⁸ J.-M. DASQUE, op. cit., p. 9ff.

¹⁹ J.-M. DASQUE, op. cit., p. 9ff.

²⁰ J.-M. DASQUE, op. cit., p. 9ff.

²¹ E. BAKER, op. cit..

²² J.-M. DASQUE, op. cit., p. 9ff.

²³ J.-M. DASQUE, op. cit., p. 9ff.

²⁴ J.-M. DASQUE, op. cit., p. 9ff.

²⁵ J.-M. DASQUE, op. cit., p. 9ff.

²⁶ J.-M. DASQUE, op. cit., p. 9ff.

Transnational organised crime has started to develop for different reasons. The globalization of the economy is one of the reasons why criminal associations tend to expand their criminal activities abroad²⁷. Another fact that helped the extension of their operating range is the increased number of immigrants and their heterogeneity²⁸. As important as the other two features are improvements in communications technology²⁹. But also the elimination of the language barriers is a trigger feature³⁰. Transnational organised crime is born because of the disaffection of the individuals from the values they threaten, namely democratic values, and the rule of law they find inappropriate to the society in which they live³¹.

Transnational organised crime also means transplantation of the organised crime group into another country with the prospect of increasing the proceeds from crime expanding and expanding their market possibilities. Transplantation is, however, not always successful. According to a scholar, organised crime groups are always less linked with a specific territory, as they want to take advantage of all the positive challenges offered by economic globalization: they need to expand their territories of influence³². Some scholars go further, even affirming that the link with the territory for an organised crime group is no longer important³³. As already affirmed some Australian scholars compare organised crime to economies of scale, the explanation stays in their desire of taking the most from labour and raw materials exploitation³⁴. The reasons that motivate an organised crime group to go abroad are of four types: the first reason is directly connected with the economic globalization of the world and the aspiration for a criminal association to become a more powerful organization, the other three reasons are determined by the destinies of the organised crime individuals who have been forced to escape. Transplantation

²⁷ P. REUTER & C. PETRIE Ed., op. cit..

²⁸ P. REUTER & C. PETRIE Ed., op. cit..

²⁹ P. REUTER & C. PETRIE Ed., op. cit..

³⁰ P. REUTER & C. PETRIE Ed., op. cit..

³¹ E. BAKER, op. cit..

³² F. VARESE, *Mafias on the Move How Organised Crime Conquers New Territories*, Princeton, Princeton University Press, 2011.

³³ F. VARESE, *Mafias on the Move*, op. cit..

³⁴ F. VARESE, *Mafias on the Move*, op. cit..

can take place thanks to “the mass migration of people who know mafia” – inside the mass of immigrants there are always a couple of individuals who are related to criminal associations and it increases the possibility for a transplantation in the new country; the mass of immigrants has to be unemployed individuals³⁵. At other times, Mafiosi are forced to leave the country in which they commit crimes by court orders or to escape justice and forced migration brings to the new country a potential precedent for the creation of a new criminal association³⁶. Thirdly, Mafiosi can escape a country because of conflicts among rival criminal associations or because they are prosecuted by their rivals: this creates a rich soil for the possible transplantation of the organised crime³⁷. Fourthly, the country’s policies against organised crime can force the criminal association to go abroad³⁸.

However, transplantation is not as simple as it is imagined. One of the first important prerequisites for the transplantation of organised crime into a new country is the absence of any other organised crime group: in this way, the work of transplantation is simpler and the criminal association does not have to worry about fighting an already installed organised crime group³⁹. If governments cannot handle the rapid appearance of new markets, which means that they cannot protect property rights and the market operators, organised crime can easily install itself in the new territory: the demand for protection is one of the consequences for an inefficient government⁴⁰ (furthermore, protection is one of the defining characteristics of organised crime groups, especially for Mafiosi, as will be seen in the following paragraphs). The presence of violence in the region in which organised crime individuals install themselves is thought to be a fundamental prerequisite for their transplantation⁴¹. Another reason that motivates organised crime groups is investments: if the new country provides better tax policies and has a more efficient financial system, organised crime can

³⁵ F. VARESE, *Mafias on the Move*, op. cit..

³⁶ F. VARESE, *Mafias on the Move*, op. cit..

³⁷ F. VARESE, *Mafias on the Move*, op. cit..

³⁸ F. VARESE, *Mafias on the Move*, op. cit..

³⁹ F. VARESE, *Mafias on the Move*, op. cit., p. 1ff.

⁴⁰ F. VARESE, *Mafias on the Move*, op. cit., p. 1ff.

⁴¹ F. VARESE, *Mafias on the Move*, op. cit., p. 1ff.

decide to settle a branch of their criminal association in that country⁴². Better tax policies and efficient financial systems means organised crime can launder money easily: money laundering is the fundamental activity for organised crime to take advantage of the proceeds from crime.

Transplantation, on the other hand, poses some difficulties. It is often “difficult to monitor their agents in distant localities”; they also have to “struggle to corrupt the police and collect reliable information”⁴³. They also fear to threatening someone who could be part of another mafia group, and one of the main characteristics of organised crime, violence, is difficult to transplant into a new country because of its strong bond with their original structure⁴⁴. Examples of transplantation successes are the settlement of ‘Ndrangheta in Piedmont, the Sicilian Mafia in the United States, in particular in New York, and the Russian mafia in Hungary; while failed attempts of transplantation are ‘Ndrangheta in Veneto and the Sicilian mafia in Argentina, in particular in Rosario⁴⁵. A failed transplantation can also be the result of the lack of demand for cartels, as was the case in Veneto and Rosario, because of the presence of export-oriented companies which do not need any help because they do not operate in the domestic market⁴⁶. Moreover, the phenomenon can occur even if the society in which organised crime groups try to insert themselves is highly civic, as is the case in Piedmont in Italy⁴⁷.

It is worth noting that the information about transnational organised crime and organised crime in general is not exhaustive. The literature and police reports are always insufficient to determine the real volume of their affairs and their real size. The literature can always make facts bigger than they really are and they can omit details that can be fundamental to the full comprehension of

⁴² F. VARESE, *Mafias on the Move*, op. cit., p. 1ff.

⁴³ F. VARESE, *Mafias on the Move*, op. cit., p. 4.

⁴⁴ F. VARESE, *Mafias on the Move*, op. cit., p. 1ff.

⁴⁵ F. VARESE, *Mafias on the Move*, op. cit., p. 1ff.

⁴⁶ F. VARESE, *Mafias on the Move*, op. cit., p. 1ff.

⁴⁷ F. VARESE, *Mafias on the Move*, op. cit., p. 31ff. By ‘highly civic society’ is meant a society composed of people who are highly educated and who engage in social activities. The social capital is composed of local voluntary non-political groups. Piedmont is thought by some established social theories an unlikely territory for the settlement of a mafia, because of its high presence of social capital. However, the reaction of civil society was not sufficient to prevent the entrenchment of mafia.

the facts. The media can contribute to this negative information, because the media can exploit organised crime for political aims and they lack objectivity⁴⁸. Police and tribunals' reports, on the other hand, are considered more reliable and more objective, but they are not complete, and when they concern mafia informers, they have to be considered with care because they can tell a semi-truth or they can alter the reality⁴⁹. This lack of information in the organised crime phenomenon is due to the small amount of attention paid by the authorities to the phenomenon since the beginning and/or their undervaluation of it, because it was considered as ordinary organised crime⁵⁰.

Organised crime groups come into the world where a mix of factors is in place in the territory they want to settle in. These factors can be divided into two broad categories: structural factors and historical factors⁵¹. Violence, as already mentioned, is a factor that affects the birth and the settlement of organised crime in a specific territory: violence can be seen in clan conflicts, fights, in settling a score and abductions⁵². In addition to violence, elements such as virility values, courage, honour, devotion, heroism and abnegation are the ones that inspire myths and legends; finally the taste of secrecy is also inherited in some religions⁵³. A bad relationship with the government is always the basis for the implantation of organised crime groups in a territory, together with a weak social web and a great sense of solidarity⁵⁴. In matters of historical break-up, the lack of a strong central power, or for example in the case of southern Italy the government disinterest, have been the basis for the proliferation of organised crime groups⁵⁵. As already mentioned in relation to the transplantation phenomenon, the presence of transition economic phases can make the government weak in face of the need for protection, and immigration is another favourable element for the formation in this new country of an organised crime

⁴⁸ J.-M. DASQUE, op. cit., p. 9ff.

⁴⁹ J.-M. DASQUE, op. cit., p. 9ff.

⁵⁰ J.-M. DASQUE, op. cit., p. 9ff.

⁵¹ J.-M. DASQUE, op. cit., p. 9ff.

⁵² J.-M. DASQUE, op. cit., p. 23ff.

⁵³ J.-M. DASQUE, op. cit., p. 23ff.

⁵⁴ J.-M. DASQUE, op. cit., p. 23ff.

⁵⁵ J.-M. DASQUE, op. cit., p. 23ff.

group or the transfer of the original organised crime group⁵⁶. The old causes for the birth of organised crime groups were illiteracy, misery, unemployment and big social inequalities⁵⁷. Cucuzza affirms that these old causes are now accompanied by the decline of certain values, such as the sense of the state, the value of the family and the religious sense; in addition the economic exclusion of determined social classes, the badly-interpreted defence of civil rights and shortcomings at the institutional level are other factors that determine the presence of the organised crime phenomenon⁵⁸. Mass media celebration of organised crime accomplishments, the fact that the state has assumed a character typical of the private entrepreneur and the increased ease of going abroad and communications have favoured this phenomenon⁵⁹. It has to be noted that the title of organised crime has now been replaced by some scholars with “power organisations”: the attribution of this expression to these associations lies in the fact that they keep going not with the proceeds from illicit activities, but from alliances and collaborations with state officials, in particular in the political world, as well as with some layers of the population⁶⁰.

To summarise, the definition of transnational organised crime is not homogeneous. The term “transnational” implies the involvement of more than one country in the phenomenon: the organised crime groups can leave their territory of origin and settle abroad or establish a relationship with another territory: this phenomenon is called transplantation. The organised crime groups are of three types, each with their structure and identifiable elements. Furthermore, this paragraph has provided the reasons why organised crime was born, has grown and continues to grow.

⁵⁶ J.-M. DASQUE, op. cit., p. 23ff.

⁵⁷ O. CUCUZZA, op. cit..

⁵⁸ O. CUCUZZA, op. cit..

⁵⁹ O. CUCUZZA, op. cit..

⁶⁰ S. LUPI & R. TOVAZZI, *La nuova criminalità organizzata. La situazione attuale*, Il Carabiniere, 2008. Available from: < <http://www.carabinieri.it/editoria/rassegna-dell-arma/anno-2008/n-1---gennaio-marzo/studi/la-nuova-criminalit%C3%A0-organizzata-la-situazione-attuale>> [Accessed: 03/04/2015].

2.The main characteristics of organised crime groups

The paragraph will present separately the most important characteristics of each type of organised crime group. The decision to do this separately is due to the fact that, as already mentioned, the groups have different structures and origins. It will be clearer to speak about the mafia-type organisations first, then the cartels and finally the gangs. However, some general statements can evidence their common traits.

A general statement can be made in relation to the number of individuals working in organised crime groups. It is impossible to know the exact number of people working in them, because the police do not have extensive information: in the Interpol database there are 250,000 registered criminals⁶¹. But this number does not take into account all the members and the associates of each organised crime group: Jean-Michel Dasque tells his readers that the Sicilian Mafia, Cosa Nostra, is thought to be composed of among 150,000 and 160,000 members; and this is only an example, because other data in the same range are provided in the book in relation to other mafia-type organisations⁶².

Another general statement on organised crime groups is the lack of the presence of women. Generally, women are excluded from transnational organised crime: they do not even have to be informed of the activities of the members and the affiliation of the husband in the criminal association has to be kept secret – the patriarchal society is the base that provides a foundation for these organised crime groups⁶³. Nevertheless, some exceptions can be found, for example in the Italian Camorra⁶⁴. Still, the criminal family is kept distinguished by the biological family, even though the biological family is becoming more important: due to the frequent discords inside the criminal association, the boss

⁶¹ J.-M. DASQUE, *op. cit.*, p. 31ff.

⁶² J.-M. DASQUE, *op. cit.*, p. 31ff.

⁶³ J.-M. DASQUE, *op. cit.*, p. 31ff. Patriarchal means men having power over women; society means the entirety of relations of a community. The patriarchal society is a society where men dominate the structure and the relations among individuals. From this, the reason why women are not considered as worthy of even knowing the activities of the men of the family.

⁶⁴ J.-M. DASQUE, *op. cit.*, p. 99.

needs to count on his biological family for support⁶⁵. Concerning members, once they were low-middle class individuals; most of all after 1945, they became middle-class individuals⁶⁶. With the passage of time, criminal association members also passed from having a simple life to a more eye-catching life⁶⁷.

The three transnational organised crime groups share some characteristics: their members are united by ties of personal allegiance; they are submitted to a strict discipline; they have to respect the code of silence and the secret is assured in many diverse ways; and, they have to hide their actions from other people⁶⁸. The code of secrecy is indeed synonymous with virility. Another common characteristic of all the organised crime groups is the use of distinctive signs to recognise themselves inside the group and to be recognised by other groups. However, the most important characteristics organised crime groups share are those of “corruption, violence, sophistication, continuity, structure, discipline, ideology (or lack thereof), multiple enterprises, and the involvement in legitimate enterprises”⁶⁹. Nevertheless, corruption and violence, the pillar not only of some mafia-type organisations, such as the Italian mafias, and the cartels, are not always present in transnational organised crime: if the organised crime group has no real boss, or puts less importance on the control of a territory, or when the control of the activities and the markets are not their priority, these two characteristics can disappear⁷⁰. Sophistication is needed in all operations: Saviano reports how meticulous cartel members are in the business of trading drugs from one country to another. He reports that they plan the route months before and when they think they are ready they try the route with a small cargo and if the route is reliable they start with larger amount of materials⁷¹. On the other hand, continuity cannot be interpreted in the same way for all the organised crime groups: the big Mexican cartels disappeared more than a decade ago, but this has not meant the complete disappearance of the cartels in the area: new

⁶⁵ J.-M. DASQUE, op. cit., p. 31ff.

⁶⁶ J.-M. DASQUE, op. cit., p. 31ff.

⁶⁷ J.-M. DASQUE, op. cit., p. 31ff.

⁶⁸ J.-M. DASQUE, op. cit., p. 31ff.

⁶⁹ P. REUTER & C. PETRIE, op. cit., p. 9.

⁷⁰ P. REUTER & C. PETRIE, op. cit., p. 9.

⁷¹ R. SAVIANO, *Zero Zero Zero*, Bergamo, Feltrinelli, 2013.

cartels are born in the same area, some of them can see the presence of old Mexican cartel members⁷². Again, the assumptions made by the Workshop about the presence of multiple enterprises do not reflect the gang associations: the Council of Foreign Relations, an independent, nonpartisan membership organisation, think tank, and publisher, affirms that the Maras activities are “drug dealing, burglaries, and contract killings”⁷³, which does not involve the presence of multiple enterprises.

The last common characteristic is the selection of the members belonging to the criminal association. Transnational organised crime groups are closed associations and their associates are selected with care: the fact that criminal associations are worried about the closure of the association and the fact that they tend to exclude people who do not have the chosen features define the structure of organised crime and permit the maintenance of a certain degree of order inside it⁷⁴. The order gives the opportunity to settle the border between what is interior to the association and what is exterior, making the group closer, but at the same time gives a task to each member proportional to their status inside the criminal association⁷⁵. Usually to enter an organised crime group is not simple, there is always a passage, a rite the probable candidate has to overcome in order to demonstrate his/her value⁷⁶.

As previously mentioned, the characteristics of the three types of organised crime will be presented separately. The first organised crime grouping to be considered will be the mafia-type organisations, defined as the aristocracy of crime by Jean-Michel Dasque, as already cited. The mafia-type organisations come into the world surrounded by a halo of mystery. The legends they are surrounded by are the way in which they find a pretext to legitimise their presence and their criminal practices⁷⁷. An example of these legends can be found in the fact that the Sicilian Mafia is thought to date back to the Sicilian

⁷² This is confirmed in the books by Jean-Michel Dasque and Roberto Saviano.

⁷³ A. ARANA, *How the Street Gangs Took Central America*, Council of Foreign Relations, 2005. Available from: <<http://www.foreignaffairs.com/articles/60803/ana-arana/how-the-street-gangs-took-central-america>> [Accessed: 01/04/2015].

⁷⁴ J.-M. DASQUE, op. cit., p. 31ff.

⁷⁵ J.-M. DASQUE, op. cit., p. 31ff.

⁷⁶ J.-M. DASQUE, op. cit., p. 31ff.

⁷⁷ J.-M. DASQUE, op. cit., p. 31ff.

Vespers, and the yakuza is thought to be the successors of the Samurai⁷⁸. Entering a mafia-type organisation requires a certain period of time: often only after a period in which the candidate is put to the test, does he or she become a Mafioso⁷⁹. Consequently, a distinctive sign has to be adopted by the new recruit not only to show his/her membership⁸⁰, but as another rite that helps to create the closure and the sense of being part of a group.

Mafia-type organisations are characterised by their longevity, they are the most enduring organised criminal association, no other association has been more successful: illegal entities, cartels, gangs, terrorist networks or spies, no one can live as long as mafia-type organisations⁸¹. Even when a boss dies or is arrested the mafia organisation continues their path with other members who replace him. The secret of their longevity is their resistance capability, together with the capability of adaptation: they can change their organisation, their strategies, their alliances, their activities and their territories in order to survive and also in relation to the political context⁸². They know how to exploit in a positive way economic and financial occasions; an example is the American Cosa Nostra who took advantage of the Prohibition Act and started to sell alcohol illicitly⁸³. They also know how to take the most from the evolution of the times from the technological point of view.

The mafia-type association structure has been devised even in the smallest detail. The functions of each member are clearly defined by the boss, who devolves upon the member a specific task⁸⁴. These tasks are entrusted in relation to their position in the organisation's hierarchy: there are different types of hierarchy, some are based on pyramids, which means that the top of the pyramid corresponds to the highest role; others have a horizontal structure; still others have paramilitary structures⁸⁵. The rules are very strict and the fact that an associative bond exists make permanence in the criminal association an

⁷⁸ J.-M. DASQUE, op. cit., p. 31ff.

⁷⁹ J.-M. DASQUE, op. cit., p. 31ff.

⁸⁰ J.-M. DASQUE, op. cit., p. 31ff.

⁸¹ J.-M. DASQUE, op. cit., p. 31ff.

⁸² J.-M. DASQUE, op. cit., p. 31ff.

⁸³ J.-M. DASQUE, op. cit., p. 31ff.

⁸⁴ O. CUCCUZZA, op. cit..

⁸⁵ O. CUCCUZZA, op. cit..

obligation: the loyalty given to the organisation is the result of the intimidation force dictated by tacit admonishment or terror⁸⁶. The aim of the mafia-type organisation is the search for profit, the profit is then shared with all the members in relation to their level in the organisation. The proceeds of crime are finally used to finance their everyday life, their illicit activities, to bribe officials and to launder money inside the economic-financial legal markets.

The Mafia does not speak directly, because it has to hide itself from the plain folks, who is not in the mafia circle. Speeches within the mafia are always indirect: it speaks to you in an indirect way and if you do not understand you receive an admonition⁸⁷. Everybody has to be controlled by the mafia and if you decide to go against them, you take your own responsibilities of being persecuted: in reality, the resistance of one is not a big issue for the mafia, but it sets a precedent that has to be removed⁸⁸. On the other hand, the mafia offers protection: it obtains for the entrepreneur the contracts at private auctions, gives the entrepreneur precious information on public auctions, helps the business at the moment of testing and looks after the workers⁸⁹. Moreover, the mafia offers “protection against extortion; protection against theft and police harassment; protection for thieves; protection in relation to informally obtained credit and the retrieval of loans; the eliminations of competitors; the intimidation of customers, workers, and trade unionists for the benefit of employers; the intimidation of lawful right holders; and the settlement of a variety of disputes”⁹⁰. Furthermore, the mafia administers justice: the mafia is a substitute for the state. It can be affirmed that the mafia acts like an official and keep the order: the order is fundamental for the mafia, they do not ask for publicity, they ask for quiet and they want to manage their activities without being interrupted. But the mafia is not democracy, the mafia is tyranny: there is no choice, it is not possible to come to terms with them. They are masters at hiding or, rather, making documents disappear: they use the game of the three cards, which means that papers pass

⁸⁶ O. CUCCUZZA, op. cit..

⁸⁷ L. SCIASCIA, *Il giorno della civetta*, Torino, Einaudi, 1962.

⁸⁸ L. SCIASCIA, op. cit..

⁸⁹ L. SCIASCIA, op. cit..

⁹⁰ F. VARESE, *Mafias on the Move*, op. cit., p. 6.

from one office to another in a chain, and suddenly the papers disappear⁹¹. Prosecutors, judges, officials, police commissioners, officers of the Carabinieri pass, the mafia remains⁹². The mafia is a family and the importance for the family for the Mafiosi has to be compared with the importance of the state for a people. Mafias settle themselves in places where there is a pre-existing situation of illegality and they aim at their two strong points: violence, that should not be thought as physical violence only, intimidation and threats also are a form of violence; and the capability of composing social relations building brokering networks⁹³.

It is worth reporting the words of an old boss recorded by a man present at the speech reported in some pieces by Saviano: the listeners were Chicanos, Italians, Italo-Americans, Albanians and former Kaibiles combatants. He was teaching his interlocutors how to live: the rules of the organization are the rules of life, while the rules of the state are the rules of someone who wants to cheat someone else, he affirmed⁹⁴. There is a difference between laws and the rules: laws are considered by this boss as laws for cowards, while mafias have honour rules which tell how to command, how to win against someone and how not to be beaten by someone who lies at a lower level, he continued⁹⁵. Respect is another fundamental word in the vocabulary of Mafiosi: respect is won by those who have something to give; respect is lost by those who have no use⁹⁶.

The second type of organised crime is composed by protomafias and cartels according to Jean-Michel Dasque. Cartels are present most of all in the region of Latin America, which means Central and South America, in particular the most active cartels are found in Mexico and Colombia. Cartels are involved in the trafficking of drugs: they manage drugs, the proceeds from drugs, the prices of drugs and the distribution of drugs. It is important for a boss to be rich and

⁹¹ L. SCIASCIA, op. cit..

⁹² L. SCIASCIA, op. cit..

⁹³ F. ZUANON, *Anche l'alta è terra fertile per il crimine organizzato*, Il Mattino di Padova, 2015. Available from: <<http://mattinopadova.gelocal.it/padova/cronaca/2015/01/24/news/anche-l-alta-e-terra-fertile-per-il-crimine-organizzato-1.10730861?ref=search>> [Accessed: 25/02/2015].

⁹⁴ R. SAVIANO, op. cit., p. 17.

⁹⁵ R. SAVIANO, op. cit., p. 17ff.

⁹⁶ R. SAVIANO, op. cit., p. 17ff.

wealthy: they have to show they are rich, but not how rich, because if they show they have everything, their men could have the desire to deprive them of something⁹⁷.

A drug cartel is structured in a different way from mafia-type organisations. A drug cartel has a structure that is more flexible than the mafia and if a leader dies or is arrested, his/her figure has to be replaced by someone else. The difference with the mafia-type organisation consists in the violence they use for achieving the vacant seats: the men at a lower level start fights to fill the gaps. The structure of drug cartels is composed of a commander who makes decisions about alliances and assassinations⁹⁸. The second most important man in a drug cartel is the right-hand man, who is the mind of the drug cartel and is in charge of the technical plans: finance, intelligence and training are his duties⁹⁹. A second man at the same level of the right-hand man, is called a hit-man and is in charge of the kidnappings, the executions, the torture sections and the territorial violence¹⁰⁰. At the outside borders four different types of groups operate: the hocks, who watch the borders and are in charge of the distribution of drugs; women, who are prostitutes, but in reality they act as spies for the drug cartel; acquisitions men are in charge of arms and munitions; the fourth man is in charge of communications and tries not to be intercepted¹⁰¹. The structure is completed by associates who work for the drug cartels and other occasional collaborators, without counting the long list of names of corrupted people in the administrative sectors, police and politicians. Therefore, half a million people work or collaborate with the drug cartels¹⁰².

The third type of organised crime is represented by gangs. The most important gangs are Posses, Maras and the Bikes. Posses are gangs commanded by a leader, sometimes called the general, and are divided into

⁹⁷ R. SAVIANO, op. cit., p. 17ff.

⁹⁸ CLARITYWAYREHAB, *Anatomy of a Drug Cartel*, 2013. Available from: <<https://www.youtube.com/watch?v=-fxX-dkrKgs>> [Accessed: 02/04/2015].

⁹⁹ CLARITYWAYREHAB, op. cit..

¹⁰⁰ CLARITYWAYREHAB, op. cit..

¹⁰¹ CLARITYWAYREHAB, op. cit..

¹⁰² CLARITYWAYREHAB, op. cit..

cells: each Posse controls a district¹⁰³. They were born in Jamaica, but then spread to the United States¹⁰⁴. They are involved in the trafficking of marijuana, but over the years they also started to trade coca and crack¹⁰⁵. They are also involved in arms trafficking, kidnapping, extortions, breaking and entering, procurement, smuggling and money laundering¹⁰⁶. They are extremely violent¹⁰⁷. The Maras are gangs especially active in Guatemala, Honduras and El Salvador. They gained power in countries marked by civil wars and with no capabilities to face the situation of these immigrants of Latin origins¹⁰⁸. Like the previous gang mentioned, Maras are violent and often fight for the conquest of the territories, and have also extended their operations to the United States¹⁰⁹. The activities they are in charge of are racketeering, thefts, breaking and entering and drug trafficking¹¹⁰. The Bikes were born in the United States, but then they spread to other countries; they are extremely well organised, hierarchical and divided into sections, they have emblems whose colours show their affiliation to the gang¹¹¹. Initially they were involved in trading motorbikes, then they started to trade drugs, to be involved in racketeering, prostitution, night-clubs management and thefts¹¹².

3.The most dangerous transnational organised crime groups

The paragraph number three will present the most important transnational organised crime groups in the world. The number of organised crime groups is very high, but the most dangerous ones are those who can make the biggest profit from their activities, who have the most influence among the other organised crime groups as well as at the commercial, financial and political level.

¹⁰³ J.-M. DASQUE, op. cit., p. 161ff.

¹⁰⁴ J.-M. DASQUE, op. cit., p. 161ff.

¹⁰⁵ J.-M. DASQUE, op. cit., p. 161ff.

¹⁰⁶ J.-M. DASQUE, op. cit., p. 161ff.

¹⁰⁷ J.-M. DASQUE, cited, p. 161ff.

¹⁰⁸ A. ARANA, op. cit..

¹⁰⁹ J.-M. DASQUE, op. cit., p. 161ff.

¹¹⁰ J.-M. DASQUE, op. cit., p. 161ff.

¹¹¹ J.-M. DASQUE, op. cit., p. 161ff.

¹¹² J.-M. DASQUE, op. cit., p. 161ff.

This paragraph aims to present some examples of the phenomenon of transnational organised crime described in the previous paragraphs. The information on the transnational organised crime will not be exhaustive, but it is useful to better understand the phenomenon. It is worth mentioning the case of organised crime in Africa: there are criminal organisations in some countries, but so-called organised crime can be found only in Nigeria and South Africa, because of their daily fighting situation which makes the phenomenon of organised crime redundant¹¹³.

3.1. Italian mafia

In Europe, the most powerful mafia is found in Italy. The Mafia in Italy was born in the southern regions, during the period of the unification of the country, a delicate moment which saw the rise of the “meridional question”, a heavy economic difficulty from which this part of the southern Italy has not yet recovered: it was the second part of the 18th century when the phenomenon emerged. This situation brought to existence five different mafias, one for each region of the south of Italy, except for Sicily: Cosa Nostra in Sicily, Camorra in Campania, ‘Drangheta in Calabria, Sacra Corona Unita in Puglia and Stidda in Sicily in the province of Agrigento. These organisations make profits of around 43 billion euros per year – this figure is related to the year 2002; however, according to Confesercenti the volume of their turnover may be even bigger¹¹⁴. Now a short description of the three most important mafias groups will be given.

Cosa Nostra has been rooted in Sicily at least from the beginning of the 1880s. The evidence of the presence of the mafia in Sicily is confirmed by a comedy, a paper of a prefect and a law of 1871¹¹⁵. Born in the western part of the island, it has spread all over the region. Today, the presence of the Cosa Nostra is still evident and the stop in the prosecutions in the first years of 2000 gave it the possibility to reorganise itself, making it more difficult for the police forces to

¹¹³ J.-M. DASQUE, op. cit., p. 121ff.

¹¹⁴ J.-M. DASQUE, op. cit., p. 91ff.

¹¹⁵ J.-M. DASQUE, op. cit., p. 91ff.

capture them¹¹⁶. In recent years, collaboration with the mafias of the Eastern Europe has been initiated and they have started the transplanted phenomenon in various countries: Cosa Nostra is present in those European countries where there are significant Italian communities and collaborates with the five families of New York¹¹⁷. The insiders of Cosa Nostra, go through an initiation ceremony only after having overcome a period of observation and a survey on his/her family, and from then on the rules they have to follow are very strict¹¹⁸. One of the most important rules the insiders have to respect is the one of the code of silence.

The Camorra is, by contrast, more of an urban mafia, very hierarchical and with a distinctive element: the presence of women in the mafia's affairs. If the boss is murdered or arrested, a woman can frequently replace him¹¹⁹. Still in contrast to Cosa Nostra, the Camorra have many clans but they do not work together; exceptions can be found for collaborations in relation to some activities¹²⁰. Also the Camorra has extended its collaborations outside the home country borders and maintains relations with other organised crime groups established in every continent of the world. An example of the transnational character of the Camorra is its relationship with the La Torre clan, established in Mondragone, Naples, with Aberdeen in Scotland and Amsterdam in The Netherlands, namely two hubs of the clan¹²¹. The activities pursued in the two cities were different: Aberdeen was used to launder dirty money, where it was invested in legal activities, while Amsterdam was the place where they sold drugs and counterfeit money¹²². However, Aberdeen and Amsterdam do not represent the acquisition of independence from the clan of origin; on the contrary, the clan

¹¹⁶ J.-M. DASQUE, op. cit., p. 91ff.

¹¹⁷ J.-M. DASQUE, op. cit., p. 91ff.

¹¹⁸ J.-M. DASQUE, op. cit., p. 91ff.

¹¹⁹ J.-M. DASQUE, op. cit., p. 91ff.

¹²⁰ J.-M. DASQUE, op. cit., p. 91ff.

¹²¹ P. CAMPANA, *Understanding then Responding to Italian Organised Crime Operations Across Territories*, 2013, p. 4ff. Available from: http://www.researchgate.net/profile/Paolo_Campana/publication/262602851_Understanding_Then_Responding_to_Italian_Organized_Crime_Operations_across_Territories/link/s/0a85e5383c6c7de690000000.pdf [Accessed 08/06/2015].

¹²² P. CAMPANA, op. cit., p. 4ff.

of origin is still the most important point of reference, both from point of view of organised crime and money dependence¹²³.

The 'Ndrangheta has instead adopted a horizontal structure: 15 families with 6,000 members in total, each family with its own territory with the monopoly of the activities in it¹²⁴. The 'Ndrangheta has an extreme respect for the code of secret, proved by the paltry number of informers among its ranks; moreover it is the most closed mafia of Italy and one of the most difficult to penetrate, as well as one of the most cruel¹²⁵. 'Ndrangheta cooperate with other Italian mafias, it has inserted itself into the northern part of Italy, as well as in Europe, North and South America, Africa, the Near East and even Australia¹²⁶.

New criminal associations are emerging, because of interests in new activities. Along with the usual activities, an interest in the traffic of human beings has emerged, in particular for prostitution and the traffic of immigrants¹²⁷. The interest in these activities necessitates international collaboration among the criminal organisations, the reason why it can be more difficult to pursue them.

3.2. East European organised crime

As regards East European organised crime, the main criminal associations operating in the area are those of Russia, Albania and Turkey. The organised crime of Albania will be examined in a more detailed way in the third chapter of the dissertation. A brief description of the other two mafias will follow.

The Russian mafia really emerged only after the fall of the Soviet Union, as is the case for Albania. However, some small criminal associations existed even before the fall of communism¹²⁸. In reality, the Russian criminal associations are an example of protomafia: they are less structured, less stable and less culturally and traditionally formed than the Italian mafias¹²⁹. In contrast to the

¹²³ P. CAMPANA, *op. cit.*, p. 4ff.

¹²⁴ J.-M. DASQUE, *op. cit.*, p. 91ff.

¹²⁵ J.-M. DASQUE, *op. cit.*, p. 91ff.

¹²⁶ J.-M. DASQUE, *op. cit.*, p. 91ff.

¹²⁷ S. LUPI & R. TOVAZZI, *op. cit.*.

¹²⁸ J.-M. DASQUE, *op. cit.*, p. 107ff.

¹²⁹ J.-M. DASQUE, *op. cit.*, p. 107ff.

Italian mafias, the subjects that compose the associations often come from different ethnic groups, and they coexist; however, this is not the case for all the organisations¹³⁰. Nevertheless, every association has its headquarters in Moscow¹³¹. The structures of the various protomafias are of different types, from the pyramid to the four levels structure¹³². The situation among the diverse associations is not peaceful: fights and conflicts have occurred for a long time; the campaign to suppress them started by Vladimir Putin has not resolved the situation in Russia; however, it is less violent and the display of the violence and richness has been diminished¹³³. When Russian organised crime establishes itself abroad, it does not reproduce the same territorial control as it has at home, and most of the time, in particular in Italy, its presence is due to the conflicts among organised crime leaders in Russia¹³⁴. The expansion of Russian organised crime does not stop with Europe but goes further, into America and Asia, in particular.

The Turkish mafias are the so-called intermediaries: they are experts in the trafficking of drugs, in particular opium and heroin. They only function as wholesalers, which means that they buy the drugs from the producer countries, in particular Afghanistan, and they send it to the mafias of the Balkans¹³⁵. This activity gives them the possibility of owning great financial funds¹³⁶. These great financial funds permit Turkish organised crime to invest in the legal economy of the country. One episode showed how big one boss's capital was: he wanted to buy a bank¹³⁷. A great scandal, known as the 'Susurluk Scandal', is proof of the

¹³⁰ J.-M. DASQUE, op. cit., p. 107ff.

¹³¹ J.-M. DASQUE, op. cit., p. 107ff.

¹³² J.-M. DASQUE, op. cit., p. 107ff.

¹³³ J.-M. DASQUE, op. cit., p. 107ff.

¹³⁴ F. VARESE, *How Mafias Take Advantage of Globalisation*, 2011. Available from: <<http://www.dssp.unimi.it/summerschool/organizedcrime/documenti/File/materiali/Federico%20Varese%20-%20British%20Journal%20of%20Crim-published%20-%20Varese.pdf>> [Accessed 08/06/2015].

¹³⁵ J.-M. DASQUE, op. cit., p. 107ff.

¹³⁶ J.-M. DASQUE, op. cit., p. 107ff.

¹³⁷ F. Ü. SELÇUK, *The Rising Mafioso Capitalists, Opportunities and the Case of Turkey*, 2011, p. 16ff. Available from: <http://www.researchgate.net/profile/Fatma_Selcuk/publication/254083430_The_rising_mafioso_capitalists_opportunities_and_the_case_of_Turkey/links/54f5d3f40cf2ca5efefd33db.pdf> [Accessed 08/06/2015].

connections between the chief exercisers of state power and organised crime in Turkey; on the other hand, great capitalists never make alliances with the Turkish mafia¹³⁸.

3.3. Asian organised crime

Asia presents three big organised crime groups: Chinese triads, Japanese yakuza and Chinese-Burmese mafias, which in reality is only a branch of the Chinese triads. The following paragraphs will discuss the Chinese triads and the Japanese yakuza.

The Chinese triads are one of the most numerous and powerful criminal organisations in the world: data show that their turnover is around the ten per cent of the GDP of the Republic of China¹³⁹. The triads are composed of autonomous entities which act in concert, so their structure is decentralised and pyramidal with a boss at the head of the triad¹⁴⁰. Entering the triads is not simple: there is a complicated ceremony that represents the entry into the organisation¹⁴¹. Their tentacles grow and spread in all the most important centres where there are a high number of Chinese people, and the core activities which Chinese organised crime pursues are extortion and protection among their fellow countrymen and countrywomen; then other activities can be pursued according to the particular country¹⁴². Alliances may exist with other organised crime groups in the country in which Chinese organised crime establishes itself¹⁴³. There is a massive incidence of Chinese organised crime in particular in Australia, in Canada, in the United States, in Russia, in Japan and in Europe¹⁴⁴.

The Japanese yakuza are, on the other hand, one of the oldest organised crime groups in the world. Their number is now decreasing due to measures to

¹³⁸ F. Ü. SELÇUK, op. cit., p. 16ff.

¹³⁹ J.-M. DASQUE, op. cit., p. 121ff.

¹⁴⁰ J.-M. DASQUE, op. cit., p. 121ff.

¹⁴¹ J.-M. DASQUE, op. cit., p. 121ff.

¹⁴² L. B. BERRY et al., *Transnational Activities Of Chinese Crime Organizations*, 2003, p. 1. Available from: <<http://www.loc.gov/rr/frd/pdf-files/ChineseOrgCrime.pdf>> [Accessed 08/06/2015].

¹⁴³ L. B. BERRY et al., op. cit., p. 1.

¹⁴⁴ L. B. BERRY et al., op. cit., p. 1-2.

suppress taken by the Japanese government¹⁴⁵. However, the Japanese government, and the Japanese police in particular, are fully aware of their presence and after the earthquake of 2011 in Japan, the most important Japanese organised crime groups started to send help to the population – “paper diapers, instant ramen, batteries, flashlights, drinks, and the essentials of daily life”¹⁴⁶. This was not the first time that the yakuza had helped the population; history was repeating itself after the earthquake of 1995¹⁴⁷. This is one of the reasons why the yakuza is accepted by the Japanese, at least as a lesser evil. Furthermore, they are recognisable to people, the police and every other official ministry. They do not hide their membership of the yakuza: they have official studios, publish magazines and they distribute their business cards¹⁴⁸. Important are three notions that form the basic rule of a yakuza: respect for and compliance with their superiors, a sense of duty, and compassion and justice towards little people¹⁴⁹. In contrast to the other organised crime groups, they do not have many connections, except for the archipelago and other Asian countries, and they have relations with both North and South America and Europe¹⁵⁰.

3.4. American organised crime

The most important organised crime groups that are located in the American continent are the North American Cosa Nostra and the cartels of Colombia and Mexico. To these organised crime groups have to be added the gangs already described in the previous paragraph: Posses, Maras and Bikes.

The North American Cosa Nostra arrived in the United States in the second part of the 18th century and installed themselves the east coast, spreading to the other parts of the United States and in Canada once they grew

¹⁴⁵ J.-M. DASQUE, op. cit., p. 121ff.

¹⁴⁶ J. ADELSTEIN, *Yakuza to the Rescue*, 2011. Available from: <http://www.nicoletakeda.com/uploads/4/2/8/5/4285390/yakuza_to_the_rescue.pdf> [Accessed 08/06/2015].

¹⁴⁷ J. ADELSTEIN, op. cit..

¹⁴⁸ J.-M. DASQUE, op. cit., p. 121ff.

¹⁴⁹ J.-M. DASQUE, op. cit., p. 121ff.

¹⁵⁰ J.-M. DASQUE, op. cit., p. 121ff.

in volume¹⁵¹. The North American Cosa Nostra is composed of 25 families, but the most influential are the five families settled in New York, they have power over the other ones in relation to the strategy and the resolution of conflicts¹⁵². The activities of the American Cosa Nostra are slightly different from classical organised crime activities, because they are most of all centred on game, television or cinema illegal activities¹⁵³.

The cartels, both of Colombia and Mexico, were established for the sole purpose of trading drugs. The Colombian Cartels were the most important cartels at least a decade ago, but they lost some of their powers, because of the growing importance of the Mexican cartels, which saw in the traffic of drugs huge profits¹⁵⁴. Jean-Michel Dasque defines the presence of Colombian cartels diving it in two eras: the era of the big cartels stopped being active at the end of the 1990s, thanks to a collaboration between the governments of Colombia and the United States, which is indirectly threatened by this situation¹⁵⁵. The threat for the United States comes in particular from the Mexico cartels who are the last passage before the drugs land on the American soil. The borderline between Mexico and the United States is of around three kilometres long, an enormous territory impossible to entirely control: information about the checking of the border said that only 20 per cent of the tracks crossing the border are inspected by the police – the track is the best means to deliver drugs¹⁵⁶. Some measures have been taken by the United States government to reduce the kilometres that have to be checked, and it approved the construction of a wall of more than 500 kilometres and other barriers have to be put in place to stop the tracks crossing the border. But criminals are creative and own money which can buy technology: Saviano reports in his book that they use small toy aeroplanes to deliver drugs in the desert, and once the goods are dropped, someone will then catch them¹⁵⁷. Again, the money can also buy submarines that are used to deliver drugs:

¹⁵¹ J.-M. DASQUE, op. cit., p. 145ff.

¹⁵² J.-M. DASQUE, op. cit., p. 145ff.

¹⁵³ J.-M. DASQUE, op. cit., p. 145ff.

¹⁵⁴ R. SAVIANO, op. cit..

¹⁵⁵ J.-M. DASQUE, op. cit., p. 145ff.

¹⁵⁶ CLARITYWAYREHAB, op. cit..

¹⁵⁷ R. SAVIANO, op. cit..

Colombia started with this fashion and the Mexican cartels decided to use the same technology; furthermore, once the submarine arrives at destination most of the time they make it sink¹⁵⁸. Submarines are used because they can trade a greater amount of drug at the same time and can navigate almost undisturbed.

The great Colombian cartels were born in the 1970s and were the cartels of Medellin, Cali and Valle: the most important figure was Pablo Escobar, who died in 1993¹⁵⁹. A second generation of cartels, called the “cartelitos”, are born as a result of violent fights and conflicts, because of the desire for power and money: the violence shown by the cartels is very evident also to the local population, who lives in these situations of ceaseless murders, shootings, kidnappings, exhibitions of murdered people in town squares and more¹⁶⁰. Cocaine is the most exported drug for both the Colombian and the Mexican cartels, second is heroin and then all the blended drugs. Both have international connections with other organised crime groups to transport and make drugs arrive in other parts of the world. An example can be based on Operation Dinero: the Italian organisation, which included the collaboration of Cosa Nostra with Salvatore Miceli and ‘Ndrangheta with Pannunzi, had a connection with the Colombian drug trafficker “Barba”, who procured them cocaine for Italy – the cocaine arrived by sea and the transfer occurred in the sea in front of Mazara del Vallo, Sicily, in small boats easily confused with the local fishing boats¹⁶¹.

4.The activities of the transnational organised crime groups

The list of the activities of organised crime is very long. There are some classical criminal activities, while others are nearly new. In any case, no organised crime organisation practises only a criminal activity: the custom is to practise more than one criminal activity at the same time. Organised crime does not exclude any sector from its range of actions, any activity can be a possible

¹⁵⁸ R. SAVIANO, op. cit..

¹⁵⁹ J.-M. DASQUE, op. cit., p. 145ff.

¹⁶⁰ R. SAVIANO, op. cit..

¹⁶¹ R. SAVIANO, op. cit., p. 243ff.

target for organised crime to make a profit. The criminal associations represent the perfect capitalist man, who wants to have the most from his activity: pros and cons are studied in depth to lower to a minimum the percentage of failure.

The easiest means to lower the percentage of failure is corruption. Corruption keeps the criminal associations powerful: attempts at corruption are directed at politicians, administrative officials, but also bankers are easily corruptible with bribes. The more important the person corrupted, the more money is needed, and the power of a criminal organisation can be measured by counting the volume of bribes. For instance, in the Guadalajara region of Mexico controlled by the Guadalajara cartel, one of whose leaders was Caro Quintero, military aeroplanes had to ask him for permission to take off¹⁶²: this serves to explain the degree of corruption in the region. Corruption, as another characteristic of organised crime groups, is only the background which makes the realisation of their feats easier. Other features that characterise organised crime groups are the already cited violence, structure, discipline, ideology, continuity and sophistication.

Organised crime can focus on a specific activity, but it is never only one. The traffic of drug is the most important activity: it bears fruit to the extent of between 40 and 50 per cent of the total turnover of organised crime of the world and moves huge resources not only from the economic point of view, but also from the logistical point of view¹⁶³. Drug traffickers have to plan in the smallest detail the journey of drugs, the various changes from hand to hand, from one organised crime group to another, in a collaboration which is not made of trust, at least in general: the Latin-America cartels ask for a man as guarantee¹⁶⁴. The second most important activity is weapons trafficking, in particular in the Third World, easily possible for the loosely-bound international agreements¹⁶⁵. The third activity of organised crime is the traffic of human beings which comprises the trafficking of women for prostitution, the trafficking of illegal immigrants and the trafficking of organs: a significant number of human beings is introduced into

¹⁶² R. SAVIANO, op. cit., p. 25ff.

¹⁶³ J.-M. DASQUE, op. cit., p. 71ff.

¹⁶⁴ R. SAVIANO, op. cit., p. 243ff.

¹⁶⁵ J.-M. DASQUE, op. cit., p. 71ff.

Western Europe. “Le Iene”, an Italian entertainment TV programme, broadcast on 19th March 2015, showed a report on the journey the illegal immigrants face to enter the Schengen area: Hungary is the first Schengen country they enter through Serbia with the help of local traffickers who ask for money to make the journey easier for these people¹⁶⁶.

Organised crime is also capable of other illicit activities. The piracy of intellectual property is another source of money for organised crime, as well as undeclared work, counterfeiting and fraud of any type: there is the fraud against social security, cyber fraud, fraud over gambling, credit cards, European subsidies and VAT¹⁶⁷. Other activities are the smuggling of commodities and protected species, and contraband, which includes the smuggling of goods that are subjected to tariffs and quotas, such as stolen cars, arms and tobacco products¹⁶⁸: the East-European organised crime groups are leaders in contraband. Among the activities of organised crime can also be found indentured servitude, hijacking and environmental crimes.

However, the most important activity for organised crime is money laundering. Money laundering is considered to be a vital activity for organised crime, because it makes possible the use of money in the legal market without being recognisable, without it being directly addressed to that specific illicit activity. Money laundering makes the money legal as though the criminal association was the cleanest enterprise. The following section will present the phenomenon of money laundering, what it consists of and how it works.

¹⁶⁶ There is no link available in the website, neither in youtube. The report was conducted by Luigi Pelazza, who pretended to be an immigrant who wanted to go to Italy through Hungary. The website of the programme is: <<http://www.iene.mediaset.it/>>, and the report was broadcasted the 19th March 2015.

¹⁶⁷ J.-M. DASQUE, *op. cit.*, p. 71ff.

¹⁶⁸ P. REUTER & C. PETRIE Ed., *op. cit.*.

B. MONEY LAUNDERING

Contents

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1.What is money laundering?

1.1. Definition

The term of “money laundering” first came into existence in the 1920s in the United States when some mafia groups used launderettes to make money appear legitimate¹⁶⁹. In the course of time the term acquired a legal meaning, again in the United States, in a judgement against a Columbian organised crime group in 1982¹⁷⁰. From then on the term has been taken as a synonym for concealing the unlawfulness of the proceeds of crime and the real beneficiaries, and letting organised crime enjoy them: they can directly consume them or they can decide to invest them, no matter whether in illegal or legal activities. Thus, the purpose of the money laundering activity is not to get economic advantages from it: money laundering itself does not imply making new economic profits, money laundering means securing the economic profits gained from other activities. The frequency of the term has been noted in the last 20 years.

Article 3 of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, also known as the Vienna Convention of 1988, makes a list of operations ascribable to money laundering. The first one is

¹⁶⁹ G. STESENS, *Money Laundering A New International Law Enforcement Model*, Cambridge, Cambridge University Press, 2000.

¹⁷⁰ P. J. QUIRK, *Macroeconomic Implications of Money Laundering*, Working Paper, Washington, DC: International Monetary Fund, June 1996, in *Combating Money Laundering and Terrorism Financing Past and Current Challenges*, Cheltenham, Edward Elgar Publishing Limited, 2013.

considered the most typical operation and concerns the conversion or transfer of property: this is the only active operation of money laundering¹⁷¹. According to Guy Stessens, the following two are passive operations: one involves “the concealment or disguise of the true nature [...] of the property”, the other “the acquisition, possession and use of property, knowing”¹⁷² that it was derived from an offence. These same assumptions are present in Article 6.1 of the *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism* of 2005, also known as the Warsaw Convention and in the *Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing* – the fourth Directive of the European Union on the matter. The difference between the three instruments is in their openness to offences that can be judged as money laundering activities. A more precise consideration of this will be given in the second chapter of the dissertation.

The need for prompt financial administration of money brings, as a consequence, the need for money laundering: it is an indispensable tool when these proceeds of crime are not directly used to finance illicit criminal activities. The activities that can be considered as money laundering are listed in “Macroeconomic Implications of Money Laundering” written by Peter Quirk: smurfing, a technique which consists in multiple cash deposits, all under the threshold of the minimum cash reporting requirement; misinvoicing, the manipulation of price, quantity or quality of a good or a service on an invoice; stolen property; parallel credit transactions; interbank wire transfers; and derivatives¹⁷³. The laundering activities are different from country to country, and depend on the necessity of their inhabitants, and differ from activity to activity, which means that any criminal activity requires a different money laundering response. Furthermore, the money laundering phenomenon is more important in countries with modern law enforcement policies; the person who is in charge of the money laundering activity is often the primary offender, even though the need

¹⁷¹ P. J. QUIRK, op. cit..

¹⁷² UNODC, United Nations Convention, op. cit..

¹⁷³ P. J. QUIRK, op. cit..

for professional figures forces them to rely upon other individuals¹⁷⁴. According to a UN Report, money laundering, as well as their operators, the launderers, can be described as global, flexible, adaptable, technological, professional, resourceful and which exploit the ingenuity of operators¹⁷⁵. Thus, substantial sums of money can easily and quickly cross international borders, due to their expertise and resources.

If we consider money laundering as a general phenomenon, not related to organised crime groups only, it has to be noted that it also involves police and administrative centres which are corrupted, tax evaders and anyone who operates according to the phases presented in the following section¹⁷⁶. On the other hand, the money laundering phenomenon is much more costly and not so profitable for short-lived criminal groups¹⁷⁷. In order to launder money, launderers need to deal with the latest technological measures and try to do their job as well as possible in order to avoid being discovered by the competent authorities and to avoid confiscation.

2.2. Stages

Many scholars share the idea that money laundering is a process which can be divided into three stages. Two of these scholars are William Gilmore and Osvaldo Cucuzza. The three diverse stages are the placement, the layering and the integration stages.

The placement stage concerns illicit capital accumulation: the cash produced by the criminal organisation is put in a financial institution or the cash is directly spent in the purchase of goods or services¹⁷⁸. When organised crime owns a large amount of cash, their favourite target is deposit-banking

¹⁷⁴ W. C. GILMORE, op. cit., p. 20ff.

¹⁷⁵ W. C. GILMORE, op. cit., p. 20ff.

¹⁷⁶ D. MASCIANDARO, Money Laundering: the Economics of Regulation, in *Combating Money Laundering and Terrorism Financing Past and Current Challenges*, Cheltenham, Edward Elgar Publishing Limited, 2013.

¹⁷⁷ W. C. GILMORE, op. cit., p. 20ff.

¹⁷⁸ W. C. GILMORE, op. cit., p. 34.

institutions¹⁷⁹. The first time an organised crime gang enters the financial institution is thought to be the moment in which criminals are exposed the most¹⁸⁰. Once it enters the deposit-banking institution, the man in charge of the organised crime group can operate in different ways: he can convert cash in small denominations into larger bills, the so-called “refining” process, or he can make transactions under the borderline chosen by the government policy, so as to avoid being checked by the institutions once the borderline has been crossed¹⁸¹. In some cases the criminal organisation can find some collaborative bank operators at different levels of the branch: this can simplify the criminal task of organised crime through bribes or other types of favours¹⁸². Once the money is secured, it can be used or switched to other forms of investment.

If in the placement stage the aim is only to place the money in a financial institution, in the layering stage the aim becomes one of the real aims of money laundering. The layering stage is the first attempt to conceal or disguise the origin of the proceeds of crime and the real beneficiaries of it¹⁸³. The operation of layering can be repeated an undefined number of times: wire transfers are the most common means for the layering stage, but other electronic measures can be taken to mask the origin of the proceeds of crime¹⁸⁴. Wire transfers can earn from their velocity, from the distance – money can be sent to countries at the other side of the world –, from their minimal audit trail, from their anonymity and from the fact that many wire transfers occur every day¹⁸⁵ and the percentage of non-checked wire transfers is much inferior to that of checked ones. A scholar includes another notion linked to the layering stage of money laundering phenomenon. He explains how the concealment process occurs through corporate interpositions: a parent society established abroad by the criminal organisation can eclipse the legal ownership of the capital and the legitimacy of

¹⁷⁹ W. C. GILMORE, op. cit., p. 35.

¹⁸⁰ G. STESENS, op. cit..

¹⁸¹ W. C. GILMORE, op. cit., p. 35-36.

¹⁸² W. C. GILMORE, op. cit., p. 35-36.

¹⁸³ W. C. GILMORE, op. cit., p. 34.

¹⁸⁴ W. C. GILMORE, op. cit., p. 37.

¹⁸⁵ W. C. GILMORE, op. cit., p. 37.

the funds; the parent society shares the profits of further anonymous corporate structures, which in turn are the head of structures of the same type¹⁸⁶.

The last part of the money laundering process concerns the integration stage. In this stage money enters the legitimate economic and financial system: from then on the laundered money cannot be recognised anymore: at least at first glance, money appears legitimate. The integration stage includes the purchase of real estate and movable properties, or of shares, bonds and government bonds; it can occur through the concession of loans, financing and subsidies¹⁸⁷. As a consequence, the integration stage is considered to be a fragile part due to the surfacing of assets in the hands of a single person¹⁸⁸.

Some examples of the three stages are given in the following lines. Deposit-taking institutions can be used by criminal associations for the transport of cash by courier, namely Interpol affirms that money is physically transported to these institutions situated in a foreign country where controls on currency are not provided and there is a high level of bank secrecy¹⁸⁹. Again Interpol specifies that money can be transported in suitcases, that money can be found in cargos, or criminal associations send it by international express package¹⁹⁰. A scholar adds the use of gambling institutions to the transport of money by courier both through gambling itself and through the purchase of a majority block of shares; the use of "compensations" credited abroad on behalf of an inhabitant; the conclusion of fake leasing contracts; the use of the system of over-invoicing and under-invoicing - the invoiced economic operations are real, what is fake are the prices which are augmented on import and decreased on export¹⁹¹. As a consequence of the latter measure, the criminal association can dispose of a large amount of money abroad. Another technique of money laundering is the use of the national bank system: the criminal association asks for a cashier's check or it opens bank accounts through passbooks, or it changes the domestic currency for a foreign currency through the import of real or fake goods or services – the export of

¹⁸⁶ O. CUCUZZA, op. cit..

¹⁸⁷ O. CUCUZZA, op. cit..

¹⁸⁸ O. CUCUZZA, op. cit..

¹⁸⁹ W. C. GILMORE, op. cit., p. 36.

¹⁹⁰ W. C. GILMORE, op. cit., p. 36.

¹⁹¹ O. CUCUZZA, op. cit..

currency¹⁹². The import of currency is the introduction of laundered money through simple transit in the international bank systems: the more sophisticated the introduction procedure in the bank accounts by legitimate companies, the more difficult the identification of the offence.

All the operations, either from the first, the second or the third stage, can be carried out separately or simultaneously. The transport of cash through courier is easily ascribable to the placement stage, while the “compensations” can be seen as operations ascribable to the layering stage. However, sometimes it is difficult to distinguish an operation and classify it in one of the three stages, because the operation can contain more stages in itself. Over- or under-invoicing is an operation that cannot be precisely ascribed to either of the stages mentioned, for example. Furthermore, it is worth noting that there is another difference from the first stage, and the second and third stages: while the first stage can be implemented by any person, the second and third stages are often carried on by professionals or at least by criminal individuals who have knowledge of the financial system which they rely upon.

It has to be noted that the facts explained in this paragraph are valid for all the people involved in the money laundering process, not only for the organised crime. The operations described above are not a prerequisite of the organised crime.

2.3. The economics of money laundering

This section will present the conditions which facilitate the development of the money laundering process and the effects of money laundering on the economy.

What makes money laundering desirable is economic globalization. With economic globalization physical possessions are no longer important¹⁹³: a person is judged rich not only by his/her belongings, but also by his/her bank account, which means that what is important is the potentiality of someone’s own wealth

¹⁹² O. CUCUZZA, op. cit..

¹⁹³ O. CUCUZZA, op. cit..

and it is likewise a symbol of power. As a consequence, the financial markets are acquiring much more importance than before, thanks to their evolution and efficiency as well. Moreover, the financial markets are not controlled by the institutions, because the private capital flow is much higher than the sum of all the stocks owned by all the central banks of the world¹⁹⁴. This means that the financial market is much less verifiable than can be imagined. Economic globalization also creates clusters in which the wealth polarises¹⁹⁵: the areas outside the clusters do not benefit from the injection of capital. As a result, money can reach a place, either rich or poor, but money is not supposed to be helpful for the community living around. The owner of the money is not contributing to the development of the geographical area that surrounds the place where the investment took place: this mechanism is perfectly explained by Manuel Castells in his theory of the “World Wide Web”. This reflects the assumptions made by Osvaldo Cucuzza in relation to the fact that the areas subjected to investments are knots inside the World Wide Web, while the areas that are not reached by those investments are not considered as part of the World Wide Web, because their inhabitants cannot benefit from them¹⁹⁶.

The conditions that contribute to the development of money laundering activities are also the liberalisation of commercial transactions and the encouragement of the use of the foreign direct investment¹⁹⁷. These assumptions are the premise for the development of criminal economic actions. An example of the encouragement of use of foreign direct investment in the European area is the need for visas for citizens of countries of central-eastern Europe wanting to enter European Union countries¹⁹⁸. Moreover, from the monetary point of view, money can be inserted in the monetary system with ease; from the financial point of view, large amounts of money can be transferred from one country to another without being checked and even once the transfer has occurred¹⁹⁹.

¹⁹⁴ O. CUCUZZA, op. cit..

¹⁹⁵ O. CUCUZZA, op. cit..

¹⁹⁶ A. VANOLO, *Geografia economica del sistema-mondo. Territori e reti nello scenario globale*, UTET Università, 2008, p. 86ff.

¹⁹⁷ O. CUCUZZA, op. cit..

¹⁹⁸ O. CUCUZZA, op. cit..

¹⁹⁹ O. CUCUZZA, op. cit..

A series of agreements and events has contributed and contributes even now to the development of money laundering activities. The Uruguay Round agreement of 1994, that brought the creation of the World Trade Organisation, is another source which affirms the liberalisation of the economic and financial markets through the lowering of the trade barriers of whatever type in goods and services; at the same time some exceptions are allowed. The World Trade Organisation also protects property rights. Furthermore, the fall of communism in the former Soviet Union has brought to the open market a number of new countries which were not ready to face this system because they were not provided with the useful policy instruments to combat its negative aspects, and were impatient for the entry of foreign capital. Another important agreement was the Maastricht Treaty of 1991: among others, it was the basis for greater political cooperation among the EEC countries and greater competencies in the economic and monetary field, in particular the completely free circulation of capital in the European community, an objective that was reached in 1993.

Other reasons can be mentioned in order to explain why money laundering activities proliferate. The progress in stock markets in the developing countries, the significant sale of public enterprises and the large variety of financial instruments are reasons that induce a strong demand for foreign capital and facilitate anonymous investments, the nourishment for a perfect money laundering activity²⁰⁰. The development in the communication sector, in particular in the telecommunication and transport sectors, facilitates the payment system making it instantaneous; another effect of the liberalisation of the financial exchanges is the increase in the overall volume of international transactions²⁰¹, which makes the job of the agencies competent to combat the money laundering phenomenon harder.

A scholar presents the macroeconomic consequences of money laundering. Analyzing the different types of transactions launderers use, he evidences how misinvoicing can lead to the concealment of cross-border transfers of the proceeds of crime; how stolen properties can become objects

²⁰⁰ G. STESENS, *op. cit.*, p. 90ff.

²⁰¹ G. STESENS, *op. cit.*, p. 90ff.

usable to barter illegal substances; that parallel credit transactions permit criminals to enter the formal economy only once the proceeds of crime have been laundered; that giving bribes to bank officials can help them in the concealment operations; finally, derivatives can elude the suspected transactions²⁰².

According to one commentator, the macroeconomic effects of money laundering are diverse. Money laundering implies the fact that some money is not detected by the system, namely the true origin of the money is hidden by criminal associations and money appears in another field of the legal economy. This provokes inaccuracies in macroeconomic data²⁰³: thinking that a particular field is well-founded can influence the policy makers: they can think that the field does not need to be helped and they do not foresee a helping policy for that specific field. Laundered money can likewise influence the choice of investors, who can invest money inappropriately due to the fact that they do not rely upon the rate of return, but upon the comfort of laundered money²⁰⁴. Financial markets are also very vulnerable; investors, because they have less confidence in the financial markets can decide to move their capitals without awareness of the facts²⁰⁵. Also the state can be hit: money laundering means tax evasion for the country in which the phenomenon exists, and tax evasion means less profit for the state coffers and it can incur deficit problems²⁰⁶. Money laundering is not beneficial from the social point of view: money laundering suggests strongly that there is a series of other criminal activities behind it and if money laundering is considered to be unpunishable, a vicious circle can be created with the increase in criminal activities leading to extreme measures taken by the community – the preference for private means of help²⁰⁷.

A commentator adds other possible consequences of the phenomenon. The basic state of the economy cannot change or, more precisely, changes can

²⁰² P. QUIRK, op. cit..

²⁰³ R. K. GORDON, Anti-Money Laundering Policies Selected Legal, Political, and Economic Issues, in *Combating Money Laundering and Terrorism Financing Past and Current Challenges*, Cheltenham, Edward Elgar Publishing Limited, 2013, p. 525.

²⁰⁴ R. K. GORDON, op. cit., p. 525.

²⁰⁵ R. K. GORDON, op. cit., p. 525.

²⁰⁶ R. K. GORDON, op. cit., p. 525.

²⁰⁷ R. K. GORDON, op. cit., p. 525.

be so small that such a demand for money is not explained²⁰⁸. As the demand for money cannot be explained, the fact that exchange rates and interest rates change so quickly cannot also be explained: money laundering can create unanticipated cross border transfers of funds²⁰⁹. The availability of black money can create the conditions for the presence of invoiced goods and service prices and different distributional effects in certain goods or services²¹⁰. A more subtle consequence of money laundering which Masciandaro mentions is the fact that legal activities can be seen as illegal ones due to negative perception created by the high importance of the phenomenon²¹¹.

All the assumptions mentioned above evidence how important is the knowledge of the phenomenon. The more visible the phenomenon is, the better the measures which can be taken by policy makers. The knowledge of the seriousness and the extensiveness of money laundering can be decisive in choosing the right target: first, where to hit launderers; second, which policies and how policies have to be constructed to be helpful for the entire community at the national level but also more broadly at international level. Knowledge means helping the right fields of the economy even if the macroeconomics results draw different conclusions.

The importance of knowing how much money is laundered is a good point of departure first to be aware of the economic consequences of the phenomenon, second to prepare an effective anti-money laundering measure at the national level. Many estimates have been made in the course of time from the 1990s and all these estimations can be divided into two great subsets: the estimations related to macroeconomics and the estimations related to microeconomics²¹². The best estimations seem to be the ones which relate to macroeconomics, because the microeconomic ones have no empirical foundations²¹³. The latter analyses the different types of crimes and estimates the

²⁰⁸ D. MASCIANDARO, op. cit..

²⁰⁹ D. MASCIANDARO, op. cit..

²¹⁰ D. MASCIANDARO, op. cit..

²¹¹ D. MASCIANDARO, op. cit..

²¹² N. BEEKARRY, *Combating Money Laundering and Terrorism Financing Past and Current Challenges*, Cheltenham, Edward Elgar Publishing Limited, 2013.

²¹³ N. BEEKARRY, op. cit..

income from each crime activity: the problem consists in the fact that data are scarce, and when there are enough data to be used in an estimate, they cannot be reliable²¹⁴. The problem with the unreliability of the data is also the fact that if the reference year shows that a hundred cars were stolen and in the following years police centres affirm that they have counted two hundreds stolen cars, it does not mean that the number of stolen cars has increased from one year to another and it does not imply that the phenomenon has effectively increased in scale: data may only have become more accurate. The phenomenon could be as current as the previous year, the only difference is the fact that the police centres have become more efficient in collecting the information. This is only one example of the types of unreliability estimators have to face. On the other hand, macroeconomic estimates take into account the underground economy of the country²¹⁵.

To better tackle the money laundering phenomenon, it is important to really know how much money is laundered. Many formulas have been created to count and predict how much money is laundered. The best estimation model ever created for the measurement of international global money laundering is the so-called "Walker Gravity Model". The name derives from its creator John Walker, well-known in the international sphere; he is now collaborating with the International Monetary Fund to improve the indicators of the model, to extend the data which can be collected and to conduct calibration studies²¹⁶. The robustness of the model has been proved by triangulation, which means that the model has been compared with the shadow economy – the economic activity in a country that is hidden from the authorities, particularly from tax agencies –, the statistics on services exports of the United Nations and the law-based index of Savona²¹⁷. It is useful to compare the statistics on services exports made by the United Nations and the gross domestic product: the result can show the countries in which there is no correspondence between them, thus a probable country can be

²¹⁴ N. BEEKARRY, op. cit..

²¹⁵ N. BEEKARRY, op. cit..

²¹⁶ J. WALKER, *Measuring Global Money Laundering: "The Walker Gravity Model"*, in *Combating Money Laundering and Terrorism Finance Past and Current Challenges*, Cheltenham, Edward Elgar Publishing Limited, 2013, p. 478ff.

²¹⁷ J. WALKER, op. cit., p. 478ff.

subjected to high-intensive money laundering operations because of “unusually strong financial services exports or other services”²¹⁸. Some examples of countries with strong financial services exports are Caribbean tax havens, Luxembourg, Switzerland and Singapore²¹⁹. On the other hand, the law-based index can help to determine where the anti-money laundering measures are failing or need to be improved²²⁰.

The Walker Gravity Model focuses on the first stage of the money laundering process, the placement stage²²¹. As a consequence, the fact of taking into account only the placement stage of the money laundering process proves that money is counted only once: the real problem faced in making estimates is the fact that money is often transferred from one country to another many times²²² and the risk is to count it more than once. It is worth taking into account the fact that also counting suspicious data can be a mistake: in counting suspicious data there is the possibility of counting legitimate transactions; on the other hand legitimate transactions can be used for criminal activities²²³, an example being the financing of terrorism.

²¹⁸ J. WALKER, op. cit., p. 478ff.

²¹⁹ J. WALKER, op. cit., p. 478ff.

²²⁰ J. WALKER, op. cit., p. 478ff.

²²¹ J. WALKER, op. cit., p. 478ff.

²²² J. WALKER, op. cit., p. 478ff.

²²³ J. WALKER, op. cit., p. 478ff. The Walker Gravity Model has been put into practice and after collecting data and data about the phenomenon, John Walker has made some assumptions from the results his model gave. He affirms that: “crime generates income in all countries”; “income from crime depends in prevalence from different types of crime and the average proceeds of crime”; “sophisticated and organised crime generate more income per crime than simpler and individual crimes”; “in general, richer countries generate more income per crime than poor ones”; “income inequality or corruption may support a rich criminal class even in a poor country”; “not all criminal income is laundered – even criminals have to eat, sleep, drive fast cars, and pay accountants and lawyers”; “not all laundered money leaves the country – some countries’ finance sectors provide perfect cover for local launderers”; “countries where official corruption is common provide benign environments for launderers”; “laundered money seeks countries with attractive banking regimes, including: tax havens, “no questions asked” banking, countries with stable economies and low risk”; “trading, ethnic and linguistic links will determine

Money laundering also has its costs for organised crime. Organised crime becomes involved in these types of operations only when it is sure of the fact that it can gain from it: if the amount of money which needs to be laundered is not big enough, it does not involve itself in the money laundering process. In fact, organised crime has to take into account the fact that there are technological costs behind the money laundering process²²⁴. On the other hand, there are also costs due to the anti-money laundering measures: the more effective they are, the more expensive the process will be²²⁵. Thus, before starting the money laundering operations, criminal associations make sure they have high profits from the criminal activities, which permit them to lower the costs of the money laundering operations. The high amount of laundered money creates a high initial volume of liquidity, which will be used as investment for the further illicit activities they want to finance.

In the end, the money laundering phenomenon has implications for both the state and for organised crime. Both face costs due to the discovery of the concealed money, while organised crime has to be aware of not being discovered. Both costs depend upon the efficiencies of the anti-money laundering measures: the more efficient they are, the more the costs for both – the increase in the costs of money laundering is directly proportional to the efficiency of the anti-money laundering measures.

2.The importance of money laundering for organised crime

2.1. Where the proceeds of crime go

As we saw in the previous section of the chapter about transnational organised crime, organised crime groups are involved in a series of activities,

launderers preferred destinations – i.e., other things being equal, “hot” money will be attracted to those havens with trading, ethnic, linguistic or geographic[al] links to the generating country”, p. 492-493.

²²⁴ J. WALKER, op. cit., p. 478ff.

²²⁵ J. WALKER, op. cit., p. 478ff.

which lead to a profit. Those profits are used by organised crime in order to pursue their criminal activities and to live. A certain sum is also used to open legal activities, which have a double function, the dirty one is to cover the origin of the illicit money.

Money laundering has to be considered the vital part of the operations for an organised crime group who wants to exploit its proceeds from crime. What organised crime needs to do is “to conceal the true ownership and origin of the proceeds”²²⁶, which means that nobody must know where the money comes from, or at least it is necessary to make money appear as licit. Another thing organised crime needs to do is to “maintain the control of the proceeds”²²⁷ of crime, which means, for example, that the money has to be put in accounts where the boss knows how it will be managed. Thirdly, organised crime needs to “change the form of the proceeds”²²⁸, as an example: they can buy real estate, such as high value art works. The importance of concealing the ownership and the origin, the control and the change of the form of the proceeds from crime is incidental to the fact of enjoying and benefiting from them. These three points permit organised crime to have the power to decide how to organise them, what to do with them and how to distribute them.

A commentator affirms that the incomes of criminal associations follow different paths and not all are channelled in the same direction²²⁹. He speaks about the proceeds of crime of the Italian mafias, but the assumptions he makes can be considered valid for all the organised crime in the world. With different proportions from organised crime to organised crime, the proceeds of crime can be placed in the same illicit activities that produced those takings, or in other illicit activities: the aim, in this case, is to make them more effective²³⁰. Another part of the proceeds of crime ends in the economic and financial legal system of the organised crime home country; a third part is exported abroad and this part will

²²⁶ W. C. GILMORE, op. cit., p. 34

²²⁷ W. C. GILMORE, op. cit., p. 35.

²²⁸ W. C. GILMORE, op. cit., p. 35.

²²⁹ O. CUCUZZA, Riciclaggio e segreto bancario, in *Segreto bancario, criminalità organizzata, riciclaggio, evasione fiscale in Italia*, Padova, CEDAM, 2007.

²³⁰ O. CUCUZZA, op. cit..

be invested in the most remunerative way²³¹. This latter part of money becomes the so-called laundered money. The very last portion of the proceeds of crime is directly distributed among all the members of the group: the distribution cannot be equal for everybody, it may be subdivided on the strength of their position in the group, and once they have it, they can open new entrepreneurial business, or buy real estate and/or safe-haven assets²³².

Considering the third part of these different destinations of the proceeds of crime, it is worth noting where the sum sent abroad is directed. Usually, organised crime groups try to export their money to particular countries, specifically where there is a low interest in controlling the origin of capitals and where there is a high degree of secrecy²³³. Those countries are called “havens”, financial havens that can be of two different types: tax havens and banking havens. The difference is in the privileged aspects: banking havens have guarantees related to banking activity and banking secrecy; while in the tax havens, fiscal relief is more relevant, above all to non-residents who manage financial operations²³⁴. A country can simply be a tax haven or a banking haven; on the other hand, it can be both at the same time, including the two types of privileges. The fact that a country is considered a financial haven is related to its economy and its law enforcement: the productivity of the country and the laws in force in it can determine and/or are the reasons why a country can become a financial haven. From the economic point of view, these countries do not have a solid economic potential: they are former colonies, such as Panama, or have little extended territories and moderate productive capacities, such as Liechtenstein, Luxembourg and the Channel Islands²³⁵. From the political point of view, these countries are stable and homogenous, sometimes totalitarian: this means that there is a political continuity and durability in the economic and currency rules²³⁶. Borrowing an expression from mathematics, it can be said that havens are to

²³¹ O. CUCUZZA, op. cit..

²³² O. CUCUZZA, op. cit..

²³³ O. CUCUZZA, op. cit..

²³⁴ O. CUCUZZA, op. cit..

²³⁵ O. CUCUZZA, op. cit..

²³⁶ O. CUCUZZA, op. cit..

secrecy as non-havens are to transparency, which means that transparency is the key to combat money laundering.

2.2. Who organised crime exploits

Organised crime, as has been said above, decides to replace money in the economy in different ways. When it decides to put money in the economic and financial legal system or to invest it in some financial havens, it needs to rely upon some institutions. These institutions can be of three types: financial institutions, non-bank financial institutions and non-financial institutions. The distinction between the first two types of institution is related to the fact that the first one is usually protected by some domestic regulations and is more prone to be checked by the law enforcement agency and the administrative organs, thanks to its importance in the economy of the country, while non-bank financial institutions are usually not targeted by domestic regulations, or at least much less targeted than financial institutions. Non-bank financial institutions provide bank-like services just as financial institutions do, but they were and are less supervised²³⁷. A list of non-bank financial institutions is provided: “bureau de change; cheque cashers and money transmission services; security and commodities brokers; insurance companies; and underground and parallel banking systems”²³⁸. A type of non-bank financial system to launder money is a financial service called money or value transfer service: cash, cheques and other monetary instruments or stores of value are accepted in this financial bureau and then the same amount of money is paid in another country in another form²³⁹. In some countries there are no identity checks, an easier way for organised crime to exploit the system without being recognised.

Organised crime relies not only upon financial institutions, but also upon non-financial institutions. Non-financial institutions are businesses, which conduct economic activity and are remunerative, and shell companies²⁴⁰. As far as money

²³⁷ O. CUCUZZA, op. cit., p. 38.

²³⁸ O. CUCUZZA, op. cit., p. 38.

²³⁹ O. CUCUZZA, op. cit..

²⁴⁰ O. CUCUZZA, op. cit..

laundering is concerned, shell companies are fake companies, which do not really work for the purpose of making profits, but for the sole purpose of hiding the illicit origin of the proceeds from crime. Usually, the non-financial institutions are highly cash-intensive businesses, such as retail shops, car washes, vending machine enterprises, restaurants and bars, which are located abroad in financial centres²⁴¹. The only aim of using these types of institutions is to repatriate money, they create the legitimacy of the proceeds of crime without realistically engaging themselves in real activities. Money is repatriated in three different ways: by foreign direct investments, which means investing in a domestic legitimate business from foreign funds; bank loans, which means opening two funds, one legitimate repaid by an illicit one (the illicit one has somehow had the look of legitimacy); and invoice manipulation, which involves inflation of invoices or the creation of fake invoices²⁴². The activity of money laundering can be carried out smoothly without the purchase or the reception of the goods. An example is given by a commentator, he describes a movie theatre activity where the owner is a shell company which is used by organised crime to create fake incomes selling fake tickets, tickets that nobody actually uses²⁴³.

Other non-financial institutions are exploited without awareness or assent of the institutions themselves. They are casinos and other gambling institutions, and vendors of luxury goods, vendors of precious metals, art and antique dealers and auction houses²⁴⁴. Gambling has been described as legal in many countries and less well regulated than banking systems, at the same time it offers services which can be compared to banks²⁴⁵. Furthermore, gambling offers anonymity, a very important tool for organised criminals who seek to hide their illicit activities. Finally, gambling institutions are sometimes directly managed by organised crime²⁴⁶, which gives it the freedom and the relative tranquillity of handling money laundering operations.

²⁴¹ O. CUCUZZA, op. cit., p. 41.

²⁴² O. CUCUZZA, op. cit..

²⁴³ S. FAIELLA, *Riciclaggio e crimine organizzato transnazionale*, Milano, Giuffrè Editore, 2009.

²⁴⁴ O. CUCUZZA, op. cit., p. 43.

²⁴⁵ O. CUCUZZA, op. cit..

²⁴⁶ O. CUCUZZA, op. cit..

Postal services, quick stop markets, telegraphic services and commodity brokers are other non-financial institutions potentially involved in money laundering activities. Automobile sales, agricultural markets, jewellers and real estate are other weak flanks of the market for money laundering²⁴⁷.

To conclude, the use of bank financial institutions, non-bank financial institutions and/or non-financial institutions permit organised crime to convert the illicit proceeds of crime into other types of assets, create a sense of legitimacy about them and some of these institutions permit hiding the true beneficiaries of them. Again, the real aim of all these operations of money laundering is to avoid confiscation of the hard-obtained proceeds of crime. After hours, days or months of hard working, organised crime groups aim at benefiting from them and enjoying the chances they have created with this hard work. Their broader aim is to take advantage of a lack of anti-money laundering measures or measures which are insufficiently effective.

3.How to fight money laundering

3.1. Which institutions are involved

Financial institutions are involved in the fight against money laundering. Their involvement derives from the anti-money laundering regulations put in place by the government of the country in which they are located. The government can impose diverse rules, which have to take into account different assumptions: bank secrecy and the right of the customer to benefit from the right to privacy. The right to privacy is deep-rooted in the European Union system and for these countries it is very difficult to approve binding instruments that enable police stations and judges to force the bank secrecy wall²⁴⁸. However, anti-money laundering measures tend even more to ask for the criminals' identification details when a particular threshold is surpassed or ask for suspicious transactions to be reported. In fact, anti-money laundering regulations are of two

²⁴⁷ P. J. QUIRK, op. cit..

²⁴⁸ G. STESENS, op. cit., p. 145.

types, threshold based and suspicious based: the latter has the advantage of giving to the competent agencies or stations a smaller amount of information to detect²⁴⁹.

The rules set by governments about the fight against money laundering aim to enable an agency able to collect the details furnished by the financial institutions. In many countries these agencies have been put in place: the so-called financial intelligence units. These financial intelligence units can be of three different types: administrative financial intelligence units, police financial intelligence units and judicial authorities as financial intelligence units²⁵⁰. The administrative financial intelligence units are seen as more reliable by bank institutions due to the fact that they can guarantee more confidentiality than the other two units, and offer the specialty principle²⁵¹ – the specialty principle considers the extradition of the criminal and includes the only possibility to convict the criminal only for the offences written in the paper delivered to the country from which the criminal is extradited. Some of the countries that have put in place such administrative units are Italy, Spain, Australia, the United States, Belgium and the Netherlands²⁵². The police financial intelligence units have the advantage of relying upon a huge amount of data thanks to the broader police stations at the regional and international level, such as Europol and Interpol²⁵³. On the other hand, police financial intelligence units benefit from a scarce trust in bank institutions because they have to share their clients information with an executive body²⁵⁴. Switzerland, Canada, Germany, Sweden, Austria and Japan are some of the countries that employ police financial intelligence units²⁵⁵. As distinct from the police units, the judicial financial intelligence units benefit from more trust in bank institutions, because they are more independent inside themselves; however, they do not guarantee the specialty principle and do not

²⁴⁹ G. STESENS, op. cit..

²⁵⁰ G. STESENS, op. cit., p. 183ff.

²⁵¹ G. STESENS, op. cit., p. 183ff.

²⁵² G. STESENS, op. cit., p. 183ff.

²⁵³ G. STESENS, op. cit., p. 183ff.

²⁵⁴ G. STESENS, op. cit., p. 183ff.

²⁵⁵ G. STESENS, op. cit., p. 183ff.

have access to the same amount of information as the police units²⁵⁶. Three of those countries are Denmark, Iceland and Portugal²⁵⁷.

The financial intelligence units collaborate among each other. While judicial financial intelligence units share information about the cases they are working on or previous cases that can be helpful for the arrest of the criminal, administrative financial intelligence units share the rules they apply in their countries for the suppression of criminal activities and they also share the information on the suspected transactions²⁵⁸.

The financial institutions examined in the previous paragraphs collaborate with financial intelligence units that collect their suspicions and/or the details of their clients when they pass a determined threshold. The collaboration with these units is forced by the law of each country. However, each country can define their own rules and these cannot be the same for all countries. As a consequence, besides the collection of different information, the problem faced by the financial intelligence units in the sharing of information among other financial intelligence units is the fact that all of them use different systems of collecting information, different words to say the same thing, making the collaboration more difficult because instead of just looking at the data, they also have to interpret them.

3.2. The confiscation

One of the most important objectives for the units competent to suppress, among others, criminal associations together with their arrest is the confiscation of their proceeds from crime. Confiscation means “the final deprivation of property”, according to the Money Laundering Convention and the Vienna Convention definitions, even if they suggest different authorities competent in the confiscation order: “whereas the Vienna Convention allows any competent authority to issue a confiscation order, the Money Laundering

²⁵⁶ G. STESENS, op. cit., p. 183ff.

²⁵⁷ G. STESENS, op. cit., p. 183ff.

²⁵⁸ G. STESENS, op. cit., p. 183ff.

Convention limits this power to courts²⁵⁹. Again the two conventions differ in the extension of the definition of the possible proceeds from crime that can be confiscated: while the Vienna Convention predicts both tangible and intangible property among others, the Money Laundering Convention does not mention it²⁶⁰. Also not mentioned in the Money Laundering Convention is the clarification of the fact that even if the proceeds of crime have been transformed, they can be confiscated²⁶¹.

Three different types of thing can be confiscated. The first is the instrumentalities of crime, thus, the objects that were actually used by the criminal association for the preparation of the committing of the crime: the aim of the forfeiture of the instrumentalities of crime is to protect the population from other similar events²⁶². The same aim moves the competent agencies to confiscate the objects used in the committing of the crime²⁶³. The last type of confiscation is the *fructum sceleris* or *productum sceleris*, which means the proceeds derived from the committing of the crime, usually the financial gains²⁶⁴.

Furthermore, there are two models of confiscation: object confiscation and value confiscation. In object confiscation, the property of the object passes from the organised crime to the state, but it is often difficult to pursue the confiscation of these objects because of the shrewdness of criminals who use dummy corporations or other people's identity to avoid being associated with these objects: the real problem is the state law that prohibits the confiscation of bona fide third parties' properties²⁶⁵. The other model of confiscation is the value confiscation: "a judicial order to pay a certain amount of money, corresponding to the value of the proceeds of crime"²⁶⁶. The advantage of value confiscation is that it is not subject to the bona fide third parties and they can ask it without receiving a negative answer²⁶⁷. Between object confiscation and value confiscation, value

²⁵⁹ G. STESENS, op. cit., p. 30.

²⁶⁰ G. STESENS, op. cit., p. 47ff.

²⁶¹ G. STESENS, op. cit., p. 47ff.

²⁶² G. STESENS, op. cit., p. 29ff.

²⁶³ G. STESENS, op. cit., p. 29ff.

²⁶⁴ G. STESENS, op. cit., p. 29ff.

²⁶⁵ G. STESENS, op. cit., p. 29ff.

²⁶⁶ G. STESENS, op. cit., p. 35.

²⁶⁷ G. STESENS, op. cit., p. 29ff.

confiscation is preferred, because it refers to an amount of money that has to repair the damages the criminal association caused, third parties' rights are less influential in the determination of the amount of money to recover, and criminal associations can avoid more than one confiscation.²⁶⁸

The importance of the confiscation procedure is due to the fact that countries can recuperate the money spent in dealing with the search for the criminal associations and the population feels safer.

²⁶⁸ G. STESENS, *op. cit.*, p. 29ff.

CHAPTER II – INTERNATIONAL INSTRUMENTS COMBATING MONEY LAUNDERING AND ORGANISED CRIME PHENOMENA

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The following chapter is divided into three macro-paragraphs. The first two paragraphs concern the international instruments combating money laundering and organised crime phenomena, while the third paragraph of the chapter focuses on the European regional instruments combating both phenomena. The first paragraph concerns the international instruments combating organised crime and other crimes related – a significant number of international instruments presented in the paragraph have been ratified within the United nations –, while the second paragraph concerns the instruments that combat money laundering at the international level. The third part of the chapter considers the European area, because it is directly linked with the third chapter of the dissertation, which talks about the situation in Albania and presents the regional instruments which Albania is related to. The information about the international instruments that combat money laundering and transnational organised crime starts with a general description of the instrument, and then gives some more details about the functioning and operations put in place in order to combat these phenomena.

1.The international instruments

The main assumption that can be made in relation to the fight against transnational organised crime is that it passes through the fight against money

laundering. The reason for this assumption lies in the fact that the main activity of transnational organised crime is drug trafficking, and drug trafficking is a great source of cash for criminal associations. Consequently, these enormous amounts of cash need to be reintroduced into the legal economy somehow. The only way to introduce cash into the legal economy and avoid the risk of being easily intercepted is laundering dirty money. Thus, hitting the money laundering phenomenon helps to find the persons behind organised crime and arrest them. Even the arrest of a single person in organised crime can have a double objective: stop, or try to stop, the vicious circle of money laundering, and discover the other participants of the organised crime and defeat it.

Anticipating a conclusion which concerns the fight against the massive use of drugs in the world, and in particular the western world, I think the problem of drug trafficking is closely linked with the threats of our times and, as many affirm, the best therapy is prevention and information. If people did not use drugs, organised crime would not earn huge amounts of money, organised crime would not acquire the power they have, organised crime would not be able to afford the costs of money laundering and, consequently, there would not be tax evasion, or, at least, less tax evasion. However, I do not think that users will stop taking drugs only because someone tells them that it is dangerous, there will be always someone asking for them.

As already cited, drug trafficking accounts for between 40 and 50 per cent of the total turnover of all the organised crime groups in the world. This is why hitting this activity will hit a great proportion of organised crime sources. This is the reason why numerous conventions, organisations and conferences tackle the problem of drug trafficking and money laundering. However, the problem of money laundering is not to be considered only a problem from the organised crime point of view, everybody is a potential tax evader and can launder money. The reason for these assumptions attempts to explain why the following paragraphs will mainly talk about conventions, organisations and conferences on drugs.

Before a brief discussion of the principal international and UN instruments, it is worth noting the importance of the international instruments. International

cooperation is a necessity: the sovereignty principle is effective in international law and defines the independence of the country in the territory it owns. Due to the fact that no other countries can enter the domestic affairs and the territory of other countries without permission, international cooperation is necessary also because of the lack of international enforcement jurisdiction. Related to our topic, international cooperation provides the information required to prove money laundering operations in a state and how criminal derives the proceeds from crime in another state²⁶⁹. The scope of international cooperation is to collect information and share it in order to capture those who try to escape justice by exploiting the gaps in international jurisdiction. In addition, international cooperation means collaboration among different authorities in two or more countries, not only in the sharing of information, but also in the seizure of the criminals, because of the sovereignty principle. The final aim is to confiscate the proceeds used for the committing of crime. Finally, international cooperation consists in investigation, seizure and confiscation²⁷⁰.

To summarise, international cooperation can be composed of two different types of collaboration: an indirect one and a direct one. The first one is called primary cooperation and it does not involve the direct collaboration of two or more countries, because it consists of the institution of criminal proceedings and the pronouncement of criminal sanctions contained in the penal code of another state; the second is called secondary cooperation and involves the direct collaboration of two or more countries, because one state helps physically the other one in the investigation and extradites the suspected²⁷¹.

The conventions which first addressed the threats posed by transnational organised crime are the conventions against drugs and other substances. The first international convention against drugs is the International Opium Convention signed in 1912²⁷². Before this convention a conference on drugs, called Opium Commission, met in Shanghai in 1909: it was the first international conference

²⁶⁹ STESENS, op. cit..

²⁷⁰ STESENS, op. cit..

²⁷¹ STESENS, op. cit..

²⁷² The Convention has been replaced by the Single Convention on Narcotic Drugs of 1961.

about drugs²⁷³. The International Opium Convention was signed in The Hague by eleven countries and the British overseas territories²⁷⁴. The second convention of international importance is the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of 1931. It was signed in Geneva and it consists of the limitation of the production of drugs; the regulation of the distribution of narcotic drugs was managed by a system based on national controls. The League of Nations adopted this convention, as well as the first one.

With the creation of the United Nations in 1945, other conventions were created for the fight against drugs and other substances. The first convention of interest is the UN Single Convention on Narcotic Drugs of 1961 signed in the city of New York²⁷⁵. The convention was amended by a Protocol in 1972, and came into force in 1975. The convention consists of the limitation of drugs for the sole medical and scientific purposes, all other uses are seen as illicit, and aims at the fight against the trafficking of drugs by transnational organised crime. The intentions of the UN Convention on Psychotropic Substances of 1971²⁷⁶ were to establish an international control system for psychotropic substances: this control has a double service: on one hand, it has to check the abuse of psychotropic substances by the people in general; on the other hand, it has to check the legal use of psychotropic substances for therapeutic practices²⁷⁷. The convention was ratified in Vienna on 21st February 1971, came into force in 1976 and the signatory countries were 34. The UN Conference on Drug Abuse and Illicit Trafficking of 1987 brought to the constitution of a second conference in 1988: during this second conference it was adopted the Convention against Illicit Traffic

²⁷³ UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Chronology: 100 years of drug control*. Available from: <http://www.unodc.org/documents/wdr/WDR_2008/timeline_E_PRINT.pdf> [Accessed 15/04/2015].

²⁷⁴ UNITED NATIONS OFFICE ON DRUGS AND CRIME, *The 1912 Hague International Opium Convention*, 2009. Available from: <<http://www.unodc.org/unodc/en/frontpage/the-1912-hague-international-opium-convention.html>> [Accessed 15/04/2015].

²⁷⁵ The Convention came into force 8 August 1975, in accordance with Article 18 of the Protocol of 25 March 1972, and the number of State Parties is 185.

²⁷⁶ The Convention came into force 16 August 1976, in accordance with Article 26, and the number of State Parties is 183.

²⁷⁷ UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Convention on Psychotropic Substances*, 1971. Available from: <<http://www.unodc.org/unodc/en/treaties/psychotropics.html>> [Accessed 15/04/2015].

in Narcotic Drugs and Psychotropic Substances²⁷⁸. It is worth noting that the first conference proclaimed the creation of the International Day against Drug Abuse and Illicit Trafficking: the General Assembly decided to choose the 26th June²⁷⁹. The Convention, besides the provision of measures against drug trafficking, also provides measures for the fight against money laundering and for the diversion of precursor chemicals. International cooperation is assured by the agreement to extradite drug traffickers, control deliveries and transfer proceedings²⁸⁰. The convention was signed in Vienna by 87 countries, now 189 States parties are part of it. Ten years after the ratification of the convention took place a United Nations General Assembly Special Session on the World Drug Problem, which faced the following themes: precursor chemicals, judicial cooperation, money laundering, drug demand reduction and elimination of illicit crops and alternative development were seen as the most important issues to figure out²⁸¹.

The three more recent conventions named and the UN General Assembly Special Session (UNGASS) of 1998 are part of the UN Drug Control system, as well as the International Narcotics Control Board (INCB), the Commission on Narcotic Drugs (CND) and the United Nations Office on Drugs and Crime (UNODC). The UN Drug Control system has found its weaknesses inside its organs, the old conventions and the UN organs. Concerning the conventions, it is believed that the use of drugs for medical and scientific purposes has been limited by the latest conventions and this use has to be implemented. Moreover, three states of the United States, first Colorado, and followed by Washington and Alaska, have legalised the use of marijuana: this policy is in contradiction to the three conventions against drug use, but it is an experiment that President Barack

²⁷⁸ The Convention came into force 11 November 1990, in accordance with Article 29, and the number of State Parties is 189.

²⁷⁹ UNITED NATIONS, *2014 Theme: A message of hope: Drug use disorders are preventable and treatable*. Available from: <<http://www.un.org/en/events/drugabuseday/>> [Accessed 15/04/2015].

²⁸⁰ UNODC, *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988*. Available from: <<http://www.unodc.org/unodc/en/treaties/illicit-trafficking.html>> [Accessed 15/04/2015].

²⁸¹ UNITED NATIONS, *Overview*. Available from: <<http://www.un.org/ga/20special/presskit/pubinfo/overview.htm>> [Accessed 15/04/2015].

Obama approved²⁸². An important event to discuss on these issues is the UNGASS 2016: it will be an occasion for the countries of the world to confront with an issue as current as before, and try to make improvements on the difficult matter of drug trafficking and all the related consequences from the criminal point of view and the abusers' point of view.

In the fight against transnational organised crime and money laundering, it is also worth mentioning the UN Convention against Corruption²⁸³. The Convention was written by an ad hoc committee selected for the sole purpose of building a convention on corruption in 2003 and the Committee was approved by the General Assembly. The convention consists of the prevention, the criminalisation and internal cooperation on corruption and asset recovery. In order to monitor and implement the Convention, a Conference of the States Parties has been created. The importance of combating corruption is underlined in the foreword of the convention, which affirms: "Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish"²⁸⁴. However, even though the Convention against Corruption has concrete international norms, standards and measures, it does "not provide for monitoring, implementation, or enforcement"²⁸⁵. A negative point of corruption is that it cannot be quantified: "there is no method of measuring corruption" due to the fact that it operates in secret and some actions

²⁸² W. BENNETT & J. WALSH, *Marijuana Legalization is an Opportunity to Modernize International Drug Treaties*, UN Drug Control, 2014. Available from: <<http://www.undrugcontrol.info/en/un-drug-control/conventions/item/5721-marijuana-legalization-is-an-opportunity-to-modernize-international-drug-treaties>> [Accessed 16/04/2015].

²⁸³ The Convention came into force 14 December 2005, in accordance with Article 68, and the number of State Parties is 175.

²⁸⁴ UNODC, *United Nations Convention against Corruption*, 2003. Available from: <http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf> [Accessed 16/04/2015].

²⁸⁵ COUNCIL OF FOREIGN RELATIONS, *The Global Regime for Transnational Crime*, 2013. Available from: <<http://www.cfr.org/transnational-crime/global-regime-transnational-crime/p28656>> [Accessed 19/04/2015].

can be seen as legitimate²⁸⁶. The only corruption measure available is the Corruption Perception Index provided by Transparency International²⁸⁷, which cannot be seen as 100 percent reliable. In 2011 the Corruption Perception Index viewed the countries of Somalia, North Korea, Myanmar and Afghanistan as the most corrupted countries in the world²⁸⁸.

The Basel Committee on Banking Supervision deals, on the other hand, with the regulation of banks and aims at regulating and supervising the banks in order to enhance their financial stability. One of the good banking practices contained in the Basel Statement of Principles is the know-your-customer rule²⁸⁹. The head of the Basel Committee on Banking Supervision is the Bank for International Settlement (BIS). The Basel Committee collaborates with other bodies inside and outside the BIS; among the bodies outside the BIS, are the FATF and the IMF²⁹⁰. Banks are one of the targets of criminal associations for the process of money laundering, and checking banks is one of the first priorities for those fighting against this phenomenon. Also the Egmont Group plays a role in combating money laundering: it is a group of Financial Intelligence Units (FIUs) that collaborates together in sharing information and in improving the FIUs of each country. The Egmont Group also works at combating the financing of terrorism, as well as the 1999 UN International Convention for the Suppression of the Financing of Terrorism²⁹¹. It has to be noted that the Egmont Group and the Basel Committee are not part of the bodies/organs of the United Nations, but their importance at the international level in the field of transnational organised crime and money laundering make them worthy of mention.

²⁸⁶ COUNCIL OF FOREIGN RELATIONS, *The Global Regime for Transnational Crime*, 2013.

²⁸⁷ Transparency International is an organisation set up by a former World Bank official Peter Eigen in 1993 with headquarters in Berlin, Germany. Politically non-partisan they try to free the world from corruption. Their website is: www.transparency.org/.

²⁸⁸ COUNCIL OF FOREIGN RELATIONS, *The Global Regime for Transnational Crime*, 2013.

²⁸⁹ STESENS, op. cit..

²⁹⁰ BIS, *Basel Committee cooperation and support*, 2014. Available from: http://www.bis.org/bcbs/coop_with_sec_and_ins.htm [Accessed 16/04/2015].

²⁹¹ The Convention came into force 10 April 2002, in accordance with Article 26, and the number of State Parties is 186.

1.1.UN Convention against Transnational Organized Crime²⁹²

The United Nations was born as a political tool in order to put into contact the official centres of each country in the world. The reasons for the birth of the United Nations were to avoid the outbreak of a new conflict of global proportions and, as a consequence, enhance cooperation among countries for pacific and positive coexistence. The United Nations was born in 1945 and soon started to deal with international issues, such as peace and security, disarmament and governance. Inside the peace and security issues is found the problem of transnational organised crime.

The United Nations fight against transnational organised crime was born in 1993 thanks to the proposal of the government of Italy to hold a World Ministerial Conference on the issue. The proposal of the government of Italy was done inside the Economic and Social Council: the initiative was embraced with a resolution. It was July 1993. The General Assembly approved and encouraged the World Ministerial Conference, in turn, with another resolution of 20 December 1993. The conference was then held in Italy and it lasted three days, 21-23 November 1994. The conference hosted by the Italian government was held because of the increasing power of organised crime in the world and the inability at that time of any country to confront the phenomenon at an international level²⁹³. In particular the problem faced at the international level was the lack of coordination in the control of the trade and communication systems of transnational organised crime, due to the already cited principle of sovereignty²⁹⁴. The focus was on the need for uniform legislation in the matter of its condemnation: in order to be able to prosecute criminals in all countries the same crime has to be included in all the penal codes; moreover, there was the need for uniform legislation in the matter of business, which needed more transparency,

²⁹² The convention came into force 29 September 2003, in accordance with Article 38, and the number of State Parties is 185.

²⁹³ IMOLIN, *Crime Prevention And Criminal Justice*. Available from: <<https://www.imolin.org/imolin/naples.html>> [Accessed 16/04/2015].

²⁹⁴ IMOLIN, op. cit..

and finally in the matter of money laundering²⁹⁵. The money laundering fight was considered a great opportunity to challenge the organised crime groups in their vital activity: making money laundering more costly would have reduced the amount of money laundered and/or delayed the process, and helped the police to find the money laundered. Furthermore, at the Conference it was declared that international cooperation was fundamental in order to achieve these objectives, but also there was a need for international cooperation, which could carry out the work at the international level²⁹⁶. The system put in place had to be completed at national level in order to be efficient.

The action taken by the World Ministerial Conference on Organized Transnational Crime was the adoption of a resolution called "Naples Political Declaration and Global Action Plan against Organized Transnational Crime", which contains the assumptions made during the three-day meetings at the World Ministerial Conference²⁹⁷. The government of Argentina also proposed the creation of a convention on organised transnational crime²⁹⁸. One of the prerequisites for efficient international cooperation was the signature of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

The proposal of the government of Argentina was taken into serious consideration. The sections for the preparation of the text of the future convention on transnational organised crime started in 1999. Other passages followed the World Ministerial Conference before the constitution of Ad Hoc Committee for the preparation of the text of the convention²⁹⁹. An Open-ended Intergovernmental Ad Hoc Committee on the Elaboration of a Comprehensive International Convention against Transnational Organized Crime gathered for ten days at the end of January 1999: the themes tackled at the Ad Hoc Committee were decided by two General Assembly resolutions of 9th December 1998 and the third

²⁹⁵ IMOLIN, op. cit..

²⁹⁶ IMOLIN, op. cit..

²⁹⁷ IMOLIN, op. cit..

²⁹⁸ IMOLIN, op. cit..

²⁹⁹ UNITED NATIONS GENERAL ASSEMBLY, *Ad Hoc Committee on the Elaboration of a Comprehensive International Convention against Transnational Organized Crime*, 1999. Available from: <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V98/572/33/PDF/V9857233.pdf?OpenElement>> [Accessed 16/04/2015].

session of the informal group of the “Friends of the Chair”³⁰⁰. During the Open-ended Intergovernmental Ad Hoc Committee the preparation of the text for the three protocols that had to be added to the convention was also discussed.

The UN Convention against Transnational Organized Crime is the main international instrument in the fight against this phenomenon. The negotiation of the convention ended in October 2000 and in November the text was approved by the General Assembly with the resolution of 15th November 2000. The Convention was signed in Palermo, Italy, during a three-day high-level political conference held in December 2000. The signature of the three Protocols is subject to one condition: the signature of the Convention by the country. The three Protocols target specific areas and manifestations of organised crime: the prevention, suppression and punishment of the trafficking in persons, especially women and children; the smuggling of migrants by land, sea and air; and the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. The Convention came into force on 29 September 2003.

The definition of transnational organised crime present in the Convention has already been cited in the first chapter. The definition of transnational organised crime first presents the description of what organised crime is (Article 2.1) and second describes what is intended with the term transnational in transnational organised crime (Article 3.2). The fact that organised crime operates transnationally implies that there is the need for adequate domestic law policies and for significant international cooperation³⁰¹. Article 5 asks for the criminalization of participation in an organized criminal group on the part of all the signatory countries. The Convention criminalises the laundering of proceeds of crime in Article 6 and affirms how the criminalisation of money laundering has to be introduced into the countries’ laws (Article 7). The importance of the phenomenon is also certified by a UN report which affirms that money laundering costs 2 percent of the global gross domestic product per year³⁰². Also corruption is a target of the Convention against Transnational Organized Crime (Articles 8 and 9). These last two articles are comparatively new: the 1988 UN Convention

³⁰⁰ UNITED NATIONS GENERAL ASSEMBLY, op. cit..

³⁰¹ W. C. GILMORE, op. cit., p. 53ff.

³⁰² CFR, *The Global Regime for Transnational Crime*, op. cit..

Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances does not take into account corruption and also the protection of witnesses and victims (Articles 24 and 25)³⁰³. The rest of the Convention is directed towards prosecution, confiscation, jurisdiction, mutual legal assistance and investigation. The very last part of the Convention deals with the structure of the Convention, how to ratify it, how the Conference of the Parties is conducted and other related arguments.

However, the Convention against Transnational Organized Crime is not thought to be so effective: much criticism comes from some authors or organisations. The already cited Council of Foreign Relations is of the opinion that the Convention lacks some measures and has to be implemented: the Council of Foreign Relations thinks that the Convention “does not adequately account for the increasingly activity-based, horizontal structure of criminal syndicates or the growing nexus between organized crime and terrorism, corruption, conflict, public health, global finance, and modern technology”³⁰⁴. The Council of Foreign Relations also affirms that a serious weakness can be found in the fact that countries are the main beneficiaries of organised crime activities because they are involved in it: the countries found guilty are Russia and other Eurasian countries, China and many Latin American and West African politicians³⁰⁵. The fact was also acknowledged during the 2010 Conference of Parties. On the other hand, a weak point in the Convention is leaving the decision as to what is thought to be a ‘serious crime’ and what is not to each country: countries can change their penal code in order to not coordinate those crimes to the Convention prerequisites³⁰⁶. There was an attempt to make a list of these ‘serious crimes’; it was, nevertheless, discarded because of no agreement between the Parties³⁰⁷.

³⁰³ W. C. GILMORE, op. cit., p. 53ff.

³⁰⁴ CFR, *The Global Regime for Transnational Crime*, op. cit..

³⁰⁵ CFR, *The Global Regime for Transnational Crime*, op. cit..

³⁰⁶ N. BOISTER, R. J. CURRIE, *Routledge Handbook of Transnational Criminal Law*, Oxon, Routledge, 2015 p. 412ff. Available from: <https://books.google.it/books?id=-_rDBAAQBAJ&pg=PA410&lpg=PA410&dq=strengths+and+weaknesses+of+the+convention+against+transnational+organized+crime> [Accessed 19/04/2015].

³⁰⁷ N. BOISTER, R. J. CURRIE, op. cit., p. 412ff.

The fight against transnational organised crime is difficult from different points of view. First the cost of the fight against transnational organised crime is high: the UN Office on Drugs and Crime estimates that the cost of the fight against transnational organised crime accounts for 3.6 percent of the global economy³⁰⁸. Second the fight is difficult because it lacks effective instruments: the norms for drug trafficking and money laundering are complete; there are, however, no instruments to monitor progress and the real actions of the states' governments³⁰⁹. Furthermore, there is a lack of political will; some norms have to be implemented and many countries are not part of some treaties, which does not make the fight homogenous from a global perspective; and finally there is a scarcity of data, which makes the fight imprecise³¹⁰. A new tendency and experiment is the freezing of the assets of the criminal groups: treating transnational organised crime as a market activity is the new attempted option to fight this phenomenon. The United States proved to be the first country to put into practice this method³¹¹.

Although many things have to be done in order to improve the efficiency of the UN Convention on Transnational Organized Crime, this is the first attempt to criminalise organised crime through a convention of international reach. As a first attempt, it is impressive that the countries of the world arrived at an agreement at such a convention. On the other hand, the lack of a complete political will is the reason why the full implementation of the convention in every country's government is not checked, as, in contrast, it is for the FATF entity on money laundering. For instance, according to the penal code of Germany, the crime of organised crime is still not present³¹².

³⁰⁸ UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crimes*, 2011. Available from: <http://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf> [Accessed 19/04/2015].

³⁰⁹ CFR, *The Global Regime for Transnational Crime*, op. cit..

³¹⁰ CFR, *The Global Regime for Transnational Crime*, op. cit..

³¹¹ CFR, *The Global Regime for Transnational Crime*, op. cit..

³¹² M. BEDETTI, *'Ndrangheta in Germania. Un modello in espansione*, 2012. Available from: <<http://www.stampoantimafioso.it/wp-content/uploads/2013/05/Tesi-versione-per-StampoAntimafioso.pdf>> [Accessed 28/04/2015].

1.2. Interpol

Interpol is the world's largest police organisation. It was created in 1923 and now has 190 member countries. It is the world's intermediary for police cooperation and its vision is "connecting police for a safer world", while the mission is "preventing and fighting crime through enhanced cooperation and innovation on police and security matters"³¹³. Interpol offers services such as the accession to tools and services necessary for national police departments, training and expert investigative support and it can provide countries with relevant data and secure communications channels³¹⁴. Interpol is composed of a General Assembly, an Executive Committee and a General Secretariat. The picture is completed by the National Central Bureaux for each member country and the Commission for the Control of Interpol's files. "Interpol also has seven regional offices across the world and a representative office at the United Nations in New York and at the European Union in Brussels"³¹⁵.

Among the main documents representing Interpol's structure there is the Constitution. In the Constitution there can be found the general statement about the Interpol's bodies, budget and resources, the relations with other organisations and how to modify the Constitution itself. The Articles from 6 to 14 describe the structure of the General Assembly, defined as the body of supreme authority in the Organisation³¹⁶. The procedure of Interpol's General Assembly is available in another official document, "Rules of Procedure of the ICPO-INTERPOL General Assembly". The Constitution states that each member country has to have at least one delegate, the delegation head; on the other hand, it is permitted to have several delegates inside the General Assembly. The functions of the General Assembly are listed in Article 8 and the ordinary session meets once a year. The Executive Committee is composed of the President of the Organisation, three

³¹³ INTERPOL, *Overview*. Available from: <<http://www.interpol.int/About-INTERPOL/Overview>> [Accessed 19/04/2015].

³¹⁴ INTERPOL, *Overview*, op. cit..

³¹⁵ INTERPOL, *Overview*, op. cit..

³¹⁶ INTERPOL, *Constitution of the International Criminal Police Organization-Interpol*, 2008. Available from: <<http://www.interpol.int/About-INTERPOL/Legal-materials>> [Accessed 19/04/2015].

Vice-Presidents and nine Delegates (Article 15 of the Constitution); it meets once a year or when the General Assembly convokes it and supervises the execution of the decisions of the General Assembly, prepares the agenda for sessions of the General Assembly, submits to the General Assembly any programme of work or project which it considers useful and supervises the administration and work of the Secretary General and exercises all the powers delegated to it by the Assembly – Article 22³¹⁷. The General Secretariat is located in Lyon, France, and operates 24 hours a day, 365 days a year, and it implements the decisions of the General Assembly and the Executive Committee, serves as an international centre in the fight against ordinary crime, serves as a technical and information centre, ensures the efficient administration of the Organisation, maintains contacts with national and international authorities, produces any publications which may be considered useful, organises and performs secretariat work at the sessions of the General Assembly, the Executive Committee and any other body of the Organisation, draws up a draft programme of work for the coming year for the consideration and approval of the General Assembly and the Executive Committee, and maintains as far as is possible direct and constant contact with the President of the Organisation – Article 26³¹⁸.

The official name of Interpol is ICPO-Interpol. The acronym ICPO stands for International Criminal Police Organization – the French version is O.I.P.C., *Organisation internationale de police criminelle*. The name Interpol stands for International Police and it is used as abbreviation of the full name. Interpol has been provided with an emblem and a flag containing the emblem. Each object present in the emblem has a meaning: the globe means that Interpol operates worldwide, the olive branches means Interpol is for peace, the sword means police action and the scales mean justice³¹⁹. There are other two elements in the emblem: the name Interpol and the acronyms OIPC and ICPO.

The origin of the Interpol agency dates back to 1914. A group of 24 countries met for the first time in 1914 in Monaco: it was only an International

³¹⁷ INTERPOL, *Constitution*, op. cit..

³¹⁸ INTERPOL, *Constitution*, op. cit..

³¹⁹ INTERPOL, *Name and Logo*. Available from: <<http://www.interpol.int/About-INTERPOL/Name-and-logo>> [Accessed 19/04/2015].

Criminal Police Congress. The ICPO was created in 1923 with headquarters in Vienna, Austria. During the 1914 Congress the delegates of the 24 countries expressed 12 wishes about general police matters, including languages and training, an identification system, creation of centralised international records and extradition. All these elements have been improved, strengthened and implemented over the years³²⁰. After the bombardment of the Organisation from the side of Nazis, in the reconstruction process the new headquarters were established in Paris, France, while the General Secretariat was moved years later to Lyon, France. In 1949 Interpol acquired the consultative status at the United Nations, as a non-governmental organisation. According to the Council of Foreign Relations, the funds of the Organisation come from voluntary donations and it means that Interpol is underfunded: it reported that in 2011 the funds of the Organisation amounted to \$ 75 billion³²¹. The INTERPOL Foundation for a safer World was created with the aim of helping Interpol in its duties, among them the Foundation collaborates with the search for funds dedicated to new initiatives and prevention³²².

Interpol's efficiency is determined by the fact that it can share data in real time. Among the data, there are 'notices' of different kinds, in relation to their seriousness and types: there are the red database, the blue, the purple, the orange, the green, the yellow and the black. The notices that can be interesting for our topic are: the red one, for wanted persons; in the blue one there is information about persons who are related to the commission of a crime; the green one is for persons who have committed a crime and are able to repeat the action; and, finally, in the purple one are described the methods criminals have used or are about to use again³²³. These 'notices' are not available for the public and only some parts are published, the rest of the materials are available only to

³²⁰ INTERPOL, *INTERPOL 1914-2014 100 Years of International Police Cooperation*. Available from: <<http://www.interpol.int/About-INTERPOL/INTERPOL-1914-2014/12-wishes-then-and-now>> [Accessed 19/04/2015].

³²¹ CFR, *The Global Regime for Transnational Crime*, op. cit..

³²² INTERPOL, *INTERPOL For a Safer World*. Available from: <<http://www.interpol.int/About-INTERPOL/INTERPOL-Foundation-for-a-Safer-World>> [Accessed 19/04/2015].

³²³ INTERPOL, *Notices*. Available from: <<http://www.interpol.int/INTERPOL-expertise/Notices>> [Accessed 19/04/2015].

authorised personnel³²⁴. Being registered in one of these ‘notices’ does not mean the person is guilty³²⁵. These databases have been created for the purpose of making easier the search for criminal organisations: for instance, Interpol possesses exhaustive information on the gang cited in the first chapter called Maras and operating in Guatemala, Honduras, El Salvador and Nicaragua: information about Maras and its members, including personal data, images, weapons, vehicles, mobile phones, and criminal events are just some examples³²⁶. The information in the databases contains fingerprints, DNA and dental records, important also for the identification of people killed in major disasters; moreover, an innovation of this year, 2015, is the presentation of another database, that of facial recognition – another tool for the identification of criminals³²⁷.

Interpol works against corruption as well as against organised crime. Evidences can be seen in the four-day meeting on the new anti-corruption measures held in Tallinn, Estonia, on 26-30 January 2015³²⁸ or the three-day meeting on 24-26 March 2015 on the enhancing of cooperation in combating organised crime and terrorism³²⁹. During the meeting in Estonia the 34 participants discussed and examined “the latest legal tools and investigation techniques for the recovery of proceeds of corruption prevalent in international business transactions”³³⁰. At the three-day meeting in Lyon, France, more than 140 delegates gathered to share information, ideas and the new resources of the Organisation to contribute to the fight against organised crime and terrorism³³¹.

³²⁴ INTERPOL, *Notices*, op. cit..

³²⁵ INTERPOL, *Notices*, op. cit..

³²⁶ INTERPOL, *Databases*. Available from: <<http://www.interpol.int/INTERPOL-expertise/Databases>> [Accessed 19/04/2015].

³²⁷ INTERPOL, *Forensics*. Available from: <<http://www.interpol.int/INTERPOL-expertise/Forensics/Facial-recognition>> [Accessed 19/04/2015].

³²⁸ INTERPOL, *Estonia Hosts INTERPOL Workshop on Anti-Corruption and Financial Crimes*, 2015. Available from: <<http://www.interpol.int/News-and-media/News/2015/N2015-006>> [Accessed 19/04/2015].

³²⁹ INTERPOL, *Enhancing Cooperation in Combating Organized Crime and Terrorism Focus on INTERPOL Meeting*, 2015. Available from: <<http://www.interpol.int/News-and-media/News/2015/N2015-031>> [Accessed 19/04/2015].

³³⁰ INTERPOL, *Estonia Hosts INTERPOL Workshop on Anti-Corruption and Financial Crimes*, op. cit..

³³¹ INTERPOL, *Enhancing Cooperation in Combating Organized Crime and Terrorism Focus on INTERPOL Meeting*, op. cit..

2.FATF

The FATF is the Financial Action Task Force, also known as GAFI from the French acronym which stands for Groupe d'Action Financière. It was created in 1990 from a group of 15 countries. Now 26 countries belong to the Organisation. To the 26 countries it has to be added two organs of further international organisations, namely the European Commission and the Gulf Cooperation Council. It has been considered "the most important international body in terms of formulation of anti-money laundering policy and in the mobilisation of global awareness" of money laundering and terrorism as well³³². A scholar has defined FATF as a crown jewel in the fight against money laundering and the enhancement of the role of the financial system in combating this phenomenon.

The FATF has been constructed without choosing the form of a treaty with its binding element, but this does not mean that countries have not adopted its statements in their legislations³³³. It was chosen to not create a binding agreement because a treaty makes modifications slower, while non-binding agreements do not necessitate that elaborate ratification procedure and amendments can be inserted without elaborate procedures³³⁴. However, it is taken into consideration and implemented in other conventions or treaties, and the ideas are made concrete in the governments of the member countries³³⁵. On the other hand, even though the basic requirements for implementation and cooperation in the financial field are minimal, the Task Force do not succeed in creating unanimous support³³⁶.

The FATF does not work alone: its mission is conducted by other bodies, the FATF-style regional bodies. Further information will be given in a following paragraph. The following paragraphs will also talk in more detail about the priorities, the structure and the Forty Recommendations.

³³² W. C. GILMORE, op. cit., p. 91.

³³³ STESENS, op. cit..

³³⁴ STESENS, op. cit..

³³⁵ W. C. GILMORE, op. cit., p. 91ff.

³³⁶ W. C. GILMORE, op. cit., p. 91ff.

2.1.FATF priorities

The idea came from the G-7 meeting held in Paris in July 1989. The Group of 7, the President of the European Commission and another eight countries wanted to enlarge their know-how and share their ideas in the matter of money laundering and financial systems. The first meeting was followed by a series of meetings lasting one year: the result was presented in April 1990 when the group came up with the Forty Recommendations. The subjects which the body has to work on are improvements of national legal systems, the enhancement of the role of the financial system and the strengthening of international cooperation³³⁷. From then on, many improvements, changes and implementations have been made to the Forty Recommendations: in 2001 another topic to their duties was added – terrorism. Terrorism, however, was considered as a separate issue: the members created Eight Special Recommendations, which were officialised in October 2001 – and became 9³³⁸.

From the point of view of the member countries there is a limit imposed by the members themselves. However, the number of member countries has increased over the years. The initial founders were 16, including the two bodies of the regional organisations, but during 1991 and 1992 the FATF expanded its membership to 28 members³³⁹. Again, in 2000 the FATF expanded to 31 members, and has since expanded to its current 36 members³⁴⁰. Malaysia is the only observer country; furthermore, there are a list of the FATF Associate Members and a list of the FATF Observer Organisations. The latter are organisations that have a special mission or function in the anti-money laundering fight³⁴¹. The member countries are mostly from the western world; in addition, there is no African country which is part of the mechanism of FATF. The

³³⁷ W. C. GILMORE, op. cit., p. 91ff.

³³⁸ FATF, *History of the FATF*. Available from: <<http://www.fatf-gafi.org/pages/aboutus/historyofthefatf/>> [Accessed 20/04/2015].

³³⁹ FATF, *History of the FATF*, op. cit..

³⁴⁰ FATF, *History of the FATF*, op. cit..

³⁴¹ FATF, *Members and Observers*. Available from: <<http://www.fatf-gafi.org/pages/aboutus/membersandobservers/>> [Accessed 20/04/2015].

Associate Members will be treated in more detail in the paragraph called 'Collaborations (FSRB)'. For the list of the FATF Observer Organisations it is worth noting the presence of UNODC, Interpol, Europol, Eurojust, the Basel Committee on Banking Supervision and the World Bank, among others.

The limitations in acquiring new members are in relation to the criteria imposed by the founders. If a country decides to take part in the Organisation, it has to meet some criteria based on qualitative, quantitative and additional indicators³⁴². The commitment of the country to the cause of the fight against money laundering and its potential contribution in this fight are taken into consideration; in addition its participation in other relevant international organisations is valued and its level of adherence to financial sector standards³⁴³. Each new entry entails a shift in the geographical balance inside the Organisation that has to be replaced³⁴⁴. To become a member of the FATF the country has to present a written commitment at the political/Ministerial level, then a report on the current situation of the country, based on the previously cited criteria, will be presented to the Plenary meeting of the FATF³⁴⁵. The report is the first obstacle for a country: if the country passes this first step, it can be invited to attend the next Plenary meeting of the FATF as an observer³⁴⁶. The second step requires a mutual evaluation of the country that has to be concluded within a maximum of three years³⁴⁷. Three options are possible when looking at the result of the mutual evaluation: the mutual evaluation can result in the immediate entry of the country into the Organisation, or the immediate refusal of the entry into the Organisation, or the FATF gives a second chance with the assurance of the commitment of the country to the implementation of the FATF objectives in its

³⁴² FATF, *FATF Membership Policy*. <http://www.fatf-gafi.org/pages/aboutus/membersandobservers/fatfmembershippolicy.html> [Accessed 20/04/2015].

³⁴³ FATF, *FATF Membership Policy*, op. cit..

³⁴⁴ FATF, *FATF Membership Policy*, op. cit..

³⁴⁵ FATF, *Process and Criteria for Becoming a FATF Member*. Available from: <http://www.fatf-gafi.org/pages/aboutus/membersandobservers/membershipprocessandcriteria.html> [Accessed 20/04/2015].

³⁴⁶ FATF, *Process and Criteria for Becoming a FATF Member*, op. cit..

³⁴⁷ FATF, *Process and Criteria for Becoming a FATF Member*, op. cit..

own government policies³⁴⁸. This last option implies that the country did not have an excellent result in the mutual evaluation, so the FATF could not accept its immediate entry, neither could it accept its immediate refusal: it can still become part of the FATF if it implements the FATF objectives in its own government.

The FATF priorities include the fact that members have to implement the recommendations taking into consideration the developments in the technological field³⁴⁹. Moreover, members have to keep track of the developments in money laundering and terrorism financing methods in order to improve and update the countermeasures established by the Organisation³⁵⁰. Finally, they have to spread their ideas and publicise external relation programmes to increase the awareness on the problem among other countries and have on their side the greatest support in the international community to counter this problem³⁵¹. This is the reason why there are some requirements: these countries have to be an example for the others and have to promote an idea that serves, according to the mission of the Organisation, to make the task of combating money laundering easier and more efficient due to the standardisation of their processes all over the world.

2.2.FATF structure

2.2.1.The 40 recommendations

The structure of the FATF is very simple. It is composed of a President, a Vice-President, a Secretariat and the Task Force. The FATF is represented by the President; the current President of the Organisation is the Australian Roger Wilkins, who assumed the position of President in July 2014³⁵². “The FATF President is a senior official appointed by the FATF Plenary from among its members for a term of one year”: all terms start on 1 July and end on 30 June of

³⁴⁸ FATF, *Process and Criteria for Becoming a FATF Member*, op. cit..

³⁴⁹ W. C. GILMORE, op. cit., p. 91ff.

³⁵⁰ W. C. GILMORE, op. cit., p. 91ff.

³⁵¹ W. C. GILMORE, op. cit., p. 91ff.

³⁵² FATF, *FATF Presidency*. Available from: <<http://www.fatf-gafi.org/pages/aboutus/fatfpresidency/>> [Accessed 20/04/2015].

the following year³⁵³. “The President convenes and chairs the meetings of the FATF Plenary and the Steering Group, and he/she oversees the FATF Secretariat”³⁵⁴. The President of the FATF is helped by the Vice-President and the latter substitutes the President in the President’s absence; furthermore, the Vice-President’s term is of the same duration as that of President and the Vice-President is appointed by the Plenary among its members³⁵⁵. The current Vice-President is Mr. Je-Yoon Shin from Korea.

The Secretariat supports the Task Force and President and the service is provided by the OECD³⁵⁶. The FATF's decision making body is the FATF Plenary and meets three times per year³⁵⁷. The subjects, object of study and analysis, are considered during multi-disciplinary working groups: these working groups are composed of policymakers and professionals who come from a wide range of disciplines in order to make the study as accurate and complete as possible³⁵⁸. The use of professionals derives from the fact that, first, they are experts in the field of the study conducted and, second, they minimise suspicion³⁵⁹. The working groups policymakers and professionals are of four different types: there is the Working Group on Typologies, the Working Group on Terrorist Financing and Money Laundering, the Working Group on Evaluations and Implementation and the International Co-operation Review Group³⁶⁰. The persons working in these groups are well selected, because they have to tackle complex affairs about subjects that are in the interest of the whole world³⁶¹.

The result of the first round of meetings was the Forty Recommendations. It was 1990 and the problem of money laundering was already a challenge for countries’ economies. Money laundering is a challenge for criminal law, international co-operation and the financial sector³⁶². The reason why the

³⁵³ FATF, *FATF Presidency*, op. cit..

³⁵⁴ FATF, *FATF Presidency*, op. cit..

³⁵⁵ FATF, *FATF Presidency*, op. cit..

³⁵⁶ FATF, *FATF Secretariat*. Available from: <<http://www.fatf-gafi.org/pages/aboutus/fatfsecretariat/>> [Accessed 20/04/2015].

³⁵⁷ FATF, *FATF Secretariat*, op. cit..

³⁵⁸ W. C. GILMORE, op. cit., p. 91ff.

³⁵⁹ W. C. GILMORE, op. cit., p. 31ff.

³⁶⁰ W. C. GILMORE, op. cit., p. 91ff.

³⁶¹ W. C. GILMORE, op. cit., p. 91ff.

³⁶² W. C. GILMORE, op. cit., p. 91ff.

financial sector is vulnerable was explained in the second section of the first chapter: illegal cash enters the domestic financial system, it is sent abroad and then repatriated as legitimate, and this creates a negative impact on credit and financial institutions. The objectives of the Forty Recommendations implement the already cited 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, also known as the Vienna Convention, so the member countries of the FATF have to ratify the Vienna Convention³⁶³. In addition, the laws on financial institutions' secrecy are allowed only if they do not inhibit the implementation of the Recommendations³⁶⁴.

The Forty Recommendations underwent a series of modifications. The first Forty Recommendations were divided into four main topic areas: numbers 1 to 3 were about generalities and there was a link with the 1988 Convention; the Recommendations from number 4 to number 8 dealt with the national legal systems and aimed at securing improvements. The Recommendations from number 9 to number 29 dealt with the financial systems: for example, the number 9 to 11 extended the measures also to non-bank institutions; Recommendation number 13 implies to ask and track information on the beneficial ownership of funds; Recommendation number 14 dealt with the retention of records; and Recommendation number 23 is about the monitoring of cross-border flows of cash³⁶⁵. The Recommendations from number 30 to number 40 dealt with the strengthening of international cooperation: it is a matter of fact that international cooperation depends on bilateral, regional and international agreements and arrangements: an example is the 1990 Convention of the Council of Europe³⁶⁶—the latter will be presented in more detail in the following section about the European instruments.

The first revision of the Forty Recommendations was concluded in 1996. The FATF system consists of periodic re-evaluation and peer review of the Forty Recommendations: it is important to do surveys or studies of the evolution of the current situation in order to be able to update the Forty Recommendations to

³⁶³ W. C. GILMORE, op. cit., p. 91ff.

³⁶⁴ W. C. GILMORE, op. cit., p. 91ff.

³⁶⁵ W. C. GILMORE, op. cit., p. 91ff.

³⁶⁶ W. C. GILMORE, op. cit., p. 91ff.

combat the latest innovations which tax evaders make and any other future threat. The Dutch Presidency proposed eight issues to be re-evaluated, while the following US Presidency added another two issues to focus on. In particular the US issues concerned the bureaux de change and the challenges posed by the new technologies: the result was the 1996 revised FATF Recommendations³⁶⁷. In the Annual Report of 28 June 1996 there were these changes: no amendments were innovative, with only one exception, because they included refinements of the first concepts, also from the stylistic point of view³⁶⁸. Furthermore, the number of the Recommendations was not changed: the member countries preferred not to add any recommendation in order to maintain the symbol of the mechanism created six years before and because of the clamour they gave rise to and with which they became known in the world³⁶⁹. The only exception present in the 1996 revised FATF Recommendations was in Recommendation 13 concerning the fight against money laundering: attention was given to new technologies. It encouraged a more pre-emptive approach rather than a reactive one³⁷⁰.

The second round of revision started in 1999 and ended in 2003. The proposal came at the G-7 finance ministers' Birmingham Summit: the Communiqué spoke about the decision to concentrate attention on suspicious transaction reports: the Committee on Fiscal Affairs of the OECD would assume the task of providing tax authorities with the best measures to check probable tax evaders³⁷¹. In July 2000 another G-7 finance ministers' meeting, held in Okinawa, affirmed the intention to update and reinforce the FATF standards: in October 2000 some topics started to be the subject of fundamental revision and three working groups were created³⁷². Each working group was responsible for a different task: customer identification and suspicious transactions reporting, corporate vehicles and gatekeepers³⁷³. For the implementation and improvement of the Forty Recommendations, the second European Directive against money

³⁶⁷ W. C. GILMORE, *op. cit.*, p. 91ff.

³⁶⁸ W. C. GILMORE, *op. cit.*, p. 91ff.

³⁶⁹ W. C. GILMORE, *op. cit.*, p. 91ff.

³⁷⁰ W. C. GILMORE, *op. cit.*, p. 91ff.

³⁷¹ W. C. GILMORE, *op. cit.*, p. 91ff.

³⁷² W. C. GILMORE, *op. cit.*, p. 91ff.

³⁷³ W. C. GILMORE, *op. cit.*, p. 91ff.

laundering, the report of the Basel Committee on Customer Due Diligence for Banks and the report of the OECD Steering Group on Corporate Governance were taken into consideration³⁷⁴. In June 2003 in Berlin during the German Presidency, the 2003 revised FATF Recommendations was adopted with stylistic modifications, additions and cancellations. With regard to cancellations, Recommendations 1 to 3 were deleted because, among other reasons, of the no-longer-appropriate link with the 1988 Convention³⁷⁵. The division of the Forty Recommendations included four sections: the Legal Systems section – Recommendations from 1 to 3, the Measures to be Taken by Financial Institutions and Non-Financial Businesses and Professions to Prevent Money-Laundering and Terrorist Financing section – Recommendations from number 4 to 25, the Institutional and Other Measures Necessary in Systems for Combating Money-Laundering and Terrorism Financing section – Recommendations from 26 to 34, and the International Co-operation section – Recommendations from 35 to 40³⁷⁶. A glossary of terms was also added at the end of the Forty Recommendations in order to facilitate comprehension of the Recommendations. The exception and the most important addition in this revision was the implementation of the Forty Recommendations with the terrorism financing fight besides the money laundering fight, as there can be seen from the titles of the sections. However, another eight recommendations were added, separated from the Forty: they were the Eight Special Recommendations on Terrorism Financing. The decision to create another list of Recommendations on an issue also present in the 2003 revised Forty Recommendations comes from the events which happened on 11th September 2001 and underline the issue.

The response to the events of the 11th September 2001 was immediate: on 29-30 October 2001 the FATF members met in Washington to take some measures on terrorism financing, its prevention, and its tracking and pursuit of people found guilty of committing such actions³⁷⁷. The methods of terrorist

³⁷⁴ W. C. GILMORE, op. cit., p. 91ff.

³⁷⁵ W. C. GILMORE, op. cit., p. 91ff.

³⁷⁶ W. C. GILMORE, op. cit., p. 91ff.

³⁷⁷ FATF, *Financial Action Task Force on Money Laundering Annual Report 2001-2002*, 2002. Available from: <<http://www.fatf->

financing and the types of financial activities constituting potential indicators of this activity, and the identification of the weaknesses in combating terrorism financing at the global level were the issues which they started to work on after the announcement of the Eight Special Recommendations: the result led to the implementation and the constitution of another Special Recommendation, reaching number 9³⁷⁸. The IX Special Recommendations are to be viewed in combination with the Forty Recommendations: in this way the former are to be considered the basic tool to combat terrorism financing³⁷⁹. The IX Special Recommendations ask the member countries to ratify the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism and to criminalise terrorism financing and money laundering³⁸⁰. The importance of the United Nations Security Council Resolution 1373 of 2001 is also stressed in the Special Recommendations I. The other recommendations talks about the freezing and confiscation of terrorist assets, reporting suspicious transactions related to terrorism, international co-operation, alternative remittance, wire transfers and non-profit organisations. The ninth recommendation talks about cash couriers and deals with physical cross-border transportation, the presence of laws which allow the freezing of suspected currency transactions and confiscation³⁸¹.

It is worth noting the interpretative note to Recommendation 3 of the Forty Recommendations about the offence of money laundering in which it is affirmed that “countries should criminalise money laundering on the basis of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic

[gafi.org/media/fatf/documents/reports/2001%202002%20ENG.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/2001%202002%20ENG.pdf) [Accessed 20/04/2015].

³⁷⁸ FATF, *Financial Action Task Force on Money Laundering Annual Report 2001-2002*, op. cit..

³⁷⁹ FATF, *Financial Action Task Force on Money Laundering Annual Report 2001-2002*, op. cit..

³⁸⁰ FATF, *Financial Action Task Force on Money Laundering Annual Report 2001-2002*, op. cit..

³⁸¹ FATF, *IX Special Recommendations*. Available from: <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/ixspecialrecommendations.html> [Accessed 20/04/2015].

Substances, 1988 (the Vienna Convention) and the United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention)³⁸².

As for the third revision of the Forty Recommendations, this started in June 2009 and ended in February 2012. This revision is far more daring than the first one, but also than the second one. The variations made in the Forty Recommendations are first of all ones of order: many recommendations changed their position in the list, others were combined and the Special Recommendations are now part of the Forty Recommendations and terrorism financing and money laundering are now tackled as a sole problem. Also the sections were modified: they passed from being four to seven. There is the AML/CFT Policies and Coordination section, the Money Laundering and Confiscation section, Terrorism Financing and Financing of Proliferation section, the Preventive Measures section, the Transparency and Beneficial Ownership of Legal Persons and Arrangements section, the Powers and Responsibilities of Competent Authorities and other Institutional Measures section, and the International Cooperation section³⁸³.

According to the FATF, “the main changes are:

- Combating the financing of the proliferation of weapons of mass destruction through the consistent implementation of targeted financial sanctions when these are called for by the UN Security Council.

- Improved transparency to make it harder for criminals and terrorists to conceal their identities or hide their assets behind legal persons and arrangements.

- Stronger requirements when dealing with politically exposed persons (PEPs).

- Expanding the scope of money laundering predicate offences by including tax crimes.

- An enhanced risk-based approach which enables countries and the private sector to apply their resources more efficiently by focusing on higher risk areas.

³⁸² FATF, *Financial Action Task Force on Money Laundering Annual Report 2001-2002*, op. cit..

³⁸³ FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation the FATF Recommendations*, 2013. Available from: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf> [Accessed 20/04/2015].

– More effective international cooperation including exchange of information between relevant authorities, conduct of joint investigations, and tracing, freezing and confiscation of illegal assets.

– Better operational tools and a wider range of techniques and powers, both for the financial intelligence units and for law enforcement to investigate and prosecute money laundering and terrorist financing.³⁸⁴

The changes in the FATF Recommendations came from two public consultations, meetings of the FATF private sector consultative forums and more focused outreach on specific technical issues. Public consultation means the consultation of the representatives of the financial sector, the representatives of the non-financial businesses and professions, and other respondents, including non-governmental organisations, the private sector and civil society. The first consultation was carried out between October 2010 and January 2011³⁸⁵. Seventy-five responses had the FATF from the first consultation and 73 from the second consultation held between June and September 2011³⁸⁶. It is worth noting that the IX Special Recommendations are now completely included in the Forty Recommendations and a section is now completely dedicated to the fight against the financing of terrorism³⁸⁷.

2.2.2. Mutual evaluation and report system

The FATF mechanism is efficient: the Forty Recommendations and the IX Special Recommendations have not only been implemented and improved over the years, but the effective putting into practice of these Recommendations by countries is also held in check. The system used to check the real applicability of

³⁸⁴ FATF, *FATF Steps up the Fight Against Money Laundering and Terrorist Financing*, 2012. Available from: <<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatfstepsupthefightagainstmoneylaunderingandterroristfinancing.html>> [Accessed 20/04/2015].

³⁸⁵ FATF, *Review of the FATF Standards and Historical Versions*. Available from: <<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/review-and-history-of-fatf-standards.html>> [Accessed 20/04/2015].

³⁸⁶ FATF, *Review of the FATF Standards and Historical Versions*, op. cit..

³⁸⁷ S. DE VIDO, *Il contrasto del finanziamento al terrorismo internazionale Profili di diritto internazionale e dell'Unione Europea*, Milano, CEDAM, 2012, p. 136ff.

the Recommendations by each government lies in a mutual evaluation and a report system.

At the beginning the checking was based on an annual self-assessment with two detailed questionnaires the countries had to fill in³⁸⁸. Subsequently, the questionnaires were modified, other questions were added and other were modified or eliminated; the questionnaires were discussed during the plenary meeting³⁸⁹. The second round of mutual evaluations focused on areas of non-compliance or partial compliance and this round was completed in 1999; however, the mutual evaluation was based on the first Forty Recommendations, not on the 1996 revised Forty Recommendations³⁹⁰. The third round focused on the areas identified in the second round with particular and significant deficiencies; for several reasons the third round completion was 2010, faced a massive delay³⁹¹. The third round mutual evaluation also changed its process: a more detailed and complex common methodology was chosen, which also resulted in greater expenditure and was less pleasant³⁹². It was introduced a formal compliance rating system, which seemed more effective, and, for a more transparent process, the FATF members decided to render the results public³⁹³.

These periodic reviews are seen as useful to improve the laws, cooperation and the discovery and seizure of the laundered proceeds from crime, but they did not eliminate the problems: sometimes countries are not so receptive and they do not take seriously the admonitions of the FATF. Thus, only after measures against them do they start responding to the request of the FATF; others need even suspension before acting, as was the case with Austria³⁹⁴. The FATF Secretariat chooses the examiners for each country and the team visits them: its length of stay in the country is usually of seven/eight days, although sometimes they need more time, and there it meets the ministers and the

³⁸⁸ W. C. GILMORE, op. cit., p. 137ff.

³⁸⁹ W. C. GILMORE, op. cit., p. 137ff.

³⁹⁰ W. C. GILMORE, op. cit., p. 137ff.

³⁹¹ W. C. GILMORE, op. cit., p. 137ff.

³⁹² W. C. GILMORE, op. cit., p. 137ff.

³⁹³ W. C. GILMORE, op. cit., p. 137ff.

³⁹⁴ W. C. GILMORE, op. cit., p. 137ff.

institutions, both public and private, which can be a target for laundering money³⁹⁵.

The fourth round is now operating in the member countries. It is based on the Forty Recommendations as amended in 2012 and it is composed of a double evaluation, on the technical compliance and on the effectiveness of the measures taken³⁹⁶. The fourth round, started in 2013, “will assess whether the necessary laws, regulations or other required measures are in force and effect, and whether the supporting AML/CFT institutional framework is in place”, and “whether the AML/CFT systems are working, and the extent to which the country is achieving the defined set of outcomes” – point I of the Procedures of the FATF Fourth Round of AML/CFT Mutual Evaluations³⁹⁷. The Mutual Evaluation Report will give the level of compliance and the level of effectiveness of the measures taken³⁹⁸. “The Methodology will be used by the FATF, the FATF-Style Regional Bodies (FSRBs) and other assessment bodies such as the IMF and the World Bank”³⁹⁹.

2.2.3. Collaborations (FSRB)

As already mentioned, the FATF body has 36 members; however, another 180 countries are involved in the FATF mechanism through a regional system. For each region of the world a regional body has been constructed, which acts as the FATF: they are the so-called FATF-Style Regional Bodies (FSRBs). The number of the FSRBs is eight:

- Asia/Pacific Group on Money Laundering (APG),

³⁹⁵ W. C. GILMORE, op. cit., p. 137ff.

³⁹⁶ FATF, *Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations*, 2013. Available from: <<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/4th-round-procedures.html>> [Accessed 20/04/2015].

³⁹⁷ FATF, *Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations*, op. cit..

³⁹⁸ FATF, *FATF Issues New Mechanism to Strengthen Money Laundering and Terrorist Financing Compliance*, 2013. Available from: <<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatfissuesnewmechanismtostrengthenmoneylaunderingandterroristfinancingcompliance.html>> [Accessed 20/04/2015].

³⁹⁹ FATF, *FATF Issues New Mechanism to Strengthen Money Laundering and Terrorist Financing Compliance*, op. cit..

- Caribbean Financial Action Task Force (CFATF),
- Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL),
- Eurasian Group (EAG),
- Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG),
- Financial Action Task Force of Latin America (GAFILAT),
- Inter-Governmental Action Group against Money Laundering in West Africa (GIABA),
- Middle East and North Africa Financial Action Task Force (MENAFATF).

The involvement of the FSRBs in the process of the FATF is testified by their participation at its Plenary Meetings: this allows the FSRBs to influence the FATF in their decisions⁴⁰⁰. They represent each part of the world. Each FSRB recognises the Forty Recommendations and ask its members to implement them in their countries. The FSRBs have been created to transmit the same anti-money laundering principles and the same anti-financing terrorism principles in order to reduce serious crime around the globe. The MONEYVAL FSRB will be dealt with in detail in a following paragraph.

3. European legal instruments

Two of the main European regional organisations are the Council of Europe and the European Union. Both of them have taken and take into consideration the fight against money laundering and the fight against the financing of terrorism, as well as the fight against transnational organised crime. In fact, the Council of Europe has proclaimed two conventions in the fight against money laundering and terrorism financing, while the European Union has issued a directive on the same matter. The two conventions in question are the 1990 Council of Europe Convention and the 2005 Warsaw Convention, which will be explained in more detail in the following paragraphs. The Directives of the

⁴⁰⁰ W. C. GILMORE, *op. cit.*, p. 137ff.

European Union on money laundering, revised and improved several times, will also be seen in more detail in the following paragraphs. Europol is the European Union's agency that handles the fight against money laundering and transnational organised crime. It is the regional counterpart of Interpol and it will be dealt with in more detail in the following paragraphs as all the entities mentioned. The last body taken into consideration at the European level is MONEYVAL. As already seen, it is an Associate Member of the FATF, so it considers the fight against money laundering as fundamental. It is also important from the point of view of this dissertation, because Albania is part of this body – Albania will be the focus of the third chapter, in which the fight against transnational organised crime and money laundering will be put into practice.

3.1.The 1990 Council of Europe Convention

The Council of Europe is a regional organisation established in 1949 which aims at promoting European unity, fostering social and economic progress in the region and protecting human rights. The member countries are 47; moreover, there are six observer countries. It is worth noting that the member countries are not only of the European region, but other countries in the Asian region are part of the Organisation: Russia, Armenia, Azerbaijan and Georgia are members of the Organisation, making the Council of Europe a pan-European organisation⁴⁰¹. The Council of Europe has close to its heart the cause of human rights: in fact, the Parliamentary Assembly is the author of the European Convention on Human Rights. The Council of Europe tends to spread this concept throughout the whole European region, and even more in the regions at the limits of Europe; it also pays attention to the maintenance of democratic values.

The Council of Europe is based in Strasbourg and it is regarded as the leader of the European region in the fight against money laundering⁴⁰². The Council of Europe is composed of eight institutions, as the Organisation calls

⁴⁰¹ W. C. GILMORE, *op. cit.*, p. 137ff.

⁴⁰² W. C. GILMORE, *op. cit.*, p. 137ff.

them. Among them there are the Committee of Ministers, the Secretary General and the Parliamentary Assembly. The Committee of Ministers is the most important body of the Organisation, because it takes the decisions that the members have to apply in their countries. It is composed of the Ministers of Foreign Affairs of the 47 countries and they meet once a year in the first days of May, the annual ordinary ministerial session; a second meeting can be held during the year time if necessary⁴⁰³. The Ministers' Deputies, on the other hand, meet several times a week in subsidiary groups⁴⁰⁴. During these meetings, the Ministers start a dialogue on political matters, interact with the Parliamentary Assembly, conclude conventions and agreements, adopt recommendations to member states and implement cooperation and assistance programmes, among others things⁴⁰⁵. The Committee of Ministers is headed by a chairman: the chairmanship of the Committee lasts six months and the rotation is based on the English alphabetical order of member States – the current Chairmanship is held by Belgium⁴⁰⁶.

The Parliamentary Assembly is composed of 138 men and women from the 47 member countries, among whom are a President and 20 Vice-Presidents. The Parliamentary Assembly is composed of nine general committees, each with a specific task to focus on, and sub-committees and ad hoc committees to help in their job. Each member can be a full member of only one committee, or they can be alternate members on more than one committee⁴⁰⁷. "Most debates in the plenary Assembly and in the Standing Committee take place on the basis of committee reports"⁴⁰⁸. The texts adopted during the plenary Assemblies have to be implemented compulsorily by the members and their adoption is checked – from the 2011 reform⁴⁰⁹.

⁴⁰³ COUNCIL OF EUROPE, *About the Committee of Ministers*. Available from: <http://www.coe.int/t/cm/aboutCM_en.asp> [Accessed 21/04/2015].

⁴⁰⁴ CoE, *About the Committee of Ministers*, op. cit..

⁴⁰⁵ CoE, *About the Committee of Ministers*, op. cit..

⁴⁰⁶ CoE, *About the Committee of Ministers*, op. cit..

⁴⁰⁷ COUNCIL OF EUROPE, *Committees*. Available from: <http://website-space.net/en_GB/web/apce/committees> [Accessed 21/04/2015].

⁴⁰⁸ CoE, *Committees*, op. cit..

⁴⁰⁹ CoE, *Committees*, op. cit..

This dissertation focuses on the Council of Europe activities about criminal matters, as this relates to the first chapter. For the Council of Europe criminal matters were already an issue of concern in the 1950s. Nineteen fifty-seven saw the ratification of the European Convention on Extradition⁴¹⁰ by some of the members of the Council of Europe. It was a declaration of the desire for more effective international cooperation on the question of extradition and in particular there was the idea of creating an instrument in which the basic principles of extradition were made public and applicable to all the adherents. The Convention was completed with four Protocols and ratified by 2010 by the 47 member countries, Israel and South Africa. A second instrument on criminal matters adopted by the Council of Europe was the 1959 European Convention on Mutual Assistance in Criminal Matters⁴¹¹, ratified by Israel as well, and completed by two Protocols. This Convention was ratified with the aim of enabling mutual assistance between countries in criminal matters.

As for the specific fight against money laundering and transnational organised crime, a specific convention was created in 1990. This convention was born from the desire of the Council of Europe to embrace the FATF's philosophy of prevention, in particular the assumption that the banking system and cooperation can both play a highly effective preventive role in financial asset recovery and make the "know-your-customer rule" a shared and shareable idea – hence the proposal for a convention. The reasons that pushed the Council of Europe to build a convention on this matter come also from the fact that the questionnaires they submitted to the member countries, showed that some of them lacked the measures to confiscate the proceeds from crime, as well as other rules⁴¹². Furthermore, they saw that the previous conventions lacked some regulations, as, for example, Article 3 of the Convention on Criminal Matters of 1957, which did not "apply to search and seizure of property with a view to its

⁴¹⁰ It was opened for signature on 13 December 1957 and came into force in 1960, after reaching the condition of three ratifications. The number of State Parties is 50.

⁴¹¹ It was opened for signature on 20 April 1959 and came into force in 1962, after reaching the condition of three ratifications. The number of State Parties is 47.

⁴¹² COUNCIL OF EUROPE, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Explanatory Report*. Available from: <<http://conventions.coe.int/Treaty/EN/Reports/Html/141.htm>> [Accessed 21/04/2015].

subsequent confiscation"⁴¹³. From an international point of view, the standardisation of the norms is important because it allows authorities to prosecute criminals even outside their domestic borders with the collaboration of the other country authorities because they recognise in their penal law the same actions and penalise them in the same way.

The Committee that was in charge of the construction of this convention was the European Committee on Crime Problems (CDCP): better said, the CDCP entrusted the Select Committee of Experts on international cooperation as regards search, seizure and confiscation of the proceeds from crime (PC-R-SC) for the construction of this convention. The European Committee on Crime Problems (CDCP) was in charge of the discussions for the "the formulation, in the light *inter alia* of the work of the United Nations, of international norms and standards to guarantee effective international co-operation between judicial (and where necessary police) authorities as regards the detection, freezing and forfeiture of the proceeds of illicit drug trafficking"⁴¹⁴. It was in 1986 at the 15th Conference of the European Ministers of Justice, held in Oslo, when the Ministers of Justice charged the CDCP with this discussion⁴¹⁵. But the proposal started some years before: the Pompidou Group⁴¹⁶ was already working on this matter in 1983 and the PC-R-SC was created only in 1987 by the European Committee on Crime Problems at the Plenary Session of the Committee of Ministers: in June 1987 the Committee of Ministers authorised the creation of this Select Committee⁴¹⁷. The creation of the Select Committee came from the need to

⁴¹³ CoE, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Explanatory Report*, op. cit..

⁴¹⁴ CoE, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Explanatory Report*, op. cit..

⁴¹⁵ CoE, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Explanatory Report*, op. cit..

⁴¹⁶ The Pompidou Group or Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs is an intergovernmental body created in 1971 with the aim of combating drug abuse and drug trafficking. In 1980 the Group was incorporated into the Council of Europe framework. Its influence is extended not only to the European countries, but also to non-European countries, and in particular to the Mediterranean region.

⁴¹⁷ CoE, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Explanatory Report*, op. cit..

combat drug trafficking and drug traffickers first of all, and their financial assets⁴¹⁸.

As already stated at the beginning of this second chapter, the fight against transnational organised crime and money laundering started with the fight against drug trafficking, the most massive remunerative and cash-producing activity of organised crime. Thus also Europe, thanks to the work carried out at the international level, and in particular at the United Nations, started to work in this field. The Pompidou Group also conducted a fundamental role in putting pressure on the work of the Select Committee: it was May 1989 when an Extraordinary Meeting declared the works on the convention had to expedite the work of the Select Committee started in October 1987⁴¹⁹. In April 1990 the Select Committee met for the last of nine times; the draft of the Convention was finalised by the CDCP at its Plenary Session in June 1990 and forwarded to the Committee of Ministers. In September 1990, the Committee of Ministers approved the text of the convention and decided to open it for signature on 8 November 1990. It deals with the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime⁴²⁰.

The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime makes clear that countries have to cooperate in collecting the evidence of crimes that may be related to or are useful for other countries, even without a request⁴²¹. It is important from the point of view of the pursuit of the offender, that he/she must not be able to hide his/her proceeds from crime or the instruments of crime; thus it is fundamental that the “freezing’ of bank accounts, seizure of property or other measures of conservancy need to be taken” – Section 4 of Chapter III of the Convention⁴²². However, according to the

⁴¹⁸ CoE, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Explanatory Report*, op. cit..

⁴¹⁹ CoE, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Explanatory Report*, op. cit..

⁴²⁰ CoE, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Explanatory Report*, op. cit..

⁴²¹ CoE, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Explanatory Report*, op. cit..

⁴²² CoE, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Explanatory Report*, op. cit..

Convention, international cooperation is not to be considered an obligation: a country can refuse to cooperate or can postpone the cooperation. The explanation lies in the fact that cooperation has to be flexible – Section 5 of Chapter III of the Convention⁴²³. The Section 6 of Chapter III of the Convention protects the third parties' rights and the notification of the documents.

Also taken into consideration in the drafting of the Convention was the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances⁴²⁴. The experts used the UN Convention as an example and a point of reference for the draft of the 1990 Convention, but they changed some points, improving them in relation to the fact that the 1990 Convention has a smaller target to focus on in relation to the number of countries it is primarily addressed to: these countries belong to the same geographical area – thus they are like-minded and it is easier to make them agree on more specific rules⁴²⁵. Hence, the sense of building a new convention, a regional convention, to deal with the same matters as a more global one lies in the fact that with a global convention it is difficult to come to a specific decision that can please everybody, while a regional body can achieve this objective more easily. In this way, the regional instruments can also address their attention to matters that are not mentioned or left to further agreements on the part of the countries. Hence, the sense of the construction of a regional agreement: it can complete the global one. On the other hand, the regional character of the 1990 Convention has not blocked the European countries from opening it to external states; Australia signed it, for instance. As a consequence, the absence of the term 'European' in the title of the Convention: it is a means to express this openness to similar like-minded countries in the world⁴²⁶.

An example of this implementation and enrichment of the Convention in comparison with the UN Convention lies in the criminalisation of money

⁴²³ CoE, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Explanatory Report*, op. cit..

⁴²⁴ CoE, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Explanatory Report*, op. cit..

⁴²⁵ CoE, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Explanatory Report*, op. cit..

⁴²⁶ CoE, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Explanatory Report*, op. cit..

laundering. Money laundering is criminalised not only from the perspective of its relationship to drug trafficking: it is criminalised from every perspective⁴²⁷. Furthermore, if an offence is committed extraterritorially, the offender can be prosecuted. Moreover, the confiscation system takes into account both property and value confiscation methods⁴²⁸. However, it is limited because he considers the Convention only as an international criminal law instrument with, in addition, no involvement of the private sector in this fight⁴²⁹. The criticism lies in the fact that it does not impose anything more than a regulation of the countries' legislation. In addition, the private sector, which is hit by the phenomenon maybe more than the public one, because the private sector is less controlled, is not regulated or taken into consideration.

To summarise the aspects present in the Convention, Chapter I explains the terms used in the text, Chapter II the measures that each country needs to take at the national level and Chapter III explains the measures to be taken for international cooperation. The Convention ends with final provisions about the functioning of the treaty. In the years since its conclusion, the 1990 Convention has come to be regarded as a key point of reference in anti-money laundering policy discussions, political declarations, and practical programmes of activity both in Europe and beyond⁴³⁰.

3.2. The 2005 Warsaw Convention⁴³¹

The so-called 2005 Warsaw Convention is simply the revised 1990 Convention. The full title of the 2005 Warsaw Convention is the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the

⁴²⁷ W. C. GILMORE, op. cit., p. 173ff.

⁴²⁸ For further information on the difference between property and value confiscation refer back to the first chapter, section B, paragraph 3.2.

⁴²⁹ W. C. GILMORE, op. cit., p. 173ff.

⁴³⁰ COUNCIL OF EUROPE, *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism Explanatory Report*. Available from: <<http://conventions.coe.int/Treaty/EN/Reports/Html/198.htm>> [Accessed 21/04/2015].

⁴³¹ It was opened for signature in 2005 and came into force in 2008. The number of State Parties is 26.

Proceeds from Crime and on the Financing of Terrorism. The major difference from the previous Convention can be seen in the title: the Convention has been extended to the fight against the financing of terrorism. The reasons that pushed the Council of Europe to integrate the previous Convention with the fight against terrorism financing were the events of 11th September 2001, when the problem emerged as global and as present as never before. Terrorism was and is a threat for the entire community of the world, and the Council of Europe exploited the revision of the 1990 Convention to add this topic.

The revision of the Convention started from the results of another two organisations: the FATF and MONEYVAL. Both organisations have a control mechanism composed of periodic mutual evaluation procedures which have the possibility to bring to light the weaknesses in the national systems in the fight against money laundering, transnational organised crime and terrorism financing⁴³². To the mutual evaluation results have to be added the expansion of the FATF scheme with the Special Recommendations and the modifications of the Forty Recommendations in 2003, the 2001 modification of the European Union Council Directive of June 1991 on prevention of the use of the financial system for the purpose of money laundering and the proposal for a third European Union Directive⁴³³. Furthermore, “the development and expansion of the Egmont Group of Financial Intelligence Units, the adoption of the United Nations Conventions against Transnational Organised Crime and Corruption and the Convention on the Suppression of the Financing of Terrorism as well as the emergence of international pressure through the imposition of counter-measures on “non-cooperative countries and territories”, which were not in conformity with international standards” pushed for an update of the 1990 Convention⁴³⁴.

⁴³² CoE, *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism Explanatory Report*, op. cit..

⁴³³ CoE, *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism Explanatory Report*, op. cit..

⁴³⁴ CoE, *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism Explanatory Report*, op. cit..

The first moves began in 1998 when there came to some Council of Europe's countries the idea of adding a Protocol to the 1990 Convention. To have a complete and exhaustive view of the desires of the countries, a questionnaire-based inquiry was distributed⁴³⁵. The same previous Select Committee charged with the preparation of the 1990 Convention analysed the inquiries submitted to it: the report the Select Committee showed to the European Committee on Crime Problems (CDCP) during one of its plenary session in 2002 was accompanied by the suggestions for the draft of a new protocol⁴³⁶. It was the year 2003 when the European Committee on Crime Problems entrusted the Committee of experts on the revision of the Convention on laundering, search, seizure and confiscation of the proceeds from crime (PC-RM) with the task of drawing up such a protocol⁴³⁷. The PC-RM started to work on the draft of this protocol in December 2003 and completed it in February 2005; finally, the modifications were so important that the Committee of experts proposed the text as a convention more than a protocol⁴³⁸. Submitted to the European Committee on Crime Problems, which approved it, the Convention was adopted by the Committee of Ministers on 3 May 2005. The Warsaw Convention came into force only in May 2008.

The differences from the 1990 Convention are to be noted in the inclusion of the financing of terrorism, as already stated. There is a slight difference between money laundering and the financing of terrorism: while money laundering sees the concealment of the origin of illicit money and its transformation into licit funds, the financing of terrorism does not necessarily involve the use of an illicit sum of money for the financing of terrorism. Most of

⁴³⁵ CoE, *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism Explanatory Report*, op. cit..

⁴³⁶ CoE, *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism Explanatory Report*, op. cit..

⁴³⁷ CoE, *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism Explanatory Report*, op. cit..

⁴³⁸ CoE, *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism Explanatory Report*, op. cit..

the time the financing of terrorism concerns the use of licit sum of money. This difference changes the points of reference in the search for the two crimes. This is the reason why it is the first international instrument to put together the two phenomena, also because of the more recent appearance of the terrorism-financing phenomenon.

Another difference from the previous convention is the insertion of specific coverage for the financial intelligence units (FIUs)⁴³⁹, due to the fact that many countries had established these types of units in order to cooperate with other units in the world⁴⁴⁰. The convention needed to regulate this aspect also in order to have the same basis for comparison. Moreover, having quick access to the financial assets of the criminal organisations is the best way to freeze their accounts and funds and stop them from committing a crime. Also it has been proved that FIUs can collect earlier and more easily the information needed and they can also share it with agencies of the same calibre in other countries without too many barriers. The *modus operandi* of the FIUs is in itself useful for the fight against terrorism financing – another reason why the two phenomena are found in the same convention⁴⁴¹. The FIUs articles are found in the second section of the third chapter of the convention. The third difference from the 1990 Convention is the treatment of the strategy of prevention. The strategy of prevention is treated, even though in broad terms, in the 2005 Convention, while it was not present in the previous one⁴⁴².

On the other hand, similarities with the FATF can be seen in this 2005 Convention. The 2005 Convention took deep inspiration from the FATF Recommendations: for instance, there is a list of the categories of offence in the appendix of the treaty, as in the FATF Recommendations; it encourages mandatory confiscation and asks for the tracking of any accounts held by

⁴³⁹ W. C. GILMORE, op. cit., p. 173ff.

⁴⁴⁰ CoE, *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism Explanatory Report*, op. cit..

⁴⁴¹ CoE, *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism Explanatory Report*, op. cit..

⁴⁴² W. C. GILMORE, op. cit., p. 173ff.

particular individuals⁴⁴³. Another similarity can be seen with the 1990 Convention: both of them share the requirement of radical changes in domestic criminal laws; moreover, attention is given to human rights, because the pursuit of certain objectives related to the fight against money laundering and terrorism financing must not destroy democratic values⁴⁴⁴.

3.3.The European Union Directives against money laundering

The European Union is one of the most important regional organisations in the European region. It has evolved with the passage of time from being a simple economic union to a political union. It was built with the aim of bringing a durable peace in this region tormented by two world wars in less than 40 years. In order to achieve this objective the participation of the Germany was fundamental in the construction of the peace. Germany is one of the six founding members of the current European Union – Belgium, France, Italy, Luxembourg and the Netherlands are the other founding members. Since 18th April 1951, the number of the member countries of the European Union has increased and reached a total of 28 on 1st July 2013 with the entry of Croatia.

The European Union is now ruled by two treaties, the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). The latest modifications made to the two Treaties were imposed by the adoption of the Lisbon Treaty in December 2007 – it came into force only in December 2009. The Treaty on the Functioning of the European Union rules the legal acts of the Union, adoption procedures and other provisions – Chapter II of the Title I ‘Institutional Provisions’ of Part XI ‘Institutional and Financial Provisions’⁴⁴⁵. The legal acts exercise the Union’s competences and these are called regulations, directives, decisions, recommendations and opinions. While the first three legal

⁴⁴³ W. C. GILMORE, op. cit., p. 173ff.

⁴⁴⁴ W. C. GILMORE, op. cit., p. 173ff.

⁴⁴⁵ EUROPEAN UNION, *Consolidated Treaties Charter of Fundamental Rights*, 2010. Available from: <http://europa.eu/eu-law/decision-making/treaties/pdf/consolidated_versions_of_the_treaty_on_european_union_2012/consolidated_versions_of_the_treaty_on_european_union_2012_en.pdf> [Accessed 22/04/2015].

acts are binding, the last two are not – Article 288 TFEU⁴⁴⁶. The three binding legal acts differ in their range: while the regulation has general application and is entirely and directly applicable in all Member States, the directives leave to the national authorities the choice of the form and methods, and directives aim at reaching a result, and finally the decisions are binding only to those they are addressed to – Article 288 TFEU⁴⁴⁷.

The paragraph will focus on the directives of the European Union treating the money laundering issue. Before focusing on this specific directive, a brief explanation on how a directive is approved will be given. Legal acts, and directives in particular, can be adopted in two different ways depending on the procedure chosen: ordinary legislative or special legislative. If the procedure chosen is the ordinary legislative procedure, this will be long, but very democratic: after the proposal of the Commission is presented to the European Parliament and the Council, the modifications of both organs are considered in depth. If the first step, called the ‘first reading’, has not ended with the approval of both organs of the same text, a ‘second reading’ starts; in the ‘second reading’ the text is submitted for the approval of both organs’ amendments – Article 294 of the TFEU⁴⁴⁸. At this point, if the text has not been approved and not rejected, the following step is the Conciliation: a Committee of Conciliation writes a text taking into consideration the amendments of the two organs; the subsequent text is submitted to the Council and the European Parliament, the ‘third reading’, which will end with the approval or the rejection of the text – Article 294 of the TFEU⁴⁴⁹. The special legislative procedure, on the other hand, sees the Council of the EU as the sole legislator, while the European Parliament’s competence is limited to consultation or approval, depending on the case.

The European Commission participated in the drafting of the 1988 UN Convention and of the 1990 Council of Europe Convention; in addition, it is an active participant in the FATF process⁴⁵⁰. The whole of this international instrument, in which the European Commission has been or is involved, talks

⁴⁴⁶ EU, *Consolidated Treaties Charter of Fundamental Rights*, op. cit..

⁴⁴⁷ EU, *Consolidated Treaties Charter of Fundamental Rights*, op. cit..

⁴⁴⁸ EU, *Consolidated Treaties Charter of Fundamental Rights*, op. cit..

⁴⁴⁹ EU, *Consolidated Treaties Charter of Fundamental Rights*, op. cit..

⁴⁵⁰ W. C. GILMORE, op. cit., p. 221ff.

about the fight against money laundering. The European Union had also to take into consideration this subject and decided to propose a directive on the same matter in order to regulate the financial institutions in its member countries: in 1991 the Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering was approved. This Directive was inspired by all these international instruments: it is addressed to the credit and financial institutions of the member countries and imposes obligations on them for the detection of money laundering⁴⁵¹. The Directive was built because of the need to complete and regulate the financial system in the single market without preventing the free movements of capital and the freedom to provide services in the European Union⁴⁵².

The Council Directive 91/308/EEC of 10th June 1991 was amended by the Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001. The amendments are based on the Commission Declaration and the wishes of the European Parliament and the Member States⁴⁵³. The 2001 Directive saw some changes in some definitions in the Article 1, for instance money laundering and financial institutions; the list of the institutions to which the impositions have to be addressed was enlarged, Article 2⁴⁵⁴, extending the Directive to all credit and financial institutions branches in the Member States⁴⁵⁵; Articles 3, 6, 7, 9, 11 were totally replaced.

The previous directives have been substituted by another, more recent directive: the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. It came into force on 12th December 2005. This Directive introduced a new subject, terrorism financing: "by terrorist financing the directive means the provision or collection of funds to carry out any of the offences defined in Council Framework Decision 2002/475/JAI on combating terrorism, such as hostage taking, the drawing-up of

⁴⁵¹ W. C. GILMORE, *op. cit.*, p. 221ff.

⁴⁵² W. C. GILMORE, *op. cit.*, p. 221ff.

⁴⁵³ EUR-Lex, 32001L0097, 2001. Available from: <<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001L0097&from=EN>> [Accessed 22/04/2015].

⁴⁵⁴ EUR-LEX, 32001L0097, *op. cit.*.

⁴⁵⁵ W. C. GILMORE, *op. cit.*, p. 221ff.

false administrative documents and the leadership of a terrorist group”⁴⁵⁶. The directive targets all customers carrying out occasional transactions of more than 15,000 euros and suspected transactions are always subject to report⁴⁵⁷. Furthermore, “the entities and persons covered by the directive must establish appropriate measures and procedures for customer due diligence, reporting of information, record keeping, risk management and communication”⁴⁵⁸.

The Directive also regulates the institution in each Member State of the Financial Intelligence Units (FIUs), which have the task of collecting information about money laundering and terrorism financing; the Directive also extends its application to the branches and the majority-owned subsidiaries around the world⁴⁵⁹. The desire of the European Union to include as many countries as possible is strictly linked to the efficiency of these fights. For instance, the Directive is applied to those countries that are part of the European Free Trade Association (EFTA) which ratified the Agreement for a European Economic Area (EEA)⁴⁶⁰. Hence it relies on anti-money laundering systems of counterpart third countries.

The 2005 Directive underwent different amendments: in 2007, 2008, 2009 and 2010, the Directive was subject to modifications. The 2007 main amendment is the extension of the application of the Directive to payment services within the European Union⁴⁶¹. On the other hand, the amendments of 2008 are very small: only Articles 40 and 41 underwent a modification related to the implantation of the powers of the Commission⁴⁶². The amendments of the Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money

⁴⁵⁶ EUR-LEX, *Money laundering: prevention of the use of the financial system*, 2014. Available from: <<http://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32005L0060>> [Accessed 22/04/2015].

⁴⁵⁷ EUR-LEX, *Money laundering: prevention of the use of the financial system*, op. cit..

⁴⁵⁸ EUR-LEX, *Money laundering: prevention of the use of the financial system*, op. cit..

⁴⁵⁹ EUR-LEX, *Money laundering: prevention of the use of the financial system*, op. cit..

⁴⁶⁰ W. C. GILMORE, op. cit., p. 221ff.

⁴⁶¹ EUR-LEX, *Directive 2007/64/EC of the European Parliament and of the Council*, 2007. Available from: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32007L0064>> [Accessed 22/04/2015].

⁴⁶² EUR-LEX, *Directive 2008/20/EC of the European Parliament and of the Council*, 2008. Available from: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008L0020>> [Accessed 22/04/2015].

institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as the title already suggests, concern electronic money institutions and their regulation⁴⁶³. The last amendment of the 2005 Directive was made in 2010 and is related to the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority). The powers of these bodies have been modified due to the Treaty on the Functioning of the European Union, and in particular Article 50, Article 53(1) and Articles 62 and 114 thereof, the proposal from the European Commission, the opinion of the European Central Bank and the opinion of the European Economic and Social Committee⁴⁶⁴.

The latest directive on the matter was issued on 20 May 2015. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing modifies Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repeals Directive 2005/60/EC of the European Parliament and of the Council and the Commission Directive 2006/70/EC⁴⁶⁵. The update of Directive 2005/60/EC was already necessary in February 2012, when the new amendments of the Forty Recommendations of the FATF were published⁴⁶⁶. The negotiation of the new directive lasted two years; the work started in February 2013, and the definitive text was concluded during the Italian Presidency and approved by the European Council. The most important amendments of the Directive include the decrease in limit checking for

⁴⁶³ EUR-LEX, *Directive 2009/110/EC of the European Parliament and of the Council*, 2009. Available from: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009L0110>> [Accessed 22/04/2015].

⁴⁶⁴ EUR-LEX, *Directive 2010/78/EU of the European Parliament and of the Council*, 2010. Available from: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32010L0078>> [Accessed 22/04/2015].

⁴⁶⁵ EUR-LEX, *Directive (EU) 2015/849 of the European Parliament and of the Council*, 2015. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2015_141_R_0003> [Accessed 08/06/2015].

⁴⁶⁶ F. CASSANELLI, *Approvata la quarta Direttiva Antiriciclaggio*, 2015. Available from: <<http://www.rivistaeuropae.eu/economia/approvata-la-quarta-direttiva-antiriciclaggio/>> [Accessed 08/06/2015].

cash payments: above € 7.500 financial institutions have to check their guests in order to eliminate suspicion of any illicit financial transactions; and people considered at risk from the corruption point of view, namely heads of State and governments, judges of the Constitutional Courts, parliamentarians and their relatives must be monitored, as well as specific vulnerable economic sectors⁴⁶⁷. Finally, Directive 2015/849 imposes on countries the obligation to create a central register with data on the beneficiaries of trust funds and other financial instruments, on high value transactions and other sensitive information⁴⁶⁸. All parties need to conform to the Directive by 26 June 2017.

The importance of this Directive is related to the conventions and the mechanisms mentioned in this chapter. The European Union applies what is declared in these instruments to its sole member countries: the construction of an instrument at regional level is more specific and detailed: focusing on a smaller number of countries, it allows the authorities to deal not with general statements for the fight against money laundering, or the financing of terrorism or transnational organised crime, but to deal with definite rules and obligations that are respected and applied because the impositions they made are studied for that specific region. Nevertheless, the rules and obligations take into consideration the more general ones, without distancing the specific rules and obligations from them.

3.4.Europol

Europol is the European Union's law enforcement agency. It assists the European Union's Member States in their fight against serious international crime and terrorism. It was born recently: it was the 1992 Maastricht Treaty that gave birth to the agency; before there was the Trevi group with the aim only of combating terrorism within the European Community⁴⁶⁹. Afterwards, the Trevi group became involved in other areas of cross-border crime within the European

⁴⁶⁷ F. CASSANELLI, op. cit..

⁴⁶⁸ F. CASSANELLI, op. cit..

⁴⁶⁹ EUROPOL, *History*. Available from: <<https://www.europol.europa.eu/content/page/history-149>> [Accessed 22/04/2015].

Community⁴⁷⁰. Europol acquired a formal status in the European Union only in 1998 with the coming into force of the Convention on Europol ratified by the member states: the Convention affirmed that each country had to constitute a national unit which had to communicate and collaborate with the Europol agency on the issues in which Europol was competent⁴⁷¹. In addition, Europol collaborates with other law enforcement agencies situated in non-European countries: some of the countries that work with the Europol are Australia, Canada, the USA and Norway⁴⁷². The headquarters of the agency have been placed in The Hague, the Netherlands, the home of many other law bodies, such as the International Court of Justice, the International Criminal Tribunal for the former Yugoslavia or the International Criminal Court, or the EU agency of Eurojust – for the judicial cooperation within the European Union⁴⁷³.

The need for the institution of Europol came from the Schengen agreements signed by all the EU members, except the UK and Ireland, and by two non-EU states, Iceland and Norway, which give the freedom to people to circulate across European countries without being checked and supervised⁴⁷⁴. Europol's main activity is therefore the coordination of the police in all the countries of the European Community. In this activity Europol is supported by 145 Europol Liaison Officers (ELOs), based at Europol headquarters, which guarantee fast and effective cooperation based on personal contact and mutual trust⁴⁷⁵. Also to be noted is the idea, completed in 1999 during the Tampere European Council, Finland, of joint investigative teams combating trafficking in drugs and human beings as well as terrorism⁴⁷⁶.

Europol combats serious crime occurring within the European borders. Terrorism and organised crime are the most important challenges Europol has to tackle every day. It is for this reason that in 2004, the European Council created a multi-disciplinary year programme, called The Hague Programme, in which

⁴⁷⁰ EUROPOL, *History*, op. cit..

⁴⁷¹ EUROPOL, *History*, op. cit..

⁴⁷² EUROPOL, *About Europol*. Available from: <<https://www.europol.europa.eu/content/page/about-europol-17>> [Accessed 22/04/2015].

⁴⁷³ EUROPOL, *History*, op. cit..

⁴⁷⁴ EUROPOL, *History*, op. cit..

⁴⁷⁵ EUROPOL, *About Europol*, op. cit..

⁴⁷⁶ EUROPOL, *History*, op. cit..

Europol focuses on illegal migration, drug trafficking, trafficking in human beings, terrorism and organised crime⁴⁷⁷. Child abuse, forgery of money, the unstable situation in the Balkans are and were only some examples of the issues Europol tackles and tackled. A joint forum between Europol and the European Commission of 1999 showed that prevention had to be added to suppression of crime and the efforts have to come from different disciplines – as confirmed with The Hague Programme – and cooperation has to be at the national, regional and international levels with agreements with third countries and international organisations⁴⁷⁸. “The core business of Europol is receiving, exchanging and analysing information and intelligence”⁴⁷⁹.

The Hague Programme specifies how the cooperation had to be put in place: an Organised Crime Threat Assessment (OCTA) was put in place and this will be examined in the following paragraph⁴⁸⁰. Furthermore, Europol was “instructed to assist the Council and Member States to improve the quality of their law enforcement data and to build the Europol Information System up”⁴⁸¹. Finally, Europol was asked to “work closely with Europol, Eurojust and other European law enforcement bodies like the European Police Chiefs Task Force to combat international organised crime”, with specific reference to the joint investigation teams (JITs)⁴⁸².

The last modifications put in place by the European Union on Europol speak about a new legal status acquired with the Lisbon Treaty, the Europol Council Decision (ECD), and the establishment of a new European Cybercrime Centre (EC3), important in the fight against cybercrime, as well as terrorism financing, transnational organised crime and money laundering. The group of agencies and programmes created by Interpol is increasingly a way to complete the criminal’s activity list. An example of the efficiency of Europol in its fight against transnational organised crime, money laundering and cybercrime was

⁴⁷⁷ EUROPOL, *First Years*. Available from: <<https://www.europol.europa.eu/content/page/first-years>> [Accessed 22/04/2015].

⁴⁷⁸ EUROPOL, *First Years*, op. cit..

⁴⁷⁹ EUROPOL, *First Years*, op. cit..

⁴⁸⁰ EUROPOL, *First Years*, op. cit..

⁴⁸¹ EUROPOL, *First Years*, op. cit..

⁴⁸² EUROPOL, *First Years*, op. cit..

reported by the online press of the Europol website on 28th April 2015. The arrests were made by the Italian Financial Police (Guardia di Finanza) in collaboration with Europol and the United States Intelligence: 10 criminals, mainly Nigerians part of a transnational organised crime group, who laundered the proceeds of an online fraud, were caught at the beginning of the year⁴⁸³.

3.4.1.OCTA/SOCTA/IOCTA

As previously affirmed, one of the Europol core businesses is analysing. With the work of analysis, some strategic analysis reports concerning organised crime and terrorism were produced, important for the construction of a specific strategy to carry on Europol's fight against serious crime. The reports the paragraph focuses on concern organised crime. These strategic analysis reports are called EU Organised Crime Threat Assessment (OCTA), EU Serious and Organised Crime Threat Assessment (SOCTA) and Internet Organised Crime Threat Assessment (iOCTA). The reason why these reports are made is strictly related to the subsequent choices in the fight against organised crime taken by the agency⁴⁸⁴. The three assessments will be presented briefly, in their main characteristics.

In the OCTA 2011 Report organised crime in the European Union was analysed; in particular the report concentrates its researches on drugs, illegal migration, trafficking in human beings, various types of fraud, cigarette smuggling, counterfeiting, weapons trafficking, organised property crime and environmental crime⁴⁸⁵. In addition, a focus on money laundering, cybercrime and the social impact of organised crime ends the report⁴⁸⁶. The report testifies how

⁴⁸³ EUROPOL, *Police Dismantle Criminal Group Laundering Money in Europe and the United States*, 2015. Available from: <<https://www.europol.europa.eu/content/police-dismantle-criminal-group-laundering-money-europe-and-united-states>> [Accessed 28/04/2015].

⁴⁸⁴ EUROPOL, *Strategic Analysis Reports*. Available from: <https://www.europol.europa.eu/content/page/strategic_analysis_reports> [Accessed 22/04/2015].

⁴⁸⁵ EUROPOL, *OCTA 2011 EU Organised Crime Threat Assessment*, 2011. Available as pdf from: <<https://www.europol.europa.eu/content/publication/octa-2011-eu-organised-crime-threat-assesment-1465>> [Accessed 22/04/2015].

⁴⁸⁶ EUROPOL, *OCTA 2011 EU Organised Crime Threat Assessment*, op. cit..

the Internet has improved the abilities of organised crime groups in their activities: the Internet activities are the first challenge for police and the capture of the criminals⁴⁸⁷. A shift in tendency has to be noted in the purchase and sale of illicit goods: if before the goods were sold for cash, now organised crime accepts barter more than it did before⁴⁸⁸. Specialists in different sectors are accomplices or members of organised crime, facilitating the job for criminals, but, at the same time, making the job for the police tougher⁴⁸⁹. The market for illicit drugs has become particularly dynamic: again this does not favour the stopping of this highly remunerative criminal activity⁴⁹⁰. The report also suggests that the greatest improvements and developments have been made by organised crime situated in the South East area, in particular Albanian, Turkish and Russian organised crime have shown an increase and an expansion in their activities, both in number and in territorial extension⁴⁹¹.

The last report of the SOCTA was produced in 2013. The SOCTA Report addresses some topics that were also analysed by OCTA; in particular some activities organised crime uses are also present in this report, but SOCTA 2013 Report also addresses crime enablers. The crime enablers identified by the report are the economic crisis, transportation and logistical hotspots, diaspora communities, corruption and the rule of law, legal business structures and professional expertise, public attitudes and behaviour, the balance between profits and risks and the ease of entry into market, the internet and e-commerce, legislation and cross-border opportunities, and ID theft and document fraud⁴⁹².

The iOCTA work is recent. The last report concluded dates back to 2014: it is the fundamental tool taken into consideration by Europol for the building of the EMPACT Operational Action Plan for 2015 in the three sub-areas of

⁴⁸⁷ EUROPOL, *OCTA 2011 EU Organised Crime Threat Assessment*, op. cit..

⁴⁸⁸ EUROPOL, *OCTA 2011 EU Organised Crime Threat Assessment*, op. cit..

⁴⁸⁹ EUROPOL, *OCTA 2011 EU Organised Crime Threat Assessment*, op. cit..

⁴⁹⁰ EUROPOL, *OCTA 2011 EU Organised Crime Threat Assessment*, op. cit..

⁴⁹¹ EUROPOL, *OCTA 2011 EU Organised Crime Threat Assessment*, op. cit..

⁴⁹² EUROPOL, *EU Serious and Organised Crime Threat Assessment (SOCTA 2013)*, 2013. Available as pdf from: <<https://www.europol.europa.eu/content/eu-serious-and-organised-crime-threat-assessment-socta>> [Accessed 22/04/2015].

cybercrime priority⁴⁹³. Thus, the iOCTA Report “provides a description and analysis of the latest trends and the current impact of cybercrime within the EU”; however, it does not stop with the present situation, but makes an analysis of the possible future situation and foresees risks and threats, providing a conceivable solution⁴⁹⁴. The report affirms that thanks to the influence of the internet in our daily lives and thanks to the fact that Europe is a relatively wealthy region, cybercrime is becoming more and more the activity preferred by organised crime for committing its crimes⁴⁹⁵. Furthermore, underground forums help criminals to understand and to exploit the potentialities of the internet, and to sell and buy their goods⁴⁹⁶. Anonymity is the first means that brought this rapid expansion of the phenomenon⁴⁹⁷. Prevention comes, according to the Report, from ‘digital hygiene’, communication programmes, investments in capacity building and training, and the cooperation with other bodies, jurisdictions and organisations⁴⁹⁸.

The importance of these reports has to be seen in the work within Europol. Each year Europol decides the guidelines for the interventions in the fights against serious crimes and the reports are a tool that helps it to define the best practices, to understand where the weak points are and where to enhance cooperation and where to focus attention.

3.5.MONEYVAL

The MONEYVAL entity has already been named several times in relation to the FATF; it is, in fact, its FATF-style regional body. MONEYVAL is a committee of experts formed with the aim of taking into account anti-money laundering and the combating of financing terrorism evaluation procedures and

⁴⁹³ EUROPOL, *The Internet Organised Crime Threat Assessment (iOCTA)*, 2014. Available from: <<https://www.europol.europa.eu/content/internet-organised-crime-threat-assesment-iocta>> [Accessed 22/04/2015].

⁴⁹⁴ EUROPOL, *The Internet Organised Crime Threat Assessment (iOCTA)*, op. cit..

⁴⁹⁵ EUROPOL, *iOCTA2014 Summary Findings and Recommendations*, 2014. Available as pdf from: <<https://www.europol.europa.eu/content/internet-organised-crime-threat-assesment-iocta>> [Accessed 22/04/2015].

⁴⁹⁶ EUROPOL, *iOCTA2014 Summary Findings and Recommendations*, op. cit..

⁴⁹⁷ EUROPOL, *iOCTA2014 Summary Findings and Recommendations*, op. cit..

⁴⁹⁸ EUROPOL, *iOCTA2014 Summary Findings and Recommendations*, op. cit..

practices used by the FATF and obliges its member countries to implement them in their laws. The extended name for MONEYVAL is Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, formerly PC-R-EV. It “was established in 1997 and its functioning was regulated by the general provisions of Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods”⁴⁹⁹. It was created within the Council of Europe, but after 2010 the Committee of Ministers adopted a resolution that transformed MONEYVAL in an independent mechanism from January 2011 – it responds directly to the Committee of Ministers⁵⁰⁰.

In fact, MONEYVAL was born from the necessity for these countries to adopt money laundering countermeasures. Assistance was to be given in this in their transition period after the fall of communism in this area: the passage from state control to openness to the global market meant integration into the world financial system and the convertibility of their currencies – something these countries were not used to⁵⁰¹. Currency convertibility is very attractive for money launderers, hence the need for a support from those countries who had already adopted these types of measures and knew how to tackle these phenomena.

The FATF mechanism was not extended to many Council of Europe members, and the first meetings on this topic started inside the FATF with the representatives of those countries, and not the Council of Europe, as might be

⁴⁹⁹ COUNCIL OF EUROPE, *MONEYVAL in brief*. Available from: <http://www.coe.int/t/dghl/monitoring/moneyval/About/MONEYVAL_in_brief_en.asp> [Accessed 22/04/2015]. The members of MONEYVAL are 30: most of them are part of the central-eastern region of Europe, thus sharing a common past: Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Hungary, *Holy See*, *Israel*, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Monaco, Montenegro, Poland, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, “The former Yugoslav Republic of Macedonia, Ukraine.

⁵⁰⁰ S. DE VIDO, *op. cit.*, p. 213ff.

⁵⁰¹ W. C. GILMORE, *op. cit.*, p. 173ff.

thought⁵⁰². Paris held the first meeting, then Budapest, Warsaw and Moscow in 1993. In September 1997 the European Committee on Crime Problems (CDCP) entrusted a sub-committee, the PC-R-EV previously mentioned, to conduct self and mutual assessments in countries that were not part of the FATF⁵⁰³. This group, MONEYVAL, is based in Strasbourg and the current number of members is 30, but before 2006 they were only 28 – in 2006 Israel joined the group and in 2011 Holy See joined the group⁵⁰⁴. Also the Russian Federation joined MONEYVAL later, in 2003; it is, however, also member of the FATF⁵⁰⁵. The group is also completed by the presence of two other members designated by the FATF President: the duration of their mandate is temporary and they rotate every two years – the current temporary members are Austria and France⁵⁰⁶. Furthermore, MONEYVAL members are assisted by other representatives who participate in their plenary meetings: they have only the status of observers: each representative is part of a body, a country and an organisation⁵⁰⁷.

⁵⁰² W. C. GILMORE, *op. cit.*, p. 173ff.

⁵⁰³ W. C. GILMORE, *op. cit.*, p. 173ff.

⁵⁰⁴ CoE, *States Evaluated*, *op. cit.*.

⁵⁰⁵ CoE, *States Evaluated*, *op. cit.*.

⁵⁰⁶ FATF, *Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL)*. Available from: <<http://www.fatf-gafi.org/pages/moneyval.html>> [Accessed 22/04/2015].

⁵⁰⁷ COUNCIL OF EUROPE, *MONEYVAL in brief*, cited. The observers are: The Parliamentary Assembly of the Council of Europe, The Council of Europe Development Bank, The European Committee on Crime Problems, The Conference of the Parties of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198), The European Commission, The Secretariat General of the Council of the European Union, Canada, Japan, Mexico, the United States of America, Secretariat of the Financial Action Task Force on Money Laundering (FATF), ICPO-Interpol, Commonwealth Secretariat, International Monetary Fund (IMF), United Nations Office on Drugs and Crime (UNODC), United Nations Counter-Terrorism Committee (CTC), United Nations Crime Prevention and Criminal Justice Division (CCPCJ), World Bank, European Bank of Reconstruction and Development (EBRD), Group of International Finance Centre Supervisors (previously named Offshore Group of Banking Supervisors (OGBS)), Organisation for Security and Co-operation in Europe (OSCE), Egmont Group of Financial Intelligence Units, Eurasian Group on Combating Money Laundering and Terrorist Financing (EAG).

Any other FATF-style regional body and any other member of the FATF complete the list of the observers⁵⁰⁸. However, not only are there entities that influence the MONEYVAL decisions, but also MONEYVAL influences other entities. MONEYVAL has acquired Associate Member Status in the FATF in 2006, allowing MONEYVAL to participate in all the FATF Working Groups and Plenary Meetings through a delegation⁵⁰⁹. Besides FATF, MONEYVAL cooperates with the IMF and the World Bank, the Conference of the Parties of CETS 198 and other entities⁵¹⁰.

The difference between MONEYVAL and the FATF is that in MONEYVAL no countries can be suspended or expelled from the body⁵¹¹. If a country does not conform to the report MONEYVAL has submitted to it the only measure that can be taken towards it is to signal the country's behaviour to the Committee of Ministers⁵¹². The suggestions and obligations made by MONEYVAL reports take into consideration all the international instruments related to the fight against money laundering and terrorism financing cited in this chapter. The fight against terrorism financing started – as for all the international instruments – after the events of 11th September 2001. The legal, financial and law enforcement sectors are taken into consideration by MONEYVAL and the points of reference are the international instruments mentioned before⁵¹³.

MONEYVAL is not only a peer review process of mutual evaluations with “highly detailed recommendations on ways to improve the effectiveness of domestic regimes to combat money laundering and terrorist financing and states’ capacities to co-operate internationally in these areas”⁵¹⁴. It also “conducts typology studies of money laundering and terrorist financing methods, trends and techniques”⁵¹⁵. All the decisions on these matters are taken during the Plenary Meetings held 3 or 4 times per year in Strasbourg and these meetings usually

⁵⁰⁸ FATF, *Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL)*, op. cit..

⁵⁰⁹ W. C. GILMORE, op. cit., p. 173ff.

⁵¹⁰ CoE, *MONEYVAL in brief*, op. cit..

⁵¹¹ W. C. GILMORE, op. cit., p. 173ff.

⁵¹² W. C. GILMORE, op. cit., p. 173ff.

⁵¹³ CoE, *MONEYVAL in brief*, op. cit..

⁵¹⁴ CoE, *MONEYVAL in brief*, op. cit..

⁵¹⁵ CoE, *MONEYVAL in brief*, op. cit..

last 5 days⁵¹⁶. The Committee of Expert PC-R-EV has now acquired total independence from the Council of Europe and has relations only with the Committee of Ministers thanks to the resolution of 2012 that modified the Statute of MONEYVAL⁵¹⁷.

The evaluation process of the countries which are part of MONEYVAL started in 1998. The first round of mutual evaluations lasted two years and only 22 members of the Council of Europe were evaluated⁵¹⁸. The second round, started in 2001 and ended in 2004, saw the evaluation of 27 member countries of the Council of Europe and the evaluations were based, as for the previous one, on the 1996 FATF Recommendations⁵¹⁹. The third evaluation saw 28 reports and a change in the point of reference: the 2003 FATF Recommendations were taken into consideration in place of the 1996 ones. The last round, started in 2009, will be finalised in 2015, when the fifth round will start. The on-site visits of the fourth round have taken into consideration the governments' current situation in the fight against money laundering and terrorism financing, the real effectiveness of the laws and measures taken. The approach of the team visiting the country for the evaluation differs from country to country: there are three different types of approaches used in this fourth round. The approach choice depends on the ratings received in the previous report: if the country was evaluated as compliant or largely compliant, the approach would be soft, a biennial update on its progresses would be sufficient; if the country was evaluated as partially compliant or non-compliant, it would be placed in regular follow-up; finally, if the country had made no progresses, it would be put into an enhanced follow-up with regular reports earlier than two years⁵²⁰. Publication of the reports only takes place when

⁵¹⁶ COUNCIL OF EUROPE, *General Overview*. Available from: <http://www.coe.int/t/dghl/monitoring/moneyval/Activities/General_overview_en.asp> [Accessed 22/04/2015].

⁵¹⁷ CoE, *MONEYVAL in brief*, op. cit..

⁵¹⁸ COUNCIL OF EUROPE, *Evaluations*. Available from: <http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/About_evaluation_en.asp> [Accessed 22/04/2015].

⁵¹⁹ CoE, *Evaluations*, op. cit..

⁵²⁰ CoE, *Evaluations*, op. cit..

the country is no longer part of the follow-up or enhanced follow-up process; however, the biennial reports are available on the website for each country⁵²¹.

⁵²¹ COUNCIL OF EUROPE, *Evaluations*, op. cit..

CHAPTER III – ALBANIAN MAFIA AND THE ALBANIAN MONEY LAUNDERING FIGHT

Contents

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1.A brief summary of the history of Albania

The engagement of the Albanian government in restoring order in the country after 1990 changed in time: if in 2007 the perception of the Albanian situation was almost negative with many improvements and actions that had to be taken by the Albanian government in order to achieve a peaceful internal harmonisation, in six years Albania did prove its desire to improve the situation and to reach the standards imposed by the international community and the European Union. As will be seen in the first part of this chapter, Albania had to face a difficult situation because of its past. Past events shaped Albania and created great chaos inside its borders. The most important event that shaped present Albania was the fall of the communist bloc: the power vacuum left by the fall of the communist bloc created in the first instance government instability, then a fertile terrain for the growth of criminal organisations.

This third chapter aims to present an example of all the information given in the first and second chapters, namely about Albanian organised crime and the money laundering phenomenon in Albania, as well as the procedures put in place by the Albanian government in order to recover from this situation. The efforts made by the government are the result of the binding requirements of the

MONEYVAL organisation, of which Albania is part, and other international and regional entities that cooperate with Albania in these fights against organised crime and money laundering.

Albania showed clear evidence of the presence of organised crime groups, whose growth started at the beginning of the 1990s and evolved and developed during the following years. The Albanian criminal organised groups became so powerful and important in the region that they soon became an international problem and acquired transnational organised crime status. Albanian organised crime is considered “the largest enterprise in terms of sales and profits in South Eastern Europe” – studying the Balkan situation it is impossible not to come across Albanian organised crime⁵²². Albanian criminal organisations are considered a threat at the international level and to stop them collaboration is needed between the Albanian government and the entire international community. The second part of the chapter will present the Albanian mafia and its characteristics. Among the countries that fear and have to deal with Albanian organised crime is Italy, which soon became a great base for the international traffic of Albanian organised crime. A very brief analysis of the situation of the Albanian mafia in Italy will be given at the end of the second part of the chapter. Furthermore, Italy is an important trade partner for Albania, as will be explained.

In the third part of the chapter attention will be given to the fight of the Albanian government against the money laundering phenomenon. As a reference the last report of the MONEYVAL organisation, dated 2011, will be used. The MONEYVAL organisation has been presented in the previous chapter, as well as its importance in the field of combating money laundering in the European region and its strict collaboration with the FATF as FATF-Style Regional Body. Furthermore, Albania is subject to European Union decisions, because Albania decided to apply to be a European Union member in 2009. At the moment Albania is still not a member of the European Union, but it acquired ‘candidate

⁵²² G. CARTER, *Shape of the Albanian Organized Crime: Albanian Mafia Clan Keljmendi List*, 2013. Available from: <<https://theremustbejustice.wordpress.com/2013/03/10/shape-of-the-albanian-organized-crime-albanian-mafia-clan-keljmendi-list/>> [Accessed 14/05/2015].

status' in October 2012. This is the reason why the European Union is also interested in monitoring the developments and improvements of the Albanian government in the fight against Albanian organised crime and money laundering. A report of the European Union on Albania will also be taken into consideration.

1.1.The history of Albania from the beginning of the XX century to 1990

It is important for an understanding of the current situation in Albania to briefly present the history of Albania in the past century. The current political, social and economic situation of a country is always the result of past events that occurred over time. Therefore the brief history from the beginning of the XX century to 1990 is presented in the first paragraph of this third chapter. It is important to notice the primitive status of the Albanian state at the beginning of the century and its continuing primitive status even after acquiring independence, with the division of the country among the most influential families. It is worth noting the use of a code, the Kanun, among the population of Albania until its independence and the imposition of communism in the country, in the 1940s. (A description of the Kanun code will be given in the second part of the chapter, when discussing organised crime and its structure.)

For five centuries the Ottoman Empire governed the region of Albania. Only in 1912 did Albania gain its independence: it was 28th November. Albania was always a primitive state from the social and political point of view and this situation still existed when Albania acquired its independence. In fact, the territory was divided among the most important families of the period⁵²³: this division of the territory seemed to owe more to feudalism than to a civil modern state. After some conflicts among the families in Albania, Ahmed Zogu from Mirdita won and proclaimed the first Albanian Republic in 1925 and became President⁵²⁴. However, he yearned for more power: in 1928 he instituted the monarchy and

⁵²³ A. DESTANISHA, *La criminalità albanese: sviluppo e collegamenti internazionali*, 2011, p. 8ff. [dissertation] Available from: <<http://www.stampoantimafioso.it/wp-content/uploads/2014/02/Tesi-antonela-destanisha.pdf>> [Accessed 14/05/2015].

⁵²⁴ A. DESTANISHA, op. cit., p. 8ff.

became king of Albania – he ruled the country until 1939, when Albania was invaded by Italian troops and annexed to Italy⁵²⁵.

In the 1940s the world was facing the Second World War and the emergence of two different parties, opposite in their ideology: the communist party and supporters of fascism/Nazism. Albania saw the formation of its own communist party in 1941, while Italian and German forces started to penetrate the country in order to fight the emergence of communism in Albania⁵²⁶. The result was the victory of the Albanian partisans over the right forces in 1944, and thus the victory of the Communist Party⁵²⁷. In 1946 the Constitutional Assembly declared Albania a Popular Republic, establishing a dictatorial regime: the leader of the Popular Republic became Enver Hoxha, who would rule the country for almost 50 years⁵²⁸.

From then on, Albania's destiny was linked with the communist world, as Enver Hoxha was the founder of the Communist Party in Albania and a strong supporter of the communist cause. This attachment to the communist cause led Enver Hoxha to sign a collaboration agreement with the Yugoslav state of Tito⁵²⁹. However, the collaboration between the two leaders ended soon due to some conflicts which arose about the question of whether to institute a Balkan confederation or not; the policies and aims of the Yugoslav and Albanian Communist Parties diverged⁵³⁰. The result was the withdrawal of the Enver Hoxha government from the collaboration agreement signed two years before and the start of relations with the Soviet Union. In fact, in 1955 Enver Hoxha signed the Warsaw Pact and became one of the best allies of the Soviet Union, mainly because Albania represented for the Soviet Union its only communist ally in the Mediterranean⁵³¹. As a result, the Soviet model was applied to Albania.

History repeats itself. The points of contrast between Albania and the Soviet Union, this time, were a different vision in terms of the sectors on which to

⁵²⁵ A. DESTANISHA, *op. cit.*, p. 8ff.

⁵²⁶ A. DESTANISHA, *op. cit.*, p. 8ff.

⁵²⁷ A. DESTANISHA, *op. cit.*, p. 8ff.

⁵²⁸ A. DESTANISHA, *op. cit.*, p. 8ff.

⁵²⁹ A. DESTANISHA, *op. cit.*, p. 8ff.

⁵³⁰ A. DESTANISHA, *op. cit.*, p. 8ff.

⁵³¹ A. DESTANISHA, *op. cit.*, p. 8ff.

concentrate: Khrushchev aimed at a programme focused on agricultural measures for the progress of the country, while Hoxha worked for industrial production⁵³². Hoxha's reply to this contrast was to give support to Chinese critics of the Soviet Union: the Soviet Union reacted by ending any type of help to Albania⁵³³. On the other hand, Albania did not need it anymore: China became the new supplier of economic grants⁵³⁴.

Again Albania faced another change in the political support it received. In 1972 the crisis between the Sino-Albanian alliance started due to the first meetings between China and the United States in that same year; diplomatic relations were cut off completely in 1978⁵³⁵. From then on, Albania proceeded in a state of isolation based on autarchic communism⁵³⁶. This meant misery for the Albanian population: the Hoxha agricultural collectivisation programme brought the population's situation to extreme levels and worsened their living conditions⁵³⁷. The collectivisation programme entailed the confiscation of the goods of the majority of the population and the families who expressed opposition to this treatment were exiled or eliminated⁵³⁸. Even a weekly limit for the consumption of food was introduced and each attempt to leave the country was harshly prevented; absolute isolation was imposed⁵³⁹. Furthermore, the legal system installed by Hoxha was based on severe sanctions for each transgressor⁵⁴⁰. The political elections held in that period made Albania reach a critical situation from the political and economic point of view. Breaking point was almost reached: the elections took place with a list composed of a sole candidate and voters were not allowed to invalidate the ballot paper⁵⁴¹.

The country faced a change of direction in 1985 with the death of Enver Hoxha. Ramiz Alia came to power and was confronted with a starving country

⁵³² A. DESTANISHA, op. cit., p. 8ff.

⁵³³ A. DESTANISHA, op. cit., p. 8ff.

⁵³⁴ A. DESTANISHA, op. cit., p. 8ff.

⁵³⁵ A. DESTANISHA, op. cit., p. 8ff.

⁵³⁶ A. DESTANISHA, op. cit., p. 8ff.

⁵³⁷ A. DESTANISHA, op. cit., p. 8ff.

⁵³⁸ A. DESTANISHA, op. cit., p. 8ff.

⁵³⁹ A. DESTANISHA, op. cit., p. 8ff.

⁵⁴⁰ A. DESTANISHA, op. cit., p. 8ff.

⁵⁴¹ A. DESTANISHA, op. cit., p. 8ff.

which, in addition, had doubled its population in 40 years⁵⁴². Ramiz Alia needed to reform the communist system put in place by Hoxha and conducted this reform because he was more moderate than his predecessor⁵⁴³. In 1988 liberalisation hit the political field and Albanian culture; the reforms of Alia became effective and the agricultural sector saw the same liberalisation faced in the political and the cultural fields⁵⁴⁴. In 1989 the communist regime as known by Albanians was about to end: the political events happening in the Eastern Europe had repercussions in Albania as well and caused the crumbling away of the Communist Party⁵⁴⁵.

1.2.The evolution of Albania from 1990 to the present days

This paragraph will explain the political and economic progress of Albania during the 1990s and the first years of the new century. The importance of the events in the South Eastern Europe area will be also explained: they influenced the political and the economic situation of the country and caused the growth of the criminal organisations in the country. The evolution of the international relations of Albania will also be analysed, namely the bilateral and the multilateral agreements put in place by Albania over the years.

The year 1990 was the turning point for Albanian life. It ended the communist oppression and Albanians felt free for the first time after more than 50 years. This was the result of the events in the Soviet Union and in the rest of the Balkan region. The country reached freedom through chaos: there were uprisings, demonstrations in the cities; in particular in Tirana in July young people gathered to express their anger against the regime⁵⁴⁶. The political scene of Albania was divided between Southerners, whose main ethnic group was the Tosks (Hoxha was part of this ethnic group), and Northerners, whose main ethnic

⁵⁴² A. DESTANISHA, op. cit., p. 8ff.

⁵⁴³ A. DESTANISHA, op. cit., p. 8ff.

⁵⁴⁴ A. DESTANISHA, op. cit., p. 8ff.

⁵⁴⁵ A. DESTANISHA, op. cit., p. 8ff.

⁵⁴⁶ A. DESTANISHA, op. cit., p. 8ff.

group was the Gegs⁵⁴⁷. After 1990 the Democratic Party emerged, led by Sali Berisha, who belonged to the Northerners and was the major political figure in the history of Albania after 1990⁵⁴⁸. The other important party in the political sphere was the Socialist Party, the successor of the Labour Party that ruled Albania during the communist years.

The year 1991 saw another important event for the citizens of Albania: the first pluralist elections since the 1920s. However, the elections were not held in a fair climate because the victory of the Labour Party was judged by the Democratic Party as illicit: the victory of the Labour Party was the result of vote rigging and of the fact that the rural population was still uncertain, frightened and not well-informed on the current situation⁵⁴⁹.

Nevertheless, the government which came to power started a process composed of reforms: Albania “was supposed to become a market-oriented democracy within a few years”⁵⁵⁰. “The liberalisation of prices and markets, privatisation, the establishment of a commercial banking system and the drafting of new legislation” were the aims of the government after the elections⁵⁵¹. The difficulties faced by the government were to pass from a highly centralised government and dictatorial regime to pure freedom, to pass from censorship – which meant the almost total ignorance of how the world was outside the Albanian borders, except for the belief that everything in the outside world was wonderful – and isolation – which meant the prohibition of going abroad⁵⁵². The results were a mass exodus of the Albanian population, which, in one sense, was positive for the Albanians who remained in the homeland, because the recovery of the country started with the remittances of the first immigrants⁵⁵³. In addition, Albania started to receive economic investment and help came from the

⁵⁴⁷ V. STOJAROVA, *Organized Crime in the Western Balkans*, 2007, p. 18ff. Available from: <http://ispo.fss.muni.cz/uploads/2download/Working_papers/ispo_wp_2007_5.pdf> [14/05/2015].

⁵⁴⁸ V. STOJAROVA, op. cit., p. 18ff.

⁵⁴⁹ A. DESTANISHA, op. cit., p. 8ff.

⁵⁵⁰ V. HYSI, *Organised Crime in Albania: The Ugly Side of Capitalism and Democracy*, in *Organised Crime in Europe Concepts, Patterns and Control Policies in the European Union and Beyond*, Dordrecht, Springer, 2006, p. 538.

⁵⁵¹ V. HYSI, op. cit., p. 538.

⁵⁵² V. HYSI, op. cit., p. 537ff.

⁵⁵³ V. HYSI, op. cit., p. 537ff.

International Monetary Fund (IMF) as well, with humanitarian operations and political objectives as was the case with Third World countries in their passage from colonisation to independence⁵⁵⁴. Another positive aspect of this change in the political forces in power was the distribution of state property “to poor farmers and former owners and [state property] was sold cheaply to those who previously worked in related businesses [...], to the victims of political prosecution under the communist dictatorship and, above all, to the militants of the political party controlling the government after the regime change”⁵⁵⁵.

The sudden change in trend also brought negative results. Unemployment was one of the consequences of this sudden change of direction and, in turn, led to a worsening of the citizens’ economic conditions; in 2001 the United Nations Development Programme estimated that almost 30 percent of the population was considered to be poor⁵⁵⁶. Internal migration was another consequence of the misery that the Albanian population had to tackle: they reached big cities in the hope of improving their current life, but city infrastructures were not capable of absorbing the mass of people that came to increase the big cities’ volume of population⁵⁵⁷. Another negative aspect of the reforms was the drastic fall in production due to the closure of state-owned companies and the collapse of agricultural production: the decline in GDP was a clear symptom of this drastic fall, as well as the high levels of inflation⁵⁵⁸.

It has to be noted that government instability was the rule in the 1990s. Governments could have only one year’s duration and ministers were often replaced, because they were accused of engagement in organised crime groups or because they were corrupt⁵⁵⁹. Furthermore, in the Albanian government there was no willingness to eliminate the use of force in politics and this behaviour affected all the competences of a government, including the capability to implement its laws, to guarantee to the population public services, protection and

⁵⁵⁴ A. DESTANISHA, op. cit., p. 8ff.

⁵⁵⁵ V. HYSI, op. cit., p. 538.

⁵⁵⁶ V. HYSI, op. cit., p. 537ff.

⁵⁵⁷ V. HYSI, op. cit., p. 537ff.

⁵⁵⁸ V. HYSI, op. cit., p. 538.

⁵⁵⁹ V. STOJAROVA, op. cit., p. 18ff.

the control of its own territory – armed gangs ruled some areas of the land⁵⁶⁰. Hence it was a weak state and this situation was protracted for several years.

1994 was marked by inflation, unemployment and high interest rates due to the diffusion of a new phenomenon: organised crime. Organised crime was a word that did not exist before in the criminal code of Albania. But, if organised crime was responsible for the increase in crime in the country, it was also responsible for the increase in the GDP of the country, together with international help and the remittances of the emigrants⁵⁶¹. Illicit traffic and smuggling were the activities that helped the recovery of the country in the first years of the 1990s.

At the government elections of 1996 the Democratic Party won because the candidates of the Socialist Party and all the other opposition parties withdrew: the latter accused the Democratic Party of election-rigging and irregularities⁵⁶². This time the irregularities were also verified by the OSCE, but the international community did not act in favour of Albanian citizens⁵⁶³.

That same year the country faced the most important financial crisis after the liberalisation of the country. The crisis was called the pyramid-scheme bubble and burst at the end of 1996: the efforts made by the government with “stabilising reforms and the positive macro-economic situation were not enough to guarantee the success of the transition to a market-based democracy and the institutionalisation of the rule of law”⁵⁶⁴. The pyramid scheme bubble was the product of the birth of public companies charged with savings collection and management, which were built according to the pyramidal scheme: these companies promised very high interest rates, from 60 to 100 percent of interest⁵⁶⁵. Albanians invested everything they owned, even their houses, encouraged by the fact that the politicians confirmed the seriousness of the commitment of the state in this matter⁵⁶⁶. After the bursting of the pyramid-scheme bubble, the investigations evidenced political ties with the presidents of

⁵⁶⁰ V. STOJAROVA, op. cit., p. 18ff.

⁵⁶¹ A. DESTANISHA, op. cit., p. 8ff.

⁵⁶² A. DESTANISHA, op. cit., p. 8ff.

⁵⁶³ A. DESTANISHA, op. cit., p. 8ff.

⁵⁶⁴ V. HYSI, op. cit., p. 539.

⁵⁶⁵ A. DESTANISHA, op. cit., p. 19ff.

⁵⁶⁶ A. DESTANISHA, op. cit., p. 19ff.

the holding companies; furthermore, it was discovered that this situation could have been avoided if the IMF and the World Bank had acted before – it took four years before the alarm was raised⁵⁶⁷. The majority of the holding companies were declared bankrupt and the majority had headquarters in the city of Vlora: again the chaos reappeared with fires and destructions of official state documents, the creation of opposition committees and of their own police with checkpoints in the country, the perfect situation for the progression of illicit traffic by organised crime⁵⁶⁸. The financial crisis soon became an economic crisis, because many citizens lost all they owned and it affected not only good citizens, but also criminal organisations. They lost much of their money in the pyramid-scheme bubble and to recover their capital the best solution was an increase in illicit activities⁵⁶⁹.

Conditions in Albania started to change 11th March 1997 with the election of Bashkim Fino as Prime Minister and the government of transition that brought the citizens to vote in a referendum to decide whether the country should be a monarchy or republic, and 66.74 percent voted for Albania to remain a republic⁵⁷⁰. Immediately the government started to work on the new Constitution: it would be approved on 28th November 1998 through a referendum and it would declare Albania to be a Parliamentary Republic, a sole and indivisible State, provided with a government based on a democratic and egalitarian vote system and with the separation of powers⁵⁷¹. That same year the government of Albania asked the World Bank to conduct research into the levels of corruption in Albania: the results of the research showed that corruption was a major problem in Albania and the official strategies put in place by the government were not sufficient to solve the problem⁵⁷². In fact in 1999 Albania came 84th out of 99 on the list of the Transparency International⁵⁷³. In 2005 Albania occupied 126th

⁵⁶⁷ A. DESTANISHA, op. cit., p. 19ff.

⁵⁶⁸ A. DESTANISHA, op. cit., p. 19ff.

⁵⁶⁹ V. HYSI, op. cit., p. 537ff.

⁵⁷⁰ A. DESTANISHA, op. cit., p. 19ff.

⁵⁷¹ A. DESTANISHA, op. cit., p. 19ff.

⁵⁷² V. HYSI, op. cit., p. 537ff.

⁵⁷³ TRANSPARENCY INTERNATIONAL, *Corruption Perception Index 1999*. Available from: <http://www.transparency.org/research/cpi/cpi_1999/0/> [Accessed 14/05/2015]. The organisation aims at putting the issue of corruption on the international policy agenda.

position out of 159 countries in the list of the most corrupt countries, while in 2006 Albania came 111th out of 163 countries, according to the Corruption Perception Index of the Transparency International⁵⁷⁴. The last Corruption Perception Index dates from 2014 and Albania is ranked 110th out of 175 countries measured; it has to be remembered that the higher the position in the list, the less corrupt the country is, while the lower in the list the more highly corrupt the country is⁵⁷⁵. The statistics also show that Albania is the most corrupt country in the Balkan region – only Kosovo does worse.

Fifteen years from the end of the communist oppression and 15 years after the population of Albania started trying to pass to a market-oriented society, the 2005 elections were a test bed of progression, in particular in the corruption field and the political use of force. The result was disappointing. The 2005 elections were marked by corruption, vote counterfeiting, intimidation and violence⁵⁷⁶. Albanian organised crime was a threat to the state as well its transformation and the collaboration it established with foreign organised crime in the Euro-Atlantic region⁵⁷⁷. Illegal activities were also a natural second job for most of Albanians, as a way to make up their wages⁵⁷⁸.

It has to be noted that with the new century, the Albanian government started to work on its criminal code in order to introduce crimes that had not existed before. The crimes of organised crime and all the related activities, such as drug trafficking, human trafficking, prostitution, little by little found themselves included in the criminal code of Albania. Progress still needs to be made and the MONEYVAL report can give a better explanation of this process of implementation – it will be described in more detail in the third part of this chapter.

The 2013 elections were the last proof for Albanians. This time the results were positive as a whole, as affirmed by the Communication from the Commission to the European Parliament and the Council ‘Enlargement Strategy

⁵⁷⁴ V. STOJAROVA, op. cit., p. 18ff.

⁵⁷⁵ TRANSPARENCY INTERNATIONAL, *Corruption Perception Index 2014: Results*. Available from: <<http://www.transparency.org/cpi2014/results>> [Accessed 14/05/2015].

⁵⁷⁶ V. STOJAROVA, op. cit., p. 18ff.

⁵⁷⁷ V. STOJAROVA, op. cit., p. 18ff.

⁵⁷⁸ V. STOJAROVA, op. cit., p. 18ff.

and Main Challenges 2013-2014'. The Commission affirmed that even though the elections were accompanied by tensions, they were competitive and managed in an orderly manner and there was a high voter turnout⁵⁷⁹.

It is worth mentioning that the difficulties Albanians experienced were not only inside the country's borders, but they came also from outside the borders. The end of the Cold War brought to light old tensions and antagonisms which dated back to the Ottoman Empire: the ethnic conflict. The ethnic conflict came from the territorial division of the Former Yugoslav Republic of Macedonia (FYROM) and Kosovo – which obtained the status of autonomous province of Serbia in 1974 – during the 1912 London Conference⁵⁸⁰. The result brought half of the ethnic Albanians outside the Albanian borders: Albanians did not – and perhaps do not – accept that Kosovo is not part of their state, but Serbians did not accept it⁵⁸¹. When the province of Kosovo – which obtained the status of autonomous province of Serbia in 1974 – proclaimed itself independent in 1990, only Albania recognised it as a state⁵⁸². In Kosovo a war broke out for the liberation of the province from the control of Serbia. The Kosovo Liberation Army KLA was the main actor in this war and it was subsidised by Albanians residing all over the world – it is striking what happened to the DAVD association of Albanians in Germany that was accused of laundering the proceeds from crime to finance the war in Kosovo⁵⁸³. In addition, it should be noted that 25 percent of the Macedonian population is ethnic Albanian⁵⁸⁴. The importance of these facts comes from the chance given to organised crime groups to exploit this fragile situation of weak states and profit from it.

To conclude, Albania has collaborated since 1991 with other countries in the matter of police and judicial cooperation. Albania has signed some agreements, both bilateral and multilateral, with many countries, including Italy,

⁵⁷⁹ EUROPEAN UNION, Conclusions on Albania, in *Albania 2013 Progress Report*, 2013, p. 1ff. Available from: <http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/albania_2013.pdf> [Accessed 14/05/2015].

⁵⁸⁰ A. DESTANISHA, op. cit., p. 63ff.

⁵⁸¹ A. DESTANISHA, op. cit., p. 63ff.

⁵⁸² A. DESTANISHA, op. cit., p. 63ff.

⁵⁸³ A. DESTANISHA, op. cit., p. 63ff.

⁵⁸⁴ A. DESTANISHA, op. cit., p. 63ff.

FYROM, Turkey and Greece in order to enhance the fight against organised crime⁵⁸⁵. Albania also participates in the Black Sea Economic Cooperation Pact on the Cooperation in the Fight against Organised Crime (BSEC), signed by all south-eastern European countries, Turkey, the Caucasus countries and Russia in 1995⁵⁸⁶. Another important agreement signed by Albania is the 'Charter on the Organisation and Functioning of the Regional Centre of the Southeast European Cooperative Initiative (SECI) in the Fight against Trans-Border Crime'⁵⁸⁷.

1.3. The Albanian economic situation

Albania is a small European country with around 3 million citizens living in an area of 28,748 square kilometres, with a density of 98 inhabitants per square kilometre. The capital, Tirana, is also the financial headquarters of the country. According to the information provided in the 2011 Mutual Evaluations of MONEYVAL, Albania is still a poor country and one of the poorest in Europe, even though its economy is growing, around 6% between 2004-2008 but with a large informal economy corresponding to almost 30 percent of the whole economy and "only 25-30 percent of transactions pass through the formal banking system"⁵⁸⁸. The official currency of the country is the Lek.

The Gross Domestic Product (GDP) of 2009 was the equivalent of US\$ 23.12 billion⁵⁸⁹. "Inflation is low and stable and the government has recently adopted a fiscal reform package aimed at reducing the large grey economy and attracting foreign investment"⁵⁹⁰. Private sector activity is profiting from the positive trend of the economy in the country and the improved stability of the

⁵⁸⁵ V. HYSI, *Organised Crime Control in Albania: The Long and Difficult Path to Meet International Standards and Develop Effective Policies*, in *Organised Crime in Europe Concepts, Patterns and Control Policies in the European Union and Beyond*, Dordrecht, Springer, 2006, p. 963ff.

⁵⁸⁶ V. HYSI, *Organised Crime Control In Albania*, op. cit., p. 963ff.

⁵⁸⁷ V. HYSI, *Organised Crime Control In Albania*, op. cit., p. 963ff.

⁵⁸⁸ MONEYVAL, *Report on Fourth Assessment Visit Anti-Money Laundering and Combating the Financing of Terrorism Albania*, 2011, p. 14. Available from: <[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/ALB4_MER_MONEYVAL\(2011\)3_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/ALB4_MER_MONEYVAL(2011)3_en.pdf)> [Accessed 14/05/2015].

⁵⁸⁹ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 14.

⁵⁹⁰ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 14.

energy supply⁵⁹¹. The world crisis of 2008 also hit Albania in the export demand, in the monetary transfers in the form of remittances and in the credit growth that decreased, but also the current account and trade deficit increased in relation to the 2007 situation⁵⁹². The reason for the trade deficit was partly the massive public road works that required the import of capital goods; however, the consumer goods imports decreased in 2008, while the Albanian exports depend largely on the clothing industry⁵⁹³. More recent studies declare that Albania's openness to trade decreased in 2012, because the imports and exports counted 5 percent points less of GDP than the previous year – only 87% in 2012⁵⁹⁴. Nevertheless, Europe remains Albania's main trading partner and among European countries, Italy is the most important trading partner and attracts more than half of Albanian merchandise exports and provides a third of its imports⁵⁹⁵. Bosnia and Herzegovina, Macedonia, Moldova, Montenegro, Serbia and Kosovo⁵⁹⁶ are the second major group of partner of Albania for imports and exports, although they saw a drastic decrease in 2012⁵⁹⁷. Bilateral agreements on economic cooperation were signed with Azerbaijan and Bulgaria in 2012, as well as bilateral agreements to facilitate trade with Kosovo⁵⁹⁸. Europe is also important from the investment point of view: it is the main source of investments for Albania, although the share of the total Foreign Direct Investment FDI stock declined between 2009 and 2013⁵⁹⁹. As a whole, Albania is a macro-economically stable country, although its economy is vulnerable to the domestic

⁵⁹¹ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 14.

⁵⁹² MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 14.

⁵⁹³ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 14.

⁵⁹⁴ EUROPEAN UNION, Commission Staff Working Document, in *Albania 2013 Progress Report*, 2013, p. 1ff. Available from: <http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/albania_2013.pdf> [Accessed 14/05/2015].

⁵⁹⁵ EUROPEAN UNION, Commission Staff Working Document, op. cit., p. 1ff.

⁵⁹⁶ These countries form with Albania the CEFTA countries. The Central European Free Trade Agreement CEFTA is an agreement signed in 2006 that aims at enlarging the free trade in the region. Croatia, Serbia and Bosnia and Herzegovina signed the agreement later. Albania held the chair of CEFTA during 2012.

⁵⁹⁷ EUROPEAN UNION, Commission Staff Working Document, op. cit., p. 1ff.

⁵⁹⁸ EUROPEAN UNION, Commission Staff Working Document, op. cit., p. 1ff.

⁵⁹⁹ EUROPEAN UNION, Commission Staff Working Document, op. cit., p. 1ff.

structural weaknesses and global economic volatility and unemployment remain high⁶⁰⁰.

As regards the relationship with Europe, it is worth noting the visa liberalisation acquired by Albania in December 2010 which permits Albanian citizens to travel to the Schengen areas without being checked⁶⁰¹. Albania and Europe have regular political and economic dialogue through the Stabilisation and Association Agreement (SAA) that came into force in April 2009 – the signature of this agreement is related to the desire of Albania to join the European Union⁶⁰². In order to become a member of the European Union Albania has to fulfil certain prerequisites: it means the implementation of determined reforms in the fight against organised crime and other major problems, as well as continuing regional cooperation and the good neighbouring relations⁶⁰³. Examples of the latest economic regional cooperation are the agreements on the Trans-Adriatic Pipeline and the Ionian-Adriatic Pipeline⁶⁰⁴.

To conclude, it is worth mentioning the relationship of Albania with the conventions and the most important organisations mentioned throughout the dissertation. Albania has been part of the International Opium Convention since 1925. It ratified the 1961 UN Single Convention on Narcotic Drugs in 2001, the 1971 UN Convention on Psychotropic Substances in 2003, the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 2001 and the UN International Convention for the Suppression of the Financing of Terrorism in 2002. Furthermore, Albania participated in the World Ministerial Conference on Organized Transnational Crime in 1994 and in 2002 ratified the UN Convention against Transnational Organized Crime and the two additional protocols about migrants and the trafficking of human beings. In 2000 Albania ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. It became a member of the Council of Europe in 1995 and joined NATO in 2009.

⁶⁰⁰ EUROPEAN UNION, Conclusions on Albania, op. cit., p. 1ff.

⁶⁰¹ EUROPEAN UNION, Commission Staff Working Document, op. cit., p. 1ff.

⁶⁰² EUROPEAN UNION, Commission Staff Working Document, op. cit., p. 1ff.

⁶⁰³ EUROPEAN UNION, Commission Staff Working Document, op. cit., p. 1ff.

⁶⁰⁴ EUROPEAN UNION, Commission Staff Working Document, op. cit., p. 1ff.

Other relevant international instruments ratified by Albania but not yet mentioned in the dissertation are the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment signed in 1993 and the European Convention on Human Rights signed in 1995⁶⁰⁵. Albania ratified the European Convention on Extradition and two additional protocols in 1998 and the Council of Europe conventions on the Transfer of Proceedings in Criminal Matters, on Mutual Assistance in Criminal Matters and on the Transfer of Sentenced Persons, all ratified in 1999⁶⁰⁶. In 1992 it ratified the UN Convention on the Rights of the Child and in 1993 the UN Convention on the Elimination of all Forms of Discrimination against Women⁶⁰⁷. Three more conventions important to combat organised crime are the Convention on Cyber-Crime of the Council of Europe in 2002, the Convention on the Compensation of Victims of Violent Crimes and the additional protocol of the Convention on Cyber-Crime in 2004 and the Civil Law and Criminal Conventions on Corruption of the Council of Europe in 2000 and 2001, respectively⁶⁰⁸. “According to Article 122 of the Constitution of the Republic of Albania, each ratified international agreement constitutes an integral part of the internal juridical system after it is published in the official journal” and it is immediately applied if it is self-applicable, otherwise it first “requires the submission/approval of an act”⁶⁰⁹.

2.The Albanian mafia

2.1.Some clarifications

Before starting to talk about the characteristics and the activities of the Albanian mafia, the difference between Albanian organised crime groups and ethnic Albanian organised crime groups must be specified, and in particular the difference between Albanians and ethnic Albanians, and the divergence as to

⁶⁰⁵ V. HYSI, Organised Crime Control in Albania, op. cit., p. 976ff.

⁶⁰⁶ V. HYSI, Organised Crime Control in Albania, op. cit., p. 976ff.

⁶⁰⁷ V. HYSI, Organised Crime Control in Albania, op. cit., p. 976ff.

⁶⁰⁸ V. HYSI, Organised Crime Control in Albania, op. cit., p. 976ff.

⁶⁰⁹ V. HYSI, Organised Crime Control in Albania, op. cit., p. 977 - footnote.

which category of organised crime Albanian organised crime belongs to, including terrorist groups. If Albanian organised crime groups can easily be identified as Albanian citizens that join forces in order to form a criminal organisation, the ethnic Albanian organised crime groups are not citizens of Albania. The ethnic Albania is the set of all the ethnic Albanian minorities that are outside the Albanian borders, namely Kosovo, FYROM and Montenegro, and not only these⁶¹⁰. Ethnic Albanians share the same origin, the same culture and the same language, namely Albanian. The relationship between Albanians and ethnic Albanians increased after the dissolution of the state of Yugoslavia, as well as the relations between the two new-born organised crime groups, because of the exit of Albania from isolation⁶¹¹.

The question of whether Albanian organised crime is a mafia or not arises from the fact that not every scholar considers Albanian organised crime to be developed and as structured as a mafia⁶¹². The scholars who recognise the status of mafia to describe Albanian organised crime, take into consideration the organisational structure of Albanian organised crime compared with the Italian mafia – Bertrand Monnet, advocates the term ‘Albanian mafia’⁶¹³, as well as Jean-Michel Dasque.

It has to be remembered that at the beginning of its activities, the Albanian mafia could not be called mafia, as it was not yet a proper mafia: the first criminal groups of the 1990s, and even before 1990, were not as developed as today. At the beginning of the 1990s, they were not as organised as they are now and their activities could be compared more to the activities of an intermediary than to those of a mafia⁶¹⁴. ‘Intermediary’ means that they were used as carriers of illegal goods: for instance, they took drugs from Turkish organised crime and sold them to the Italian mafia and nothing more. Over the years, it can be seen how the internal organisation and the activities of the criminal groups have grown, passing

⁶¹⁰ A. DESTANISHA, op. cit., p. 63ff.

⁶¹¹ A. DESTANISHA, op. cit., p. 63ff.

⁶¹² Refer back to the first chapter, Section A to have further details on three different types of organised crime recognised by Jean-Michel Dasque.

⁶¹³ A. DESTANISHA, op. cit., p. 63ff.

⁶¹⁴ A. DESTANISHA, op. cit., p. 42ff

from being simple intermediaries to selling their goods directly⁶¹⁵. In the dissertation Albanian organised crime will be referred to as 'Albanian mafia' throughout its life, due to the fact that it is difficult to identify the specific moment in which Albanian organised crime became mafia.

Finally, the UN Information Service reminds us that the distinction between organised crime and terrorist organisations in Albania is very thin and it is difficult to identify and distinguish a criminal activity aiming at just earning money and power for the criminals' sole pleasure – as is the case with organised crime – from a criminal activity aiming at bigger plans with economic, religious, political or ideological goals⁶¹⁶. The reasons for this clarification lie in the fact that Albanian organised crime is not considered to be composed of pure organised crime groups. Grey Carter affirms that the Albanian organised crime groups are hybrid organisations because they conduct criminal activities of an organised crime nature, but at the same time political activities⁶¹⁷. As we have learned from the first chapter in relation to the qualities of organised crime groups, they are apolitical. This means that even though they secure alliances with politicians, they do not take into consideration whether the representative is from the right or from the left. They secure alliances irrespective of the political beliefs of these men and women, because they go beyond it; they pursue economic interests and advantages. An example of the ephemeral nature of ethnic Albanian organised crime is in the attack at the US embassy in Athens in January 2013, Carter reports that the attack seemed "to originate from the triangle Kosovo-Tetovo-Albania and the arms smugglers networks there"⁶¹⁸.

2.2.The causes

The Albanian mafia already existed in the 1980s. Evidences of the activity of an Albanian mafia can be seen in the collaboration between this and the Italian mafia, as confirmed by two scholars, Bertrand Monnet and Jean-Michel Dasque.

⁶¹⁵ A. DESTANISHA, op. cit., p. 42ff

⁶¹⁶ G. CARTER, op. cit..

⁶¹⁷ G. CARTER, op. cit..

⁶¹⁸ G. CARTER, op. cit..

In 1986, the Sacra Corona Unita needed financial resources and in particular currencies and turned to nearby Albania to obtain what they could not have from Italy because of more repressive measures put in place by the Italian government against organised crime⁶¹⁹. The Italian mafia transformed the Albanian ports of Durres and Vlora into bases for their criminal transshipment operations⁶²⁰.

After 1990 the activity of the Albanian mafia started to assume an importance never seen in this country. The Albanian *Qendra e Studimeve per sigurine ne vend*, namely the Study Centre for National Security, highlighted the crucial features that determined the expansion of the phenomenon⁶²¹. The past events and in particular the 50 years of dictatorship resulted in narrow-minded people and in weak personalities inclined to commit crime – some of the causes that made organised crime a real possibility⁶²². The poverty of the population, the sense of revenge and the pursuit of money were other causes of the expansion of this phenomenon: at the beginning of the 1990s the majority of the population in Albania lived on low salaries and faced increases in prices; in addition, in 1997 the unemployment rate reached 42 percent and the average salary was around \$60 per month, everything accompanied by slow industrial sector degeneration⁶²³. The grants of the international community were fragmented and ruled by an emergency policy which did not aim at constructing a long-term political-economic project; in addition, the international community did not suggest how to deal with the grants⁶²⁴. Furthermore, donations meant dependence and were an obstacle to the real absorption of the changes⁶²⁵. The Albanian Study Centre added political disorder, together with the weakness of the institutions, to the list of the causes of the terrible situation that Albania confronted in the 1990s⁶²⁶. The institutions of Albania were not prepared to deal with the openness of the markets and the free circulation of people; they did not have the structures in place to deal with those situations; thus, incertitude,

⁶¹⁹ J.-M. DASQUE, op. cit., p. 113ff.

⁶²⁰ J.-M. DASQUE, op. cit., p. 113ff.

⁶²¹ A. DESTANISHA, op. cit., p. 42ff.

⁶²² A. DESTANISHA, op. cit., p. 42ff.

⁶²³ A. DESTANISHA, op. cit., p. 27ff.

⁶²⁴ A. DESTANISHA, op. cit., p. 27ff.

⁶²⁵ A. DESTANISHA, op. cit., p. 27ff.

⁶²⁶ A. DESTANISHA, op. cit., p. 27ff.

corruption and nepotism gained the upper hand⁶²⁷. The openness of the markets and the free circulation of people meant access to potential new business markets; at the beginning of the 1990s the number of investments was so big as to prevent institutions from checking all of them⁶²⁸. The Albanian Study Centre concluded its report with an acknowledgement of the shortage of adequate infrastructures to combat organised crime and the lack of laws to combat the same, because it was a new phenomenon; the latter were only created at the end of the 1990s, but the road to establishing successful institutions was to be a long one⁶²⁹.

The presence of a weak state in Albania was one of the first reasons for the penetration of organised crime in the country and its institutions, a real threat to the democratic values that were to become the pillars of the new republic. Influential members in the political sphere, including government and cabinet figures, and the secret police, *shik*, were found over the years to be involved in drug trafficking and illicit arms trafficking⁶³⁰. For instance, in 1996 the Defence Minister Safet Zhulai acknowledged the direct responsibility of the Albanian government in the bursting of the pyramid-scheme bubble⁶³¹. The corrupt nature of the politicians began to be a common phenomenon: for Albanians it was normal to make use of bribes when dealing with officials; “customs, taxation, telecommunications, the justice system, police forces and prosecutor’s offices, and health care agencies” were the most affected services⁶³². Corruption was and is beating Albania in its economy and in the effectiveness of its organised crime control efforts; furthermore, corruption became so common that a fixed rate of payment for specific favours became established and private enterprises knew in advance how much they had to pay for a specific favour⁶³³. However, it has to be remembered that not all the corrupt actions were and are related to organised crime activities or groups.

⁶²⁷ A. DESTANISHA, op. cit., p. 27ff.

⁶²⁸ A. DESTANISHA, op. cit., p. 42ff.

⁶²⁹ A. DESTANISHA, op. cit., p. 42ff.

⁶³⁰ A. DESTANISHA, op. cit., p. 42ff.

⁶³¹ A. DESTANISHA, op. cit., p. 42ff.

⁶³² V. HYSI, *Organised Crime in Albania*, op. cit., p. 558.

⁶³³ V. HYSI, *Organised Crime in Albania*, op. cit., p. 559.

To these internal circumstances there is one that was fundamental in the installation of the mafia outside its borders: the diaspora⁶³⁴. It has been estimated that several thousands of people emigrated from the Albanian territory in search of fortune elsewhere. They escaped from the situation just presented; for them leaving the country meant salvation and a better future. An unheard-of mass exodus was seen; it has been calculated by the International Organization for Migration (IOM) and the Albanian government that by 1999 30 percent of the population had migrated⁶³⁵. As has been illustrated in the first chapter in the first section, mass migration also means the transfer of criminal activities and structures of the local mafia abroad. If at the beginning the mass migration was only a source of profits, then it was exploited as a means for criminals to install themselves in the Albanian communities abroad. Here is an example of the phenomenon of mafia transplantation: different bosses are now resident in Belgium, The Netherlands and Switzerland, and Italy, for instance, has a great number of Albanian criminals installed with their families in the country.

Internal circumstances, on the other hand, cannot be considered as responsible alone for the development of the mafia in Albania. To the internal circumstances other external circumstances have to be added. First of all, it is the geographical position of Albania that allowed organised crime to grow and acquire an international status. As is confirmed by many authors cited in this third chapter⁶³⁶, the geographical position of Albania is considered to be of strategic importance: Albania is part of the drug route that crosses the Balkans and is situated near the Italian coast⁶³⁷; in addition, it is situated near developed areas, namely big markets for its criminal businesses. The Kosovo war, together with the violent decomposition process of the former state of Yugoslavia, created a rich soil for organised crime. The war in the Balkans was a market opportunity, a request for goods and services and for the management of violence: the military conflict brought a weakening of the state and the destruction of the institutions,

⁶³⁴ J.-M. DASQUE, *op. cit.*, p. 113ff.

⁶³⁵ A. DESTANISHA, *op. cit.*, p. 27ff.

⁶³⁶ Namely, Vera Stojarova, Antonela Destanisha, Vasilika Nysi and Jean-Michel Dasque.

⁶³⁷ J.-M. DASQUE, *op. cit.*, p. 113ff.

as already seen⁶³⁸. The fall of the regular economy and the acceptance by the state organs of illegal activities as a form of self-financing for the armed forces was another consequence of the disorder; in addition organised crime became an efficient producer of sellers of protection and violence in war time: it artificially increased the demand for protection in order to manipulate the public and to obtain the status of saviours of the nation eliminating delinquency and restoring social peace⁶³⁹. Truces became important because they could guarantee the transformation of profits into investments in both legal and illegal activities; moreover, organised crime knows how to take advantage of embargoes and the imposition of sanctions, as was the case for Serbia and Montenegro in 1992, when Resolution 754 of the UN Council decided to take these actions⁶⁴⁰. The result was the beginning of an illicit traffic of oil to Serbia: the organised crime groups bought oil which was sold to Serbia and the price consumers paid was four times higher than the rest of Europe⁶⁴¹. Valuations show that between 1993 and 1994 Albanian organised crime earned one million dollars per day from the selling of oil to Serbia⁶⁴².

To conclude, Albanian organised crime expansion was also the result of globalisation, as it was for all organised crime groups in the world. Also Albanian organised crime knew how to take advantage of new technologies, in particular electronic payment methods and the speed of new means of communication and transport. Furthermore, the progressive financialisation of the economic flows were and are an important tool for laundering money. Having become more important than being: this is where materialism and the desire to make money begin – the intellectual, social and political prestige is overtaken by the purchasing power of the individual⁶⁴³. Money is only one of the reasons why organised crime in particular wants to pursue illegal activity; power is the other important reason.

⁶³⁸ A. DESTANISHA, op. cit., p. 113ff.

⁶³⁹ A. DESTANISHA, op. cit., p. 113ff.

⁶⁴⁰ A. DESTANISHA, op. cit., p. 113ff.

⁶⁴¹ A. DESTANISHA, op. cit., p. 113ff.

⁶⁴² A. DESTANISHA, op. cit., p. 113ff.

⁶⁴³ A. DESTANISHA, op. cit., p. 27ff.

2.3. The characteristics of the Albanian mafia

The Albanian mafia is composed of familiar clans subject to the law of the Kanun. The affirmation is confirmed by several other scholars. The 'Kanuni i Lek Dukagjinit', or Kanun, is a collection of customary laws dating back to 400, which were passed on by word of mouth for centuries, in particular in the northern and north-east region of the country⁶⁴⁴. In 1500 these laws were formalised by the prince Lek Dukagjinit and the code officially remained in force until the proclamation of Albanian independence in 1912⁶⁴⁵. The Kanun reflects a society without a central government (here it is explained the presence of some families who ruled the country, a structure more similar to feudalism than to a modern state, as affirmed in the first part of the history of Albania) and explains how the family has to be organised, how the property has to be divided, who can draw up a contract and make sure it is respected⁶⁴⁶. Justice is ensured by a group of elders chosen for their wisdom and prudence, as the elder was usually the boss of the family, the most important institution of society: he protects the large patriarchal family, demands respect and the submission of the members, and his interference in the life of the relatives is total⁶⁴⁷. The most important value in the Kanun code is the word *Besa*, an authentic measure of honour, which means everything and has to be protected at every cost⁶⁴⁸. The Kanun code was suspended with the communist regime in the second part of the previous century. The decision of Albanian organised crime to restore it came from the power vacuum and, most of all, because there was the need for a set of rules to survive and to control the behaviour of the organised crime members⁶⁴⁹. Without rules it is impossible to control a mass of men working under you: with rules you can foresee their actions, as their actions follow a standard mechanism and every unexpected action can be punished as an example and roles and competencies

⁶⁴⁴ A. DESTANISHA, op. cit., p. 56ff.

⁶⁴⁵ A. DESTANISHA, op. cit., p. 56ff.

⁶⁴⁶ A. DESTANISHA, op. cit., p. 56ff.

⁶⁴⁷ A. DESTANISHA, op. cit., p. 56ff.

⁶⁴⁸ A. DESTANISHA, op. cit., p. 56ff.

⁶⁴⁹ A. DESTANISHA, op. cit., p. 56ff.

are fixed. However, the Kanun was entirely restored only by the more underdeveloped areas, above all the north of the country⁶⁵⁰.

As far as it is known by the Albanian police forces, the structure of the clan, *fis*, consists of “an extended family or a clique of friends sharing a similar background or working position, or originating from the same village or city”⁶⁵¹. The structure, as confirmed by many authors is influenced by the Italian mafia, and in particular by the Sacra Corona Unita and the gangs of Lecce province, but also by the ‘Ndrangheta, thanks to the connections that were born at the beginning of the Albanian mafia activity⁶⁵². The study of the Albanian mafia conducted by the Italian Carabinieri affirms that similarity with the ‘Ndrangheta lies in the fact that members are mainly part of the same family unit, the same city or even the same district. In addition, as with the Calabrian criminal organisations, the structure is horizontal with a recognisable supreme leader and interchangeable persons in the background⁶⁵³. Thus the rest of the criminal organisation is composed of traffickers and couriers: the first have the function of maintaining contacts with foreign organised crime groups; most of the time they live abroad with regular documentation and family, which means having a good level of integration from the social and cultural point of view, and they manage the traffic⁶⁵⁴. The latter are simple people, coming from the masses, with a low criminal profile and charged with the task of transferring the goods⁶⁵⁵. The organisational level depends on the size of the clan: big organisations manage entrepreneurial activities in the homeland and illicit traffic, mainly drug trafficking; medium-sized organisations act in collaboration with other criminal groups sharing the same interests, but they do not manage big traffic as the big organisations, human trafficking, including prostitution and illegal immigrants are

⁶⁵⁰ A. DESTANISHA, op. cit., p. 56ff.

⁶⁵¹ V. HYSI, Organised Crime in Albania, op. cit., p. 544ff.

⁶⁵² V. HYSI, Organised Crime in Albania, op. cit., p. 544ff. Also Jean-Michel Dasque confirms it.

⁶⁵³ F. IADELUCA, *Fenomenologia del crimine organizzato transnazionale: la mafia albanese*, 2008. Available from: <<http://www.carabinieri.it/editoria/rassegna-dell-arma/anno-2008/n-3---luglio-settembre/studi/fenomenologia-del-crimine-organizzato-transnazionale-la-mafia-albanese>> [Accessed 14/03/2015].

⁶⁵⁴ A. DESTANISHA, op. cit., p. 56ff.

⁶⁵⁵ A. DESTANISHA, op. cit., p. 56ff.

their major activities; the latter organisational level is composed of criminal groups that associate occasionally to pursue one or more crimes⁶⁵⁶. The criminal groups are usually independent from one another due to the fact that there is no hierarchical order among them and peace among them is assured by mutual respect⁶⁵⁷. It has to be added that in 2005, after four years of conflicts among the clans, a system comparable to that of the Sicilian mafia, the cupola, was put in place in Albania: the name of this institution is *autoritet superklanor*⁶⁵⁸. This authority was created to solve all the conflicts that can arise among the different criminal groups and that decision has to be respected.

The rules Albanian organised crime follows include violence and the code of silence. Violence is exercised both against victims and the members of the organisations, as a way to instil fear and respect⁶⁵⁹. The victims of human trafficking, once rescued, have always reported the atrocities they were obliged to suffer, from the fake promises of good jobs in the new country to threats, from beatings to rapes⁶⁶⁰. To this has to be added the possibility of being thrown in the sea if police forces intercept them, to avoid being caught⁶⁶¹. The code of silence, on the other hand, is the reason for the highly impenetrable nature of the Albanian mafia. It is no coincidence that the 'Ndrangheta from which they take their structure is as impenetrable as the Albanian mafia. Here the explanation can be found of why Albanian organised crime is called 'mafia', as affirmed by Bertrand Monnet and other scholars.

2.4. The activities of the Albanian mafia

The first activities of the Albanian mafia were mainly activities linked with the events that were occurring in the Balkan region, namely the openness to the world and the conflicts in the Balkan region. The first activity was the trafficking of human beings, women and children for exploitation for sexual purposes and for

⁶⁵⁶ A. DESTANISHA, op. cit., p. 56ff.

⁶⁵⁷ A. DESTANISHA, op. cit., p. 56ff.

⁶⁵⁸ A. DESTANISHA, op. cit., p. 63ff.

⁶⁵⁹ V. HYSI, *Organised Crime in Albania*, op. cit., p. 544ff.

⁶⁶⁰ V. HYSI, *Organised Crime in Albania*, op. cit., p. 549ff.

⁶⁶¹ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

begging – simple fugitives from the poor conditions in which they lived. Other activities were the trafficking of stolen cars, of drugs, of arms, and ending with the counterfeiting of banknotes, robberies, burglaries and theft, and the smuggling of cigarettes.

At the beginning, as already seen, Albania saw a mass exodus of its population. It is from this fact that an Albanian mafia started to grow. However, it was not only the Albanians that took advantage of the work of the mafia to leave their countries, but also other citizens from the neighbouring states – above all Kurds and Turks – exploited their services⁶⁶². The demand for human trafficking was so high that the profits were enormous and the activity was carried on with the collaboration of the Italian mafia, in particular the criminal organisations of Apulia: immigrants were transported in speedboats or dinghies from the ports of Vlora and Durres to the Apulian coast⁶⁶³. An Interforce Police Mission in Albania affirmed that 90,000 illegal people were stopped on their way to Italy and this was only a part of the large number of immigrants that crossed the Adriatic in the 1990s⁶⁶⁴. The human trafficking involved family members, relatives or acquaintances of the organised crime groups who lived in the coastal areas and were able to give shelter to the immigrants before they embarked in the boats on the journey to the promised land⁶⁶⁵. The cost of the crossing was estimated to be around \$ 750 per person or more, the equivalent of the average annual salary of a person in Albania in the 1990s; not everyone could afford such an amount, so after paying the advance cash, they put themselves into debt with the criminal organisations that asked the money at the end of the crossing⁶⁶⁶. The UNDP estimated in 2001 that between USD 250 to 350 million a year was the profit of the traffickers in the city of Vlora alone⁶⁶⁷.

The trafficking of women with the aim of exploiting them for prostitution is another activity related to the trafficking of human beings. Women were and are most of the time obliged to prostitute themselves: only a small percentage of the

⁶⁶² V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁶⁶³ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁶⁶⁴ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁶⁶⁵ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁶⁶⁶ A. DESTANISHA, op. cit., p. 34ff.

⁶⁶⁷ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

women interviewed engage in prostitution of their own free will⁶⁶⁸. Women are promised good jobs in a western country, sometimes are kidnapped or coerced by violence or intimidation and can come from Romania, Bulgaria, Russia, Bosnia and Herzegovina or other countries, as confirmed by Interpol⁶⁶⁹. Concerning the trafficking of children, organised crime exploits their vulnerability because they are most of the time orphans or abandoned children; sometimes they are even sold by their families or tutors to the organised crime groups⁶⁷⁰. The children are exploited and forced to beg in the streets, to steal or to get involved in more serious crimes⁶⁷¹. The profits from prostitution are now the second most important source of revenue for the criminal organisations: the prostitutes are sold for 10,000 to 15,000 euros⁶⁷².

Concerning the trade in stolen cars, Albanians were at the same time victims and buyers of stolen cars⁶⁷³. It has to be said that during the communist years a car was a luxury that only few could afford⁶⁷⁴. If before criminal organisations used violence, arms and false or skeleton keys to steal cars, now with the new technologies, they use more peaceful methods: they even make a deal with the owner and simulate the theft⁶⁷⁵. The activity is still flourishing because of the presence of corrupt police and Albanian customs: no convictions for stealing cars had been made until 2003⁶⁷⁶. Cars stolen in Western countries, according to the Europol report on Organised Crime of 2004, are then transported to Eastern countries⁶⁷⁷.

Drug trafficking is the most important activity nowadays for Albanian organised crime⁶⁷⁸. Albania finds itself in a strategically important position, as it is situated in the middle of the drug route departing from the Asian drug producers

⁶⁶⁸ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁶⁶⁹ G. CARTER, op. cit..

⁶⁷⁰ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁶⁷¹ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁶⁷² J.-M. DASQUE, op. cit., p. 113ff.

⁶⁷³ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁶⁷⁴ A. DESTANISHA, op. cit..

⁶⁷⁵ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁶⁷⁶ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁶⁷⁷ EUROPOL, *2004 European Union Organised Crime Report*, 2004. Available from: <<https://www.europol.europa.eu/content/publication/european-union-organised-crime-report-2004-1497>> [Accessed 14/03/2015].

⁶⁷⁸ J.-M. DASQUE, op. cit., p. 113ff.

and ending with the European drug consumers; furthermore, Albania is itself a producer of drugs, in particular of cannabis sativa now cultivated all over the country, and hashish and marijuana⁶⁷⁹. But these are only some of the drugs the traffickers trade in the country; all cannabis products, heroin, amphetamines and cocaine are other products they trade. The drugs they do not produce themselves are bought from Turkey, Macedonia and Bulgaria and sold both in Albania and outside, most of all through Italy⁶⁸⁰. Heroin is a great market for Albanian organised groups, which sell it through their Albanian contacts spread all over Europe, mainly in Belgium, Germany, Switzerland and Greece – it has been recorded that 70 percent of the heroin street-level distribution is managed by Albanians in Germany and in Switzerland, and in Greece this percentage reaches 85⁶⁸¹. It has been calculated that the profits deriving from the smuggling of heroin in Europe by Albanians is around two billion per year in US dollars, a great amount of money ready to be laundered in other illegal and legal activities by their owners⁶⁸². Moreover, a commentator reports that local politicians are bribed in order to enable the route from Afghanistan, through Iran, Turkey, Albania, Montenegro, Bosnia-Herzegovina, Croatia and finally the West Europe to continue⁶⁸³. Seizures of speedboats and dinghies plus the increase of charges against criminal groups were and have not been sufficient to stop an activity that now has connections with all the European criminal organisations⁶⁸⁴.

Jean-Michel Dasque defines arms trafficking as the current fourth major activity of Albanian organised crime⁶⁸⁵. It was mainly the pyramid-scheme bubble and the Kosovo war that were used as pretexts to steal weapons and ammunition from the warehouses of the armed forces in order to make profits from selling it illegally to other organised crime groups, mainly in Kosovo, but also to normal citizens⁶⁸⁶. In 1997 the government demanded the return of the weapons and many citizens complied, but not all weapons came back to the owner, the

⁶⁷⁹ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁶⁸⁰ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁶⁸¹ G. CARTER, op. cit..

⁶⁸² G. CARTER, op. cit..

⁶⁸³ G. CARTER, op. cit..

⁶⁸⁴ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁶⁸⁵ J.-M. DASQUE, op. cit., p. 113ff.

⁶⁸⁶ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

state⁶⁸⁷. Arms trafficking is, however, not as widely practised as in the first years of the activity of Albanian organised crime⁶⁸⁸.

Minor crimes, because of their smaller profits compared to the other crimes previously mentioned, are economic crimes, racketeering and frauds of various kinds. Financial crimes (as with the pyramid scheme) were replaced with economic crimes due to the reforms undertaken: “counterfeiting of official stamps, documents, labels and trademarked goods and the smuggling of highly taxed goods”⁶⁸⁹ are also accompanied by the counterfeiting of euro banknotes – organised crime groups own sophisticated printing facilities and recruit professionals used to printing and counterfeit euro banknotes in order to pursue this activity⁶⁹⁰. Another economic crime is the control of imports: Albanian imports 75 percent of its consumer goods and criminal organisations control the majority of them⁶⁹¹. It has been noted that the clans of Tirana and Durrës control the markets for steel, wheat, coffee, sugar, beer, the most important European car trademarks and even an Italian appliance producer⁶⁹². The control of imports affected the economy of the whole country, causing a trade deficit equal to 25 percent of the Albanian GDP in 2005, because imports exceeded exports⁶⁹³.

Albanian organised crime is able to conquer society through infiltration, first in businesses, then in the trade unions or other similar associations in order to become mediators between people and the local political system, as is the case with the major organised crime groups⁶⁹⁴. To this has to be added the control of some sectors of the job world. Among them the most desirable is the building sector: for organised crime it is the perfect place to hide substantial amounts of money and makes possible the establishing of connections with the public companies that manage the public tenders, as well as offering the chance of earning a lot of money from the selling of the finished buildings – in Tirana, for

⁶⁸⁷ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁶⁸⁸ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁶⁸⁹ V. HYSI, *Organised Crime in Albania*, op. cit., p. 556.

⁶⁹⁰ EUROPOL, *2004 European Union Organised Crime Report*, op. cit..

⁶⁹¹ A. DESTANISHA, op. cit., p. 63ff.

⁶⁹² A. DESTANISHA, op. cit., p. 63ff.

⁶⁹³ A. DESTANISHA, op. cit., p. 63ff.

⁶⁹⁴ A. DESTANISHA, op. cit., p. 63ff.

instance, the cost per square metre varies from 215 to 650 euros⁶⁹⁵. From the social point of view the control of the building sector finds favour among people in general because they find a job and this acceptance permits organised crime to pursue their criminal activities⁶⁹⁶. Finally, among the minor crimes there are robberies, burglaries and theft: the Europol report claimed that (mini) excavators, backhoe loaders, compressors, fork lift trucks and loaders are stolen and then sold in Albania⁶⁹⁷.

Money laundering is the activity that washes capital clean, disguising its illegal origins, thus enabling organised crime able to use it again in illegal activities or invest it in the legal market. Due to the widespread practice of tax evasion, money laundering is made easier in Albania: private companies in the Albanian homeland, "sometimes work with two balance sheets, one for their internal use and one to present as an official document to tax authorities"⁶⁹⁸. The practice of money laundering is so widespread due to the corrupt public officials and the very rare prosecution by the judicial authorities of perpetrators of this type of crime (as will be seen in the third part of the chapter)⁶⁹⁹. Examples of institutions engaging in money laundering are presumed charitable foundations that in the first years of the 1990s collected money promising Albanians their repayment at very high interest rates; in reality, this was only a company used to launder dirty money originating from the illegal crimes they perpetrated⁷⁰⁰. Two banks, such as Credits Bank and Banka Popullore, were responsible for laundering the money of criminal organisations⁷⁰¹.

2.5. Transnational expansion

The Albanian mafia has connections with other organised crime groups all over Europe. It has been noted that the Albanian mafia have connections outside

⁶⁹⁵ A. DESTANISHA, op. cit., p. 63ff.

⁶⁹⁶ A. DESTANISHA, op. cit., p. 63ff.

⁶⁹⁷ EUROPOL, *2004 European Union Organised Crime Report*, op. cit..

⁶⁹⁸ V. HYSI, *Organised Crime in Albania*, op. cit., p. 557.

⁶⁹⁹ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁷⁰⁰ V. HYSI, *Organised Crime in Albania*, op. cit., p. 546ff.

⁷⁰¹ A. DESTANISHA, op. cit., p. 63ff.

the country's borders for several reasons: for perpetrating an activity, which could mean purchasing some products, as is the case with drugs, or selling, as in the trafficking of human beings. According to Europol 2009 Report, the Albanian mafia has five main areas where it is developing: the north-west area, namely The Netherlands and Belgium, the south-west area, namely, the Iberian peninsula, the north-east area, namely the Eastern European countries, the southern area, namely Italy and the south-east area, namely Ukraine, Moldavia, the western Balkans and Turkey⁷⁰². Jean-Michel Dasque in his book also includes Switzerland, Germany, the United Kingdom, Belgium and France as having offshoots of the Albanian mafia⁷⁰³.

The most important organised crime organisation with which the Albanian mafia has connections is the Italian mafia. The relationship with the Italian mafia does not stop at the simple buying-and-selling relations, but it goes further: the Albanian mafia settled in the Italian territory and now they pursue their own activity without being subordinated to of the Italian mafia, at least in some regions – they acquired their autonomy in the territory⁷⁰⁴. However, the authorisation and the permission of the local mafias are always asked for⁷⁰⁵. As affirmed on the Italian *Carabinieri*⁷⁰⁶ website, in a first phase of settlement, the Albanian mafia was particularly present in the north part of the Peninsula, Piedmont and Lombardy at the top of the regions hit by the influx of Albanian criminals; while in a second phase, it moved to the south, thus to the entire territory⁷⁰⁷. In addition, the Europol 2004 Report affirms that in northern Italy Albanian and local mafia share various criminal activities and in particular the production and distribution of illegally manufactured goods; in others sectors Albanians have acquired their autonomy, such as in drug trafficking, the exploitation of prostitution and the trafficking of their clandestine compatriots⁷⁰⁸. However, the connections with the Apulian organised crime groups, as already known, started before. According to

⁷⁰² A. DESTANISHA, op. cit., p. 38ff.

⁷⁰³ J.-M. DASQUE, op. cit., p. 113.

⁷⁰⁴ F. IADELUCA, op. cit..

⁷⁰⁵ EUROPOL, *2004 European Union Organised Crime Report*, op. cit..

⁷⁰⁶ The Carabinieri are a unit of the Italian armed forces.

⁷⁰⁷ F. IADELUCA, op. cit..

⁷⁰⁸ EUROPOL, *2004 European Union Organised Crime Report*, op. cit..

the Carabinieri report, it has to be noted that the relationship between the Italian and the Albanian mafia started to become more stable after 2005 for human and drug trafficking, and in particular for the traffic of heroin and cocaine⁷⁰⁹. On the other hand, the Italian Foreign Minister affirmed that between 2000 and 2006 the number of illegal immigrants coming from the Albanian coast decreased⁷¹⁰.

3.The Albanian state fight against organised crime and money laundering

When Albania escaped the communist regime, the freedom it acquired was apparent as it is for all the democratic countries that work for a better coexistence. In fact, from 1990 Albania was the object of attention from the IMF, which sought to help Albania in the years of the transition. After the IMF, several other international organisations from all the levels started to initiate collaboration with this country. The objective of these collaborations is the agreement of the countries on specific goals proclaimed in charters, constitutions or recommendations. It is obvious that the best way to achieve a determined goal among a group of countries is to conform to certain standards in order to have a common front and to ease the collaboration that at certain moments has to be very rapid. Among those international organisations, the one related to the fight against organised crime and money laundering is MONEYVAL. Albania joined the Organisation and started to be evaluated for its progress in the matter of the fight against these phenomena. As explained in the second chapter, these mutual evaluations have the objective of monitoring the countries in this process and of suggesting some actions in order to achieve the goals of the Organisation.

The following third part of the chapter will try to present the evolution in the Albanian criminal code and the improvements made by it in relation to the fight against organised crime and money laundering. In the first paragraph the changes in the Albanian Criminal Code will be presented; the second paragraph will present all the measures in place in the current Albanian state for the fight

⁷⁰⁹ F. IADELUCA, op. cit..

⁷¹⁰ A. DESTANISHA, op. cit., p. 34ff.

against these two phenomena according to the last MONEYVAL report which dates from 2011 and the opinion of the European Union. The second paragraph will examine the extent to which Albania has conformed to the FATF standards claimed by MONEYVAL.

3.1.The Albanian Criminal Code

Albania is used as a base for the perpetration of several illegal activities, mainly drugs trafficking, human and arms trafficking and stolen cars. Corruption is another major problem in Albania, as evidenced before. Albania soon started to cooperate with bodies that aimed at combating this phenomenon and positive developments took place. The fight against organised crime involves law enforcement organs, experts from universities and civil society. The involvement of the press in the issue was found by some authors to be important to let the people know what the situation is, to make them aware of a problem and to make them understand that organised crime is not the state and must not replace it. In 2004 the European Commission expressed this opinion in relation to the current situation in Albania: “the professional capacities of judges, prosecutors, judicial police and administrative staff remain limited, and infrastructures and equipment are inadequate”⁷¹¹. Corruption is then a major obstacle to law enforcement and to the judicial system and the deficiencies in the fight against corruption are in the lack of the implementation and enforcement of the strategies and legislation, as it is for organised crime⁷¹². In the following paragraph a brief summary of the Penal Law Reform and the Penal Procedural Law and other legal measures will be given.

The current Criminal Code was introduced in Albanian law after the fall of the communist regime in 1995 – the Criminal Code of the Republic of Albania⁷¹³. From then on, it was subjected to amendments: the most important legislative measures in the Criminal Code were approved in 2001 and in 2013. The criminalisation of some new forms of crime, the introduction of new concepts

⁷¹¹ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 963ff.

⁷¹² V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 963ff.

⁷¹³ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 966ff.

such as organised crime, criminal organisation, financing illegal activities and human trafficking are just some of the amendments in the Criminal Code produced by the legislation reforms, as well as the improvement of the criminal provisions already in place⁷¹⁴. However, a commentator affirmed in an article published in the *Mediterranean Journal of Social Sciences* that the numerous changes and reforms in the Albanian Criminal Code are not to be considered as real improvements, because many of these changes were not the result of scientific studies, but just the fruits of populism and demagogy⁷¹⁵.

The Albanian Criminal Code now penalises organised crime. The Albanian Criminal Code penalises also foreign citizens committing crimes related to organised crime activities, as affirmed by Article 7 of the Criminal Code⁷¹⁶. The Criminal Code also penalises money laundering in Article 287/a⁷¹⁷. Amendments related to drug offences have increased the number of years in prison for any person acting in an organised crime group; drug trafficking has also been distinguished from all other drug offences⁷¹⁸. Punishments related to drug offences increased after the introduction of the 2001 amended Criminal Code, many crops were destroyed and seizures have increased, but not sufficiently if the percentage of drug seizure and real drug trafficking are compared⁷¹⁹. Individuals involved in prostitution and parents abandoning their children have been subject of criminal sanctions since 1995 and the amendments in the trafficking in women and children for sexual exploitation included a separate crime for the exploitation of prostitution by organised crime; the trade of organs was also introduced as an offence, among others⁷²⁰. However, in 2002 these types of offences found only 213 cases opened, 176 of which were dismissed for insufficient evidence or procedural errors, proof of the weak desire to combat

⁷¹⁴ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 966ff.

⁷¹⁵ A. NIKOLLI, *Historical and Comparative Analysis of Changes in the Albanian Penal Code. The Criminalization of Behaviours and Severity of Punishments*, 2015, p. 306. Available from the: <www.mcser.org/journal/index.php/mjss/article/download/5466/5271> [Accessed 27/04/2015].

⁷¹⁶ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 966ff.

⁷¹⁷ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 966ff.

⁷¹⁸ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 966ff.

⁷¹⁹ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 966ff.

⁷²⁰ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 966ff.

these offences⁷²¹. Child pornography, arms trafficking and the smuggling of human beings are considered as separate crimes, with convictions for the latter very rare in 2004, as the country borders controls were poor⁷²². The offence of money laundering has been present in the Criminal Code only from 2001 in Article 287/a: “offenders can be punished with five to ten years’ imprisonment”⁷²³. For the European Commission the legislation on money laundering was not sufficient: the Financial Intelligence Unit, the Prosecutors’ offices and the Police Economic Crime Unit lack the human, technical and professional capacity to ensure enforcement, resulting in zero convictions in 2002 and only four important convictions in 2003⁷²⁴. The results for convictions for corruption were also poor in 2004, even though corruption was and is very present and the Criminal Code punishes “actions committed by persons holding public office or civil servants”, who are considerably involved⁷²⁵. Goods smuggling and cybercrime are now present in the Criminal Code, as well as witness and victim protection, the latter only after 2004⁷²⁶.

The Code of Criminal Procedure (CCP) was also approved in 1995 and was also subject to several amendments, the last one dating from 2013⁷²⁷. The fight against organised crime can find support from the interception of telecommunications thanks to Article 221 of the CCP, which permits the interception of conversations, phone calls and other forms of telecommunications when needed for crimes punishable with more than seven years of imprisonment⁷²⁸. The pre-trial detention has been extended up to two years in cases investigating severe crimes and organised crime, as affirmed by Article 263 CCP⁷²⁹. In addition, several bills have been approved related to tax evasion and corruption, as well as national strategies in order to prevent some

⁷²¹ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 966ff.

⁷²² V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 966ff.

⁷²³ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 966ff.

⁷²⁴ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 966ff.

⁷²⁵ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 972.

⁷²⁶ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 966ff.

⁷²⁷ A. NIKOLLI, op. cit., p. 300.

⁷²⁸ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 966ff.

⁷²⁹ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 966ff.

offences⁷³⁰. Some examples of national strategies are the National Strategy for Children of 2001 or the National Strategy to Prevent Drug Trafficking of 2004⁷³¹.

The reforms happened not only in the Criminal Code and the Code of Criminal Procedure, but also in the law enforcement apparatus and the justice system. The police system was implemented with a National Committee for the Fight against Drugs in 1995 and in 1998 with the Anti-Drugs and Organised Crime Sections⁷³². Moreover, in 2000 a new body of the State Police was instituted – the judicial police with competencies in the prevention and solving of serious crimes and the investigation of organised crime⁷³³. In 2001 an Inter-Ministerial Drug Control Coordination Committee was created and it coordinates the activities of 12 operational anti-drug police units; in addition in Albania and in particular in the cities of Tirana, Durres, Fier, Vlora and Shkoder active Organised Crime Task Forces have been established with international assistance since 2004⁷³⁴. Among other actions of importance is the establishment of the Court of Serious Crimes in 2002 which judges “the crimes of establishing, organising and managing armed gangs and criminal organisations, crimes committed by these groups as well as any other crime punishable with a minimum of not less than 15 years of imprisonment and theft of arms”; the first sentences were able to be pronounced only after 2004⁷³⁵. In 2004 the Council of Europe declared that the judiciary system remained “very weak, with poorly paid and poorly trained personnel”, overrun by corruption, open to political pressures and intimidation, and the same situation can be found in the police apparatus⁷³⁶. The “lack of a true national approach and corruption” and intimidation were the major challenges for an effective fight against organised crime in the country in 2004, according to the European Union⁷³⁷. Training for the police and the Public Prosecution Service is also another thing that had to be implemented in Albania

⁷³⁰ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 966ff.

⁷³¹ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 966ff.

⁷³² V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 977ff.

⁷³³ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 977ff.

⁷³⁴ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 977ff.

⁷³⁵ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 979.

⁷³⁶ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 979.

⁷³⁷ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 980.

in 2004; some international organisations provided Albania with the necessary programmes in order to teach how to combat serious crimes⁷³⁸.

3.2. The MONEYVAL Report

MONEYVAL, as already affirmed, is the Organisation in charge of checking the progress of the Eastern European countries in the fight against money laundering and the financing of terrorism. The checking happens through periodical mutual evaluations. The last mutual evaluations report of Albania was adopted by MONEYVAL in April 2011, after the visit of a team composed of IMF and MONEYVAL representatives in order to check not only compliance with the FATF, but also with the European Union directives⁷³⁹. The team visited Albania in November 2010 and met with officials and representatives of all relevant government agencies and the private sector and it “considered all materials supplied by authorities, the information obtained on site during their mission and other verifiable information provided by authorities”⁷⁴⁰. Thus, the report presents the progress and the suggestions for a better implementation of the 40+9 FATF Recommendations and the European Union directives about money laundering and the financing of terrorism. The paragraph will present only the measures related to the fight against money laundering.

In the executive summary the progress in the fight against money laundering and the financing of terrorism by Albania has been acknowledged; however, the process is not yet complete⁷⁴¹. Money laundering still affects the country due to the large cash-based informal economy, in particular the property sector and the commercial undertakings are the sectors of the economy most used by criminal individuals to launder money⁷⁴². Other sectors particularly vulnerable to money laundering are illegal exchange bureaux, as well as illegal casinos and games of chance, where organised crime is often involved in their

⁷³⁸ V. HYSI, *Organised Crime Control in Albania*, op. cit., p. 977ff.

⁷³⁹ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 1ff.

⁷⁴⁰ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 7.

⁷⁴¹ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 8ff.

⁷⁴² MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 8ff.

management⁷⁴³. Another cause of the presence of money laundering in the country is the very active cross-border transportation of cash and “its further assimilation into the economy and Albania’s financial system”, the monitoring of which is enhanced by the Total Information Management System (TIMS), which has digitised information, making easier the task of sharing it⁷⁴⁴. The report evidences the most commonly-used methods that organised crime groups employ to launder money:

- “Transactions within the financial sector;
- Opening of bank accounts in the name of social and family ties;
- Purchasing or entering into partnerships in [...] legal businesses (commercial companies, construction, services, transportation etc);
- Opening of offshore companies; purchasing immovable properties (land, apartments, hotels, restaurants, gas stations etc.);
- Commission of criminal activity outside of the territory of Albania, and laundering some of the proceeds obtained from this activity in Albania”⁷⁴⁵.

Among the different schemes used by organised crime to conceal the proceeds from crime, the most common schemes are structured transactions; the others are the “injection of illicit income into business activities”, the “purchase of real estate” and the acquisition of luxury goods⁷⁴⁶. It has to be noted that the majority of the operations carried out on the black market use cash⁷⁴⁷. Since 2006 only four cases about money laundering have been sent to court and 13 cases about stolen goods – a paltry number compared to the number of real cases⁷⁴⁸.

Concerning the financial sector in Albania, “the Bank of Albania offsite monitoring is inadequate” and “the onsite risk-based supervision is undeveloped”, and there is a lack of suspicious transaction reports⁷⁴⁹. Moreover, the preventive

⁷⁴³ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 16ff.

⁷⁴⁴ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 16.

⁷⁴⁵ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 16-17.

⁷⁴⁶ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 17.

⁷⁴⁷ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 16ff.

⁷⁴⁸ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 16ff.

⁷⁴⁹ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 11.

measures adopted by Albania do not fit the international standards, such as “the identification of beneficial owners, and the lack of any customer due diligence (CDD) measures for customers that are foreign politically exposed persons (PEPs)”⁷⁵⁰. It is worth noting that Tirana has a stock exchange not currently operational and that the banking sector dominates financial activity in Albania, but the financial sector is not growing much⁷⁵¹. The Albanian banks are funded by capital coming from Austria, Italy, France and Greece⁷⁵².

All the non-financial businesses and professions have anti-money laundering obligations, as well as financial ones. Casinos and games of chance, real estate agents and notaries are considered as high risk for money laundering, the latter due to the wide range of transactions they notarise, while lawyers are considered as medium risk⁷⁵³. There is, however, a Supervision Unit of the Games of Chance which has the aim of controlling and monitoring games of chance in Albania; while the Chamber of Advocates is responsible for monitoring its sector⁷⁵⁴. Accountants, accounting and auditing firms are considered for money laundering as low to medium risk, while dealers in precious metals and stones are considered as low risk, even though some jewellers operate in the black market, raising concerns about the use of cash⁷⁵⁵.

The prevention of money laundering saw, in October 2010, the approval of a National Strategic Document ‘On the investigation of financial crime’, whose objectives will be completed in 2015⁷⁵⁶. The most important thing for the success of the strategies put in place by the Council of Ministers is the cooperation among law enforcement agencies, state institutions and the financial supervisory authorities⁷⁵⁷. The National Strategic Document also stresses the importance of international cooperation, in particular “with international organisations, such as Interpol, Europol, MONEYVAL, the Egmont Group, the Group of Countries against Corruption (GRECO), and the Southeast European Cooperative

⁷⁵⁰ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 11.

⁷⁵¹ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 16ff.

⁷⁵² MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 16ff.

⁷⁵³ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 24ff.

⁷⁵⁴ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 24ff.

⁷⁵⁵ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 24ff.

⁷⁵⁶ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 24ff.

⁷⁵⁷ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 24ff.

Initiative⁷⁵⁸. The successes of the strategy are the amendments to the anti-money laundering and combating the financing of terrorism (AML/CFT) Law, the development of the National Risk Assessment, the provision of training programmes, the creation of Joint Investigation Units, the establishment of inter-institutional committee and the signing of memoranda of understanding to exchange information⁷⁵⁹. “The Organized Crime Law was enacted in 2009 and provides a promising mechanism to enhance asset recovery activities”⁷⁶⁰. Despite the listed successes, the National Strategic Document in 2012 had many actions which had to be put into practice in order to achieve all the goals set in it⁷⁶¹.

The Committee for the Coordination of the Fight against Money Laundering has a fundamental importance in the fight against this phenomenon: it is the policy making body⁷⁶². Another important body in the fight against money laundering is the Financial Intelligence Unit (FIU): the Albanian version of the FIU is called General Directorate for the Prevention of Money Laundering, whose main aim is to share information with the law enforcement institutions, make annual examination plans and prepare mutual assistance programmes with other countries⁷⁶³. The Albanian State Police has had since 2007 a Law on State Police which defines how the law has to be implemented by the police forces⁷⁶⁴. The General Prosecutor’s Office is a constitutional institution that pursues “penal proceedings and represents State’s case in court”⁷⁶⁵. The General Prosecutor’s Office created in 2007 the Joint Investigation Unit mentioned before⁷⁶⁶. The General Directorate on Customs and the General Tax Directorate are also involved in the fight against the phenomenon and subject to the AML/CFT Law and the first one is also obliged to report to the FIU any transaction crossing the

⁷⁵⁸ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 29.

⁷⁵⁹ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 24ff.

⁷⁶⁰ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 29.

⁷⁶¹ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 24ff.

⁷⁶² MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 24ff.

⁷⁶³ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 24ff.

⁷⁶⁴ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 24ff.

⁷⁶⁵ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 33.

⁷⁶⁶ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 24ff.

borders⁷⁶⁷. Also Albania has its own intelligence agency for national security, but it does not carry out police or activities of a military character: the Albanian intelligence agency is called the State Informative Service (SIS)⁷⁶⁸. The SIS deals with the prevention of the phenomenon of money laundering⁷⁶⁹.

The mutual evaluation recommends and presents the measures undertaken by the Albanian authorities, giving suggestions when necessary or just underlying the non-compliance of some obligations. According to the mutual evaluation in relation to the criminalisation of money laundering, Albania has accomplished the recommendation on the insertion in the Criminal Code of an offence of money laundering committed abroad by foreigners; it has specified that self-laundering is covered in the Criminal Code, at least in one article and “legal entities are now subject to liability for violations of Albania’s ML criminal provisions”⁷⁷⁰. In relation to the legal system and related institutional measures, Albania has not accomplished the recommendation on the elimination of the separate court decision for the illegal origin of assets and the money laundering offence; “the underutilisation of money laundering provisions continues”⁷⁷¹. In relation to the confiscation, freezing and seizing of proceeds of crime, Albania has provided legislation that permits the confiscation of third parties’ assets and has safeguarded bona fides third parties; it has allowed the application of provisional measures before opening a formal investigation and has checked that cases did not result in revision for unjustifiable reasons⁷⁷².

The Financial Intelligence Unit has pursued all the recommendations made by the MONEYVAL team, except only one measure: the official declaration of the independence of the FIU from any other body. In fact the Minister of Finance is still responsible for hiring and firing the General Director⁷⁷³. Among the tasks accomplished are the provision for training of staff, the adoption of

⁷⁶⁷ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 24ff.

⁷⁶⁸ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 24ff.

⁷⁶⁹ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 24ff.

⁷⁷⁰ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 40.

⁷⁷¹ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 40.

⁷⁷² MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 39ff.

⁷⁷³ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 39ff.

computer systems and the publishing of annual reports⁷⁷⁴. Also the procedures for the implementation of law enforcement, prosecution and other competent authorities' recommendations have been satisfied, according to the MONEYVAL Report: the introduction of studies of the phenomenon, the increase in the level of expertise of the judicial police or the review of the adequacy of the staff are just some of the positive results⁷⁷⁵.

In relation to the preventive measures of the financial institutions and in particular customers' due diligence, the results show that on the whole the recommendations have been satisfactorily implemented, with some exceptions, including provisions for foreign politically-exposed persons⁷⁷⁶. Concerning record keeping and wire transfer, the recommendations have been partially met, because the AML/CFT Law "does not differentiate between domestic or international wire transfers and no minimum threshold has been adopted"⁷⁷⁷. Monitoring is not an issue that has been completed: the principle of the application of the domestic legislation to foreign branches or subsidiaries has not been introduced in the Criminal Code and the most important anti-money laundering recommendation of the FATF has not been adopted in relation to monitoring⁷⁷⁸. Furthermore, financial institutions are not advised of the weaknesses of the anti-money laundering measures in other countries, as required⁷⁷⁹. Suspicious transaction reports and other reporting are another category badly implemented in Albanian law enforcement: there is no obligation to report suspicious transactions to the Albanian FIU and the list of the transactions that have to be reported has not been completed⁷⁸⁰. However, other recommendations have successfully been implemented: for instance, the cooperation of the Albanian FIU with other law enforcement agencies and the provision of training⁷⁸¹. Cross-border declarations or disclosure have successfully been implemented, except for the lack of a sanction on under-reporting and false

⁷⁷⁴ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 39ff.

⁷⁷⁵ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 39ff.

⁷⁷⁶ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 39ff.

⁷⁷⁷ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 48.

⁷⁷⁸ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 39ff.

⁷⁷⁹ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 39ff.

⁷⁸⁰ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 46ff.

⁷⁸¹ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 46ff.

reporting⁷⁸². Internal controls, compliance, audit and foreign branches recommendations have been completed on the whole, while the supervisory and oversight system recommendations have not been implemented, because, among other factors, the offsite supervision is in an early stage, the Financial Supervisory Authority do not supervise anti-money laundering problems and the training has not been provided and security and insurance sectors regulations have not been established yet⁷⁸³.

In relation to the preventive measures of the non-financial businesses and professions, the recommendations have been implemented, with the only exceptions being the supervision mechanism, the limit on cash payments and the imposition of the obligation of paying sums above 300,000 Lek through the banking system⁷⁸⁴. In relation to the legal persons and arrangements and non-profit organisations, most of the recommendations have not been implemented⁷⁸⁵. However, national cooperation and coordination have been shown to have been successfully implemented, as well as the implementation of the conventions and the UN special resolutions on the matter; on the other hand, the mutual legal assistance has not proved to have been sufficiently taken into consideration: the Criminal Procedure Code has not been amended as required, guidance documents to judges and prosecutors have been supplied and the statistics produced are insufficient⁷⁸⁶. The general remarks state that the adoption of the AML/CFT Law is positive, because it is a step towards the application of all the FATF standards, that the Bank of Albania regulations are important, but warn Albania “to take urgent remedial action to counter the phenomenon of real estate transactions below their market value”⁷⁸⁷.

⁷⁸² MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 46ff.

⁷⁸³ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 46ff.

⁷⁸⁴ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 55ff.

⁷⁸⁵ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 57ff.

⁷⁸⁶ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 57ff.

⁷⁸⁷ MONEYVAL, *Report on Fourth Assessment Visit*, op. cit., p. 61.

CONCLUSIONS

The dissertation tries to answer the question of how powerful organised crime is. The power of organised crime groups is affirmed by the acquisition of the status of transnational organised crime: criminal organizations are no longer confined to one country, but they can go further and operate abroad or even settle abroad in another state. The capacity of an organised crime group is also demonstrated by the phenomenon of money laundering, which permits organised crime to benefit from the proceeds from crime. The consequence of the transnational character of the two phenomena implies the need to tackle them at an international level: hence the enormous number of conventions, agreements and entities that try to combat transnational organised crime and money laundering. In order to concretely understand the range of the phenomena, the Albanian mafia has been analysed.

In analysing the transnational organised crime phenomenon, the importance of a strong state in the fight against it can be seen clearly. Albanian organised crime is an example of the fact that a weak state is a vehicle for the growth of this phenomenon, an uncontrolled and progressive growth. The Albanian problem was the lack of preparation of the Albanian institutions in tackling the openness to the market-oriented economy after the end of the communist regime. The presence of determined problems is always the consequence of determined events and the spread of organised crime in a country cannot be related solely to the weakness of the state: historical, as well as political elements, affects the spread of the phenomenon. In Albania the two most influential historical – and at the same time political – elements were, firstly, the almost primitive structure in the management of the division of the country, with no central government and families ruling parts of their country, which bore more resemblance to feudalism than to a modern state, at least until 1928 when Ahmed Zogu proclaimed Albania a monarchy; and, secondly, the historical-political shaping element of the fifty years of the communist dictatorial regime of Enver Hoxha and the total isolation of the country from the outside world in the last years of his regime after the ending of relations with all the other communist

countries. Finally the social and cultural elements complete the picture: illegal activities are a natural second job for Albanians, and equally natural is corruption, and to such an extent that fixed fees were settled for bribes. This is a consequence of the fifty years of dictatorship which forged narrow-minded people and weak personalities inclined to commit crime. On the other hand, it has to be noted that the presence of a strong state does not mean that organised crime groups and activities are not present in that specific country, an example of which is the United States, meaning that a strong state is not sufficient to eliminate or prevent its presence.

The dissertation has evidenced the thesis of the phenomenon of transplantation – the implantation of the organised crime group in another country – suggesting that transplantation is a difficult process and that some characteristics have to be present in the territory in which they settle. As can be confirmed by the threat of Albanian organised crime in Italy, the Albanian mafia not only successfully transplanted itself in that country, but also made possible the pursuit of their own illegal activities without the interference of the Italian mafia. This successful transplantation suggests the acquiescence of the Italian mafia, but the difficulty for the transplantation for an organised crime group lies in inserting itself in a country where an organised crime group already exists. The Albanian mafia corresponds to the small percentage of organised crime groups that succeed in transplanting themselves in a region already populated by a mafia. The fact that the Albanian mafia transplanted itself in a region populated by another mafia means only that they made an arrangement:

“Politics and mafia are two powers that live in control of the same territory: they can make war or make an arrangement.” Paolo Borsellino

Paolo Borsellino affirms that when a mafia rules a territory it is like a dictator: it does not want anybody else to rule it. It has to have its own control. Where there is mafia, it can happen that a state makes an arrangement with it; the same can be said with the transplantation of another mafia in its territory: the home mafia makes an arrangement with the transplanted one in order to

establish peaceful coexistence. The phrase of Paolo Borsellino, although strong, represents the reality of bribery and corruption, not only in Italy or in Albania, but in every country. Countries can be beneficiaries of the phenomenon when there is resistance in the pursuit of the criminal individuals, because they are involved in it: an example can be found in the episode of the pyramid-scheme bubble of 1996 in Albania where politicians admitted the involvement of the state in this illicit activity at the expense of the population. Meaningful for the knowledge and the involvement of the state is also the case of the yakuza in Japan, where everybody knows about its existence but the police do not act against them.

The Albanian mafia has established itself in countries where there is the presence of big Albanian communities. These communities represent people who migrated in search of fortune and are mixed with criminals: if in the country of origin there is the presence of organised crime, it is very probable that a small percentage of these migrants are composed of criminals and, as made clear in the third chapter, several thousands of Albanians migrated in the 1990s. The analysis of transnational organised crime also brought to light the fact that organised crime moves to other countries in search of better tax policies; furthermore, it also moves to better pursue its activities in the countries where it is active. The Albanian five macro-regional areas, namely The Netherlands and Belgium, the Iberian peninsula, the Eastern European countries, Italy and Ukraine, Moldavia, the western Balkans and Turkey represent their most important foreign networks.

Thus criminal associations represent the perfect capitalist man: they migrate and enlarge their horizons, pursuing their activities also outside the home borders in order to achieve more in terms of money and in terms of power – the sole interests for organised crime. The fact that money is one of the two sole interests for organised crime makes it fundamental to fight against the phenomenon not only by making a perfect definition of crime in laws, but also by shrinking the criminals' financial empires. Defining the phenomenon of transnational organised crime at the international level is important in order to make governments conform to the same definition of law and to enable easier cooperation among states. However, due to the enormous capital owned by

organised crime groups and due to the fact that it is thanks to the proceeds from crime that they can pursue their illicit activities and expand, a fight from the economic point of view, namely a fight against money laundering, is fundamental.

In relation to the definition of the two terms, it can be affirmed that both phenomena are difficult to precisely identify with a single definition. The reason lies in the fact that both are subject to evolution: transnational organised crime responds to the progress made by the official institutions in order to combat them – criminal organisations are always a step ahead of the official institutions and once an agreement, a convention or other types of documents become active, it is already time to make a revision of them. Although the conventions and all the official documents cannot achieve the full elimination of the phenomenon, it is important to reduce or block it. Proof of this is in the numerous conventions on drugs, starting with the 1912 Hague International Opium Convention and ending with the 1971 Convention on Psychotropic Substances and the creation of conventions and their continuous integration and modification.

In order to make the process of constructing or amending an international instrument quicker, in the last twenty years a new type of body has been created, one that cannot be associated with international organisations and that produces non-binding documents: the most important example described in the dissertation is the FATF. Even if the documents are not binding, the FATF Recommendations are transposed into the law of the countries, also thanks to the regional bodies of the FATF mechanism, as it is for MONEYVAL which is described in this dissertation. From the latest modifications of the FATF Forty Recommendations, two things can be deduced: first, the real speed of the modifications of the Recommendations, the revision lasting less than three years – as distinct from the creation of the UN Convention on Transnational Organized Crime which needed seven years – confirming the efficiency of this particular body. Second, the importance of the body and its reputation at the international, regional and national level: the European Union, one year after the adoption of the revised Forty Recommendations started the revision of its directive against money laundering and the directive was approved this May, implying the European Union member states' will conform to the directive in two years' time. The

acquisition of the legitimacy of the body is also confirmed by modifications and implementations in the Albanian state of the suggestions made by its mutual evaluation results. However, their implementation and completion are far from being achieved, but progress has been made. Bodies like the FAFT, in the end, work better and more efficiently when there is the involvement of the state.

Something else can be learned from the FATF mechanism, namely the fact that it is useful to have a mechanism that checks the real implementation of the binding acts of the international organisations in order to make sure that the state really conforms to the norm. It is something that the state takes part in by its own will; nobody can force a state to enter an international organisation, but once it is in, it is supposed to respect its commitment towards the other state parties: the monitoring mechanism of the body is then a legal and really useful instrument. The problem with international instruments is the fact that the majority are not self-executing, thus the real and effective implementation of these norms is up to the country. The determination of the country to really implement them attests to the will of the country in the fight against the phenomenon. On the other hand, it is also true that collaboration at the international level, and sometimes even at the regional level, can be difficult because of the probable non-equivalence of the laws among the states.

However, all the measures taken into considerations in the second chapter cannot be considered to be useless. Albania started its fight against the phenomena with the help of such international organisations as the IMF and the pressures of regional bodies like MONEYVAL: without their support, Albania might not have achieved the results it has achieved,. That is why I think that the cascade and mutual evaluation mechanism of the FATF is efficient: it permits major recommendations to be made by a global body whose recommendations are reflected in regional bodies that own a mechanism of control of the real implementation and progress of the country in its confirming to the recommendations. This mechanism, implemented with the presence of political exponents of the countries in the decision body, can be reproduced for other major fights like transnational organised crime or, most importantly, corruption.

The fight against corruption is the common denominator in the fight against transnational organised crime and money laundering.

Finally, a fight against organised crime should also concentrate on a strong psychological and social element: power, one of the main interests of organised crime. The power it has acquired is the result of beliefs it has fed and intimidation: what has to be undermined is the belief that it is legitimate.

Help in this fight has to come from the population, the first target of organised crime but also the first resource that can undermine its power. The elimination of the power of organised crime has to come from the knowledge on the part of the population that organised crime is not good for the population; it is a dictator and it eliminates freedom and creates dependence.

Scholars, journalists and other local organisations are already trying to spread this awareness to the public in certain states, in particular in Italy and in France. More has to be done in countries like Albania, where the population still has difficulty in admitting the existence of the phenomenon, thus making the fight harder.

It is also true that it is hard to win the fight: it is like eliminating from people's minds prejudices or stereotypes. They need good and positive examples before changing their minds. It will be hard to win the fight, but the fight must be fought. People have to know that there is a way to escape from this situation and to understand that life without organised crime is a better life.

BIBLIOGRAPHY

BOOKS

E. BAKER, The Legal Regulation of Transnational Organised Crime Opportunities and Limitations, in *Transnational Organised Crime Perspectives on Global Security*, Oxon, Routledge, 2003.

N. BEEKARRY, *Combating Money Laundering and Terrorism Finance Past and Current Challenges*, Cheltenham, Edward Elgar Publishing Limited, 2013.

O. CUCUZZA, *Segreto bancario, criminalità organizzata, riciclaggio, evasione fiscale in Italia*, Padova, CEDAM, 2007.

J.-M. DASQUE, *Géopolitique du crime international*, Paris, Ellipses, 2008.

S. DE VIDO, *Il contrasto del finanziamento al terrorismo internazionale Profili di diritto internazionale e dell'Unione Europea*, Milano, CEDAM, 2012.

P. EKBLÖM, Organised crime and the Conjunction of Criminal Opportunity framework, in *Transnational Organised Crime Perspectives on global security*, Oxon, Routledge, 2003.

S. FAIELLA, *Riciclaggio e crimine organizzato transnazionale*, Milano, Giuffré Editore, 2009.

C. FIJNAUT & L. PAOLI Ed., *Organised Crime in Europe Concepts, Patterns and Control Policies in the European Union and Beyond*, Dordrecht, Springer, 2006.

W. C. GILMORE, *Dirty Money The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism*, Council of Europe Publishing, 2011.

R. K. GORDON, Anti-Money Laundering Policies Selected Legal, Political, and Economic Issues, in *Combating Money Laundering and Terrorism Finance Past and Current Challenges*, Cheltenham, Edward Elgar Publishing Limited, 2013.

V. HYSI, Organised Crime Control in Albania: The Long and Difficult Path to Meet International Standards and Develop Effective Policies, in *Organised Crime in Europe Concepts, Patterns and Control Policies in the European Union and Beyond*, Dordrecht, Springer, 2006.

V. HYSI, Organised Crime in Albania: The Ugly Side of Capitalism and Democracy, in *Organised Crime in Europe Concepts, Patterns and Control Policies in the European Union and Beyond*, Dordrecht, Springer, 2006.

D. MASCIANDARO, *Money Laundering: the Economics of Regulation*, in *Combating Money Laundering and Terrorism Finance Past and Current Challenges*, Cheltenham, Edward Elgar Publishing Limited, 2013.

P. J. QUIRK, *Macroeconomic Implications of Money Laundering*, Working Paper, Washington, DC: International Monetary Fund, June 1996, in *Combating Money Laundering and Terrorism Finance Past and Current Challenges*, Cheltenham, Edward Elgar Publishing Limited, 2013.

R. SAVIANO, *Zero Zero Zero*, Bergamo, Feltrinelli, 2013.

L. SCIASCIA, *Il giorno della civetta*, Torino, Einaudi, 1962.

G. STESENS, *Money Laundering A New International Law Enforcement Model*, Cambridge, Cambridge University Press, 2000.

A. VANOLO, *Geografia economica del sistema-mondo. Territori e reti nello scenario globale*, UTET Università, 2008.

F. VARESE, *Mafias on the Move How Organised Crime Conquers New Territories*, Princeton, Princeton University Press, 2011.

J. WALKER, *Measuring Global Money Laundering: "The Walker Gravity Model"*, in *Combating Money Laundering and Terrorism Finance Past and Current Challenges*, Cheltenham, Edward Elgar Publishing Limited, 2013.

ELECTRONIC RESOURCES

J. ADELSTEIN, *Yakuza to the Rescue*, 2011. Available from: <http://www.nicoletakeda.com/uploads/4/2/8/5/4285390/yakuza_to_the_rescue.pdf> [Accessed 08/06/2015].

A. ARANA, *How the Street Gangs Took Central America*, Council of Foreign Relations, 2005. Available from: <<http://www.foreignaffairs.com/articles/60803/ana-arana/how-the-street-gangs-took-central-america>> [Accessed: 01/04/2015].

BANK FOR INTERNATIONAL SETTLEMENT, *Basel Committee cooperation and support*, 2014. Available from: <http://www.bis.org/bcbs/coop_with_sec_and_ins.htm> [Accessed 16/04/2015].

M. BEDETTI, *'Ndrangheta in Germania. Un modello in espansione*, 2012. Available from: <<http://www.stampoantimafioso.it/wp-content/uploads/2013/05/Tesi-versione-per-StampoAntimafioso.pdf>> [Accessed 28/04/2015].

W. BENNETT & J. WALSH, *Marijuana legalization is an opportunity to modernize international drug treaties*, UN Drug Control, 2014. Available from: <<http://www.undrugcontrol.info/en/un-drug-control/conventions/item/5721-marijuana-legalization-is-an-opportunity-to-modernize-international-drug-treaties>> [Accessed 16/04/2015].

L. B. BERRY et al., *Transnational Activities Of Chinese Crime Organizations*, 2003. Available from: <<http://www.loc.gov/rr/frd/pdf-files/ChineseOrgCrime.pdf>> [Accessed 08/06/2015].

N. BOISTER, R. J. CURRIE, *Routledge Handbook of Transnational Criminal Law*, Oxon, Routledge, 2015. Available from: <https://books.google.it/books?id=-_rDBAAQBAJ&pg=PA410&lpg=PA410&dq=strengths+and+weaknesses+of+the+convention+against+transnational+organized+crime> [Accessed 19/04/2015].

P. CAMPANA, *Understanding then responding to Italian organised crime operations across territories*, 2013. Available from: <http://www.researchgate.net/profile/Paolo_Campana/publication/262602851_Understanding_Then_Responding_to_Italian_Organized_Crime_Operations_across_Territories/links/0a85e5383c6c7de690000000.pdf> [Accessed 08/06/2015].

G. CARTER, *Shape of the Albanian organized crime: Albanian Mafia Clan Keljmendi List*, 2013. Available from: <<https://theremustbejustice.wordpress.com/2013/03/10/shape-of-the-albanian-organized-crime-albanian-mafia-clan-keljmendi-list/>> [Accessed 14/05/2015].

F. CASSANELLI, *Approvata la quarta Direttiva Antiriciclaggio*, 2015. Available from: <<http://www.rivistaeuropae.eu/economia/approvata-la-quarta-direttiva-antiriciclaggio/>> [Accessed 08/06/2015].

CLARITYWAYREHAB, *Anatomy of a Drug Cartel*, 2013. Available from: <<https://www.youtube.com/watch?v=-fxX-dkrKgs>> [Accessed: 02/04/2015].

COUNCIL OF EUROPE, *About the Committee of Ministers*. Available from: <http://www.coe.int/t/cm/aboutCM_en.asp> [Accessed 21/04/2015].

COUNCIL OF EUROPE, *Committees*. Available from: <http://website-pace.net/en_GB/web/apce/committees> [Accessed 21/04/2015].

COUNCIL OF EUROPE, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Explanatory Report*. Available from: <<http://conventions.coe.int/Treaty/EN/Reports/Html/141.htm>> [Accessed 21/04/2015].

COUNCIL OF EUROPE, *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism Explanatory Report*. Available from:

<<http://conventions.coe.int/Treaty/EN/Reports/Html/198.htm>> [Accessed 21/04/2015].

COUNCIL OF EUROPE, *Evaluations*. Available from: <http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/About_evaluation_en.asp> [Accessed 22/04/2015].

COUNCIL OF EUROPE, *General Overview*. Available from: <http://www.coe.int/t/dghl/monitoring/moneyval/Activities/General_overview_en.asp> [Accessed 22/04/2015].

COUNCIL OF EUROPE, *MONEYVAL in brief*. Available from: <http://www.coe.int/t/dghl/monitoring/moneyval/About/MONEYVAL_in_brief_en.asp> [Accessed 22/04/2015].

COUNCIL OF EUROPE, *States Evaluated*. Available from: <http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Country_profiles_en.asp> [Accessed 22/04/2015].

COUNCIL OF FOREIGN RELATIONS, *The Global Regime for Transnational Crime*, 2013. Available from: <<http://www.cfr.org/transnational-crime/global-regime-transnational-crime/p28656>> [Accessed 19/04/2015].

A. DESTANISHA, *La criminalità albanese: sviluppo e collegamenti internazionali*, 2011. Available from: <<http://www.stampoantimafioso.it/wp-content/uploads/2014/02/Tesi-antonela-destanisha.pdf>> [Accessed 14/05/2015].

EUR-Lex, *32001L0097*, 2001. Available from: <<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001L0097&from=EN>> [Accessed 22/04/2015].

EUR-LEX, *Directive 2007/64/EC of the European Parliament and of the Council*, 2007. Available from: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32007L0064>> [Accessed 22/04/2015].

EUR-LEX, *Directive 2008/20/EC of the European Parliament and of the Council*, 2008. Available from: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008L0020>> [Accessed 22/04/2015].

EUR-LEX, *Directive 2009/110/EC of the European Parliament and of the Council*, 2009. Available from: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009L0110>> [Accessed 22/04/2015].

EUR-LEX, *Directive 2010/78/EU of the European Parliament and of the Council*, 2010. Available from: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32010L0078>> [Accessed 22/04/2015].

EUR-LEX, Directive (EU) 2015/849 of the European Parliament and of the Council, 2015. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2015_141_R_0003> [Accessed 08/06/2015].

EUR-LEX, *Money laundering: prevention of the use of the financial system*, 2014. Available from: <<http://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32005L0060>> [Accessed 22/04/2015].

EUROPEAN UNION, Commission Staff Working Document, in *Albania 2013 Progress Report*, 2013. Available from: <http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/albania_2013.pdf> [Accessed 14/05/2015].

EUROPEAN UNION, Conclusions on Albania, in *Albania 2013 Progress Report*, 2013. Available from: <http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/albania_2013.pdf> [Accessed 14/05/2015].

EUROPEAN UNION, *Consolidated Treaties Charter of Fundamental Rights*, 2010. Available from: <http://europa.eu/eu-law/decision-making/treaties/pdf/consolidated_versions_of_the_treaty_on_european_union_2012/consolidated_versions_of_the_treaty_on_european_union_2012_en.pdf> [Accessed 22/04/2015].

EUROPOL, *2004 European Union Organised Crime Report*, 2004. Available from: <<https://www.europol.europa.eu/content/publication/european-union-organised-crime-report-2004-1497>> [Accessed 14/03/2015].

EUROPOL, *About Europol*. Available from: <<https://www.europol.europa.eu/content/page/about-europol-17>> [Accessed 22/04/2015].

EUROPOL, *EU Serious and Organised Crime Threat Assessment (SOCTA 2013)*, 2013. Available as pdf from: <<https://www.europol.europa.eu/content/eu-serious-and-organised-crime-threat-assessment-socta>> [Accessed 22/04/2015].

EUROPOL, *First Years*. Available from: <<https://www.europol.europa.eu/content/page/first-years>> [Accessed 22/04/2015].

EUROPOL, *History*. Available from: <<https://www.europol.europa.eu/content/page/history-149>> [Accessed 22/04/2015].

EUROPOL, *IOCTA2014 Summary Findings and Recommendations*, 2014. Available as pdf from: <<https://www.europol.europa.eu/content/internet-organised-crime-threat-assessment-iocta>> [Accessed 22/04/2015].

EUROPOL, *OCTA 2011 EU Organised Crime Threat Assessment*, 2011. Available as pdf from: <<https://www.europol.europa.eu/content/publication/octa-2011-eu-organised-crime-threat-assesment-1465>> [Accessed 22/04/2015].

EUROPOL, *Police Dismantle Criminal Group Laundering Money in Europe and the United States*, 2015. Available from: <<https://www.europol.europa.eu/content/police-dismantle-criminal-group-laundering-money-europe-and-united-states>> [Accessed 28/04/2015].

EUROPOL, *Strategic Analysis Reports*. Available from: <https://www.europol.europa.eu/content/page/strategic_analysis_reports> [Accessed 22/04/2015].

EUROPOL, *The Internet Organised Crime Threat Assessment (iOCTA)*, 2014. Available from: <<https://www.europol.europa.eu/content/internet-organised-crime-threat-assesment-iocta>> [Accessed 22/04/2015].

FATF, *IX Special Recommendations*. Available from: <<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/ixspecialrecommendations.html>> [Accessed 20/04/2015].

FATF, *Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL)*. Available from: <<http://www.fatf-gafi.org/pages/moneyval.html>> [Accessed 22/04/2015].

FATF, *FATF issues new Mechanism to Strengthen Money Laundering and Terrorist Financing Compliance*, 2013. Available from: <<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatfissuesnewmechanismtostrengthenmoneylaunderingandterroristfinancingcompliance.html>> [Accessed 20/04/2015].

FATF, *FATF Presidency*. Available from: <<http://www.fatf-gafi.org/pages/aboutus/fatfpresidency/>> [Accessed 20/04/2015].

FATF, *FATF Secretariat*. Available from: <<http://www.fatf-gafi.org/pages/aboutus/fatfsecretariat/>> [Accessed 20/04/2015].

FATF, *FATF Steps Up the Fight Against Money Laundering and Terrorist Financing*, 2012. Available from: <<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatfstepsupthefightagainstmoneylaunderingandterroristfinancing.html>> [Accessed 20/04/2015].

FATF, *Financial Action Task Force on Money Laundering Annual Report 2001-2002*, 2002. Available from: <<http://www.fatf-gafi.org/media/fatf/documents/reports/2001%202002%20ENG.pdf>> [Accessed 20/04/2015].

FATF, *History of the FATF*. Available from: <<http://www.fatf-gafi.org/pages/aboutus/historyofthefatf/>> [Accessed 20/04/2015].

FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation the FATF Recommendations*, 2013. Available from: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf> [Accessed 20/04/2015].

FATF, *Members and Observers*. Available from: <<http://www.fatf-gafi.org/pages/aboutus/membersandobservers/>> [Accessed 20/04/2015].

FATF, *FATF Membership Policy*. <http://www.fatf-gafi.org/pages/aboutus/membersandobservers/fatfmembershippolicy.html>> [Accessed 20/04/2015].

FATF, *Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations*. Available from: <<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/4th-round-procedures.html>> [Accessed 20/04/2015].

FATF, *Process and Criteria for Becoming a FATF Member*. Available from: <<http://www.fatf-gafi.org/pages/aboutus/membersandobservers/membershipprocessandcriteria.html>> [Accessed 20/04/2015].

FATF, *Review of the FATF Standards and Historical Versions*. Available from: <<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/review-and-history-of-fatf-standards.html>> [Accessed 20/04/2015].

F. IADELUCA, *Fenomenologia del crimine organizzato transnazionale: la mafia albanese*, 2008. Available from: <<http://www.carabinieri.it/editoria/rassegna-dell-arma/anno-2008/n-3---luglio-settembre/studi/fenomenologia-del-crimine-organizzato-transnazionale-la-mafia-albanese>> [Accessed 14/03/2015].

IMOLIN, *Crime Prevention and Criminal Justice*. Available from: <<https://www.imolin.org/imolin/naples.html>> [Accessed 16/04/2015].

INTERPOL, *Constitution of the International Criminal Police Organization-Interpol*, 2008. Available from: <<http://www.interpol.int/About-INTERPOL/Legal-materials>> [Accessed 19/04/2015].

INTERPOL, *Databases*. Available from: <<http://www.interpol.int/INTERPOL-expertise/Databases>> [Accessed 19/04/2015].

INTERPOL, *Enhancing Cooperation in Combating Organized Crime and Terrorism Focus on INTERPOL meeting*, 2015. Available from:

<<http://www.interpol.int/News-and-media/News/2015/N2015-031>> [Accessed 19/04/2015].

INTERPOL, *Estonia Hosts INTERPOL Workshop on Anti-Corruption and Financial Crimes*, 2015. Available from: <<http://www.interpol.int/News-and-media/News/2015/N2015-006>> [Accessed 19/04/2015].

INTERPOL, *Forensics*. Available from: <<http://www.interpol.int/INTERPOL-expertise/Forensics/Facial-recognition>> [Accessed 19/04/2015].

INTERPOL, *INTERPOL 1914-2014 100 Years of International Police Cooperation*. Available from: <<http://www.interpol.int/About-INTERPOL/INTERPOL-1914-2014/12-wishes-then-and-now>> [Accessed 19/04/2015].

INTERPOL, *INTERPOL For a Safer World*. Available from: <<http://www.interpol.int/About-INTERPOL/INTERPOL-Foundation-for-a-Safer-World>> [Accessed 19/04/2015].

INTERPOL, *Name and Logo*. Available from: <<http://www.interpol.int/About-INTERPOL/Name-and-logo>> [Accessed 19/04/2015].

INTERPOL, *Notices*. Available from: <<http://www.interpol.int/INTERPOL-expertise/Notices>> [Accessed 19/04/2015].

INTERPOL, *Overview*. Available from: <<http://www.interpol.int/About-INTERPOL/Overview>> [Accessed 19/04/2015].

S. LUPI & R. TOVAZZI, *La nuova criminalità organizzata. La situazione attuale*, Il Carabiniere, 2008. Available from: <<http://www.carabinieri.it/editoria/rassegna-dell-arma/anno-2008/n-1---gennaio-marzo/studi/la-nuova-criminalit%C3%A0-organizzata-la-situazione-attuale>> [Accessed: 03/04/2015].

MONEYVAL, *Report on Fourth Assessment Visit Anti-Money Laundering and Combating the Financing of Terrorism Albania*, 2011. Available from: <[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/ALB4_MER_MONEYVAL\(2011\)3_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/ALB4_MER_MONEYVAL(2011)3_en.pdf)> [Accessed 14/05/2015].

A. NIKOLLI, *Historical and Comparative Analysis of Changes in the Albanian Penal Code. The Criminalization of Behaviours and Severity of Punishments*, 2015. Available from the: <www.mcser.org/journal/index.php/mjss/article/download/5466/5271> [Accessed 27/04/2015].

P. REUTER & C. PETRIE Ed., *Transnational Organised Crime: Summary of a Workshop*, Washington DC, National Academy Press, 1999. Available from: <http://www.nap.edu/openbook.php?record_id=9631&page=8> [Accessed 05/03/2015].

F. Ü. SELÇUK, *The Rising Mafioso Capitalists, Opportunities and the Case of Turkey*, 2011. Available from: <http://www.researchgate.net/profile/Fatma_Selcuk/publication/254083430_The_rising_mafioso_capitalists_opportunities_and_the_case_of_Turkey/links/54f5d3f40cf2ca5efefd33db.pdf> [Accessed 08/06/2015].

V. STOJAROVA, *Organized Crime in the Western Balkans*, 2007. Available from: <http://ispo.fss.muni.cz/uploads/2download/Working_papers/ispo_wp_2007_5.pdf> [14/05/2015].

TRANSPARENCY INTERNATIONAL, *Corruption Perception Index 1999*. Available from: <http://www.transparency.org/research/cpi/cpi_1999/0/> [Accessed 14/05/2015].

TRANSPARENCY INTERNATIONAL, *Corruption Perception Index 2014: Results*. Available from: <<http://www.transparency.org/cpi2014/results>> [Accessed 14/05/2015].

UNITED NATIONS, *2014 Theme: A message of Hope: Drug Use Disorders are Preventable and Treatable*. Available from: <<http://www.un.org/en/events/drugabuseday/>> [Accessed 15/04/2015].

UNITED NATIONS, *Overview*. Available from: <<http://www.un.org/ga/20special/presskit/pubinfo/overview.htm>> [Accessed 15/04/2015].

UNITED NATIONS GENERAL ASSEMBLY, *Ad Hoc Committee on the Elaboration of a Comprehensive International Convention against Transnational Organized Crime*, 1999. Available from: <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V98/572/33/PDF/V9857233.pdf?OpenElement>> [Accessed 16/04/2015].

UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Convention on Psychotropic Substances, 1971*. Available from: <<http://www.unodc.org/unodc/en/treaties/psychotropics.html>> [Accessed 15/04/2015].

UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Chronology: 100 Years of Drug Control*. Available from: <http://www.unodc.org/documents/wdr/WDR_2008/timeline_E_PRINT.pdf> [Accessed 15/04/2015].

UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crimes*, 2011. Available from: <http://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf> [Accessed 19/04/2015].

UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Organized Crime*. Available from: <<http://www.unodc.org/unodc/en/organized-crime/index.html>> [Accessed: 05/03/2015].

UNITED NATIONS OFFICE ON DRUGS AND CRIME, *United Nations Convention against Corruption*, 2003. Available from: <http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf> [Accessed 16/04/2015].

UNITED NATIONS OFFICE ON DRUGS AND CRIME, *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 1988. Available from: <<http://www.unodc.org/unodc/en/treaties/illicit-trafficking.html>> [Accessed 15/04/2015].

UNITED NATIONS OFFICE ON DRUGS AND CRIME, *The 1912 Hague International Opium Convention*, 2009. Available from: <<http://www.unodc.org/unodc/en/frontpage/the-1912-hague-international-opium-convention.html>> [Accessed 15/04/2015].

F. VARESE, *How Mafias Take Advantage of Globalisation*, 2011. Available from: <<http://www.dssp.unimi.it/summerschool/organizedcrime/documenti/File/materiali/Federico%20Varese%20-%20British%20Journal%20of%20Crim-published%20-%20Varese.pdf>> [Accessed 08/06/2015].

F. ZUANON, *Anche l'alta è terra fertile per il crimine organizzato*, Il Mattino di Padova, 2015. Available from: <<http://mattinopadova.gelocal.it/padova/cronaca/2015/01/24/news/anche-l-alta-e-terra-fertile-per-il-crimine-organizzato-1.10730861?ref=search>> [Accessed: 25/02/2015].

OTHER BOOKS

C. FOCARELLI, *Diritto internazionale I Il Sistema degli Stati e I valori comuni dell'umanità*, Lavis, CEDAM, 2012.

OTHER WEBSITES

<www.transparency.org/> [Accessed 22/04/2015].

<untreaties.un.org/> [Accessed 08/06/2015].

<<http://conventions.coe.int/>> [Accessed 13/06/2015].