CRIME, CORRUPTION AND INSTABILITY

AN EXPLORATORY REPORT

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AIV

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Contents

Foreword

January 2012 the Advisory Council on International Affairs (AIV) received a request for advice on the nexus between crime, corruption and instability (see annexe II). The AIV started work on its report in June 2012 as it first had to complete other advisory duties. The AIV established a committee to prepare the present report. This was chaired by Professor J.J.C. Voorhoeve (AIV, Peace and Security Committee) and its other members were Professor M.G.W. den Boer (European Integration Committee), Dr N. van Dam (Peace and Security Committee), Dr B.T. van Ginkel (Peace and Security Committee), Professor M. de Goede (Peace and Security Committee), Professor E.M.H. Hirsch Ballin (Human Rights Committee), Major General (RNLMC) C. Homan (ret.) (Peace and Security Committee), Professor E.J. Koops (Human Rights Committee), Dr A.R. Korteweg (Peace and Security Committee) and Dr W. Verkoren (Peace and Security Committee). G.W.F. Vigeveno acted as civil service liaison officer. The executive secretary was J. Smallenbroek, assisted by R. van Kampen, C. Rutting and A.L.M. van Nieuwland (trainees). Annexe III lists the names of persons consulted by the committee. The committee thanks them for their input.

This report was discussed at length in the AIV's meeting of 5 April 2013 and was finalised on 13 May 2013.

Introduction

The request for advice on the nexus between crime, corruption and instability covers a broad field. Each of these concepts is complex and this complexity is increased by the connections between them. The request for advice mentions various aspects of transnational crime, including the destabilising impact on some countries, the control exercised by criminals over the exploitation of natural resources, the role of and effects on development cooperation, Dutch efforts to combat transnational crime and the efforts of the EU and other international organisations. The government put various questions about these subjects to the AIV.

Owing to the constraints of time and resources, the AIV has been obliged to impose limitations on itself. There are also gaps in the (academic) knowledge of the links between transnational crime, corruption and instability and what action the Netherlands can take to remedy this. It was therefore necessary to interpret the request for advice more narrowly. The AIV has mainly focused on the question of how the profitability of transnational crime can be reduced. This allows this very broad field to be viewed from a single perspective. What almost all forms of transnational crime have in common is that criminals wish to utilise the proceeds of their crime and transfer at least part of them in some way to the legitimate economy. Child pornography and terrorism are exceptions in this regard. Other important ways of reducing crime are dealt with more summarily. If desired, they can be considered at greater length in follow-up reports. This advisory report is therefore an exploration of the nexus between crime, corruption and instability.

Chapter I outlines the nexus between crime, corruption and instability. First, the terms are explained and then some connections between crime, corruption and instability are described.

Chapter II deals with certain forms of transnational crime which are known to be highly profitable and are bound up with instability and corruption. These are human trafficking, drug trafficking, arms trafficking and illicit profits from the extraction of minerals in the Democratic Republic of the Congo.

Chapter III considers four approaches to tackling crime: namely the preventive, criminal justice, administrative and financial approaches. In the case of each of these approaches various tools for fighting crime are mentioned. Subsequently, the nexus in unstable states is discussed.

The last chapter contains conclusions and recommendations.

The report presents various data, for example the estimated turnover or presumed profit from certain forms of crime or numbers of crimes. The AIV wishes to emphasise that it follows from the nature of crime that no reliable data are available on the number of crimes and the income from crime. This is because criminals conceal their actions as far as possible. Nonetheless, the AIV has seen fit to report the available figures as it wishes to give an impression of the relative scale of the different forms of crime. It should be borne in mind, however, that they are merely rough estimates.

I Nexus between crime, corruption and instability

Uncovering the links between crime, corruption and instability is no easy task, but has rightly been identified by the government as an important issue. As this report will show, the three phenomena are closely interconnected, which has adverse consequences for both poor and rich countries. By nexus we mean the connections as a whole, in other words the close bond that determines whether each of these three undesirable phenomena will continue to exist or be curbed. For the Netherlands and Europe this nexus means that efforts to fight crime, even close to home, are made more difficult by the continued existence of the other phenomena. And in the case of developing countries, particularly unstable or fragile states, the nexus serves to prolong conflicts and injustice, in part because rebels finance their fight through criminal networks and because corrupt authorities with criminal connections provoke resistance. In many cases, the crime connected with corruption and instability is accompanied by serious human rights violations and humanitarian emergencies. The costs in terms of human suffering can hardly be overestimated.

I.1 Transnational crime

Although transnational crime is a phenomenon that has been around for some considerable time, its prominent position on the international political agenda is of quite recent date. Globalisation and technical advances mean that the scope and complexity of the problem has increased. This led to the adoption of the United Nations Convention against Transnational Organized Crime (UNTOC, also known as the Palermo Convention), which entered into force in 2003. And there are many other conventions and international institutions that deal with specific forms of transnational crime.

Features
Transnational organised crime is a many-headed monster for which there is no internationally agreed definition. Even UNTOC contains no definition. Article 2 (a) of this convention defines what is meant by an organised criminal group, namely:

- a group of three or more persons, existing for a period of time;
- acting in concert with the aim of committing one or more serious crimes or offences punishable by a maximum deprivation of liberty of at least four years;
- for the purpose of obtaining, directly or indirectly, a financial or other material benefit.

Parties to UNTOC are obliged to make engaging in organised crime a criminal offence. The convention applies only to organised crime of a transnational nature. The transnational nature of an offence may derive from various elements, for example commission in more than one state, preparation in another state, commission by an organised criminal group that operates internationally or if the offence has substantial effects in another state. UNTOC also provides that the object of the group must be to obtain a financial or other material benefit; it follows that criminal activities exclusively intended to serve political goals, such as terrorism, fall outside the scope of UNTOC. In fact, this definition covers all profit-making criminal activities that have international consequences. In this report the term transnational crime is used to mean transnational organised crime as described above.

New technology and globalisation have created an environment more conducive to transnational crime.[1] Communication and transport links have improved. The movement of people, goods, services, capital and information has grown very significantly. As monitoring these flows is becoming increasingly difficult, illegal movements have a good chance of going undiscovered. The improvement in transport links is also making it possible for criminals to travel to the Netherlands for just a few days to commit offences and then leave again. Mobile gangs are on the increase.[2] Even the economic crisis in Europe seems to be an opportunity for some criminal groups. Europol reports that although the economic crisis has not resulted in an increase in organised crime, it has produced a change in the nature of the activities. For example, counterfeiting is no longer restricted to luxury goods and instead extends to such everyday items as cleaning products. Despite the economic crisis, illegal migration has not declined. Global inequalities are still too large for this.[3] The weakness of international law enforcement and international governance make transnational crime attractive for criminals.

Transnational crime tends to be very flexible, quickly adapting to the 'market' and to changing legislation. Often it takes place in anonymity, cloaked by front companies, false identities, shadowy corporate structures and so forth. Moreover, criminal organisations do not always focus on a single form of crime, but diversify across a much broader field. Transnational crime can be committed by hierarchically organised gangs such as the Italian Mafia, the Cali and Medellín cartels and the Japanese Yakuza, but also by networks consisting of many participants scattered throughout the world who work together on an ad hoc basis. Such networks can operate very flexibly. The internet and other modern technologies allow cooperation over great distances. Criminals who wish to work together need no longer meet one another physically. These characteristics of transnational crime make it hard to get to grips with. This is also why reference is made to criminal partnerships or networks rather than criminal groups or gangs.[4]

Terrorism falls outside the scope of this report because its objectives are primarily political whereas most transnational crime is motivated by desire for gain. Nonetheless, there may be a link between terrorism and transnational crime.[5] Sometimes terrorism is financed from criminal activities such as drug trafficking or arms trafficking. An example would be the operations of the *Fuerzas Armadas Revolucionarias de Colombia* (FARC). As time goes by, the political motive may in some cases become much less prominent. Conversely, criminal organisations may resort to political rhetoric or terrorist practices. They do this not for material gain or to change the political status, but to

1 C.J.C.F. Fijnaut and L. Paoli, *Organised crime and its control policies*. European Journal of Crime, Criminal Law and Criminal Justice, 14(3), pp. 315-318.

2 M.G.W. den Boer, *New Mobile Crime*, in Peter Burgess (ed.), Handbook of New Security Studies, Routledge, 2010, pp. 253-262.

3 Europol, *Serious and Organised Crime Threat Assessment*, The Hague, 2013, p. 10.

4 P.C. van Duyne and M. Levi, *Drugs & Geld: Misdaadgeld-beheer en drugsmarkten in Europa* (Drugs & Money: Crime money management and drug markets in Europe), Wolf Legal Publishers, Nijmegen 2009, p. 67.

5 T. Makarenko, *The Crime-Terror Continuum: Tracing the Interplay between Transnational Organised Crime and Terrorism*, Global Crime, vol. 6, no.1 (February 2004), pp. 129-145.

eliminate competitors, intimidate crime fighters or the like.[6] For example, the Italian Mafia committed attacks on crime fighters in order to hinder investigation and prosecution. During civil wars situations occur in which criminals use a power vacuum to expand their criminal activities under the guise of military action, as was the case with the Arkan Tigers in the former Yugoslavia. The distinction between criminal networks and terrorist organisations is not always clear, but terrorism and organised crime could be said to constitute a continuum. The position of criminal networks and terrorist groups in such a continuum may shift, thereby blurring the distinction between the two. In addition, criminal and terrorist groups may enter into alliances, not only with each other but also with political and religious movements. This report deals only with illegal activities for profit.

Forms

Annexe I contains a non-exhaustive list of different kinds of transnational crime. This is intended to show the very varied nature of transnational crime. The term covers human trafficking, people smuggling, drug trafficking (heroin, cocaine, cannabis and synthetic drugs), illegal arms trafficking, illegal dumping of harmful waste, illegal trafficking in natural resources, trafficking in counterfeit products, maritime piracy, cybercrime (such as identity theft and the distribution of child pornography) and VAT fraud. Moreover, money-laundering, corruption, document fraud and violence in themselves constitute offences in many countries, but are at the same time instruments used by criminals to commit offences and infiltrate the legitimate sectors of a society.

Role of the Netherlands

The Netherlands is a destination for virtually all forms of transnational crime. In other words, there is demand in the Netherlands for illegal goods or services that are imported. Europol notes that the Netherlands also plays a leading role as a transit country, namely in the transit of various illicit goods (e.g. drugs, counterfeit goods and environmental waste) and services (e.g. human trafficking). According to a recent report by Europol and the European Monitoring Centre for Drugs and Drugs Addiction,[7] the Netherlands plays an important role in the transit of cocaine, is both a source and an exporter of cannabis and is the centre of ecstasy production and export. Europol attributes this to the Netherlands' good infrastructure and the proximity of profitable markets. The Dutch Police Services Agency (KLPD which has now been subsumed into the National Police) reports that the Netherlands is a transit market for drugs, human trafficking, people smuggling and firearms.[8] In view of the volume of trade through Dutch ports and airports, it is physically impossible to check all goods. Checking all cargo in ports and airports would result in unacceptable delays in traffic movements. It should in fact be noted that the Netherlands, together with the United Kingdom, is relatively successful in intercepting drug shipments.

6 See for example: P. Arlacchi, *Mafia Business: the Mafia Ethic and the Spirit of Capitalism*, Verso, New York, 1986.

7 Europol and European Monitoring Centre for Drugs and Drug Addiction, *EU Drugs Markets Report: A Strategic Analysis*, 31 January 2013. See: <https://www.europol.europa.eu/sites/default/files/publications/att-194336-en-td3112366enc-final2.pdf>, (retrieved on 1 February 2013).

8 KLPD, *Nationaal dreigingsbeeld 2012 - Georganiseerde criminaliteit* (National Threat Assessment 2012 - Organised Crime) Zoetermeer 2012, p. 238.

I.2 Corruption

Definition
The term corruption covers a wide range of phenomena such as bribery, nepotism, embezzlement and the illegal financing of election campaigns. Countries have different legal definitions of specific forms of corruption. What may be an offence in one country need not (yet) be one in another country. It is therefore hard to formulate a general definition of corruption that would be applicable worldwide and cover all forms of corruption.[9] Most international conventions such as the United Nations Convention Against Corruption, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development (OECD)[10] and the Council of Europe's Criminal Law Convention on Corruption and Civil Law Convention on Corruption contain no general definition of corruption but do provide operational definitions of forms of corruption. The main international conventions oblige their signatories to criminalise specific forms of corruption such as bribery of national and foreign officials, embezzlement, misappropriation and abuse of office.

International organisations such as the UN Global Programme against Corruption, the World Bank and UNDP use a broad definition of corruption: 'misuse of entrusted power for private gain'. This definition covers many corrupt practices. It also includes the misuse of powers to achieve non-pecuniary benefits. Bribery, embezzlement and fraud often yield a pecuniary benefit, unlike nepotism and particularism. The definition also includes misuse of power to obtain a benefit for persons other than oneself. This definition also applies to persons other than public servants. For example, a personnel officer of a company who uses his position to obtain a job for an unqualified relative is guilty of misusing the power entrusted to him to achieve an advantage for another person. The definition also includes behaviour that in many countries is contrary to public standards but not a criminal offence. Sometimes behaviour is viewed as corrupt even though it has not (yet) been criminalised.

A disadvantage of this definition is that the word misuse refers to a standard that is determined socially or legally,[11] while different societies apply different (social or legal) standards. As views therefore differ on what constitutes corruption, there are also differences in the extent to which this conduct is criminalised. This can hinder international cooperation. Moreover, even within the same society there may be differences between the social and legal standards of subgroups. The definition of corruption has changed over time, both in the Netherlands and elsewhere in Europe. For example, until the end of the 18th century it was customary in Europe for various public offices to be sold. At that time such offices tended to be regarded more as

9 See I, paragraph 2, Explanatory report to The Criminal Law Convention on Corruption, Council of Europe.

10 The OECD has recently evaluated the application of the Convention in the Netherlands: OECD, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in The Netherlands*, December 2012: <http://www.oecd.org/daf/briberyininternationalbusiness/NetherlandsPhase3ReportEn.pdf>, (retrieved on 27 February 2013).

11 For a discussion of definitions of corruption see: J.A. Gardiner, *Defining Corruption* and M. Philp, *Conceptualizing Political Corruption*, both in A.J. Heidenheimer, M. Johnston (eds.), *Political corruption, concepts and contexts*, Transaction Publishers, New Brunswick (USA) and London 2009, pp. 25-40 and 41-58 respectively.

personal possessions than as public commitments.[12] Clearly, therefore, this definition presupposes a sharp distinction between public and private. In the past this distinction was not clear in Western countries and even today the boundary between public and private in some non-Western countries is still not sharply drawn or is defined differently. If the distinction between public and private – whether de facto or normative – is largely absent, government may assume a patrimonial character. In patrimonial regimes those who govern regard their office as a personal possession and confer resources (e.g. jobs) as personal favours on loyal followers. This also still occurs in some sectors of developed states that have a functioning rule of law.

A distinction is often made between two categories of corruption: grand and petty corruption. Grand corruption is a category in which large companies, businesses, institutions or individuals pay substantial amounts, whether on a one-off basis or otherwise, to senior politicians or officials in order to win tenders for contracts or gain other business advantages. This involves considerable sums of money that have to be concealed or laundered. By contrast, petty corruption involves small amounts that have to be paid to lower-ranking officials in order to get a service delivered more quickly or to gain access to services. This form of corruption takes place in the day-to-day implementation of existing laws and other rules. Those who pay are the general public and small organisations. The recipients are corrupt officials who have day-to-day contact with the public and are in a position to demand small sums from a lot of different people. Such income usually supplements their regular income and is therefore often spent in the formal economy. There is usually no need for it to be laundered through complex arrangements.

In the 2011 Corruption Perceptions Index published by Transparency International, the Netherlands scores 8.9 on a scale of 0 (highly corrupt) to 10 (no corruption). The index does not measure the actual level of corruption but reflects the perception of corruption as gauged in opinion polls. The Netherlands is therefore seen as a country with only a low level of corruption in the public sector. It scores well in comparison with other countries and ranks seventh on the index. Nonetheless, it is necessary to remain alert to possibilities for corruption and to take effective action to eliminate them owing to the risk that powers may be abused and sound government undermined.

Function in society
Corruption can have important functions in a society. For example, it can be a way for politicians to gain political support and for business people to try to protect their interests. And for members of the public it can be a survival strategy.

Corruption can enable the political leadership of a country to mobilise and retain political support; as such it can therefore reinforce the political status quo. A leader can reward his supporters by appointing them to jobs, particularly jobs that offer scope for accepting bribes. A political leader can also distribute material favours among some of his loyal supporters. Such favours may be financed from corruption. Harold Crouch describes how under President Suharto a patronage system of this kind promoted stability in Indonesia

12 H. van den Heuvel, *Moraal van de Macht: Historisch portret van de integriteit van de staat* (Ethics of power: Historical portrait of the integrity of the state) Walburg Pers, Zutphen 2010.

in the short term.[13] The economic progress that took place in Indonesia continually generated new resources and opportunities for rewarding supporters. For example, positions could be created in newly formed state-owned businesses or trade monopolies granted to private companies. Many of the latter were linked with military officers and received preferential treatment from the government. Crouch states that most military personnel in Indonesia during the Suharto administration thought it was normal to use their official position to benefit colleagues, relatives and friends (whether or not in exchange for 'commission').[14]

The members of a patronage network may consider that their behaviour is not in breach of any norm. Patronage systems are systems of social obligations between persons (e.g. kinsmen) which cannot easily be disregarded by an individual. Such systems are based on a social norm under which others in the patronage network are offered advantages. The persons concerned do not usually regard patronage as against the law. This makes it difficult, if not impossible, for government officials to adopt an independent and neutral position. Their position requires that they treat all citizens equally on the basis of impartial, neutral criteria, whereas their network expects them to act on the basis of personal considerations. Although corrupt behaviour is in breach of a legal norm, it may well be in keeping with social obligations.[15]

Patronage networks are related to clientelism. Clientelism is the exchange of goods and services for political support. This involves a personal relationship over a long period rather than a one-off transaction. The exchange may relate to a wide range of goods and services. It need not take place simultaneously, as one party may perform its part of the exchange at a different time from the other party. The relationship is based on the trust that both parties will perform their obligations over a longer period. Moreover, clientelism involves a personal relationship between two unequal parties in which the patron is in a stronger position than the client. Often the client does not have a choice between two or more patrons and is dependent on his patron. By contrast, the patron usually has two or more clients and can choose. Clientelism mainly occurs in a context in which the client's access to certain goods or services is routed primarily through the patron. Other sources are scarce, for example because the authorities provide too few services.[16]

Patronage is also connected with the structure of an economy. Where a state is dependent on natural wealth (or development aid) it is said to have a rentier economy. In a market economy of the kind we know in the West the government obtains its income to a large extent from taxes levied on salaries and profits generated by employment and business. In a rentier economy, however, income comes mainly from rents and not from taxes. Rents are generated by natural resources, foreign aid or government manipulation of prices. The government has control of such rents and is therefore largely independent of

13 H. Crouch, *Patrimonialism and Military Rule in Indonesia*, World Politics, vol. 31, no. 4 (July 1979), pp. 571-587.

14 Ibid., p. 577.

15 P. Chabal and J. Daloz, *Africa Works*, James Currey Publishers, Oxford 1999.

16 T. Hilgers, *Clientelism and Conceptual Stretching: Differentiating among Concepts and among Analytical Levels*, Theory and Society, vol. 40, no. 5, (September 2011), pp. 567-588.

the economic activity of its citizens.[17] Citizens who wish to increase their wealth need to gain access to these rents. This makes a government post a prized possession. This is one reason why war is more common in countries that are rich in natural resources: the government is a source of wealth and hence of conflicts. For those who have no realistic chance of being appointed to a government post, the best option is to build up connections with government officials. These connections usually take the form of patronage networks. A rentier economy is therefore accompanied by both conflict and patronage. In such a context the establishment of formal institutions as part of state-building strategies in fragile states often has little effect. This often produces a neo-patrimonial situation in which new bureaucracies are created in order to distribute income in accordance with a patronage system.

Neo-patrimonialism is a mixture of rational bureaucratic power and control by a patron based on personal relationships. The formal structure is quite comparable to that of a modern bureaucracy, but interpersonal relationships determine to a large extent the outcome of bureaucratic processes (policy and policy decisions). The effect is that political and administrative systems serve personal and group interests. These patterns of authority are hard to eradicate because the state is the prisoner of an agreement between different and rival sections of the elite about the distribution of income. Although the agreement helps to keep the peace, it actually serves the interests of the elite and can hinder socioeconomic development. Such a situation can in due course undermine the population's confidence in the authorities.[18]

Nor does the introduction of elections generally produce real change. In such a context elections merely serve as a way of strengthening these ties. Citizens are not swayed by considerations of policy, but vote in accordance with the patronage network to which they belong.

Businesses that have the right political connections thus acquire a degree of certainty and predictability which they need. Disputes can be prevented or resolved by appealing to the patron. In countries where the rule of law is weak, it may be good strategy for a company to place itself under the protection of a politician in exchange for contributions to his political campaigns. It is also evident that such practices disrupt the operation of the market since whether a company continues to exist is determined not by its price competitiveness or product quality but by the extent to which it has the right political connections.

Effects of corruption

Many studies have been made into the effects of corruption, most of which have been carried out in developing countries. In a synthesis study Ugur and Dasgupta conclude that corruption adversely affects economic growth, but that this impact differs between countries and over time. These differences depend on, among other things, the level

17 M. Dauderstädt, A. Schildberg (eds.), *Dead Ends of Transition: Rentier Economies and Protectorates,* Campus, Frankfurt, New York 2006.

18 L. Anten, I. Briscoe, M. Mezzera (Clingendael Conflict Research Unit); *The Political Economy of State-building in Situations of Fragility and Conflict: from Analysis to Strategy*, The Hague, January 2012, pp. 12-13.

of socioeconomic development and the quality of government institutions.[19] They refer to various studies showing that corruption disrupts the deployment of qualified staff, makes rights of ownership more uncertain, can influence the result of elections and can deter foreign investment.[20] In exceptional cases, however, corruption can make a positive contribution to economic growth, namely where vigorous political leadership at central level presses for economic growth and holds (corrupt) officials and local politicians to account for their contribution to economic progress.[21] Finally, on the basis of their research findings Ugur and Dasgupta reject the theory that corruption helps to overcome bureaucratic impediments and thus makes a contribution to economic growth. This rejection is based largely on the ground that the advantage does not offset the disadvantage of market disruption.[22]

UNDP has published extensively on the relationship between poverty and corruption. It asserts that there is a correlation between the two, but that this does not necessarily imply that the one is the cause of the other. However, anti-poverty measures should go hand in hand with anti-corruption measures. UNDP lists the following effects of corruption:[23]

1. Corruption exacerbates poverty (as it increases the price of public services and lowers their quality) and negatively affects economic growth.
2. Corruption has a disproportionate impact on women.
3. Corruption has a debilitating effect on development in countries rich in natural resources.
4. Corruption encourages conflict and is an obstacle to consolidating peace.
5. Corruption undermines the delivery of humanitarian and reconstruction assistance.
6. Corruption shares a nexus with organised crime.
7. Corruption violates human rights because a corrupt judiciary undermines the right to a fair trial.
8. Corruption fosters an anti-democratic environment by affecting state legitimacy through the erosion of state institutions.

Corruption also causes harm, for example to disadvantaged competitors, employees and litigants. This is why the Council of Europe's 1999 Civil Law Convention on Corruption (signed and ratified by the Kingdom of the Netherlands in 2007) requires the parties to introduce legislation recognising claims for compensation.

Corruption has varying effects. Corruption can reinforce the political status quo and can in a sense have a stabilising effect, in so far as it prevents the development of counterweights in the political system. Sometimes corruption fulfils political, social or

19 M. Ugur and N. Dasgupta (EPPI-Centre University of London), *Evidence on the Economic Growth Impacts of Corruption in Low-income Countries and Beyond: a Systematic Review*, London, August 2011, p. 87.

20 Ibid., pp. 53-55.

21 Ibid., p. 57.

22 Ibid., pp. 57-58.

23 UNDP, *Corruption and Development: Anti-Corruption Interventions for Poverty Reduction, Realization of the MDGs and Promoting Sustainable Development*, New York 2008, pp. 10-12.

economic functions in society, as part of a wider system of patron-client relationships which offer people a degree of stability and protection. This is certainly important when the government is unwilling or unable to guarantee them. But this is not to say that corruption is a good thing. It disrupts the market economy, reinforces inequality (for example, access to services may be limited to people who have the right connections) and is conducive to crime. However, given the complexity of the phenomenon as described above, the question is how can corruption best be combated. Supporting anti-corruption institutions and promoting the rule of law in the broadest sense are important, but not usually sufficient in themselves. It is also necessary to examine how corruption is embedded in society and consider the social functions that corruption and patronage fulfil. Where patronage networks provide an informal social safety net, the best course of action is to assist the authorities in developing a formal safety net which benefits everyone. This has hitherto received little attention. In addition, employment can reduce the economic dependence of people on their patron. This is examined at greater length in chapter III.

I.3 Instability

This section explains terms that come within the concept of instability, namely fragility, failed state, criminalisation of the state, predatory state and ungoverned spaces.

The OECD's International Network on Conflict and Fragility defines fragile states in the following terms: 'A fragile state has a weak capacity to carry out basic functions of governing a population and its territory, and lacks the ability to develop mutually constructive and reinforcing relations with society. As a consequence, trust and mutual obligations between the state and its citizens have become weak.'[24] There are therefore two aspects: the capacity of the state and the political legitimacy of the state in the sense of acceptance and trust.[25] Such trust may be absent in a state which is legitimate in formal legal terms. The ultimate form – or consequence – of fragility is a failed state.[26] Somalia is often cited as an example owing to the absence of all central authority over many years. Paul Peters and Nico Schrijver define a failed state as a state that is unable to control its territory (or large parts of its territory) and to guarantee the security of its citizens because it has lost its monopoly on the use of force. Owing to the loss of this monopoly the state is no longer able to uphold the internal legal order and deliver public services to its population or create the conditions for such delivery.[27] The central element of this definition is the capacity to maintain the monopoly on the use of force.

24 OECD, *Supporting Statebuilding in Situations of Conflict and Fragility: Policy Guidance, DAC Guidelines and Reference Series*, OECD Publishing, Paris 2011, p. 21.

25 L. Anten, I. Briscoe and M. Mezzera (Clingendael Conflict Research Unit); *The Political Economy of State-building in Situations of Fragility and Conflict: from Analysis to Strategy*, The Hague, January 2012, pp. 12-13.

26 G. Helman and S. Ratner, *Saving Failed States*, Foreign Policy, vol. 89, Winter (1992-1993), pp. 3-20; R.I. Rotberg, *State Failure and State Weakness in a Time of Terror*, Brookings, Washington D.C. 2003.

27 P. Peters and N. Schrijver, *Een Multilaterale Aanpak van het Probleem van Falende Staten* (A Multilateral Approach to the Problem of Failing States), Internationale Spectator, vol. 58, no. 7/8 (July/August 2004), pp. 356-360.

It should be noted that the above quotation is based on the common assumption that the state previously functioned well ('trust and mutual obligations *have become* weak'). However, in many parts of the world the state has never had great legitimacy among the population and the capacity to govern has always been relatively weak. In many parts of the world state-building has been decisively influenced by the colonial powers. As citizens can often expect little of the government (or may indeed even feel threatened by the government) informal institutions play an important role in their lives. These may be traditional institutions (such as chiefs and tribes) militias or religious organisations as well as the patronage networks referred to previously. David Roberts writes that these networks reflect a 'pre-state social functionality' and remind us that 'the state is a quite recent, artificial, and socially constructed intervention in human organisation'.[28]

Jean-François Bayart talks of the criminalisation of the state. This occurs where the state's monopoly on the use of force is exercised in the course of illegal activities for private gain.[29] Various terms such as 'predatory state' and 'state capture' are used to describe the criminalisation of the state. Individuals, businesses or criminal organisations may resort to bribery in an attempt to influence decisions on the awarding of contracts or the granting of permits, but may also go a step further and seek to change policy and legislation to their advantage. Such a situation is described as state capture. A state where politicians exercise their influence primarily to achieve private economic benefits is termed a predatory state.

Areas where there is in practice an absence of state authority – often border areas – are described by various terms such as 'black hole' or 'ungoverned space'. A black hole is an area where the central authority is very weak and criminal groups can operate more or less without hindrance. Such areas are sometimes also described as ungoverned spaces.[30] However, the terms black hole and ungoverned space are misleading as a form of government does exist in such areas and is provided, for example, by traditional leaders, warlords or criminal organisations. A more relevant concept is 'hybrid political orders'.[31] For the purposes of the present analysis it is important to note that non-state or hybrid power structures are often unable (and also unwilling) to prevent, investigate and prosecute all forms of crime. Criminals can therefore operate with impunity in and from such areas.

28 D. Roberts, *The Superficiality of Statebuilding in Cambodia: Patronage and Clientelism as Enduring Forms of Politics*, in R. Paris & T. Sisk (eds.), The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations, Routledge, London, New York 2009, p. 154.

29 J. Bayart, *The Criminalization of the State in Africa,* James Currey Publishers, Bloomington 1999, pp. 25-26.

30 S. Patrick, *Weak States and Global Threats: Fact or Fiction?*, *The Washington Quarterly*, vol. 29, Spring (2006); R.D. Lamb (Office of the Deputy Assistant Secretary of Defense for Policy Planning), *Ungoverned Areas and Threats from Safe Havens,* January 2008. See also: <http://www.cissm.umd.edu/papers/files/ugash_report_final.pdf>, (retrieved on 27 February 2013).

31 V. Boege, A. Brown, K. Clements and A. Nolan, *On Hybrid Political Orders and Emerging States: What is Failing – States in the Global South or Research and Politics in the West?* in Michele Fischer and Beatrix Schmelzle (eds.) *Building Peace in the Absence of States: Challenging the Discourse on State Failure*, Berghof Research Centre for Constructive Conflict Management, Berlin 2009.

The terms mentioned above are often used fairly loosely. For example, predatory states may be called failed states although they are anything but weak. What such states have in common is that they do not deliver basic services for the population.

I.4 Nexus between crime, corruption and instability

The previous section identified and defined a number of terms that indicate to what extent the state exercises real authority over its territory or part of its territory. This is an important factor in the nature of the relationship between criminal networks and the state. This section will briefly discuss possible relationships between criminals and the state as well as possible relationships between criminal networks and the local population. What factors make a country vulnerable to transnational crime will also be considered. Corruption is almost always a factor in the relationship between criminals and states and in the vulnerability of countries to transnational crime.

Relations between criminal networks and the state
Relations between criminals and the state can take various forms. Rachel Locke identifies three strategies which criminal networks can apply in relation to the authorities, namely facilitating, infiltrating and confronting. Criminals can facilitate their illegal activities through corruption, can infiltrate state structures or can use violence to confront the authorities.[32]

Corruption is an important means of facilitating transnational crime. Drug shipments and human trafficking can be facilitated by bribing customs officers. Criminals can also use bribery to try to obstruct police investigations or prosecutions or get sentences reduced. Corruption lowers the risks and costs for criminal networks. The United Nations Office on Drugs and Crime (UNODC) notes that the financial resources of some organised criminal gangs are so great that in some countries they are able to bribe large parts of the civil service.[33]

By infiltrating state structures criminals can gain control over parts of the machinery of government. If criminals can influence the investigation and prosecution of offences, they have a largely free hand in the country concerned. Even if elections are held and there is a judicial system, the country is not in fact a constitutional democracy governed by the rule of law. The distinction between criminal networks and state structures becomes blurred. Infiltration undermines the democratic process and can also affect the legitimacy of the state in due course. As already discussed, infiltration can result in state capture, after which the machinery of government is used to further the aims of criminal organisations. Criminal networks can use their substantial resources to influence politics by means of targeted contributions to politicians, political parties, political campaigns and the media. These processes were clearly visible in Colombia, as will be apparent from the case described in chapter II.

Criminal networks can be so powerful that they no longer try to circumvent the state but confront it directly. This may even take place in regions where state authority is relatively

32 R. Locke (International Peace Institute) *Organized Crime, Conflict and Fragility: a New Approach*, IPI, New York, July 2012.

33 UNODC, *The Globalization of Crime. A Transnational Organized Crime Threat Assessment,* Vienna 2010, p. 221.

well-developed. The financial resources of organised criminal networks can be many times greater than those of the law enforcement services. These networks can threaten or murder government officials. Sometimes this also causes fatalities among the general public. Confrontation between criminal groups and the state can degenerate into extreme violence. A good example of this is the situation in Mexico where some 50,000 deaths have occurred since 2006 as a result of drug-related violence.

The strategies of facilitating, infiltrating and confronting are relevant in areas where the state still actually exercises some authority. However, there are also areas where power is in the hands of traditional leaders, criminal networks or warlords, as discussed above. To what extent criminal gangs have a free hand then depends in part on the extent to which the traditional leaders or warlords are willing and able to take action against them. Criminal networks can also be active in an ungoverned space and at the same time cooperate with the state, which exercises authority elsewhere.

Sometimes there is an interplay between weak state authority, political resistance to the central government, illegal exploitation of natural resources and domestic conflicts. In some cases armed rebels benefit from economic activities in regions where they are the dominant power factor. Through extortion they can misappropriate part of the revenues from natural resources and then use this to expand their power. This means that the government of the country concerned loses tax income, while the warlords use some of the proceeds of these criminal activities to purchase weapons and ammunition. As noted at the start of this chapter, such a situation lengthens the conflict, which is often accompanied by human rights violations and great human suffering.

Relations between criminal networks and the local population
As already noted, in fragile and post-conflict states the basic needs of the population are often met by non-state actors, and these actors frequently take on a public nature over time. In such circumstances the theoretical distinction between state and civil society becomes artificial.[34] Core functions of the state, such as providing security, creating a legal system and levying taxes, are taken over by alternative institutions.[35] These arrangements may have been put in place by local people themselves, for example where they form militias to provide for their own security. But they may also have been established by warlords or rebel groups, external aid organisations, parts or remnants of the state structures or a combination of them. Examples can be found in conflict

34 W. Verkoren and M. van Leeuwen, *Civil Society in Fragile Contexts: Global Discourse, Local Reality*, International Peacekeeping, 2013, forthcoming, Special Issue on 'Peacebuilding Plans and Local Reconfigurations: Frictions between Imported Processes and Indigenous Practices'.

35 See, for example, K. Menkhaus, *Governance without Government in Somalia; Spoilers, State Building, and the Politics of Coping*, International Security, vol. 31, no. 3 (winter 2006-2007), pp. 74-106; T. Raeymaekers, K. Menkhaus and K. Vlassenroot, *State and Non-state Regulation in African Protracted Crises: Governance Without Government?*, Afrika Focus, vol. 21, no. 2 (February 2008), pp. 7-21.

areas in Africa,[36] Latin America[37] and southern[38] and central Asia.[39] Even if the state is barely present in such areas local institutions nonetheless seldom operate entirely independently of the government authorities. Local authorities and informal power structures are interconnected in complex ways.[40] For example, there have been many analyses of African political systems explaining how patrimonial relationships mingle with the formal bureaucracy, as already described. It is also apparent from the above that the nature of the relationship between criminal networks and the local population can differ. Sometimes the population is the victim of the presence of criminal networks. Where the state is not present and the criminal networks deliver certain basic services, the local population may tolerate or even support the networks. In the former case there will be a degree of willingness among the population to support the authorities in combating the networks, but in the latter case this is unlikely.

Vulnerability of countries to transnational crime

According to Briscoe,[41] various factors explain the vulnerability of countries to transnational crime. Countries where natural resources are present or which form a market for illicit goods or services are intrinsically attractive to criminal networks. Briscoe points out that transnational crime requires domestic partners. In some countries local criminals, armed groups, politicians, business people or state officials are prepared to cooperate with foreign criminal networks because this is a way of furthering their own ends. Local actors may therefore themselves actively seek cooperation with criminals. They then become part of a transnational criminal network, but for them crime is merely a means of achieving another (political) goal, namely increasing their power base. The cooperation with local actors affords the criminal organisation in that country greater protection. There is a real likelihood of symbiotic cooperation of this kind in countries afflicted with political and institutional fragmentation, inequality and social atomisation. After all, countries with political and institutional fragmentation have competing elites, which can use links with criminals to strengthen their position in relation to rivals. The income from illicit activities may be useful, for example, in strengthening their own

36 C. Lund, *Twilight Institutions; Public Authority and Local Politics in Africa*, Development and Change, vol. 37, no. 4 (July 2006), pp. 685-705; K. Vlassenroot and T. Raeymaekers, *New Political Order in the DR Congo? The Transformation of Regulation*, Africa Focus, vol. 21, no. 2 (2008), pp. 39-52.

37 E.D. Arias and D.M. Goldstein (eds.), *Violent Democracies in Latin America*, Durham NC, Duke University Press 2010.

38 N. Vandekerckhove, *"We are Sons of the Soil"; The Endless Battle over Indigenous Homelands in Assam, India*, Critical Asian Studies, vol. 41, no. 4 (2009) pp. 523-548.

39 J. Goodhand, *From War Economy to Peace Economy? Reconstruction and Statebuilding in Afghanistan*, International Affairs, vol. 58, no. 1 (2004), pp. 155-174.

40 V. Boege, *On Hybrid Political Orders and Emerging States: What is Failing – States in the Global South or Research and Politics in the West?*; D. Roberts, *The Superficiality of Statebuilding in Cambodia: Patronage and Clientelism as Enduring Forms of Politics*, in Roland Paris and Timothy D. Sisk (eds.), *The Dilemmas of Statebuilding: Confronting the contradictions of postwar peace operations* (London and New York: Routledge, 2009), pp. 149-170.

41 I. Briscoe, Norwegian Peacebuilding Resource Centre, *NOREF report: What makes Countries Vulnerable to Transnational Organised Crime?* Oslo, September 2011.

patronage networks, thereby enabling them to generate domestic political support. Inequality is conducive to transnational crime, particularly in combination with a sense of disaffection from the state and marginalisation of certain groups. In such a situation the population can feel more sympathy for criminal networks than for the state, particularly if they undertake certain social activities. Social atomisation means that individuals are disinclined to be guided by social interests and retreat into mechanisms of indifference when there are major social problems. At local level there is then much scope for criminal networks to establish control over social and political life. Where cooperation between local elites and criminal networks is mutually advantageous, this provides the elites with a strong argument for ensuring the continued weakness of state structures. This is necessary if they are to continue benefiting from the cooperation.

Conflict areas are characterised by a war economy. In a war economy the formal (taxable) economy is usually very small. Trade and services are often difficult in a conflict situation. In such circumstances the relative importance of raw material extraction increases still further, but rebels often succeed in appropriating part of the revenues. The informal economy is very large: amidst all the insecurity and uncertainty people fall back on subsistence farming and on small-scale trading in the black market. Moreover, the criminal economy flourishes in unstable regions. The third component of a war economy is the 'international aid economy'.[42] Finally, war economies are generally not confined within national borders. The literature on contemporary wars emphasises the growing importance of shadow economies: in other words, grey or black sectors of the economy in which transnational networks traffic in the necessities of life, weapons, commodities, drugs and human beings. These shadow economies are most prevalent in border areas. The complicated nature of modern conflicts cannot be explained without taking account of this dimension.[43]

International criminal networks can operate in states only if a minimum of infrastructure is present.[44] This is because they need access to functioning means of communication, logistical infrastructure and (informal) financial institutions in order to be able to import or export illicit goods.

Conclusion

This chapter has dealt with the question of how the AIV assesses the problem of crime, corruption and instability outlined in the request for advice. Its conclusion is that the nexus between these three elements is highly complex. Crime and corruption have major adverse consequences and can exacerbate instability. Conversely, instability can be a breeding ground for corruption and crime. But corruption and crime can also fulfil social

42 B. Kamphuis, *Economic Policy for Peacebuilding* in: G. Junne and W. Verkoren (eds.), Postconflict Development: Meeting New Challenges, Lynne Rienner Publishers, Boulder 2004.

43 M. Duffield, *Global Governance and the New Wars: The Merging of Development and Security,* Zed Books, London 2001; M. Kaldor, *New and Old Wars: Organized Violence in a Global Era,* Polity Press, Oxford 1999; R. Devetak, *Globalization's shadow: An introduction to the globalization of political violence*, in: R. Devetak and R. Hughes (eds.), The Globalization of Political Violence: Globalization's Shadow, Routledge, New York, London, 2008. S. Patrick, *Weak states and global threats, fact or fiction?*, The Washington Quarterly, vol. 29, no. 2 (Spring 2006), p. 39.

44 S. Patrick, *Weak states and global threats, fact or fiction?*, The Washington Quarterly, vol. 29, no. 2 (Spring 2006), p. 39.

roles, particularly in fragile states where the authorities are unable to guarantee the security and well-being of their citizens. To reduce the vulnerability of unstable, fragile and weak states to criminal networks, the Netherlands should promote development of the rule of law as an important long-term objective in its relations with them. However, in such contexts establishing the rule of law is no simple matter. Consideration should also therefore be given to the creation of alternatives to violence, crime and corruption.

Crime and corruption are serious obstacles to the socioeconomic and political development of developing countries. Promoting the proper functioning of the rule of law must therefore be an important aim of the relations of the Netherlands and the EU as a whole with developing countries, in particular in cooperation with weak and fragile states. As a corollary, it is essential that more attention be paid in national and international development efforts to building the police and justice system in these countries. More specifically, it is recommended that technical assistance and training be given to the developing countries from which crime spreads to the Netherlands, thereby enabling them to tackle this crime more effectively and to cooperate with the Dutch police and judicial authorities for this purpose.

II The profitability of some forms of transnational crime

This chapter discusses some forms of transnational crime. This includes consideration of what actors are involved and how the money flows are routed. It also endeavours to explain how the nexus between crime, corruption and instability plays a role in combating transnational crime. The descriptions below are intended merely as illustrations of the links in the chain of transnational crime and not as evaluations of existing policy.

II.1 Human trafficking

Human trafficking and people smuggling are similar offences, but differ in that people who have been smuggled are free at the end of their journey, whereas the victims of human trafficking are exploited either permanently or for long periods. The difference between them becomes blurred if people who have been smuggled have to pay the smugglers by working in bad conditions, often in a country where they are living illegally. This is a very common pattern in the case of Chinese trafficking operations.

Louise Shelley explains that there are big differences between the modus operandi of human traffickers from different regions. For example, traffickers from China, the former Soviet Union and the Balkans operate very differently. Chinese migrant smugglers generally use little violence, unlike most other people smugglers and human traffickers. Shelley describes six different 'business models'.[45] She concludes that no single anti-trafficking strategy is effective against all these models. For example, low status and lack of education generally increase the vulnerability of women to human trafficking, but Russian traffickers actually have a preference for young, educated women as well-educated prostitutes are in great demand in Western countries.[46] Two of the six human trafficking models are discussed below, namely the Chinese model and the Slavic model. Victims of human trafficking from both China and the Slavic countries are found in the Netherlands. Human trafficking in Sinai is also discussed. This was a situation that arose in 2009, shortly before the publication of Shelley's book.

The Chinese model
The Chinese model is usually a combination of people smuggling and human trafficking. The ambiguous nature of Chinese trafficking in the Netherlands is described in a report of the Dutch Police Services Agency (KLPD) and the University of Amsterdam. This report states that it is above all the burden of debt resulting from the journey which makes migrants extra vulnerable to exploitation and abuse.[47] The initial contact with people smugglers is often sought by the victims themselves. They are then smuggled to a country where they hope to build a better future. The prospect of a better existence is what motivates the victims; they need not have been misled by the smugglers. The

45 L. Shelley, 'Human Trafficking: A Global Perspective', Cambridge University Press, Cambridge, 2010, pp. 112-138.

46 Ibid., p. 132.

47 M. Bottenberg (National Crime Squad) and M. Janssen (University of Amsterdam), *De positie van Chinese masseuses in de Chinese beautybranche in Nederland* (The position of Chinese masseuses in the Chinese beauty industry in the Netherlands), annexe to Parliamentary Papers 28638 no. 93, p. 42.

journey is arranged by bribing officials, forging documents or concealing the migrants in some form of international transport. The smuggler organises the entire journey to the country of destination and pays for all the expenses. The victims thus accumulate a debt to the smuggler, which they repay by working for a time illegally in the country of destination. As they are paid little if anything and almost always work in conditions that are in breach of local legislation, this qualifies as exploitation and human trafficking. After they have repaid their debt they are usually released. Often the victims do not regard themselves as such; they are inclined to fulfil the terms of the contract with the smuggler/trafficker and may even advise their family and friends to take the same route. It follows that Chinese smugglers/traffickers need take almost no action to recruit new victims (customers); the latter themselves contact the trafficker. The trafficker has an interest in not using force because this could put off future customers. Nor is this necessary because the victim views the exploitation as payment for services rendered. The smuggler/trafficker usually controls the entire supply chain from recruitment through to the provision of illegal workers to businesses in more affluent countries. The victim remains under the control of the same smuggler/trafficker throughout the entire procedure. The profits can be considerable and are often invested in the region of origin. This involves transferring the profits from the country to which the victim has been smuggled to the country of origin. Often this is arranged through informal banks.

The Slavic model (post-Soviet organised crime)
Groups that use this model operate in the Slavic areas of Russia, the Baltic states and Moldavia. The model is characterised by the use of deception and force by a network of criminal groups. The human traffickers recruit victims through deception, for example by representing themselves as a legitimate job placement agency. In this way they recruit people who are in a vulnerable position and in search of a better income. The human traffickers use extreme force to compel their victims into prostitution or forced labour. Women are often sold to criminal groups in neighbouring geographic regions, which in turn resell the women to other groups. This creates a chain of groups which sell people to one another, thereby creating a cash flow in the opposite direction. Sometimes the Russian groups themselves exploit women in western Europe. In this model too the journey is arranged by bribing officials, forging documents or concealing the victims in some form of international transport. Some of the profits are spent on a luxury lifestyle; some are repatriated and laundered through import/export companies.

Sinai
In their study of human trafficking in Sinai, Van Reisen, Estefanos and Rijken[48] describe how refugees from Eritrea, Ethiopia and Sudan are kidnapped and held hostage in Sinai after they have been sold and repeatedly resold to human traffickers. They are often tortured and released only after ransoms have been paid by relatives. The great majority of the victims come from Eritrea, which they leave without an exit visa. People smugglers help men, women and children to cross the border. Others leave the country legally. After the victims cross the border they are handed over to human traffickers by members of a local tribe (Rashaida) and Eritrean and Sudanese border guards. Cases also occur in which refugees in the vicinity of the Shagarab refugee camp are kidnapped, for example when they are out looking for firewood. Most of the victims are sold and repeatedly resold to human traffickers until they reach the Bedouins in Sinai. From Sinai relatives are called with demands for ransoms. To increase the pressure on relatives, the victims are severely

48 M. van Reisen, M. Estefanos and C. Rijken, *Human Trafficking in the Sinai: refugees between life and death*, Brussels/Tilburg, September 2012.

tortured during the telephone conversations. As the victims have been sold and resold for ever larger amounts, the Bedouins often demand high ransoms. Relatives sometimes have to sell all their possessions in order to produce the ransom. The ransom is generally remitted by mobile phone or electronic transfer. It should be noted, incidentally, that victims are not always released after payment of a ransom. Occasionally they succumb to torture or are killed in order to terrorise other prisoners. Women may be sexually abused. After their release many victims are refused entry to Egypt or Israel.

This form of human trafficking (followed by hostage-taking) is caused by many factors, each of which is connected with other complex problems. This clearly reveals the nexus between crime, corruption and instability. The situation in Eritrea is a major cause of this form of human trafficking. Most of the victims come from Eritrea and feel compelled to leave the country. The instability in the region forces people to flee and makes them vulnerable to human traffickers. The lack of safety around refugee camps and the corruption of border guards make kidnapping possible. As Egypt is unable to maintain law and order in Sinai, the Bedouins there can detain and torture people and demand ransoms for their release. As government is weak throughout the region from the Horn of Africa up to and including Sinai, criminal networks are free to operate as they please.

Similarities and differences
The three models described above all concern human trafficking, but there are important differences. Chinese victims of human trafficking do not usually report the offence to the authorities. Indeed, it is even questionable whether they are prepared to cooperate in a criminal investigation. A striking feature of the Chinese model is that all participants in the chain (human traffickers, victims and exploiters of victims) have an interest in this arrangement. This makes it difficult to intervene in the supply chain. The market can, however, be disrupted by checks on illegal employment in the countries of destination. Moreover, as the victims may have entered the country illegally, measures to combat illegal migration can also have an impact on human trafficking. By contrast, victims of Russian traffickers do see themselves as victims and are often severely traumatised, but fear may prevent them from cooperating in an investigation and prosecution of traffickers. Once victims of human traffickers in Sinai are released they are seldom protected by the authorities in Egypt or Israel. The three models also differ in the extent to which the victims cooperate voluntarily. Chinese victims usually cooperate in the smuggling and the trafficking, with the exception of cases in which they are forced into prostitution. Slavic traffickers initially deceive their victims and in later stages of the process use extreme force. The third model does not involve voluntary cooperation or deception, but instead starts with kidnapping. Only in the third case is there a clear correlation with instability. In the Chinese model there is no connection with instability; on the contrary, it is probable that the repatriation of the profits of human traffickers to China in the form of foreign investment contributes to economic development and social stability. Victims of Chinese and Slavic traffickers are fleeing poverty and are therefore susceptible to suggestions that they could build a better life elsewhere. The majority of victims of human traffickers in Sinai are trying to escape the political situation in their own country, which is part of an unstable region consisting of weak states. These states lack the capacity to protect their citizens.

II.2 Afghanistan and heroin[49]

In Afghanistan heroin trafficking is closely linked to the political structure. After the Soviet Union invaded Afghanistan in 1979, the United States and the Soviet Union supplied arms and money to the parties and groups that chose their side in the conflict. This enabled warlords to build up local power monopolies, which undermined the traditional fabric of Afghan society. After the dissolution of the Soviet Union and the withdrawal of Russian support a year later, other powers (with the exception of Pakistan and Iran) showed less interest in Afghanistan and the flow of arms and money dried up, but the domestic struggle continued. Local warlords were obliged to search for other sources of income, and 'taxes' levied on the cultivation of the opium poppy plant, on the production and shipment of opium and on heroin laboratories became an important source of revenue for them. During that period the Taliban succeeded in gaining control of almost all of the country. Following the aircraft hijackings and the attacks on the Twin Towers and the Pentagon on 11 September 2001, the United States invaded Afghanistan and resumed the support to warlords who took up arms against the Taliban. Once again there was a flow of arms and money that enabled warlords to strengthen their positions. Despite the best efforts of NATO, the UN and bilateral donors who wished to build up both the country and the state, the authority of the central government is still weak and local rulers (especially warlords) have a strong position. To retain their support the government has offered them high positions, although some are involved in or profit from heroin trafficking or commit gross violations of human rights. The government's authority over rural areas has never been great and this situation has remained unchanged. The government is insufficiently able to deliver public services such as education, health care and, in some areas, security. In parts of Afghanistan the monopoly of force is not in the hands of the central government. In this context the income from heroin trafficking enables local elites to enrich themselves and maintain their power base in their area through patronage. The Taliban can use income from 'tax levies' to finance their military activities. As the highest priority for foreign powers since 1979 has been geostrategic considerations, the fight against heroin trafficking has received insufficient attention. This helps to explain why opium poppy cultivation and heroin trafficking have increased to such an extent.[50]

In Afghanistan there is therefore a big difference between the formal institutions and the actual balance of power. Although, formally speaking, the country has a political model that closely resembles a constitutional democracy governed by the rule of law, the political leadership is in practice highly fragmented. There is a decentralised power structure in which various players command armed groups. Patronage plays a major role in maintaining stability. Control over the government provides access to national and international resources, and the income from heroin trafficking helps to support patronage systems. Effective measures to combat heroin trafficking might therefore have political consequences in Afghanistan. Some players have links with foreign governments. All of this makes the political situation in Afghanistan extremely complicated.

49 J.H. Watkins, E.P MacKerrow and T. Merrit, *Simulating the Afghanistan-Pakistan Opium Supply Chain*, Los Alamos National Laboratory, July 2010.

50 J. Goodhand, *Corrupting or consolidating the peace? The drugs economy and post-conflict peacebuilding in Afghanistan,* International Peacekeeping, vol. 15, no. 3, June 2008 and M. Nicoletti, *Opium production and distribution: poppies, profits and power in Afghanistan, Theses and Dissertations* Paper 74, DePaul University, 2011, pp. 12-33.

Afghanistan accounts for approximately 95% of global opium production. Half of the opium production comes from the province of Helmand. Whether a farmer chooses to cultivate opium depends not just on the financial proceeds but on other factors as well. In some parts of Afghanistan opium poppies are not cultivated because the climate is unsuitable or because there is too little water. Opium poppy cultivation is labour-intensive and some farmers cannot afford to hire seasonal workers. The labour available in the family limits the surface area that can be sown with poppy seeds. Some large landowners and traffickers will give loans to small farmers only if they cultivate poppies. In return the landowners or traffickers demand the right to buy the harvest cheaply.[51] If farmers need a loan just to be able to cultivate anything at all, such an offer can be very attractive in view of the high proceeds. Ending this relationship of dependence by offering alternative supplies of credit could form part of a strategy for combating opium poppy cultivation in Afghanistan (or parts of it). It is important to encourage the cultivation of other crops, but this is hindered by the low prices.

UNODC reports that the annual cash income of farmers who grew opium poppy (USD 3,933) was significantly higher than that reported by other farmers (USD 2,279), despite the fact that the land holdings of the two groups were largely the same.[52] UNODC concludes from this that combating poverty is not in itself a sufficient means of reducing opium poppy cultivation. In many areas, however, there are no alternative economic activities that generate more profit than opium poppy cultivation. Economic development will not result in such activities in the short term, but that could be the case in the longer term. Development cooperation could in due course help to combat opium poppy cultivation in Afghanistan.

The opium is sold to traffickers, who then deliver it to laboratories. There the opium is cooked with various chemical substances that have to be imported illicitly. The product is brown heroin, which can be smoked. Sometimes the heroin undergoes further processing to produce white, injectable heroin. This results in a huge increase in value. The laboratories pay ‘tax’ to the Taliban or to government officials for protection of the shipments to the border. In large parts of Afghanistan there are many ways of crossing the border unseen and, if necessary, attempts can be made to bribe the border guards. Opium which is smuggled to the north is sometimes exchanged for weapons. Both Kyrgyzstan and Kazakhstan have factories for the production of AK 47 machine guns.

After export the opium or heroin is sold to other traffickers until it reaches the consumer. The costs incurred by traffickers in this part of the chain are for labour, transport and bribery. In December 2012, the street value of a kilo of heroin in the Netherlands was between EUR 20,000 and EUR 40,000.[53] As the greatest increase in value takes place after the export of the opium or heroin from Afghanistan the profit is mainly for the traffickers.

51 D. Macdonald & D. Mansfield, *Drugs and Afghanistan*, in: Drugs: education, prevention and policy, vol. 8, no. 1, 2001, pp. 1-6.

52 UNODC, discussion paper: Is poverty driving the Afghan opium boom?, March 2008.

53 See: <http://www.trimbos.nl/onderwerpen/alcohol-en-drugs/heroine/heroine-algemeen/prijs>, (retrieved on 5 December 2012).

UNODC emphasises in various reports that opium poppies are cultivated in areas over which the government has little control. This might suggest that opium poppy cultivation would be greatly reduced if the government were to have control over the entire country. Various authors point out, however, that Afghan politicians and senior officials also have economic interests in opium poppy cultivation and heroin trafficking.[54] UNODC also states that organised crime is interwoven with the state and the insurgents: 'Whether protecting the cultivation of opium or sponsoring trafficking of contraband, crime appears to be a primary survival strategy for many government officials and insurgents'.[55] The possibility of profiting from opium trafficking makes some government jobs very attractive. For example, there are reports that tens of thousands of dollars are paid for appointments to a government post with a monthly salary of just a few tens of dollars, but which provide an opportunity to demand bribes from opium farmers, opium traffickers and laboratories.[56] The heroin trade is corrupting the entire state and a large part of the country.

It follows that a wide range of political, socioeconomic, agricultural and climatological factors are of importance to an analysis of the production of opium and heroin in Afghanistan. This underlines once again that a strategy must be integrated if it is to be effective and must be based on an understanding of all relevant factors in the chain.

II.3 Colombia and cocaine

Cocaine is produced by chemical means from the leaves of the coca plant. The first phase of the process produces coca paste and the second phase cocaine. As consumers usually buy cocaine cut with other substances the price and purity of the product differ. One leaf of the coca plant contains very little of the active ingredient. A thousand kilos of leaves are needed to produce about two kilos of cocaine.

The coca plant thrives in the climate in the Andes, which is why all cocaine comes from Colombia, Peru and Bolivia. This report specifically considers the situation in Colombia,[57] the world's largest producer of cocaine. The export of cocaine from Colombia grew rapidly in the 1970s when demand rose in the United States. Initially, the Colombian producers purchased coca paste from local farmers, produced cocaine in laboratories and then sold their product mainly to Cuban smugglers. From the mid-1970s onwards, however, Colombian criminal groups took over wholesaling operations in the United States from the Cubans and, in some cities, distribution to consumers. They did this by employing Colombians who had previously emigrated to the United States. They used

54 New York Times, *Is Afghanistan a narco-state?*, 27 July 2008; A. Lieven, *Afghanistan: an unsuitable candidate for state building*, in: Conflict, Security & Development 7: issue 3, October 2007, p. 485.

55 UNODC, *Addiction, crime and insurgency, The transnational threat of Afghan opium*, October 2009, p. 105.

56 J. Goodhand, *Corrupting or consolidating the peace? The drugs economy and post-conflict peacebuilding in Afghanistan,* International Peacekeeping, vol. 15, no. 3, June 2008, p. 412 en UNODC *Addiction, crime and insurgency, The transnational threat of Afghan opium*, October 2009, p. 139.

57 K. Michel, *Mexico and the cocaine epidemic: the new Colombia or a new problem*? See: <http://www.hsdl.org/?view&did=11060>, A. Camacho Guizado, *Plan Colombia and the Andean Regional Initiative; the ups and downs of a policy*, see: <http://www.kus.uu.se/CF/sem041202/Camacho.pdf>.
A. López-Restrepo, A. Camacho-Guizado, *From smugglers to drug-lords to 'traquetos': changes in the Colombian illicit drugs organizations*. See: <http://kellogg.nd.edu/faculty/research/pdfs/LopeCama.pdf>.

extreme violence against the Cubans. In this way the Colombian cartels succeeded in vertically integrating the entire supply chain and cornering a large part of the profits for themselves.

In 1995 Zaitch researched the added value in the various links in the supply chain.[58] Like R.T. Naylor he noted that the majority of the profit was made in the last part of the chain, i.e. between the wholesale operation in the country of destination and the consumer. Vertical integration of the supply chain was therefore very attractive to exporters in Colombia.

The Medellín drug cartel led by Pablo Escobar initially chose the strategy of infiltration and state capture. His cartel bribed politicians, government officials and police officers. Indeed, Escobar even succeeded in becoming an elected as a member of parliament in 1982. However, public indignation about his election resulted in his removal from office. The possibility of a revision of the constitution to allow extradition to the United States was discussed. Escobar then switched to a strategy of confrontation. He arranged for the Minister of Justice to be murdered and unleashed a campaign of terror, which claimed many victims among the population at large. As a result of the terror campaign the number of Escobar's enemies multiplied both in Colombia and abroad. On account of the terror no constitutional provision allowing for the extradition of Colombians was introduced. As most of the acts of terror went unpunished, a climate of impunity was created and confidence in the law diminished still further. The United States then changed its policy: besides attempting to intercept drug shipments on its borders, the US government made millions of dollars available for combating drug-related crime in Colombia, allowing for the deployment of military resources. Heavy pressure was also exerted on the Colombian government to take active measures to combat the cartels. Escobar was imprisoned in his own luxury prison, from which he was able to continue conducting business. He escaped, but died in a firefight with the police in 1993. This marked the beginning of the end of the Medellín cartel.

From the outset the Cali cartel opted for a strategy of infiltration and collaboration. It kept a low profile and its leaders tried to come across as ordinary business people. They did not attempt to acquire political posts. The Cali cartel benefited from the demise of the Medellín cartel and was able to virtually monopolise the cocaine trade. Demand had not declined. The downfall of this cartel began when it became known that it had donated USD 3.5 million to the election campaign fund of presidential candidate Ernesto Samper and had also supported the election of dozens of other politicians. Although corruption was not unusual, this caused a great public outcry. On account of the general indignation and the pressure brought to bear by the United States, Samper had no option but to take vigorous action against the Cali cartel. By the mid-1990s the cartel had been virtually eliminated. The place of the two large cartels was taken by hundreds of small criminal organisations.

The Colombian resistance movement FARC was one of the organisations to benefit from the demise of the cartels; this was an unintended side-effect of the struggle against the cartels. From the mid-1970s onwards, when demand for cocaine grew, more and more farmers started cultivating coca plants and FARC began levying 'taxes' on the

58 T. Naylor, *Wash-out: a critique of follow-the-money methods in crime control policy*, Crime, Law & Social Change, vol. 32, no. 1 (1999), p. 25; D. Zaitch, *Trafficking cocaine, Colombian drug entrepreneurs in the Netherlands*, Kluwer Law International, The Hague/London/New York, 2002, pp. 46-47.

production and transport of coca paste. FARC also compelled traffickers to pay higher prices to the farmers and protected their crops from destruction by anti-drug trafficking forces. This garnered sympathy for them among the local rural population. The Cali cartel accepted the tax levy, but the Medellín cartel decided to confront FARC. For this purpose it established a paramilitary organisation, which succeeded in capturing large areas of the coca-growing region from FARC – something which the armed forces had failed to do. The demise of the Medellín cartel removed FARC's strongest enemy and enabled FARC to tighten its grip on cocaine production and trafficking still further. In this way FARC generated very significant revenues. These increased even further when production in Peru and Bolivia dropped as a consequence of government policy in those countries. Production shifted to Colombia, in particular to the areas under the control of FARC. The Colombian president Andrés Pastrana entered into negotiations with FARC, but his successor Alvaro Uribe broke them off and fought FARC with the assistance of the United States. This was partially successful, but opened the way for the emergence of extreme right-wing paramilitary militias, which came together in the United Self-Defence Groups of Colombia. These groups were often successors to the paramilitary groups of the drug cartels, but started to lead a life of their own after the demise of the major cartels. They too derived a large part of their funding from extortion of cocaine traffickers and other forms of illegal taxation as well as from contributions by large landowners. In 2001 the United States declared the United Self-Defence Groups of Colombia to be a terrorist organisation. Uribe started peace negotiations with the United Self-Defence Groups, which led to the demobilisation of thousands of paramilitary personnel.

Cocaine trafficking and the manner in which it affected the domestic situation greatly aggravated the human rights situation in Colombia. Many people became the victim of criminal and political violence. Impunity was the norm for a long period.

As the power of the Colombian cartels waned and cocaine shipments to the United States were routed mainly overland, Mexico's criminal organisations established a grip on part of the supply chain. These organisations had previously worked for the Colombians, but were now in a position to demand a larger share of the profit. However, this led to a conflict about territory between different Mexican gangs, which also involved the deployment of paramilitary organisations.

As control of the smuggling routes by sea and air in the Caribbean was tightened, smugglers diverted the routes to Europe to pass through West Africa. In various West African countries South American drug rings worked with senior officials and military personnel so that the machinery of government could sometimes be deployed for the shipment of cocaine to Europe. From 2007 onwards, senior officials in Guinea-Bissau made accusations against military personnel of involvement in drug trafficking. Some were arrested and found to be in possession of hundreds of kilos of drugs, but sometimes other military personnel arranged for the confiscated drugs to disappear. In 2009 the army leader and the president were murdered, after which the drug trafficking routes were changed. A connection between government officials and drug rings was also observable in Guinea and Gambia.[59] Drug dealers selected weak states in West Africa where they were able to infiltrate the government with relative ease.

The fight against cocaine production and trafficking has had some significant unintended effects. First of all, domestic politics in Colombia have been strongly influenced by the

59 UNODC, *The Transatlantic Cocaine Market, Research Paper*, April 2011, pp. 42-57.

fight against cocaine trafficking. The fight against the two big cartels strengthened the position of FARC. After FARC itself became the target of the measures to combat cocaine trafficking, paramilitary organisations benefited. Second, the elimination of the two major cartels probably fuelled the competition between Mexican gangs and contributed to the explosion of violence in that country. Third, the measures did not stem the flow of drugs, but merely changed the route they took. The switching of shipment routes to Europe to pass through West Africa has contributed to the criminalisation of states in West Africa. An effective, integrated international strategy is still lacking.

II.4 Illegal arms trafficking

The illicit trade in firearms has two main target groups. The first consists of criminals who use firearms to commit a crime or for their own protection. This trade is generally on a small scale. The second consists of rebel groups and terrorist organisations. This involves larger consignments of arms.[60] Illicit arms trafficking occurs throughout the world, but demand for illicit arms is greatest in areas affected by armed conflict, violence and organised crime. By the same token, the supply of arms and ammunition raises the level of violence in such areas. Sometimes the arms are paid for with the proceeds of illegally obtained natural resources or from drug trafficking, sometimes in kind. Illicit arms trafficking and instability almost always go hand in hand. Such trafficking is usually an integral part of the nexus between crime, corruption and instability.

Nuclear, bacteriological and chemical weapons seldom play a role in the nexus between crime, corruption and instability. These will therefore be disregarded in this report. Within the category of conventional weapons, a distinction is usually made between small arms and other weapons. Small arms and light weapons (SALW) are portable and can be carried and fired by one person or a small group. These are very suitable for use by rebel movements as they are relatively cheap and easy to use, even for child soldiers.

As small arms are durable goods and unlikely to be rendered obsolete by technological innovations, they are hardly ever replaced. Only about 1% of the total number of firearms in circulation is replaced annually. Firearms therefore have a lifespan of decades, but their use depends on whether sufficient ammunition is available. Stockpiles of ammunition have to be replenished regularly. The trade in ammunition is therefore just as important as the trade in firearms. After a conflict has ended, arms traffickers sell the used firearms to combatants in other conflicts.

The arms trafficking chain: production and trafficking
Only a small proportion of arms are made illegally. Illegal production takes place in three ways: first, amateurs can make their own weapons by a process known as ‘craft production’ (e.g. by copying original models); second, existing models can be made in arms factories that do not have a manufacturing licence; and, third, legal production figures can be fraudulently adjusted.[61]

60 See: <http://www.smallarmssurvey.org/weapons-and-markets/transfers/illicit-trafficking.html>.

61 See: <http://www.smallarmssurvey.org/fileadmin/docs/G-Issue-briefs/SAS-IB2-Scraping-the-barrel.pdf>.

The great majority of small arms traded illegally were originally produced legally.[62] Arms produced legally may end up being trafficked illicitly in various ways. In general, the supply chain is short: the weapons are produced legally and pass into the hands of a trafficker, who then resells them to an illegal destination, with or without the connivance of corrupt officials.

Stohl identifies nine ways in which small arms can enter illicit networks from the legal trade.[63] These are not mutually exclusive. The first is circumvention of an arms embargo. States, companies or individuals can violate national, regional or international sanctions and embargoes. There are many examples of violations of UN arms embargoes.[64] Some countries supply arms to rebel movements in other countries for geostrategic reasons, even if this is contrary to international law.

The second way is the diversion of arms through the bribery of officials or the use of fraudulent documents. Corrupt officials allow weapons exports or transit to a country which does not fulfil the conditions of relevant legislation and policy. This may involve fraudulent export: on paper the arms are exported to legitimate foreign buyers, thereby fulfilling the terms of the export licence. The actual customer is not mentioned on the end-user certificate. The arms are exported initially to a legal destination, from which they are then transported to an illegal final destination. Corrupt authorities in the country mentioned on the end-user certificate may, for example, accept bribes to provide false statements about the final destination. Moreover, customs officials may accept payoffs to allow illegal exports. The consignment papers may also indicate a false cargo. On account of the huge volume of goods passing through most ports and airports, the chance of discovery is small.

Third, inadequate stockpile security and poor management may allow small arms to be misappropriated and end up in illegal networks. The collapse of the regimes in the Soviet Union, Albania and Yugoslavia contributed significantly to the illegal arms trade. Large quantities of firearms and ammunition became surplus to requirements in the former East Bloc countries. Some of them were exported illegally to the rest of the world from poorly guarded stockpiles. This huge flow of arms was probably facilitated by corruption.

A fourth way is through raids on national arsenals and weapons caches during periods of instability. For example, insurgents in Syria are apparently shooting down aircraft and helicopters of the Syrian air force using captured anti-aircraft missiles. Western countries fear that such missiles from Syrian army bases and weapons depots could fall into the hands of Al Qaida.[65]

62 R. Stohl, *Fighting the illicit trafficking of small arms*, SAIS Review vol. XXV no. 1, (Winter-Spring 2005), p. 61, and C.J.C.F. Fijnaut, *De bestrijding van illegale vuurwapenhandel: Het beleid van de Verenigde Naties en de Europese Unie* (Fighting the illicit trafficking of firearms: the policy of the United Nations and the European Union), Justitiële verkenningen, 34(4), pp. 9-28.

63 Ibid, see also A.C.M. Spapens, *Trafficking in illicit firearms for criminal purposes within the European Union,* European Journal of Crime, Criminal Law and Justice*,* 2007, pp. 359-381.

64 G. Lamb, *Beyond 'shadow-boxing' and 'lip service', the enforcement of arms embargoes in Africa*, ISS paper 135, Pretoria, April 2007.

65 Volkskrant, *Assad losing air superiority*, 30 November 2012, p. 15.

Fifth, arms may fall into other hands as a result of careless management. Ultimately these weapons make their way into illicit trafficking networks. Sixth, soldiers may sell their weapons to generate extra income. And, seventh, weapons may be stolen from their legitimate owners.

The eighth way is for weapons to be smuggled from a country where they can be bought legally to a country where possession of firearms is illegal. Cars and vans may be used to smuggle a few weapons at a time across borders. This smuggling takes place on a small scale and usually at the request of a customer. The great majority of illegal weapons in Mexico and South America have been smuggled in this way from the United States.[66]

As few checks are made at the internal borders of the Schengen area, it is relatively easy to transport arms through the Schengen countries. This is often done using cars, vans or lorries. Smuggling to the United Kingdom (which is not a Schengen country) takes place rather differently: smugglers make use of hidden voids in vehicles. Illegal firearms trafficking within the EU is for the most part the provision of a service to criminals.[67]

Lastly, Stohl notes that individuals or organisations may make their own weapons by a process referred to as 'craft production', for example from alarm pistols or decommissioned weapons. Alarm pistols can be purchased legally in many EU countries. In many countries, decommissioned weapons are in practice not destroyed but sold. There is therefore a possibility that they may end up in illicit networks.

As is apparent from this summary, trade regulation is not the only important factor in combating illicit trafficking; other requirements are the good management of arms stockpiles, effective disarmament in post-conflict situations, destruction of surplus weapons and the marking of firearms so that their origin can be checked. These measures can help to prevent legally produced weapons from being diverted to illegal networks. These policy principles can be found in the UN Programme of Action.

Legal framework
Until recently there were few international legal norms for the legal possession of and legal trading in conventional weapons. A number of conventions prohibit or regulate the possession, use or storage of and trading in specific weapons. These include the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, the second protocol to that convention (the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices), Protocol IV to the Convention (the Protocol on Blinding Laser Weapons), the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction and the Convention on Cluster Munitions).[68] The aim of these conventions is to limit human suffering caused by violent conflict. For this purpose, the conduct of the belligerents and

66 See: <http://www.smallarmssurvey.org/weapons-and-markets/transfers/illicit-trafficking.html>.

67 A.C.M. Spapens, *De logistiek en aanpak van illegale vuurwapenhandel binnen de EU-landen* (The logistics and tackling of illegal firearms trafficking within the EU countries) in: Illegale wapenhandel, Justitiële Verkenningen 4 - 08, Research and Documentation Centre, July 2008, p. 69.

68 M. Brozska, *Monitoring and verification of the arms trade and arms embargoes*, Disarmament Forum, 2010, no. 3, p. 29.

the choice of means and methods of warfare are limited by treaty.[69]

The UNTOC Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition obliges states to criminalise the illicit manufacturing of and illicit trafficking in firearms and ammunition, but leaves it to the parties to the protocol to determine in what cases manufacturing and trafficking are illicit.

In addition, the UN Security Council may impose an arms embargo for a specific region and specific states pursuant to Chapter VII of the UN Charter. The member states of the UN are required to perform these measures. However, without adequate legislation and institutions member states cannot enforce an arms embargo. The UN Security Council usually establishes a sanctions committee to supervise a specific arms embargo using information supplied by the member states. Regional organisations such as the EU or the African Union may also impose arms embargoes.

In a more general sense, states have an obligation to respect the sovereignty of other states and not to use force against them. It follows that they are deemed to have an obligation to refrain from delivering arms to states or groups such as terrorists or rebel movements which wish to undermine the sovereignty of another state. Various human rights conventions also contain provisions that indirectly limit the export of arms. Examples are the right to life and the prohibitions on torture and forced migration. In cases in which exporting states have reason to suspect that an export of arms may undermine peace and security or contribute to violations of human rights, the export will be illegal under international law, even if not prohibited under national law.

Also relevant here is the Wassenaar Arrangement, which was concluded in 1998. Under this Arrangement the parties agreed to exchange information on their exports of conventional arms, particularly by giving notification of licences granted and denied. The Wassenaar Arrangement provides a forum for discussing the risks posed by arms exports to peace, security and stability in specific areas. It does not lay down any rules for arms exports and leaves decisions on the granting of licences to the participating states.

Under the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA), which dates from 2001, states are called upon to regulate the trade in such arms, but the programme contains no substantive criteria for issuing or refusing export licences. The programme also calls on the states to regulate the manufacture of arms and to provide individual arms and weapons with markings to enable their origin to be traced. Legally manufactured arms have markings and serial numbers that usually enable the national authorities of the country concerned to identify the manufacturer. Other aspects of the Programme of Action include effective stockpile management and the destruction of illicit arms.

Within the EU, measures have been taken to harmonise the legislation of member states on the possession of firearms by citizens, for example the classification of firearms, resulting in greater uniformity in the licensing obligations between the different member states. There is also closer cooperation between the different police forces. However, there are still major differences in national firearms legislation between the member

69 See: <http://www.icrc.org/eng/war-and-law/weapons/overview-weapons.htm>, (retrieved on 29 March 2013).

states. Measures to combat illicit firearms possession in the EU are primarily taken at national level. Relevant to the export of arms is Council Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology, which above all harmonises procedural aspects between member states. The EU has a Common Position on Arms Exports, which mentions eight criteria for assessing arms transfers, but these are implemented differently by the member states.[70]

An individual possesses a weapon illegally if he or she does not have the requisite permits under the law of the country where he or she is present. This also applies to the members of armed groups such as terrorists, rebels or criminals. Trafficking in arms is illegal if they are sold without compliance with the statutory requirements, such as an export licence.

Recently a step was taken to regulate the trade in conventional weapons, parts and ammunition. On 2 April 2013 the General Assembly of the United Nations adopted a draft text for an arms trade treaty: 154 states voted in favour, 23 abstained and North Korea, Iran and Syria voted against.[71] The text provides that the export of arms is prohibited if this is contrary to a resolution of the Security Council under Chapter VII of the UN Charter or is contrary to an international agreement to which the state concerned is party, or if the state concerned knows that the arms will be used in the commission of genocide, crimes against humanity, war crimes, grave breaches of the Geneva Conventions of 1949, attacks against civilians or other war crimes, as defined in international agreements to which the state is party. In deciding whether to authorise a transfer the exporting state must take into account whether the export might undermine peace and security or be used to commit or facilitate a serious violation of international humanitarian or human rights law or acts that constitute terrorism or transnational organised crime. The export of ammunition and parts must also be assessed against these criteria, but the other provisions of the treaty do not apply to ammunition and parts. These provisions deal, for example, with the sharing of information, the prevention of diversion and the regulation of trading and transit. Parties to the (future) treaty must also fulfil these obligations when exporting to countries which are not party to the treaty. The treaty will open for signature on 3 June 2013 and enter into force 90 days after being ratified by the fiftieth signatory. States which have signed the treaty will be expected to comply with the treaty even if it has not yet entered into force.

An important difference between arms trafficking and most other forms of crime is that it often serves political interests, in particular the geopolitical interests of major powers. States usually have an interest in not having the arms trade subject to regulation and sometimes fail to observe the existing rules, whereas it is usually in their interest to combat other forms of transnational crime. This is why regulation of arms trafficking is so hard to introduce and will be difficult to enforce. The effectiveness of the UN Arms Trade Treaty will partly be decided by whether it is ratified by the main exporters of conventional weapons, parts and ammunition.

70 M. Bromley, *The Review of the EU Common Position on Arms Exports: prospects for strengthened controls, Non-proliferation papers*, no. 7, January 2012.

71 United Nations General Assembly A/67/L.58.

II.5 Democratic Republic of the Congo and illicit profits from the extraction of natural resources

The situation in the Democratic Republic of the Congo (DRC) well illustrates the nexus between crime, corruption and instability. The administration of the country is weak and a large part of the population lives in poverty. A small and partly corrupt elite benefits from the country's natural resources.

After the end of the Cold War support from Western countries for the then president – Joseph Mobutu – started to wane and domestic opposition to his regime mounted. Rebel leader Laurent Kabila seized power in 1997, supported by an intervention by Rwandan and Ugandan troops. Only a short while later Tutsis from eastern Congo, supported by Rwanda, turned against Kabila. In the years that followed the majority of neighbouring countries were militarily active in the DRC, with Angola, Zimbabwe and Namibia supporting the government and other countries giving military support to the rebels. The eastern part of the DRC especially has therefore suffered decades of armed conflict, foreign intervention, poverty, large-scale and very grave human rights violations and corruption. The fighting in the DRC has already cost millions of lives. Poor discipline among government troops (including mutiny) and the presence of armed groups in eastern DRC, some of whom are supported by neighbouring countries, greatly exacerbate the instability. The situation in the DRC is therefore extremely complex. The rest of this section, however, will focus solely on the connection between the extraction of natural resources and instability in eastern DRC.

The DRC has an enormous wealth of natural resources such as tin, tantalum (from coltan), wolframite and gold. For more than a decade the (illicit) trafficking of minerals has fuelled armed conflicts in the DRC as armed groups (not only warlords but also units of the regular army operating illegally) have managed to appropriate part of the proceeds from the operation of the mines. From these proceeds warlords can fund their military efforts. They misappropriate part of the proceeds, for example by levying 'tax' on ore extracted by miners, on ore shipments or on mineral traders, as well as by attacks on the population of areas not under their control or on mines in such areas. As long as warlords can obtain large revenues from the trade in natural resources the conflict will continue. If effective measures can be taken to drastically reduce these revenues, it may become more difficult for the warlords to sustain their military efforts. However, if warlords subsequently develop other sources of income, regulation of the trade in natural resources will not reduce instability in the region. Stability is a necessary – but in itself insufficient – precondition for socioeconomic development and for effectively combating abuses, such as the human rights violations and bad working conditions in the mines.

By way of example, the situation of the tin trade is described below as the Dutch government has launched an initiative regarding the provenance of this metal.[72] Making it difficult for warlords to benefit from the exploitation of tin is only one possible policy measure, which will not in itself change the situation in the DRC. Such a policy could, however, form part of a very wide range of interventions designed to improve the complex situation in the DRC.

72 Based on R. de Koning, *Conflict minerals in the Democratic Republic of the Congo*, Stockholm International Peace Research Institute policy paper 27, Stockholm, June 2011 and various publications of the International Crisis Group.

Not only warlords obtain illegal profits from the extraction of minerals. Some units of the regular army also levy illicit taxes on miners, on ore shipments and on mine owners. They have also been accused of large-scale violations of human rights such as rape and forced labour. The levying of illicit tax does not contribute to political instability, but is a form of corruption. As the army is an essential instrument for the government, army commanders are in a strong position in relation to the civil authorities and can abuse this position for their own enrichment and to protect themselves from legal measures. As some government officials are involved, part of the government bureaucracy is also corrupt.[73]

The supply chain
Mining in eastern DRC takes place in a large mines consisting of small pits where miners dig for ore manually. Artisanal mining of this kind takes place without the use of large machinery. The miners sell the ore by bag to mineral traders, who usually have legal status under Congolese law. The ore is then delivered through a system of intermediary traders to a small number of smelters which produce tin. These smelters are located abroad. Thereafter the tin is sold to companies for the production of goods such as electronics. At the end of the chain is the consumer.

The wholesalers are the last link in the chain on Congolese territory and therefore form the gateway to the international market. The great majority of ore exports are channelled through these wholesalers. They generally have close ties with politicians. Although the wholesalers commonly maintain that they have no knowledge of the origin of the minerals they purchase, *Global Witness* considers this to be highly unlikely. These companies are in the hands of Congolese business people with years of experience in the mining industry. Often the wholesalers specifically inquire about the precise origin of the minerals in order to be able to judge their quality.[74] However, they have no interest in greater transparency.

Measures for reducing the profits of warlords
Over time various attempts have been made to prevent warlords from profiting from the extraction and export of minerals in eastern DRC. Different initiatives have been launched for this purpose and have gained considerable impetus as a result of the entry into force of the US Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). This Act has a number of provisions intended to increase the transparency of corporate activities. Under section 1502 of the Dodd-Frank Act[75] all companies that are listed on US stock exchanges are obliged to disclose whether they use conflict minerals (in particular, coltan, tin, wolframite or gold) from the DRC or neighbouring countries. If that is the case these companies have to file a report listing the products in which these minerals have been used and whether or not the proceeds from these minerals have contributed to the conflict in the DRC. Products may bear the 'DRC conflict free' label if they do not contain any minerals coming from the DRC in cases where the proceeds of their extraction have benefited armed groups in the DRC or neighbouring countries. This section applies only to the DRC and its neighbouring countries and to specific minerals and does not amount to a prohibition. It leaves it to the consumer to decide whether or not to purchase products containing metals in cases where the proceeds of their extraction may have contributed to continuation of an armed conflict.

73 Global Witness, *Faced with a gun, what can you do?*, July 2009.

74 See: <http://www.globalwitness.org/sites/default/files/pdfs/report_en_final_0.pdf>, pp. 56-58.

75 See: <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>, pp. 838-843.

Section 1504 of the Dodd-Frank Act[76] obliges oil, natural gas and mining companies which are listed on US stock exchanges to disclose all payments which they make to foreign state actors. Companies must indicate per country and per project how much they have paid foreign governments. This will reveal what revenues governments receive from the exploitation of these natural resources in their country and make it more difficult for such revenues to be embezzled. There is no obligation to disclose payments to warlords or armed groups.

Since the Dodd-Frank Act came into force in July 2010, producers of end products have had to be certain of the provenance of mineral resources in order to protect their reputation. In the case of minerals from the DRC it is necessary to establish that warlords have not benefited from their extraction. The Act required the US Securities and Exchange Commission to draw up rules. These rules were adopted in August 2012.

In December 2010 various organisations published recommendations for due diligence guidelines. Due diligence is a standard of care to be observed by companies, in this case in relation to the purchase of minerals, particularly in order to reveal whether their extraction has contributed in any way to continuation of a conflict or (related) human rights violations. This presupposes that it is possible to determine from what mine the minerals originate and that the company has sufficient certainty as to whether the belligerents did or did not benefit from the extraction of the minerals. The Organisation for Economic Cooperation and Development (OECD) published guidelines for due diligence which were developed in cooperation with non-governmental organisations and businesses. In the same month the UN Group of Experts on the DRC also published recommendations on guidelines for due diligence for importers, processing industries and consumers of mineral products from eastern DRC, after it had previously made general recommendations along similar lines. The UN Security Council adopted these recommendations and called on states to put them into practice.[77]

One of the initiatives to increase transparency in the supply chain and reduce the revenues received by warlords from mining in eastern DRC was launched by the UN peace mission in the DRC.[78] In an attempt to prevent warlords from profiting from the trade in natural resources it has established trading centres (*centres de négoce*) for ore trading. The idea is that the trade in minerals should take place mainly in the centres to allow better oversight. In addition, local police officers are being trained to guard the mines and transport routes and civilians are carrying out inspections in the mines. This is being done in order to try to prevent the illegal levying of tax in the mines and on the transport routes. Moreover, every bag containing minerals which leaves the mine is labelled so that it is possible to check the provenance of mineral resources from the records.

In the trading centres the government levies tax on all bags of ore that have been collected by official observers. Staff also check the permits of miners and wholesalers, determine the value of the ore by testing it and fix its price. The bags are then relabelled

76 See: <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>, pp. 845-848.

77 S/RES/1952(2010).

78 R. de Koning, *Conflict minerals in the Democratic Republic of the Congo*, Stockholm International Peace Research Institute policy paper 27, Stockholm, June 2011, p. 35.

and sold to wholesalers, who arrange for their export.[79] This system traced the origin from the mine up to and including the exporter, but did not exclude the possibility that exporters were selling ore that did not come from the trading centres set up by the UN. Exporters could mix ore from different mines and sell it on the international market. It was also still possible for warlords to levy taxes on ore shipments.[80]

In 2009 the International Tin Research Institute, an organisation that represents the tin smelters, started a project to improve the traceability of cassiterite (tin ore). Initially this was done by standardising the documents that tracked the ore from when it left the mine to when it reached the exporters. However, even this system could not guarantee to the smelters that certified ore had not been mixed with non-certified ore. This exposed the smelters to international criticism because they were (indirectly) funding armed groups. Two large smelters then decided to cease importing tin from eastern DRC. This had serious unintended consequences since it caused high unemployment among miners. In 2010 the procedure was modified to ensure that bags of ore were labelled from when they left the mine to when they reached the exporters.

A mining ban imposed by the government of the DRC applied in the eastern part of the country from September 2010 to March 2011. Official mining therefore ground to a virtual halt. In early 2011, however, regulations to implement the provisions of the Dodd-Frank Act had still not been introduced. It was thus still unclear whether imported tin would meet the requirements of the Act. Accordingly it was also unclear whether existing due diligence schemes would satisfy the requirements of the Securities and Exchange Commission. In anticipation of the introduction of further regulations, the companies united in the Electronics Industry Citizenship Coalition decided on 1 April 2011 to stop purchasing minerals originating from eastern Congo.[81] They feared reputational damage if they were accused of indirectly financing the violence in eastern DRC. As a consequence of the continuing uncertainty about the sourcing of tin ore, mining in eastern DRC and the export of minerals did not resume when the ban was lifted by the government in March 2011. In November 2011 the government of the DRC issued regulations in keeping with the recommendations of the UN working group and the OECD. On this basis the licences of two Chinese export companies were suspended and they were temporarily barred from exporting cassiterite (tin ore).

In reaction to the Dodd-Frank Act more mineral purchasers have joined the Electronics Industry Citizenship Coalition (EICC) and its partner organisation the Global e-Sustainability Initiative (GeSI). Together they have developed the Conflict-Free Smelter (CFS) Assessment Programme. This scheme covers the previously unsupervised part of the electronics supply chain, namely between the exporters (wholesalers) and the smelters. An independent third party evaluates the sourcing practices of the smelter and determines whether the minerals deserve to be classified as ‘DRC conflict free’. The EICC and GeSI

79 See: <http://www.crisisgroup.org/en/regions/africa/central-africa/dr-congo/derriere-le-probleme-des-minerais-des-conflits.aspx>.

80 See: <http://www.globalwitness.org/sites/default/files/library/Congo’s%20minerals%20trade%20in%20the%20balance%20low%20res.pdf>, p. 12.

81 See: <https://icglr.org/spip.php?article1>.

also provide models to assist companies with their due diligence procedures.[82]

As each of the initiatives described above has related to part of the supply chain from the mine up to and including the end product and has had various shortcomings, it has not been possible to provide companies with sufficient assurance about the provenance of tin. The Dutch government has taken the initiative of bringing all parties together in the Pilot Conflict Free Tin Initiative (CFTI). This pilot project aims to integrate due diligence measures into the entire supply chain and to create a sourcing certification system that provides companies with sufficient assurance about the provenance of ore and natural resources. The main aim of the CFTI pilot project is to reduce instability in eastern DRC by removing some of the revenue sources of the armed groups. The Netherlands has played an important role in bringing together the interested parties (manufacturing industry, the DRC authorities and NGOs) and has made funding available. CFTI was inspired by the Solutions for Hope Project, launched as a pilot initiative by Motorola. This is a similar pilot project for conflict free coltan from Katanga, in the southern part of the DRC.

CFTI differs from the initiative of the International Tin Research Institute in that it uses a more advanced identification system developed by the German Geological Service (BGR). This service identifies the unique composition of the ore in each mine and records this in a database. The source of ore can thus be identified not only by the labelling system but also by checking the geological composition of random samples. This virtually excludes the possibility of fraud. Moreover, PACT, an American NGO, is working to strengthen local capacity for overseeing the certification process. This NGO involves Congolese civil society organisations, industry and government authorities in the initiative to promote local capacity.[83] If the system can provide buyers with sufficient certainty about the source of tin, it will allow tin production to be restarted, miners to earn an income again and the revenues received by armed groups from tin mining operations to be greatly reduced. However, the system is not intended to address (directly) the issue of human rights violations, including the bad working conditions in the mines.

Conclusion
As a result of the introduction of the Dodd-Frank Act, manufacturers that use tin in their products need to be certain about sourcing before they purchase. The tin must therefore have been extracted without armed groups having benefited financially. Manufacturers of end products fear reputational damage if they are unable to give consumers a guarantee of the conflict-free status of the materials. Pressure has therefore been created at the end of the supply chain.

The aim of this measure is not to drive armed groups from certain areas, but rather to ensure that tin from mines from which warlords derive profit is unsaleable and that a major source of their revenue therefore dries up. This may weaken them militarily. However, this approach also causes unemployment among miners. They no longer have an income and are plunged into deep poverty. As a due diligence scheme can result in unemployment and poverty among the local population it should be accompanied by an anti-poverty policy.

82 See: <http://www.conflictfreesmelter.org/documents/Conflict-FreeSmelterFAQ.pdf>, p. 4.

83 See: <http://www.pactworld.org/cs/who_we_are/what_we_do>.

The effectiveness of this approach does not depend on the quality of governance in the DRC. The end of the supply chain (producers of end products and consumers) is the driving force behind the measure, and local factors therefore have less influence over its design and the due diligence criteria. Admittedly, this can also be regarded as a disadvantage because it undermines the principle of local ownership. The most important role of the DRC government in the measures described above is certification of the mines. It is unlikely that the government would certify mines in which armed groups have an economic interest, but it is equally possible that, under pressure from army commanders, it might certify mines in which units of the regular army have a financial stake. The measures cannot effectively combat this form of extortion and corruption, nor can they tackle the human rights violations that accompany the illicit activities of army units.

Such schemes cost money. First, funding must be available to bring the parties concerned together and enable them to reach agreements. Second, money must be available for the design and operation of the schemes. These costs will ultimately be reflected in the price of the natural resources. This may mean that the price is no longer competitive, an objection to such schemes that is quite often raised by the business world. To institute an integrated due diligence system, the Dutch government has made funding available in the context of the CFTI pilot project.

One of the methods by which armed groups benefit from the extraction of ore is by levying tax on shipments. Although it may be possible to establish that ore comes from a conflict-free source, this does not reveal whether warlords have extorted the carriers. A specific oversight mechanism is necessary for this purpose.

Comparison with the trade in diamonds is illustrative of the limitations of certification schemes. The Stockholm International Peace Research Institute notes that a scheme of this kind is effective if the natural resources concerned have a substantial value only when traded in large quantities. The trade in diamonds and gold is much more difficult to certify by this system. Gold and diamonds have a high value by volume and can be easily smuggled in small amounts by an individual to a different country where they can be mixed with ‘clean’ gold or ‘clean’ diamonds. Moreover, the processing of gold and diamonds takes place on a small scale whereas all tin ore (worldwide) must be processed in a relatively small number of industrial smelters. These form a bottleneck in the supply chain and mean that an effective inspection system can be easily organised.[84] The willingness of smelters to join a certification scheme is essential to the effectiveness of the system. As long as there are smelters willing to sell non-certified ore, armed groups will continue to be able to levy illicit taxes.

Another long-established source of revenue for armed groups has been the trade in rough diamonds. Some parties in the civil war in Sierra Leone obtained substantial income from this. 2003 saw the introduction of the Kimberley Process Certification Scheme for diamonds, which was set up jointly by governments, industry and NGOs. Virtually all countries in which rough diamonds are produced have signed up to this certification scheme. The countries and companies that participate in the scheme have undertaken only to trade in diamonds which have been certified as ‘conflict free’. The certificates are issued by national governments. The quality of the local administration plays a role in this scheme. There are also forged certificates in circulation. Global Witness, which was

84 R. de Koning, *Conflict minerals in the Democratic Republic of the Congo*, Stockholm International Peace Research Institute policy paper 27, Stockholm, June 2011, pp. 6 and 12.

one of the founders of the Kimberley Process Certification Scheme, decided in December 2011 that it would no longer participate. It argued that the governments involved did not sufficiently call each other to account and that the scheme was therefore ineffective. Global Witness also argued that there was no independent check on the diamond industry's supply chain and that it was therefore impossible to say with any certainty that the sale of certain diamonds had not contributed to the funding of armed groups or governments that violate human rights. Global Witness concluded that 'voluntary schemes are not going to cut it in a multi-polar world where companies and countries compete for mineral resources'.[85]

Various other mineral resources from which armed groups can profit, besides tin and diamonds, are exploited in eastern DRC. A certification scheme for tin is therefore not sufficient to cut off funding to the warlords. Comparable measures must also be taken for other mineral resources. One such scheme already exists for coltan.[86]

The Dodd-Frank Act only applies to companies listed on US stock exchanges. As a great many companies sell some of their products on the American market through US companies, the Act may also affect companies not listed on US stock exchanges. For example, a number of Chinese smelters only wish to purchase certified ore.[87]

The UN has found that part of the ore mined in the DRC is smuggled to Rwanda from where it is exported.[88] The fact that the operation of section 1502 of the Dodd-Frank Act is not limited to the DRC, but also extends to its neighbouring countries is therefore important. Rwanda too has a certification scheme, but there are indications that it is still possible to mix and export Congolese and Rwandan ore.[89] The government of Rwanda is accused of supporting rebel movements in the DRC. In resolution 2076 (2012) the UN Security Council demanded the immediate withdrawal of the armed group known as the 23 March Movement (M23) and condemned external support provided to M23. Although the resolution did not mention Rwanda by name, the press release on this resolution did make explicit reference to it.[90] Certification could cut off the revenues received by armed groups from the exploitation of natural resources but not the support provided by foreign governments. Certification alone is therefore not sufficient to stop all revenue to armed groups.

Illicit income earned by units of the regular army has been disregarded above. Commanders of regular units of the DRC's armed forces can illicitly levy taxes and thus acquire great wealth. A scheme of the kind described above does not provide a sufficient answer to such situations. The national government determines whether or not a given

85 Global Witness press release of 5 December 2011; <http://www.globalwitness.org/library/why-we-are-leaving-kimberley-process-message-global-witness-founding-director-charmian-gooch>.

86 See: <http://solutions-network.org/site-solutionsforhope/>, (retrieved on 25 January 2013).

87 UN Security Council, S/2012/843, para. 208, p. 48.

88 Ibid., para. 176, p. 43.

89 Ibid., para. 169, p. 42.

90 See: <http://www.un.org/News/Press/docs/2012/sc10823.doc.htm>.

mine is ‘clean’; if it is, armed groups can no longer benefit from the extraction of tin in that particular mine. However, the government may certify a mine for domestic political reasons even though units of the regular army are illicitly levying tax and violating human rights in that mine. Independent oversight of certification, for example by civil society organisations, is of great importance. An alternative would be certification by an independent party.

In summary, certification can help to increase stability, but such schemes also have vulnerabilities and disadvantages. It is still too early to judge the effectiveness of the tin and ore trading certification schemes. The integrity of the certification scheme is probably the most vulnerable link in a country in which corruption is endemic. Government authorities can support the development of such certification schemes by calling together interested parties (including civil society organisations) and offering funding to launch initiatives. Certification of natural resources trading is not a solution for all the problems in the DRC, but it can be an element of a broader policy designed to promote stability, combat corruption and enhance socioeconomic development.

II.6 More policy considerations

The descriptions of the supply chains show that different business models are used for each form of transnational crime. Chinese human traffickers and Colombian cocaine producers have a vertically integrated supply chain. In other words, they control their product right up to the point of delivery to the consumer. Human traffickers from the former Soviet Union and Afghan opium producers do not. They supply people and drugs to traders in neighbouring countries, who in turn sell them to others. Here the supply chain is not vertically integrated, but consists instead of a system of intermediate distributors. The degree of vertical integration has important consequences for the distribution of the proceeds and the related money flows. Depending on the type of crime and how it is carried out, crime may or may not lead to the accumulation of capital.

A vertically integrated model must ultimately generate a substantial flow of money close to the source country. Often this involves such large amounts that they might be expected to become visible in international fund transfers. Regulation of financial transactions can therefore help to trace transnational crime carried out in a vertically integrated model. However, if money is transferred from one country to another not through the formal international financial system but through informal banks or in cash, regulation of financial service providers will not be effective.

Regulation of financial transactions may also be effective in investigating and combating transnational crime which is not vertically integrated, provided that it is a highly profitable form of crime. In the case of highly profitable illicit markets which are not vertically integrated, the profit is made in the country of destination and also remains there. This profit need not end up in international fund transfers, but may be consumed nationally or laundered in the national financial system. In the latter case it should become visible.

If the system involves many intermediate distributors and each distributor or link in the chain only makes sufficient profit to meet his or her own needs, or to live in style, this does not generate large (international) money flows. There is no surplus to be invested and laundered. These forms of crime, which do not result in the accumulation of capital in the hands of a few persons, leave little trace in the official bank transaction records.

It is evident from the descriptions of human trafficking in Sinai, heroin trafficking, cocaine trafficking and the extraction of tin in the DRC that there is a close connection between these forms of crime and instability in the areas concerned. First, the instability makes the illegal activities possible. The large-scale cultivation of the opium poppy and coca plant would be inconceivable in a country where the central government is able to exercise real authority. And, second, the illicit activities fuel instability. Part of the proceeds of illegal activities are used by armed groups to sustain instability. Sustaining instability enables armed groups to maintain their power and income. Illegal activities and instability fuel each other.

III Four approaches to tackling the nexus between crime, corruption and instability

This chapter identifies and analyses possible approaches to tackling transnational crime and the tools that can be employed for this purpose in each approach. The focus is on fighting crime, but this is always viewed in the broader context of the connection with corruption and instability. Four approaches will be discussed, namely the preventive, criminal justice, administrative and financial approaches. The four are not mutually exclusive and can be used in combination with one another. As the advantages and disadvantages of the various approaches and tools vary, it is necessary to consider what approach would be most suitable in each case. Simultaneous use of different approaches can generate synergy. This also answers the government's question as to what preventive and flanking measures would most effectively complement the criminal justice approach.

The preventive approach involves possible ways of anticipating crime before it has been committed. The criminal justice approach revolves around the punishment of offenders. Sometimes special support from the armed forces can be called upon. The administrative approach is aimed at the entire population. The financial approach, like the criminal justice approach, concentrates on offenders. However, the aim of this approach is not to punish offenders but to put obstacles in their way or deprive them of financial gain. Preventing and combating money laundering is the most important element of this approach. The criminal justice, administrative and financial approaches are largely based on legislation.

Finally, this chapter explains why promoting the rule of law in unstable countries is so difficult.

III.1 Preventive approach

The preventive approach consists of all activities that can be undertaken before a crime is committed. It can be divided into three categories of measures, namely enabling measures (to create an unfavourable environment for crime), risk identification measures (to provide sound information) and intervention measures (to allow intervention immediately before or during the commission of a crime). Basically, the preventive approach is not an independent approach, but instead supports the criminal justice approach and the administrative approach in particular.

III.1.1 Enabling measures

The measures in this category can be subdivided into two types: measures to promote the rule of law and measures to implement socioeconomic policy.

Promoting the rule of law

It was explained in chapter I that transnational crime flourishes in environments where governance is weak. By contrast, strong institutions create an environment that is unfavourable for transnational crime. Van Dijk states that the quality of institutions responsible for enforcing the rule of law is the critical factor determining the scope of organised crime, whereas this probably plays a much less significant role in explaining levels of 'conventional' crime. He therefore considers that the importance of effective

police forces and an independent, professional judiciary is still underestimated.[91] Conversely, the presence of transnational crime usually affects the quality of governance, in particular by corrupting the police and justice authorities. Organised crime tends to undermine the integrity of politicians and officials, put policy and governance in the service of criminal interests and undermine economic growth.[92]

There are various definitions of (good) governance. An authoritative definition is that given by the World Bank. In a paper published by the World Bank, Kaufmann et al. define governance as 'the traditions and institutions by which authority in a country is exercised'.[93] This comprises the following dimensions:

a) the process by which governments are selected, monitored and replaced;
b) the capacity of the government to effectively formulate and implement sound policies; and;
c) the respect of citizens and the state for the institutions that govern economic and social interactions among them.

For each of these three dimensions they have constructed two measures of (good) governance, which together form an indicator:

Re a)

- *Voice and accountability*: capturing perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media;
- *Political stability and absence of violence/terrorism*: capturing perceptions of the likelihood that the government will be destabilised or overthrown by unconstitutional or violent means, including politically-motivated violence and terrorism;

Re b)

- *Government effectiveness*: capturing perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies;
- *Regulatory quality*: capturing perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development;

Re c)

- *Rule of law*: capturing perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police and the courts, as well as the likelihood of crime and violence;
- *Control of corruption*: capturing perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as 'capture' of the state by elites and private interests.

91 J. van Dijk, Mafia markers: *Assessing Organized Crime and its Impact Upon Societies*, in Trends in Organized Crime, 10 (2007), pp. 46-47.

92 Ibid., p. 54.

93 D. Kaufmann, A. Kraay, M. Mastruzzi, *The Worldwide Governance Indicators, Methodology and Analytical Issues*, Policy Research Working Paper 5430, World Bank, September 2010. See also, for example, the annual report of Freedom House: *Countries at the Crossroads,* <http://www.freedomhouse.org/report/countries-crossroads/countries-crossroads-2012>.

It is apparent from these dimensions of good governance that what the authors are in fact describing is a functioning democratic state governed by the rule of law. This operationalisation of the concept of good governance is based on research into factors that influence the effectiveness of development cooperation. Kaufmann, et al point out that these measures are interconnected. They reinforce one another and there is therefore also a positive correlation between them. Although other definitions of good governance are possible and some aspects of the indicators used could be criticised, the World Bank's definition and the indicators give an idea of what is meant by good governance.

One of the dimensions of good governance is control of corruption. Promoting transparency is essential for preventing and combating corruption. If more information about the income and expenditure of government authorities is in the public domain, corruption becomes more difficult. Transparency International assesses the functioning of the National Integrity System, the complex of institutions designed to maximise transparency within a country.[94] These include institutions such as a court of audit, an electoral management body, an ombudsman, an independent judiciary, police, a legislative assembly, media, civil society, political parties and anti-corruption agencies. Such institutions form a system of counterweights that prevents undue concentrations of power and situations in which officials can abuse their office. If these institutions function in a society that has freedom of expression and a free media, they can promote transparency and thus help to prevent and fight corruption.

A specific way of promoting effective institutions is Security Sector Reform (SSR). SSR involves the reform of the army, police, customs and justice system in order to enhance their effectiveness and improve democratic control of these institutions. SSR is of great importance in creating a secure environment. For this purpose SSR focuses on the professionalisation of staff in the security sector, who may also be involved in fighting transnational crime. The Dutch armed forces are also active in this field. One of the provisions of the present government's 'Building Bridges' coalition agreement of October 2012 is that from 2014 onwards an annual sum of EUR 250 million will be available from the development cooperation budget to cover international security-related spending, thereby ensuring that the Dutch armed forces can continue to be deployed for peace and security purposes in the world.

Good governance is also essential for the application of the criminal justice, administrative and financial approaches. The criminal justice approach is, after all, based on the assumption of a properly functioning criminal investigation system and independent and non-corrupt judges. Likewise, the administrative approach is based on the assumption of a properly functioning administrative system, once again untainted by corruption. And the assumption underlying the financial approach is that the authorities and private bodies, in particular financial service providers, have the knowledge and capacity to adopt and apply relevant rules. However, in many countries of the world this is something that cannot be taken for granted.

Strengthening the rule of law and governance structures therefore provides a basis for fighting transnational crime, corruption and instability. The Netherlands has an interest in ensuring good governance in other countries as this benefits international cooperation

94 For an evaluation of the integrity systems of 25 European countries, see Transparency International; *Money, Politics, Power: Corruption Risks in Europe*, June 2012.

in the fight against transnational crime. As part of their development cooperation efforts most Western donors have a policy of promoting the rule of law and good governance in developing countries, partly in order to enhance the effects of development cooperation. The defective functioning of government organisations can be a consequence of weak capacity, but may also result from corruption or involvement in criminal networks. If the political leaders of a country lack the will to improve governance structures and the rule of law, it is doubtful whether good results can be achieved.

Socioeconomic development
An environment that is unconducive to crime can be created not only by strengthening the rule of law but also by promoting socioeconomic development. Chapter I referred to the existence of factors that determine to what extent countries are vulnerable to transnational crime. Other factors exist that make people vulnerable to becoming a victim or perpetrator of certain forms of transnational crime. In countries with widespread poverty, crime may be an attractive option, particularly if there are few legal ways of earning a living. Attempts have been made to persuade farmers in Afghanistan and South America to grow products other than opium poppies and coca respectively. If people can earn a sufficient wage from legal work and if they are better educated and in employment, they will be less likely to turn to crime.[95] Victims of human trafficking are often deceived by the hope of a better existence elsewhere. People who have sufficient means of subsistence will be less inclined to be deceived by human traffickers. If socioeconomic development creates more opportunity for earning a reasonable income, it can help in the longer term to combat certain forms of transnational crime.

It is especially important to put the emphasis on promoting employment in the legal economy. This offers people an alternative not only to illegal activities but also to the use of violence as a survival strategy. It is almost impossible to overstate the importance of employment in increasing stability as only paid work provides an alternative for people who have become dependent on war and instability for their survival.[96] The weakness in disarmament, demobilisation and reintegration programmes (DDR) is therefore that reintegration is impossible if there is no work.[97] In addition, paid work can reduce dependence on (corrupt) patronage networks, which sometimes function as a social safety net. An active government policy, for example in the form of major infrastructure projects and measures to promote local production, may be necessary in order to create employment. Often there is too little scope for this within current development policy, partly because of the emphasis on limiting the role of the public sector in the economy.

III.1.2 Intelligence
As noted previously, globalisation and new technology have created new possibilities for transnational crime. However, the very same technological innovations have also resulted

95 See, for example, UNDP, *Global Programme Annual Report 2011: Strengthening the Rule of Law in Crisis-Affected and Fragile Situations*, Denmark 2011. See: <http://www.undp.org/content/dam/undp/library/crisis%20prevention/UNDP%20Rule%20of%20Law,%20Annual%20Report_web%202011.pdf>, (retrieved on 17 September 2012).

96 G. Junne and W. Verkoren (eds.), *Postconflict Development: Meeting New Challenges*. Lynne Rienner Publishers, Boulder 2005.

97 R. Willems, W. Verkoren, M. Derks, J. Kleingeld, G. Frerks and H. Rouw, *Security Promotion in Fragile States: Can Local Meet National?,* Peace Security and Development Network publication no. 30, 2010.

in new investigation methods. Nowadays, much more information is gathered and stored. This information can later be retrieved and some business sectors are obliged to keep information for the benefit of law enforcement authorities. Information may consist of various kinds of data such as financial data or video images. Data from various files can be linked together to identify risks and investigate and fight crime, including transnational crime. Modern technology makes it possible to sift through and analyse large quantities of information for indications of criminal activities. In practice, however, the authorities do not have sufficient capacity to analyse effectively the data they already possess.[98] A drawback of the technological advances is that it is possible to shield information ever more effectively and that privacy protection is becoming ever harder to achieve.

Information and analysis are increasingly used to manage operational activities. For example, analysis of collected information is being used more and more to decide what incoming flights should be checked more extensively or where and when motorway checks should be carried out.

Many law enforcement authorities already use risk analysis or threat analysis methods. Europol, for example, has developed the Organised Crime Threat Assessment (OCTA),[99] which forms the core of the European Crime Intelligence Model. On the basis of analysed and sensitive intelligence OCTA assesses certain trends in organised crime, for example in the form of a typology of criminal organisations, criminal markets, a geographical analysis of the hubs of organised crime in Europe and trends and developments that may influence serious and organised transnational crime. An initial European policy cycle was initiated between 2011 and 2013 on the basis of the 2011 Organised Crime Threat Assessment.[100] OCTA will also serve as a basis for the adoption at high political level of priorities for enforcement and preventive measures to tackle organised crime.[101]

The operations of Frontex, the European Border Control Agency, are also based on the use of intelligence and risk analysis.[102] This EU agency works with partner organisations such as Europol and Interpol, for example with a view to compiling intelligence-based products. Examples are risk and threat analyses for the benefit of cross-border operations

98 B.P.F. Jacobs and W.G.Teepe, *Over vermogen en onvermogen*, August 2007, see: <http://www.cs.ru.nl/~wouter/papers/2007-jacobs-teepe-over-vermogen.pdf>, (retrieved on 1 March 2012).

99 See Europol, *OCTA 2011: EU Organised Crime Threat Assessment*, 2011, see: <https://www.europol.europa.eu/sites/default/files/publications/octa2011.pdf>, (retrieved on 17 September 2012).

100 Council of the European Union, Council conclusions on the creation and implementation of an EU policy cycle for organised and serious international crime, Brussels, 8 and 9 November 2010; see: <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/117583.pdf>, (retrieved on 12 February 2013).

101 See, for example, the Harmony Project: *A Generic European Crime Intelligence Model: Bringing Together the Existing Instruments and Strengthening Europol's Central Role*, Belgian Presidency of the Council of the European Union, 2010.

102 Frontex, *2012 Annual Risk Analysis,* Warsaw, April 2012, see: <http://frontex.europa.eu/assets/Attachment_Featured/Annual_Risk_Analysis_2012.pdf>, (retrieved on 17 September 2012).

designed to tackle illegal migration, people smuggling and human trafficking.[103]

The use of intelligence to prevent crimes may give rise to legal and ethical issues. For example, errors involving false positives may occur where suspects match a risk profile but do not in fact belong to the risk group. Outdated or contaminated databases may also result in errors in the analyses and hence in the action based on them. Another possibility is that offences may be held to have been committed as a result of entrapment by an undercover police officer. There is already a substantial body of international legislation and case law on this subject.[104]

Good intelligence is necessary in order to identify international threats against states and their societies and businesses. The intelligence comes from national intelligence agencies and international sources, in particular partners in the fight against crime. These are the police, civilian and military intelligence services. The Netherlands Defence Intelligence and Security Service (MIVD) and the General Intelligence and Security Service (AIVD) are responsible, among other things, for supplying information about networks and persons to enable threats posed by organised crime to be dealt with. Mutual trust and intensive cooperation are necessary if crucial information is to be gathered in time. Cooperation between foreign agencies is based on reciprocity. It is therefore important for an agency to have its own capacity to gather intelligence, for one thing because it is then able to assess the legality and reliability of intelligence.[105]

The AIV has therefore recommended that the government reconsider its plan announced in 2012 to make drastic cuts in the AIVD's budget and foreign capacity as this would severely restrict its operational capacity.

III.1.3 Disruption

In various countries such as the Netherlands, the United Kingdom and the United States increasing use is made of disruption as a method of preventing, undermining or frustrating criminal or terrorist activities. Disruption strategies such as tax measures, expropriation, confiscation or asset freezing may be used to tackle the disbursement and circulation of illicitly acquired funds (see also under 'financial approach' below).[106] The disruption of serious and organised crime, terrorism and radicalisation is increasingly based on risk

103 Frontex, *Frontex signs Working Arrangement with Interpol,* see: <http://www.frontex.europa.eu/news/frontex-signs-working-arrangement-with-interpol-0YZiMM>, (retrieved on 17 September 2012).

104 See for example P. de Hert, *Europese Rechtspraak inzake dwangmiddelen, politietap, gevangenissen, politiegeweld, terrorisme, voorlopige hechtenis, anonieme getuigen, etc.* (European case law on coercive measures, police wiretaps, prisons, police violence, terrorism, remand in custody, anonymous witnesses, etc.) in Vigiles, Tijdschrift voor politierecht, vol. 2, no. 4 (1996), pp. 26-37.

105 See: Bibi van Ginkel, *Towards the intelligent use of intelligence: Quis custodiet ipsos custodes?*, ICCT Research paper, August 2012, see: <http://www.icct.nl/download/file/ICCT-van-Ginkel-Intelligent-Use-of-Intelligence-August-2012.pdf>, (retrieved on 26 March 2013).

106 See: A. Leong, *The Disruption of International Organised Crime. An Analysis of Legal and Non-Legal Strategies*, Ashgate, Aldershot, 2007.

assessments, threat analysis and intelligence work.[107] Individuals suspected of engaging in criminal activities are hindered from participating in a criminal network or a criminal market. People with a lavish lifestyle clearly not funded from legitimate income may be kept under close surveillance by the police and criminal justice authorities. An example would be where a person suspected of a criminal offence is stopped during a roadside or breathalyser check and required by the traffic police to submit to a full-scale search. Another example would be withdrawing travel documents and insurance cover from people suspected of terrorist activities and freezing their assets. Disruption may also mean that a suspect is subjected to surveillance or regular visits by the police. This method may be used where the police wish to disrupt patterns of burglary.[108] Disruption may entail an infringement of the right to privacy and should therefore be used only if it is considered proportionate in view of the criminal or terrorist activities the person concerned is suspected of preparing. Disruption may also have unintended consequences: for example, criminals may change the route of their planned activities or a criminal who has been temporarily removed from circulation may be replaced by another.

III.2 Criminal justice approach

The criminal justice approach aims to investigate and prosecute people who commit transnational crime. If an activity is criminal, the criminal justice approach is essential. Sometimes, however, the authorities and the legislator may consider that the results and side-effects of the criminal justice approach are such that its expense is not warranted. In these cases it may be decided that the activities in question should be tolerated or even legalised. For example, the ban on brothels was removed from the Criminal Code in 2000, and legalisation of the use and possession of soft drugs is also currently being advocated. Application of the criminal justice approach then ceases to be necessary or even possible. Administrative and financial measures can be used in an attempt to curb socially undesirable behaviour. Activities that are not criminal or no longer criminal fall outside the remit of this advisory report. It does not therefore deal with the issue of whether it was or would be right to legalise prostitution and soft drugs.

International cooperation is necessary because transnational crime takes place by definition in different jurisdictions. However, as the Scientific Council for Government Policy has noted, the nature of a criminal law system and its conceptual framework and structure are nationally oriented. Owing to the differences that have evolved historically, there is a certain resistance in the Netherlands and other countries to the internationalisation of law enforcement. However, a law enforcement deficit may occur where states are together unable to find adequate solutions to transnational crime.[109]

107 See: M. Innes & J.W.E. Sheptycki, *From Detection to Disruption: Intelligence and the Changing Logic of Police Crime Control in the United Kingdom*, International Criminal Justice Review, vol. 14, 2004.

108 M. van den Hengst (ed.), *De Community of Intelligence over Woninginbraken* (The Community of Intelligence on Burglaries), Apeldoorn, Police College, December 2012.

109 A. van den Brink, *Internationalisering en europeanisering van strafrechtelijke rechtshandhaving in Nederland* (Internationalisation and Europeanisation of Criminal Law Enforcement in the Netherlands), Scientific Council for Government Policy. The Hague, May 2010, see: <http://www.wrr.nl/fileadmin/nl/publicaties/PDF-webpublicaties/Internationalisering_en_Europeanisering.pdf>, (retrieved on 1 March 2013).

Differences between the substantive and procedural law of EU member states can hinder cooperation. For example, the Netherlands differs from other countries in that it has institutionalised the toleration of certain offences and does not have minimum sentences. Dutch policy on drugs, abortion and euthanasia are well-known examples. Moreover, the criminal law is regarded in the Netherlands, in any event in theory, as a last resort which should be employed only if other approaches prove ineffective. As regards prosecution, it should be noted that the enforcement authorities have a relatively large degree of statutory discretion. Under the discretionary principle the public prosecutor may decide to refrain from prosecuting a case.

The Scientific Council for Government Policy concludes that criminal law systems are slowly but surely becoming 'deterritorialised', in other words separated from their purely national context. International agreements concluded to date are based on voluntary participation and are often bilateral; in many cases the participating countries have reserved an independent right to evaluate their implementation. Moreover, the EU has not introduced a federal criminal enforcement system which reduces the influence of the national systems. As the EU member states have instead opted for a system based on the principle of mutual recognition, the national criminal enforcement systems remain extremely important. The Scientific Council for Government Policy notes that this is not necessarily a good thing since it may also mean that certain problems are incapable of being resolved. This may be an obstacle for a relatively small country with open borders such as the Netherlands. National discretion may make it more difficult to combat transnational crime. With the entry into force of the Treaty of Lisbon much procedural cooperation has acquired a mandatory nature, as recorded in the framework decisions on the European arrest warrant and the European evidence warrant.

Forms of bilateral and international cooperation
Forms of international criminal law cooperation may be viewed as part of a continuum of cooperation between national law enforcement and prosecuting authorities at one end, to enforcement and prosecution at international level at the other. At the international end of the continuum, national sovereignty is to some extent shared with other states.

The Netherlands has concluded conventions as a member of the Council of Europe and bilateral treaties with various countries on subjects such as the extradition of suspects, mutual assistance, transfer of proceedings in criminal matters and transfer of enforcement of criminal judgments. Examples of mutual assistance include requests to obtain evidence, to interview witnesses and to obtain information in some other way which may be of importance in investigating and prosecuting suspects. National sovereignty remains intact as each state acts on the basis of its own legal system and does not adapt its legal system to that of other states.

However, bilateral criminal law cooperation does not always produce the desired result. First of all, mutual assistance requires a legal basis, in either national law or treaties or both, at any rate in a state that applies the rule of law. Such a basis may be provided not only by bilateral treaties but also by multilateral conventions, for example those of regional organisations such as the Council of Europe, and of the United Nations, for example the United Nations Convention against Transnational Organised Crime (UNTOC) and the United Nations Convention against Corruption (UNCAC), but not in all cases. Second, under the law of many countries the offence must be punishable in both the requesting and the requested state. This is no longer a strict requirement in the EU. Third, the requested state must have sufficient capacity to comply with the request for mutual assistance and give it priority. A case which has priority in the requesting state

need not have priority in the requested state. Fourth, the request may be politically sensitive in the requested state or may relate to people in that state who are in a position to use corrupt means to prevent the request from being complied with. Finally, the request may be refused because the quality of the rule of law and respect for human rights in the requesting state is considered insufficient. In view of these constraints, it is therefore not certain whether this form of cooperation will produce the desired results for the requesting state. It should be noted in this connection that persons consulted by the Committee have stated that the Netherlands is generally too slow in responding to mutual assistance requests. As a result, other countries tend to give a low priority to Dutch requests for assistance. The AIV recommends that more police and judicial capacity be made available to respond to requests for international mutual assistance. It would be unreasonable for the Dutch authorities to expect their requests for assistance to be dealt with quickly and adequately if the Netherlands itself is slow to answer requests from other countries.

Conventions intended to combat transnational crime may be concluded within multilateral organisations. Usually these conventions leave such a wide margin of discretion to the parties that national sovereignty is not affected. Almost all multilateral organisations are active in combating transnational crime, corruption and instability in many fields. The EU has directives covering virtually all forms of crime as well as organisations for police cooperation (Europol), judicial cooperation (Eurojust), crime prevention (European Crime Prevention Network / EUCPN), fraud prevention (European Anti-Fraud Office / OLAF) and external border security (Frontex). The European Parliament has a Special Committee on Organised Crime, Corruption and Money Laundering.[110] The Council of Europe has programmes, conventions and institutions to tackle money laundering (e.g. Moneyval), corruption (Group of States against Corruption / GRECO), cybercrime and counterfeiting, as well as a number of conventions for international criminal law cooperation. The OECD is concerned, among other things, with good governance and fighting corruption. The UN has various specialised agencies that deal with aspects of transnational crime. Examples are UNODC, the International Labour Organisation and the World Intellectual Property Organisation, each of which administers one or more conventions and their accompanying protocols such as UNCAC, UNTOC and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

Mutual recognition and harmonisation

The free movement of persons, goods, capital and services within the EU has increased the pressure for international cooperation. Within the Schengen Area, which covers part of the EU, internal border controls have been abolished, but the national borders within the EU are still the dividing lines between different criminal law systems. Investigation and prosecution are still largely organised at national level; the police and judicial authorities have national powers and jurisdictions. The Convention implementing the Schengen Agreement made provision for a number of measures such as police and judicial cooperation between the Schengen countries, the establishment of a joint database (the Schengen Information System), improvement of the technical facilities for communication between the police forces of different countries, permission for cross-border pursuit and so forth. Since the Schengen Agreement was absorbed into the EU Treaty in 1997 the strengthening of police and judicial cooperation in criminal matters has been moved from the Schengen framework to the EU framework. Under the Prüm Convention (2005), more far-reaching agreements were made about cooperation, for example about the exchange of biometric data between countries.

110 For the Commission's working document see: <http://www.europarl.europa.eu/committees/en/crim/working-documents.html#menuzone>.

Without cooperation between the Schengen countries and the EU countries the abolition of border controls could easily result in law enforcement deficiencies. Cooperation between EU member states no longer takes place through diplomatic channels; instead direct communication between the liaison officers of police services and prosecution authorities is now possible. Member states have fewer possibilities for refusing requests than under bilateral treaties, although the requests of other member states are assessed by reference to national rules.

Far-reaching cooperation of this kind between countries requires a degree of harmonisation of legislation or mutual recognition of legal norms and decisions or both. Harmonisation of national criminal law and criminal procedure means that the law of the different countries becomes increasingly similar. Harmonisation can be achieved by means of a convention, but can also take place through simultaneous national legislative procedures. Examples of harmonisation by means of conventions are UNTOC and UNCAC. States may also go a step further by making agreements about sentencing. Harmonisation of legislation can be conducive to international cooperation, but far-reaching harmonisation is exceptional if only because of the cultural differences between countries.

Harmonisation of procedural law may also have its limits. For example, two different legal systems coexist within the EU: the common law system (the United Kingdom and Ireland) and the civil law system. Far-reaching harmonisation could affect the character of these systems and hence the balance between the interests of the prosecutor and the safeguards for suspects, as recorded in procedural law. However, if the formalised rules in the written law of the civil law system were to be combined with the open rules of the common law system, this could also create an imbalance that hampers the prosecution and trial of offences.

In the negotiations on the Treaty of Lisbon, the United Kingdom obtained the right to opt out of police and judicial cooperation within the EU. The British parliament must vote on this option by June 2014 at the latest.[111] If the British parliament votes to exercise the block opt-out, the United Kingdom may still participate in parts of European anti-crime cooperation, but would have to negotiate this with the EU. Considerable differences between the cultures and traditions of the different EU member states in the field of criminal procedure also exist in respect of other elements.

Instead of harmonisation, efforts are now focusing on arranging for mutual recognition of judicial and police warrants. Mutual recognition of judicial decisions means that the member states recognise the legal force of each other's arrest warrants, confiscation decisions, judgments and so forth. This is the guiding principle in the European Union and therefore goes beyond specific criminal cases; states make general agreements among themselves to assist each other in criminal cases. Mutual recognition requires that the member states have sufficient trust in each other's legal system, including respect for human rights and privacy protection.[112] This form of cooperation is of a more binding nature than mutual assistance treaties and mutual assistance requests, although states still retain the right to refuse to cooperate.

111 H. Brady, Centre for European Reform, *Cameron's European 'own goal': Leaving EU police and justice cooperation,* London, October 2012.

112 T. Obokata, *Key EU principles to combat transnational organized crime*, Common Market Law Review, vol. 48, no. 3 (2011), pp. 801-828.

The European Union now has the European arrest warrant, which on the basis of mutual recognition of legal principles allows in certain cases for the quicker arrest and surrender of suspects than would be possible under traditional extradition treaties. A European evidence warrant[113] and a European investigation order[114] has been or will shortly be introduced in the member states of the European Union, after which they will be obliged to grant a request from another member state. Furthermore, the EU framework decisions for mutual recognition of confiscation orders and on the freezing of the proceeds of crime have entered into force.

Under article 86 of the Treaty on the Functioning of the European Union the Council may, on the basis of unanimity, decide to establish a European Public Prosecutor's Office in order to combat crimes affecting the financial interests of the Union. This article also provides for the possibility of expanding the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension. This article has a long history. As long ago as 1976 the European Commission endeavoured to amend the European treaties in such a way as to allow for the adoption of a common criminal procedure for tackling fraud affecting the financial interests of the EU. At the request of the European Parliament the European Commission commissioned research in the 1990s into the feasibility of a scheme for a criminal procedure to tackle such fraud. In the resulting report entitled 'The implementation of the Corpus Juris in the Member States: penal provisions for the protection of European Finances' the authors concluded that traditional mechanisms such as the assimilation principle (member states undertake to combat infringements of European law just as vigorously as similar infringements of national law), intergovernmental cooperation (under treaties and international agreements) and harmonisation did not provide an adequate answer to fraud affecting the financial interests of the EU. Instead, the study recommended that enforcement under the criminal law should be effected by a uniform scheme of substantive and procedural provisions by a centralised body, namely a European Public Prosecutor's Office. A legal basis for such an approach was established with the introduction of the Treaty of Lisbon.[115] A European Public Prosecutor's Office could make up for the lack of priority given in the member states to tackling financial crimes and could ensure more effective and efficient enforcement. However, the implementation of article 86 of the Treaty on the Functioning of the European Union has been delayed by differences of opinion about the relationship with the national authorities. The AIV recommends that the government take steps to promote the use of article 86 and that, as regards forms of crime that harm the financial interests of the Union, the European Public Prosecutor's Office be charged solely with the coordination of cases brought through the national public prosecutors.

113 Council Framework Decision on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters; Framework Decision 2008/978/JHA.

114 Council of the European Union, *Interinstitutional File: 2010/0817 (COD)*, Brussels, 3 June 2010, see: <http://register.consilium.europa.eu/pdf/en/10/st09/st09288-ad01.en10.pdf>, (retrieved on 17 September 2012).

115 W. Geelhoed, *Eurojust en het Europees Openbaar Ministerie* (Eurojust and the European Public Prosecutor's Office) in Strafblad, 2008, see: <https://openaccess.leidenuniv.nl/bitstream/handle/1887/ 15118/Eurojust%20en%20het%20Europees%20Openbaar%20Ministerie.pdf?sequence=2>, pp. 598-606, retrieved on 25 March 2013 and A. Suominen, *Past, Present and the Future of Eurojust*, in Maastricht Journal of European and Comparative Law, volume 15, number 2 (2008), pp. 217-234.

The most far-reaching form of cooperation involves the conclusion of conventions in which states confer responsibility for investigating and prosecuting cases at global level on international organisations, thereby surrendering national sovereignty. This requires international consensus on the definition of crimes, something which is exceptional. As differences on the definition of offences, criminal liability, sentencing and procedural law are in practice too great to allow legally binding international agreements to be reached on matters of this kind, investigation and prosecution almost always remain a national responsibility. Only in respect of war crimes, genocide and crimes against humanity have independent international tribunals been charged with investigation and prosecution. The existing general conventions on narcotic drugs, transnational crime and corruption (the UN Convention against Illicit Trafficking in Narcotic Drugs of 1988, UNTOC and UNCAC) oblige states to criminalise certain conduct. The conventions give a general definition of the conduct that must be criminalised, but contain no guidelines on sentences. However, various other conventions, including those of specialised UN agencies, do contain definitions of specific forms of transnational crime. Many examples of this are given in annexe I.

Limitations of the criminal justice approach
Various authors[116] believe that the investigation and prosecution of criminals does not necessarily result in a reduction in crime. Transnational crime can also be regarded as a market of supply and demand. If people are arrested or criminal groups are rolled up, this removes a provider from the market. However, the demand for illicit goods and services continues to exist and other providers will very likely take the place of the criminal groups that have been eliminated. If investigation and prosecution reduce the supply of illicit goods and services, however, this may drive up prices and increase profit margins for criminals. This could provide an even greater incentive to participate in the criminal activity. Besides investigation and prosecution, measures should therefore be taken to reduce demand. These could be administrative or financial measures to discourage consumption, or measures to prohibit consumption altogether. Measures aimed solely at reducing demand might also cause criminals to switch to other illicit activities. It will therefore be necessary to continue fighting criminal groups and punishing criminals.

There is a risk that a successful national approach would displace criminal activity to other countries or other parts of the world, often to regions where the police and judicial authorities are less well able to deal with it. For example, one effect of the introduction in 2003 of the checks on all air travellers coming from the former Netherlands Antilles, Aruba, Venezuela and Suriname to the Netherlands was that these routes were then used much less for smuggling drugs. In consequence, more cocaine was shipped to the European market through West Africa and Trinidad and Tobago. This shift was accompanied by a sharp rise in the number of murders in Trinidad and Tobago.[117] It should be noted, by the way, that the former Coastguard for the Netherlands Antilles and Aruba intercepted substantial drug shipments by sea in those years.[118] The problem has therefore been greatly reduced at national level, but at global level transnational crime has remained constant.

116 M. Verkoren, G. Junne, I. Briscoe and E. Dari, *Crime and Error: why we urgently need a new approach to illicit trafficking in fragile states*, Clingendael Conflict Unit Policy Brief, no. 23, May 2012, p. 4; UNODC, *The Globalization of Crime. A Transnational Organized Crime Threat Assessment,* Vienna 2010, pp. 276-277.

117 UNODC, Research paper: *The Transatlantic Cocaine Market*, Vienna, April 2011, p. 53.

118 UNODC, Research paper: *The Transatlantic Cocaine Market*, Vienna, April 2011.

A criminal justice approach does not address the political or socioeconomic factors which transnational crime may involve. If the authorities and/or legal private organisations are unable to deliver important public services, the population will rely on other safety nets such as the family, the clan or perhaps even a criminal organisation. In fragile states, for example, the authorities are insufficiently able to deliver basic services such as public safety, education and healthcare. If, by contrast, criminal organisations are to some extent able to meet these needs the population may be inclined to tolerate their presence and activities. In such cases a criminal justice approach will not alter the fact that the environment is conducive to crime and may possibly not reduce crime.

Use of special resources
If the civilian authorities lack the appropriate resources or personnel in quantitative or qualitative terms, they may cooperate with the armed forces. The Dutch armed forces, including the Royal Military and Border Police (RNLM), perform a variety of activities in the fight against transnational crime. The civilian authorities continue to have primary responsibility for the performance of these activities.

The armed forces have search teams which can assist the police and judicial authorities. These teams possess specialised skills and equipment, such as drones and ground-penetrating radar (GPR) which can examine the subsurface up to a depth of a few metres and discover concealed spaces behind walls or in objects. Other specialised units are the Ministry of Defence's diving group, which can carry out searches under water, and the Maritime Intermediate Search Team which can search boats and ports. These maritime units are also used to combat piracy and drug trafficking, and to enforce embargoes. Another task for which the navy is used is intercepting drug shipments at sea. At the request of the Ministry of Justice, drones are regularly deployed for observation purposes above the Netherlands. In addition, special units may be asked to undertake operations against criminals at the high end of the violence spectrum, which are beyond the capabilities of the police.

The part of the armed forces that most visibly assists the civilian authorities is the RNLM, which has over 6,600 military and civilian personnel. Approximately 20% of its work is for the armed forces and 80% for national security (its civilian role). Although the organisation is part of the Ministry of Defence, it mainly carries out police duties. Controls at both the Dutch borders and the external borders of the Schengen Area (in so far as they coincide with Dutch borders) are carried out by the RNLM under the responsibility of the Ministry of Security and Justice. Staff of the RNLM are also engaged in mobile immigration controls on the borders with Belgium and Germany.

The Dutch Coastguard and the Coastguard for the Caribbean Netherlands not only patrol the borders of the territorial sea but also play a role in fighting international organised crime, in particular illicit trafficking in and transport of drugs. The RNLM also has teams for combating drug trafficking and human trafficking across the southern and eastern borders of the Netherlands. Within the Coastguard for the Caribbean Netherlands, the RNLM contributes to strengthening intelligence gathering in Curaçao and St Maarten.

III.3 Administrative approach

The administrative approach comprises all instruments which the national authorities have at their disposal, with the exception of the criminal law. Examples are taxation, subsidies, regulation, certification and the provision of information. It should be noted that investigation and prosecution do not necessarily result in less transnational crime

if the demand for illicit goods and services remains high. However, some administrative measures do influence demand. Whereas the criminal justice approach focuses by definition on criminals, the administrative approach also targets other players.

As part of an administrative approach, the authorities or a private organisation may provide information to potential or actual perpetrators, consumers or victims. Examples are information campaigns against drugs and sex tourism. These campaigns may draw attention to the fact that the consumption of the prohibited goods or services is a crime or has adverse consequences for health or family life. In practice, however, it is difficult to design the information campaign in such a way as to achieve the desired effect.[119]

Various parties consulted by the AIV indicated that the impression exists that some professional groups underestimate to what extent they may be facilitating organised (transnational) crime. Banks, notaries, lawyers and other professional groups are insufficiently aware that criminals need their services to commit crimes and launder money. Nor is there sufficient realisation of the considerable social harm caused by 'victimless' crimes such as fraud and corruption. If information were to be provided to these professional groups about their potential role in facilitating crime and the social harm caused as a result, this could concentrate minds and ensure an earlier and better response to warning signs.

Regulation makes it possible to set conditions and exercise supervision over an industry in which the risk of criminal behaviour is relatively high. This can prevent illicit practices and human suffering. Regulation involves setting, implementing and enforcing rules. And it requires an organisation to supervise compliance with the rules. According to Huisman and Beukelman, the drawbacks of imposing mandatory rules are defective legitimacy and the possibility of high costs for the industry concerned, which reduces readiness to comply with the rules.[120] An example of regulation of a sector where risks of criminal behaviour exist is the sex industry. Many countries prohibit human trafficking but not prostitution. According to the International Labour Organisation (ILO), 22% of the victims of human trafficking worldwide end up in prostitution. To prevent people from being forced into prostitution it may be desirable to regulate the sex industry. For example, sex businesses in the Netherlands require a permit and sex workers have to register. The permits are subject to conditions. Regulation of the sex industry provides possibilities for combating human trafficking involving prostitution, although doubts have been cast on the effectiveness of such regulation.[121]

Regulation may also take place at international level. An example is the recently concluded Arms Trade Treaty, which has already been discussed in section II.4 above.

119 See, for example, <http://www.hu.nl/OverDeHU/Nieuws/Voorlichting%20overheid%20leidt%20zelden%20tot%20gewenste%20effect.aspx>, (retrieved on 1 March 2013).

120 W. Huisman and A. Beukelman, *Invloeden op regel naleving door bedrijven; inzichten uit wetenschappelijk onderzoek* (Factors influencing corporate compliance with rules; insights from research), Boom Juridische Uitgeverij, The Hague, 2007.

121 National Rapporteur on Trafficking in Human Beings, *Mensenhandel – 10 jaar Nationaal Rapporteur Mensenhandel in Nederland – Achtste rapportage van de Nationaal Rapporteur* (8th report of the National Rapporteur), BNRM, The Hague 2010, pp. 30-34.

It has been suggested that the introduction of codes of conduct could make a contribution in cases where it is not possible to make internationally binding agreements. However, codes of conduct are not legally enforceable. Compliance with international agreements and codes of conduct is problematic on account of the nature of the international legal order. International organisations are sometimes given the power to oversee compliance with international agreements, but rarely have the power to enforce observance through sanctions. States would have to transfer part of their sovereignty to a supranational organisation in order to make international enforcement possible. This is something states are seldom prepared to do. Usually, the responsibility for monitoring compliance with conventions therefore rests with states. However, states may take diplomatic or political measures to induce other states to comply. The European Union is one of the few multilateral organisations with supranational powers.

Certification is an instrument for documenting the origin, composition, manufacturing process or destination of responsibly produced goods and services in cases where regulation of the complete supply chain is not possible. The certificate is intended for consumers, intermediate distributors and the authorities. They can take informed and legal buying and selling decisions on the basis of the certificate, no matter whether it concerns tropical wood, diamonds or arms. The certificate must be issued by a reliable (independent) authority whose staff are not susceptible to bribery. It is not in fact necessary for the government authorities to be involved in the certification of products as private parties too can establish a certification scheme. The example of the certification of tin from the DRC was discussed in the previous chapter. This example showed how complex the application of this tool is in practice.

Another example of administrative regulation is the Public Administration (Probity Screening) Act. Under this Act administrative authorities (municipalities, provinces and government departments) may request advice from the Public Administration Probity Screening Agency (BIBOB Agency) about the probity of holders of and applicants for licences, municipal exemptions and grants. Administrative authorities have the power to refuse or cancel certain grants or licences if there is a risk or suspicion that criminal offences such as money laundering will be committed. Such screening is also possible for applicants bidding for a tender; those who fail may be excluded from the procurement procedure. Government bodies may refuse to award or terminate a contract if the company concerned does not comply – or ceases to comply – with the requirements concerning the trustworthiness of the company or its officers. The BIBOB Agency can advise administrative authorities about this after the authorities themselves have first carried out an investigation.

Border controls can be an effective tool against transnational crime. Illicit shipments of drugs, arms and victims of human trafficking can be intercepted by means of effective controls. Europol warns that ‘The Schengen Area provides a comfortable operating area for traffickers in human beings and will continue to be exploited’.[122] In the Netherlands the RNLM and the customs authorities are responsible for checking persons and goods at the borders. The police too play a role in this, for example by cooperating with neighbouring countries in the European Police Information Centre and in joint hit teams. A ‘hit-and-run cargo team’ established jointly by the Seaport Police, the customs authority and the Fiscal Intelligence and Investigation Service (FIOD) operates in the port of Rotterdam. The customs authorities also have container scanners in use in Rotterdam.

122 Europol, *Serious and Organised Threat Assessment*, The Hague, 2013, p. 24.

The international Container Security Initiative sets additional criteria for the proactive screening of containers destined for the United States. Examples of international cooperation are the border controls carried out at the Dutch-German frontier by cross-border police teams consisting of the German Bundespolizei and Landespolizei and the Dutch police and RNLM. The aim of these controls is to combat illegal migration and transnational crime.

As the checks on persons at the internal borders of the Schengen Area and the inspections of goods within the borders of the European Union have, in principle, been abolished, checks on persons and goods take place mainly on arrival at the external borders such as Schiphol Airport. Frontex assists EU member states in maintaining the external border controls at the desired level. The external border controls of the European Union have been harmonised on the basis of the Schengen Borders Code. Under this joint legislation, it is still possible for member states to reintroduce internal border controls if there is a serious threat to public policy or internal security. However, the member state concerned must give the European Commission 15 days' notice of the proposed reintroduction of the internal border controls. The measure cannot be maintained for longer than six months, and it is a measure of last resort. The European Commission may take a decision on prolonging border controls at internal borders. Moreover, the RNLM is authorised to carry out non-systematic checks at the internal borders, but may not do so permanently in view of the EU agreements. The spot-check clause in the Schengen Borders Code enables the police to stop and search people and vehicles. The mobile units for border surveillance are making increasing use of technical equipment such as automatic number plate recognition by sensors. Instead of waiting at the border for a criminal to pass, the police can now search for criminals and criminal networks throughout the entire area as part of a preventive approach.

Although the Schengen Agreement is now part of EU law, membership of the EU does not automatically mean that the controls at national borders that are not external Schengen borders may be abolished. For example, although Romania and Bulgaria have been members of the EU since 2007, they may not join the Schengen Area as long as certain other member states continue to block this on account of rule-of-law shortcomings and the ineffectiveness of their efforts to tackle organised crime and corruption.

Travellers who enter or leave the EU with more than EUR 10,000 in cash (i.e. in euros or some other currency or in bearer-negotiable instruments) are required to declare this to the customs authorities.[123] This obligation is a consequence of the EU's strategy for preventing money laundering and terrorist financing. If a traveller fails to declare this, the cash may be detained. The member states must introduce statutory penalties for failure to make a declaration or for making an incorrect or incomplete declaration. Information is exchanged through the Financial Intelligence Units of the member states if there are indications that the cash is connected with illicit activities. A European Commission survey shows that this regulation is being satisfactorily implemented by the member states. Penalties have been laid down in national legislation and inspections of travellers, baggage and vehicles take place in practice. However, in a number of member states shortcomings were found in the procedure for the declaration of cash and the penalties

123 Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community.

were considered to be on the low side.[124] The AIV recommends that the penalties for failure to comply with the obligation to declare should be harmonised. It also recommends the introduction of more random checks on the transport of cash at the internal borders of the member states of the European Union. For this purpose the police, the RNLM, the customs authorities and the FIOD could cooperate with foreign partners in other EU member states.

The AIV also recommends that the random checks for human trafficking, arms, precious metals and identity papers (including arrest for tax debts and the collection of fines) be expanded in close cooperation with neighbouring countries.

III.4 Financial approach

The financial approach is based on the assumption that material gain is an important motive for criminals. The aim of the approach is to minimise any such gains. Measures taken as part of this approach can prevent criminals or corrupt individuals from converting their gains into funds or property in the legal economy (money laundering). The proceeds of crime can be siphoned off or seized. Government authorities, financial institutions and bona fide dealers can also take measures to hinder financial transactions of criminal networks. Information from the financial system may be used for the purposes of investigation and prosecution. Financial service providers have the duty to report unusual transactions. The financial approach therefore focuses not only on criminals and corrupt individuals but also, for example, on financial service providers. As the criminal law plays a major role in the financial approach there is a considerable overlap between the financial and criminal justice approaches although they have different frames of reference, namely gain and punishment respectively.

Authors define illicit financial flows in a variety of ways. Financial flows may be illicit because the transaction itself is illicit, because the money comes from illicit activities (crime or corruption) or because not all obligations have been fulfilled (e.g. payment of taxes). UNODC concentrates on transnational crime and pays little attention to corruption, which often takes place within national borders though its proceeds may be illicitly transferred abroad. By contrast, other authors reason more from a development aid perspective and put a lot of emphasis on the money laundering of the proceeds of corruption and the adverse effects on socioeconomic development. Some authors, such as Baker and others connected with the NGO Global Financial Integrity, speak of illicit financial flows, which in their view include funds generated by tax avoidance on the part of multinational corporations. By manipulating transfer pricing, multinationals are able to shift profits to a country where the tax on profits is low. Global Financial Integrity regards this as unacceptable, arguing that it deprives developing countries of considerable tax revenue.[125] The Netherlands has a relatively low rate of corporation tax, which is one reason why it is regarded by multinationals as an attractive country in which to set up a business. Moreover, some companies established elsewhere realise their profit in the Netherlands, where they pay a low rate of tax. This advisory report will not give any further consideration to tax avoidance as it is not illegal, although this is not to say that it is ethically sound. By contrast, tax evasion and tax fraud are illegal.

124 See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0429:FIN:EN:PDF>, (retrieved on 15 March 2013).

125 Global Financial Integrity, *Illicit Financial Flows From Developing Countries: 2001-2010*, Washington, December 2012.

No reliable statistics on the scope of illicit financial flows and money laundering are available as they are, by definition, illegal activities. UNODC states that the scope of financial transactions related to transnational crime in 2009 totalled approximately 1.5% of global GDP, of which approximately 70% was laundered. It also states that, on the basis of this estimate of the scope of illicit financial flows, only 1% of global illicit financial flows are currently seized and frozen.[126] The Dutch Police Services Agency says that everyone is completely in the dark about the quantity of money laundered annually in the Netherlands, but that it is certainly in the billions.[127]

There is little reliable information about turnover and profits in criminal sectors or about the quantity of money laundered. Van Duyne and Levi state that it cannot be deduced from the estimated scope of drug trafficking in the Netherlands how much money is laundered in the Netherlands. There is no direct correlation between profit or turnover in a criminal sector and the amount of money laundered, as some of the proceeds are used to pay service providers (e.g. for transport and storage) and some are spent on living expenses, bribery and possibly legal assistance.[128] Van Duyne and Levi also note that it is not possible to draw any definite conclusions from the data on confiscations and judgments about the extent to which criminal money infiltrates the legal economy, but that the possibility of such infiltration is anything but hypothetical.[129] They consider, however, that there is a glaring gap between the large amounts mentioned by UNODC and others and the facts as evidenced by court judgments, seized assets and property and the identified investments of criminals in the legal economy.[130]

Conventions and international organisations
Various conventions oblige states to take measures as part of the financial approach. The main examples are UNTOC, UNCAC, the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism and the Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. These conventions oblige the parties to criminalise money laundering. In addition, they require them to take one or more of the following measures to prevent or be able to trace money laundering: an obligation for financial institutions and dealers to keep accounts of all transactions for at least a number of years, a prohibition on opening an account without verifying the identity of the ultimate beneficial owner, an obligation for financial institutions and dealers to observe due diligence in respect of politically exposed persons, an obligation for financial institutions and dealers to report large and/or suspicious transactions to the authorities and an obligation for the authorities to establish a system for regulation and supervision.

126 UNODC, *Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes*, Vienna, 2011, p. 5.

127 Dutch Police Services Agency, *Nationaal dreigingsbeeld 2012 – Georganiseerde criminaliteit* (National threat assessment 2012 - Organised crime), Zoetermeer 2012, p. 144.

128 P.C. van Duyne and M. Levi, *Drugs & Geld, misdaadgeld-beheer en drugsmarkten in Europa* (Drugs & Money, crime money management and drugs markets in Europe), Wolf Legal Publishers, Nijmegen 2009, p. 120.

129 Ibid., p. 133.

130 Ibid., pp. 115-152.

There are various international forums in this field. One of the most important is the Financial Action Task Force (FATF). This was set up during the G7 Summit in 1989 and published 40 recommendations in 1990, mainly designed to prevent the laundering of profits from drug trafficking. The scope of the recommendations was widened to include other forms of crime in 1996 and on subsequent occasions as well. After the terrorist attacks on 11 September 2001 the recommendations were expanded to cover terrorist financing. The recommendations were modified, consolidated and renumbered in February 2012. Other matters addressed by the recommendations (through anti-money-laundering measures) include the non-proliferation of weapons of mass destruction (recommendation 7) and the manner in which financial service providers deal with politically exposed persons i.e. persons who hold or have held public office (recommendation 12). As dignitaries and former dignitaries could have abused their office for self-enrichment, financial service providers must observe special care when providing services to them. This establishes an explicit link with 'grand corruption'. The FATF is also involved in fighting corruption in other ways. For example, it has published a report on risk factors connected with laundering the proceeds of corruption. This report is a supplement to an earlier report of the FATF about money laundering and corruption (Laundering the Proceeds of Corruption, 2011). The FATF also investigates specific methods and techniques used in laundering the proceeds of corruption.

The FATF makes recommendations to members and non-members. Although only 36 countries are members of the FATF, including the countries with the world's largest financial centres, its authority extends much further. As the recommendations have also been adopted by sister organisations of the FATF (FATF-style regional bodies), they in fact apply to over 180 countries. The EU has used the FATF standard as the basis for three anti-money-laundering directives, thereby requiring the EU member states to convert the FATF recommendations into national legislation. Discussions are underway at present on a Commission proposal for a fourth money-laundering directive based on the new FATF recommendations of February 2012. The FATF has a system of mutual evaluations of members. It can call on its members to oblige financial institutions in their country to exercise special care when entering into transactions with natural persons and other legal persons in countries which are clearly underperforming in terms of preventing money laundering and terrorist financing (recommendation 19). This can mean that business transactions with these countries are subject to delay or that banks are disinclined to do business with legal persons in such countries. For this reason countries generally go to considerable lengths to ensure that their legislation against money-laundering and terrorist financing is properly in order, despite some major gaps.

The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval) is a Council of Europe monitoring body and Europe's FATF-style regional body. All EU member states that are not members of the FATF are members of Moneyval, so they are subject to similar evaluations based on the same FATF standard as countries which are FATF members. In addition, the World Bank, the International Monetary Fund and various other international organisations have a mandate to concern themselves with these aspects of the financial system.

The UN Security Council has the power to adopt a binding resolution freezing financial assets of certain persons if it finds that they are responsible for breaches of international peace and security. In most cases this concerns heads of state or heads of government, ministers and possibly their family members. A violation of international peace and security may occur if the proceeds of, say, the illicit trade in diamonds, timber or arms are used to finance an internal conflict or destabilise a region.

There are also various NGOs that concern themselves with illicit financial flows or with increasing the transparency of financial flows. Examples are the Tax Justice Network, Global Financial Integrity, Publish What You Pay, Global Witness and Transparency International. The Tax Justice Network and Global Financial Integrity focus on international financial flows connected with tax avoidance and tax evasion and view these issues from the perspective of developing countries. Publish What You Pay is a group of NGOs which advocates effective, transparent and responsible management of oil, gas and mineral wealth so that these resources benefit the mass of the population. CORDAID and Oxfam NOVIB are affiliated to it, as is Global Witness, which carries out investigations into conflict and corruption related to the exploitation of natural resources and campaigns for action to tackle these problems. Transparency International has been set up to fight corruption in general.

The Extractive Industries Transparency Initiative (EITI) is an international organisation in which resource-rich countries, donor countries, dozens of large companies and NGOs work together.[131] EITI has a board and a permanent secretariat which publishes reports on payments made by member companies to governments and on payments to member governments by companies, in so far as they are related to the extraction of natural resources. EITI has developed a validation methodology for this purpose and countries which meet all requirements are declared 'EITI compliant'.

Preventing money laundering

To prevent the proceeds of corruption and criminal activities from being laundered in bank transactions, it is necessary to establish unequivocally who is the owner of an asset. The FATF therefore recommends that financial institutions should be obliged to verify the identity of customers and store this information. In practice, these recommendations have not yet been implemented everywhere. In a study published by the World Bank entitled 'The Puppet Masters, How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It',[132] the authors explain how corporate vehicles can be misused for laundering the proceeds of corruption. In doing so they also discuss the implementation of four of the FATF's recommendations. Two of them concern the recommendation that the identity of a customer of a financial institution should be verified and one is a comparable recommendation for casinos and real estate agents. According to the authors, not a single one of the 159 evaluated countries had fully complied with these recommendations, while 41% had completely failed to implement the recommendation for financial institutions. And the figure for the recommendation concerning casinos and real estate agents was as high as 71%. The two other evaluated recommendations concerned the recording of information about ultimate beneficial owners and ultimate controllers. These recommendations have been implemented by 7% and 9% of the 159 countries respectively, but have not been transposed into national legislation by 25% and 36% of the countries respectively. The other countries have legislation which does not entirely comply with the requirements of the recommendations. Although the FATF has a broad reach through its member countries and sister organisations, it is apparent that the recommendations are not always transposed into legislation. In view of these gaps in the global system, the AIV considers that it cannot

131 EITI, *EITI Factsheet*, Oslo 2013; see: <http://eiti.org/files/EITI-Factsheet-English_2.pdf>, (retrieved on 25 February 2013).

132 E. van der Does de Willebois et al., *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, World Bank Publications, Washington 2011, appendix A.

be effective. Incidentally, the authors of 'The Puppet Masters' comment that no single system can completely prevent misuse of corporate vehicles because service providers cannot be expected in all cases to make in-depth enquiries into the ultimate beneficial owners. According to the authors, determining the identity of the ultimate beneficial owner is a complex task. Identifying the ultimate beneficial owner depends very much on the context and is more a matter of exercising judgement than applying a legal definition. It would be unrealistic to expect service providers to be capable in all cases of getting to the bottom of who is the ultimate beneficial owner. Nonetheless, it is of great importance that service providers gather and store information about the substantive and formal control of corporate vehicles because otherwise a criminal investigation can easily come to a dead end.

Businesses and persons who pass on information to law enforcement authorities run the risk of being held liable by suspects. If private sector organisations cooperate voluntarily, for example by notifying unusual transactions, they must be indemnified against liability. While there should be indemnification for giving evidence, concealment should be punishable. If the private sector is to make an active contribution there must be a cultural change. The criminal law is another instrument: where a business or person has knowledge of a crime, failure to report it is sometimes an offence.

The FATF's 2010 evaluation report of the Netherlands[133] states that the country has features that make it an attractive target for money launderers, notably a highly developed financial system which offers a great variety of financial products and is closely connected with the international financial system.[134] The evaluation identified a number of shortcomings in Dutch legislation. Some of the conclusions related to the rules for determining the identity of the ultimate beneficial owner of legal persons and legal arrangements. The FATF also criticised the Netherlands because 'terrorism financing' had not been made an autonomous criminal offence, but was prosecuted under other provisions of the Criminal Code. Some of the conclusions concerned the organisation and procedure of the Financial Intelligence Unit, in particular its position within the civil service and its mandate and operational independence. The evaluation report also noted that the scope of the official or professional privilege which protects the confidential relationship between financial service providers (lawyers and civil- law notaries) and clients was too wide-ranging in the Netherlands. This made it difficult for the police and judicial authorities to trace property and assets and to comply with requests for international legal assistance. In response to this evaluation report the Money Laundering and Terrorist Financing (Prevention) Act was amended. One of the changes was an extension of the obligation of private parties (financial institutions, lawyers, civil-law notaries, high-value dealers and casinos) to carry out more client screening (passport check, transaction screening and risk analysis). In addition, an amendment to the Criminal Code to make terrorist financing an autonomous offence is currently under consideration by the House of Representatives. Changes to the organisation and procedures of the Financial Intelligence Unit are partly related to the establishment of the National Police. Moreover, client trust accounts set up by civil-law notaries are no longer covered by professional privilege. Other aspects of the duty of confidentiality of lawyers and civil-law notaries are the subject of

133 FATF, *Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism, The Netherlands*, Paris 25 February 2011; see: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/ MER%20Netherlands%20full.pdf>, (retrieved on 1 March 2013).

134 Ibid., p. 23.

consultations between the responsible minister and the House of Representatives. One consideration here is that the public interest in having lawyer-client privilege must be weighed against the importance of fighting financial and economic crime.

Money laundering always requires the cooperation of financial service providers; conduct in this sector is one of the factors which determine the effectiveness of measures to prevent and combat money laundering. The chances of being caught are low as tackling money laundering requires the cooperation of many different organisations, which may well lack the knowledge and skills necessary for such investigations. To resolve this problem a Financial and Economic Crime Programme has been implemented and a Financial and Economic Crime Expertise Centre set up.

Financial investigations
The cooperation of the financial system is necessary in order to trace illicit financial flows. Banks, civil-law notaries and lawyers may have information pointing to such flows. Sometimes this is like identifying the pieces of a jigsaw puzzle that provide evidence of criminal activities. Relevant information in the possession of financial service providers must therefore be accessible to law enforcement authorities. The FATF has drawn up recommendations for this purpose. In many countries financial service providers have a duty to report unusual transactions. As this involves the principle of customer privacy the interests of the investigation must be weighed against the customer's interest in the statutory right to privacy.

If banks do not have a reporting duty and cannot be forced to disclose information about assets and transactions to the law enforcement authorities, a criminal investigation or confiscation procedure along financial lines is scarcely possible. Measures to prevent criminal networks from using the financial system for illicit purposes are therefore designed in part to enhance the transparency of the financial system. The Tax Justice Network refers in this connection to a 'secrecy spectrum'.[135] In other words, this is not about a black-and-white distinction: national financial systems lack transparency to differing extents. The Tax Justice Network also draws a distinction between 'secrecy jurisdictions' and legitimate confidentiality: 'Financial secrecy occurs when there is a refusal to share this information with the legitimate authorities and bodies that need it, in order to tax wealthy taxpayers appropriately, for example, or to enforce its criminal laws'.

The Tax Justice Network distinguishes between three categories of secrecy. The first is banking secrecy (financial service providers do not share information about customers with government institutions or may even be committing a criminal offence if they share information with third parties). The second is the possibility of establishing legal persons whose property, functioning and object can be concealed or even kept secret. Reference was made above to the World Bank's 'Puppet Masters' report, which shows poor levels of compliance with the FATF's recommendations on establishing the identity of customers of financial institutions. The third category concerns the extent to which countries actively obtain information about legal persons and are prepared to exchange their information with other countries.

135 Tax Justice Network, *Financial Secrecy Index, What is a secrecy jurisdiction?,* 4 October 2011; see: <http://www.financialsecrecyindex.com/documents/WhatIsASecrecyJurisdiction.pdf>, (retrieved on 1 March 2013).

The Tax Justice Network has drawn up an index for the degree of secrecy allowed by countries. This index is based on 15 key indicators, which are related to the three categories mentioned above.[136] The Network notes that the degree of secrecy in the financial sector in the Netherlands Antilles is high. In Europe, Switzerland, Andorra, Monaco and Jersey also have a high score on the financial secrecy index for 2011. The organisation advocates greater transparency in the financial sector, mainly in order to reduce illicit financial flows from developing countries to richer countries.

The AIV recommends that, in the context of the EU and the FATF, countries be urged to make use of every possibility available to them to abolish secrecy jurisdictions completely. Countries should oblige financial institutions to keep a careful record of the personal particulars of the holders of financial assets so that there is sufficient certainty about the identity of the ultimate beneficial owner.

Prosecution
In recent years there has been a shift in the burden of proof in many countries. In the past, whenever a sum was to be confiscated, it was necessary to prove a connection with a predicate offence before the financial assets or property could be seized. Nowadays, money laundering is a criminal offence in many countries and the owner of assets must be able to show that he has acquired them lawfully. Where wealth cannot be explained, the statutory scope for confiscation is greater than in the past. This development is based on a reversal of the burden of proof, whereby defendants are now required to explain how they have obtained their assets. This represents a departure from the presumption of innocence, i.e. the principle that everyone must be deemed innocent until the opposite has been proved.

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances provides that 'Each Party may consider ensuring that the onus of proof be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.'[137] Many countries have arranged for this reversal of the onus of proof to be incorporated in their national legislation. People whose financial assets and property have been confiscated have in a number of cases lodged an application with the European Court of Human Rights on the grounds that reversal of the burden of proof is contrary to the right to a fair trial (article 6 of the European Human Rights Convention). However, the European Court of Human Rights has held that this is not correct. For example, the case of Grayson & Barnham v the United Kingdom concerned two separate applications by two British nationals who had been convicted of drug trafficking. The European Court of Human Rights held that the reversal of the burden of proof in these cases was not incompatible with the right to a fair trial, partly because the authorities had shown that each of the applicants possessed or had possessed substantial assets, they had not succeeded in showing the lawful origin of these assets and there were also sufficient procedural safeguards.[138] The public

136 Tax Justice Network, *Mapping Financial Secrecy,* September 2009; see: <http://www.secrecyjurisdictions. com/researchanalysis/kfsi/>, (retrieved on 17 August 2012).

137 Article 5 (7), United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

138 ECtHR, 23 September 2008, Grayson & Barnham v. the United Kingdom, nos. 19955/05 and 15085/06.

prosecutor does not therefore need to prove that the property and income of a defendant derive from crime, but is entitled to assume this if the defendant does not succeed in showing the lawful origin of the assets and income.

Article 9 (5) of the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism provides that a prior or simultaneous conviction for the predicate offence is not a prerequisite for a conviction for money laundering. A defendant may therefore be convicted of money laundering without having been convicted of the offence from which he obtained the illicit proceeds. Moreover, article 9 (2) provides that it need not be proved that the defendant knew that the laundered assets had been obtained illicitly. Such knowledge may be inferred from the objective, factual circumstances. If laundering is punishable as such under national legislation, the predicate offence need not be proved in order to obtain a money laundering conviction against a defendant who has unexplained wealth. Under Dutch law the Public Prosecution Service must prove that the proceeds or property are the product of crime, but need not prove the predicate offence or demonstrate the exact proceeds of the offence.[139]

Confiscation of the proceeds of crime and forfeiture of seized assets
Property and assets that have been financed from the proceeds of criminal activities may be seized as the outcome of criminal proceedings. In some countries confiscation may also take place as a result of civil proceedings. An important difference between criminal and civil proceedings is that criminal proceedings come to an end if the defendant dies, is found to be mentally ill or goes missing, but this is not true of civil proceedings. In such cases confiscation can be continued by means of civil proceedings. In the Netherlands the relevant legislation is known as the 'Squeeze 'em laws'. This presupposes that governments are able to trace and identify assets and determine the identity of the owner; transparency in the financial sector is therefore a precondition for the effective use of this instrument. Confiscation and forfeiture are not the only possibilities; a defendant may also be offered the possibility of a settlement involving payment of a fine, compensation and a confiscation amount. A defendant who does not accept the settlement is then prosecuted in the normal way. Another possibility is that the defendant may be offered a confiscation settlement, which does not take the place of criminal proceedings for the predicate offence. A confiscation settlement relates only to the confiscation of the proceeds of crime and is not a punishment.

Limitations of the financial approach
The financial approach can be effective in fighting transnational crime only if there is sufficient cooperation between the criminal justice authorities and if the financial system is sufficiently transparent. The existence of secrecy jurisdictions is a particular problem in fighting transnational crime. The financial approach does not dampen demand for illicit goods and services, but is instead merely concerned with seizing the supply-side proceeds. As long as the demand for illicit goods and services continues to exist and the chance of being caught is low, criminals will view measures that target the proceeds of crime as a business risk or overhead that does not compel them to terminate their lucrative illicit activities completely.

Measures to combat money laundering or to confiscate the proceeds of crime require cooperation between many organisations: financial institutions and dealers must report unusual transactions to a central office, which must then decide whether the unusual

139 See, for example, Supreme Court 13 July 2010, LJN BM0787.

transaction is to be classified as a suspicious transaction and, if so, pass on the report to the police. The police must then investigate and pass the file to the Public Prosecution Service for a decision on whether to prosecute. Sometimes the tax authorities or customs authorities are involved as well. In some countries these institutions lack either the capacity or the willingness to fight money laundering and confiscate the proceeds of crime. A lack of willingness may result from insufficient capacity, corruption or political influence. It may even be the case that parts of government have been infiltrated by or work together with criminal networks. Or economic motives may play a role, for example a desire to protect the income of the national banking sector as in Switzerland and Luxembourg. Government bodies responsible for fighting money laundering must be sufficiently independent. In cases where there are cross-border transactions, the cooperation of other countries is also necessary. The mutual assistance procedures required for these purposes can take years. In addition, international cooperation is hampered by the fact that states have different lists of predicate offences.

Experts have queried the theory that reducing the profits from crime is the best way to reduce crime. This theory is based on certain assumptions which are open to doubt. The first assumption is that professional criminals are motivated by a desire for gain. However, the motivation may lie in other factors such as peer group prestige earned by committing audacious acts. The second assumption is that confiscation could prevent criminals from infiltrating the legal economy. Quite apart from the question of how much the proceeds of crime actually amount to, criminal investment in legal companies would in most cases not be harmful to the economy unless the investments were used to support illicit activities. The third assumption is that removing the proceeds of crime could compel criminal organisations to end their illicit activities. However, when one group is eliminated another can simply take its place.[140]

One of the main criticisms of the financial approach to crime concerns its effectiveness. It is open to question whether criminals are actually discouraged by this approach, particularly if they have few alternative ways of earning a living (as in fragile states). Moreover, little is known about the effectiveness of reporting rules. Those who have a reporting duty often receive little information about what action is taken on their reports and whether they result in successful prosecutions or confiscations.[141] A large survey carried out in Great Britain a few years ago revealed that there were still major deficiencies in cooperation between the authorities and private sector companies in this area. Cost-benefit analysis of the rules for suspicious activity reports also raises questions about the effectiveness and efficiency of this approach.[142]

140 R.T. Naylor, *Wash-out: a critique of follow-the-money methods in crime control policy*, Crime, Law & Social Change, vol. 32, no. 1 (1999), pp. 1-57.

141 KPMG, *Global Anti-Money Laundering Survey*, 2011; see: <http://www.kpmg.com/nl/nl/issuesandinsights/ articlespublications/pages/global-anti-money-laundering-survey-2011.aspx>, (retrieved on 1 March 2013).

142 S. Lander, Serious Organised Crime Agency, *Review of the Suspicious Activity Reports Regime*, 2006; Netherlands Court of Audit, *Bestrijden, Witwassen, Financieren* (Combating, Laundering, Financing), The Hague, 3 June 2008; see: <http://www.rekenkamer.nl/Publicaties/Onderzoeksrapporten/Introducties/2008/06/Bestrijden_witwassen_en_terrorismefinanciering#internelink>, (retrieved on 1 March 2013).

As noted above, UNODC estimates that financial transactions relating to transnational crime accounted for approximately 1.5% of global GDP in 2009. Other estimates are in the same order of magnitude.[143] Van Duyne and Levi query the FATF's estimates of criminal income.[144] They argue that although the income of many Dutch and other criminals allows them to live in some style, they have little left for investment. As criminal income is kept largely in cash and is used to pay for living expenses or pay off criminal service providers the financial flows are hardly traceable. Most criminals set aside little money for investment. Naylor also considers that the typical criminal organisation is small, unstable and usually generates little profit. The greatest profit in drug trafficking is made by the street dealers who are numerous and seldom organised in larger groups. This means that the great majority of the profit is spent immediately or kept only in small quantities.[145] According to Europol, most organised criminal groups have access to sufficient, but not ample resources. These are often groups consisting of EU citizens who commit financial crimes. They are also often owners of legal businesses, which are sometimes a major source of income. And it is the groups with ample resources that make use of corruption as a means of committing crimes.[146] Where crime does not result in an accumulation of capital there is no need to create complicated schemes for money-laundering. In such circumstances there is little if any scope for confiscation. The financial approach is therefore fairly ineffective in these cases. Incidentally, the impossibility of gauging the proceeds of crime with any accuracy also means that it is impossible to determine accurately whether measures against money laundering are effective. It is impossible, after all, to determine whether or not illicit financial flows are reduced. There are indications that drug traffickers can transfer the proceeds of the sale of heroin and cocaine in European countries (worth approximately EUR 54 billion a year according to UNODC) to bank accounts over which they have complete control. This gives the impression that anti-money-laundering measures are not highly effective in Western countries either.[147]

Finally, part of the financial flows are routed not through the formal financial system but through systems over which there is little or no supervision. For example, the internet provides new possibilities. It is possible to buy digital money which is then stored on the owner's PC. This can be used to purchase goods and services worldwide. The AIV recommends that the government examine how these new flows affect the formal economy, how these forms of payment transaction can facilitate transnational crime

143 Ibid., pp. 18-46.

144 P.C. van Duyne and M. Levi, *Drugs & geld, misdaadgeld-beheer en drugsmarkten in Europa* (Drugs & Money, crime money management and drugs markets in Europe), Wolf Legal Publishers, Nijmegen 2009, pp. 117-126.

145 R.T. Naylor, *Wash-out: a critique of follow-the-money methods in crime control policy*, Crime, Law & Social Change, vol. 32, no. 1 (1999), p. 25.

146 Europol, *Serious and Organised Crime Threat Assessment*, The Hague, 2013, pp. 36-37.

147 The Washington Post of 11 December 2012 reported that the British bank HSBC had paid penalties totalling USD 1.9 billion in a settlement with the US authorities following accusations that it had, among other things, facilitated the laundering of USD 670 billion by Mexican criminals in the years 2006-2009; see: <http://www.washingtonpost.com/business/ap-source-hsbc-to-pay-19b-in-money-laundering-probe-biggest-forfeiture-ever-in-bank-case/2012/12/10/0cb3df4a-4335-11e2-8c8f-fbebf7ccab4e_story_1.html>.

and what developments can be expected in the future. In Africa mobile phones are increasingly used to make payments. For many people, particularly those on very low incomes, this is often the only way of transferring money because there are no banks in their immediate vicinity. Sometimes people are unable to open a bank account because they have no identity document or no fixed address. They are then dependent on informal forms of banking. These new payment methods provide solutions for people who have been excluded from the regular banking system to transfer money and for migrants to send remittances to their country of origin. There are various reasons why migrants use these channels. Sometimes they have no bank account in the country in which they are living. Often informal banking is simply faster, cheaper and more reliable than regular banks or transfer networks such as Western Union. Informal banks can also transfer money to countries or rural areas where no bank branches are present. Although informal banks can be used for criminal purposes, it is not clear to what extent this happens. Informal banking originated not as a service to criminals but as a service to persons who had no access to official payment services. Much research has been carried out into a possible link between informal banking and terrorism, but no such link has been demonstrated. Informal networks are no more susceptible to fraud than ordinary banks.[148]

Strict application of the FATF's recommendations may be the reason why some people, particularly poor people in developing countries, are unable to use formal financial services, for example because they have no identity document or no fixed address and are therefore unable to open a bank account. This compels them to use other financial institutions over which there is no supervision. From the FTAF's viewpoint this is undesirable. The FATF dealt with this issue in a paper entitled 'Anti-money laundering and terrorist financing measures and financial inclusion' of June 2011. The risk-based approach was introduced when the FATF's recommendations were consolidated in 2012. This allows countries and financial institutions to set lower requirements for groups with a low risk profile, thereby enabling them to take part after all in the formal financial system.[149] More attention is also paid to concepts such as proportionality and contextuality, so that it is no longer just the potential risk that is assessed but also the proportionality of the measures and their impact in a given context. This reflects the FATF's original intention of working with NGO typologies, thereby ensuring that the risk profiles of organisations, combined with the quantity of money involved, is an indicator for the measures that are applicable.

Criticism of the worldwide anti-money-laundering system
Some authors consider that recommendation 8 on non-profit organisations (NPOs) could easily be misused by authoritarian regimes as an excuse for limiting freedom of association and freedom of expression. This recommendation states that NPOs are

148 N. Passas, *Informal Value Transfer Systems and Criminal Activities,* Research and Documentation Centre, The Hague 2005, p. 36; see also M. de Goede, *Literatuurstudie Terrorismefinanciering 2004-2006: rapport aan de Nationaal Coördinator Terrorismebestrijding* (Literature Study on Terrorism Financing 2004-2006: report to the National Coordinator for Counterterrorism), Amsterdam July 2007, pp. 53-59; see: <http://dare.uva.nl/record/267696>, (retrieved on 1 March 2013).

149 FATF, *FATF's focus on financial inclusion: protecting the integrity of the global financial system*, Basel, 29 October 2012; see: <http://www.fatf-gafi.org/pages/fatfsfocusonfinancialinclusionprotectingtheintegrityoftheglobalfinancialsystem.html>, (retrieved on 1 March 2013).

especially vulnerable and that governments must ensure that they cannot be abused for the purposes of financing terrorism. However, few cases are known of non-profit organisations being directly involved in the financing of terrorism.[150] It is unclear whether the FATF's evaluations are based on a considered assessment of how measures to combat the risks of terrorism financing might affect rights, in particular freedom of expression and freedom of association. At present there is an international debate on the FATF's recommendations and their impact on political freedom and the stability of non-democratic or semi-authoritarian states.

The EU's second anti-money-laundering directive imposed an obligation on lawyers and other professionals to report unusual transactions in so far as their knowledge is unrelated to legal proceedings for a client or the institution or avoidance of such proceedings. In Belgium and France lawyers resisted the national legislation based on this directive as they considered it to be in breach of article 6 (2) of the EU Treaty and article 6 (right to a fair trial) and article 8 (right to respect for private and family life) of the European Convention on Human Rights. In June 2007 the Court of Justice of the European Union held that the imposition on lawyers of an obligation to inform the authorities responsible for combating money laundering and working with them when they participate in certain financial transactions unconnected with legal proceedings does not infringe the right to a fair trial.[151] However, the Court of Justice did give a very broad interpretation of the exception to the reporting obligation. A case challenging national legislation implementing the European anti-money-laundering directives also came before the European Court of Human Rights (ECtHR). The ECtHR held on 6 December 2012 that although the relationship of trust between lawyers and clients is of great importance to the rule of law, the obligation of lawyers to report unusual transactions is a proportionate measure in the context of combating money laundering.[152]

III.5 Nexus in unstable states

Obstacles to promoting good governance and the rule of law
Naturally, the priority in promoting good governance and the rule of law lies in unstable or fragile regions where the problems are the most intractable and the possibilities for criminal groups to operate without interference are the greatest. However, it is also precisely in these regions that strengthening the formal institutions of a state that applies the rule of law is the hardest to achieve.

As explained in chapter I, the existence in such countries of the state – and certainly a constitutional democracy governed by the rule of law – can by no means be taken for granted. State-building and the formation of democracy took place in our part of the

150 B. Hayes, Transnational Institute/Statewatch, *Legalizing Surveillance, Regulating Civil Society,* March 2012.

151 Court of Justice of the European Union, Luxembourg, 26 June 2007, judgment in case C-305/05, Ordre des barreaux francophones et germanophones and Others v Conseil des ministres.

152 ECtHR, 6 December 2012, Michaud v France, no. 12323/11 (Fifth Section).

world in very specific historical and geographical circumstances,[153] and this process cannot simply be repeated elsewhere nowadays.[154] As we have seen, patronage networks often play an important role and are hard to eradicate.

A second reason why strengthening good governance and the rule of law is so difficult in unstable regions is the importance of informal institutions and non-state actors in settings where governance is weak, as described in chapter I. It is increasingly recognised that interventions in 'hybrid' contexts must take account of all existing informal and hybrid forms of authority and respond to them. But in practice this is far from easy. Important local actors such as security communities, militias or tribal groups do not always meet the standards of development workers in terms of non-violence, exclusiveness or gender equality. This hinders cooperation between development organisations and these actors to strengthen governance.

A third problem with policy aimed at national institutions is the cross-border nature of conflict and crime in unstable regions. As noted previously, the most 'fragile' or 'hybrid' regions are often close to borders. In these border areas governments usually have little influence. Here criminal and informal shadow economies flourish and rebel groups have their ever-moving bases. In such circumstances little heed is paid to national borders. A good example is provided by the Lord's Resistance Army, which has switched its base from northern Uganda to South Sudan, eastern Congo and the Central African Republic. A similar tendency to move around is evident in the case of the rebels in (and around) Mali. Some authors have advocated a regional rather than a national approach to this problem.[155] This aspect is considered at greater length later in this report.

A fourth reason why the focus on national institutions in unstable areas can be problematic is that attributing instability to government failure is to ignore the role of unequal globalisation processes.[156] This is illustrated by transnational crime; transnational groups benefit greatly from instability. The global division of labour (which makes it difficult for the poor to assume any role other than that of commodity exporter),

153 C. Tilly states in *The Formation of States in Western Europe* that tax had to be levied in order to fund wars. This led to the establishment of tax-gathering systems, which developed in due course into fully fledged state institutions. Democratisation followed because citizens demanded representation in government in exchange for the payment of tax. See also W. Verkoren (2010), *It's the economy stupid: Interventie en staatsvorming in Afghanistan en elders* (It's the economy stupid: intervention and state formation in Afghanistan and elsewhere) in Internationale Spectator 64(4).

154 For a list of the differences between then and now and the literature on this, see B. Kamphuis and W. Verkoren (2013, forthcoming), *Statebuilding in rentier states: How development policies hamper democratic state formation in Afghanistan,* Development and Change Forum 2013 issue, May 2013.

155 See, for example, M. Pugh and N. Cooper with J. Goodhand: *War Economies in a Regional Context: Challenges of Transformation,* Lynne Rienner Publishers, London and Boulder 2004.

156 See, inter alia, Duffield, *Global Governance and the New Wars* and M. Pugh, *The Political Economy of Peacebuilding: A Critical Theory Perspective*, International Journal of Peace Studies, vol. 10, no. 2 (2005) pp. 23-42. In the words of J. Meyer: 'when it comes to 'new threats' (…) the world is globalised (…), but when it comes to the causes of human suffering and the absence of peace, the world consists of autonomous spaces ('failed states', 'dictatorially preserved states', and so on).' From: J. Meyer, *The Concealed Violence of Modern Peace(-Making)*, in Millennium Journal of International Studies vol. 36, (2008) p. 568.

trade barriers and neoliberal policy play a role in maintaining instability. Although the promotion of good governance and the rule of law remains an important objective, it is bound in practice to be a long-drawn-out process.

Economic policy
The challenge is to convert the economy of a conflict area (in which rebels often derive income from illicit economic activities) into an economy which actually promotes stability. This also enables the authorities to levy tax on this economy, which is often scarcely possible in a conflict area where the economy is characterised by informal and illicit economic activities. The limited literature on economic policy to promote peace contains much criticism of the consequences of economic policy for unstable regions advocated by the World Bank and the International Monetary Fund. At the urging of these two organisations, a policy was formulated that adversely affected government capacity and stability in a number of countries. Structural adjustment programmes imposed through conditional loans led to a loss of public services. This caused dissatisfaction among the population, while at the same time the diminished and weakened government had fewer ways of removing this dissatisfaction or mounting an effective response. In Yugoslavia, for example, the political tensions accompanying the transition from socialism to a democratic market economy were exacerbated by the retrenchment measures taken as a result of Western pressure.[157] Existing tensions between ethnic groups increased as a result, as also happened in Rwanda, where the Tutsis largely monopolised state employment and the Hutus were prominent in private trading activities. When the public sector had to retrench, the balance of power between the two groups suddenly changed.[158]

One reason for the negative effect of structural adjustment measures in many developing countries is that the context there is very different from that envisaged by the architects of privatisation, liberalisation and deregulation. Once again, the dominance of patron-client relations plays an important role. Privatisation led in this context to the creation of monopolistic and oligopolistic markets that benefited only a small elite around the president. The privatisation of the diamond trade in Sierra Leone is a well-documented example of this. The effects in that country were dramatic: the living standards of those who did not belong to the elite dropped sharply and public services gradually ground to a halt. Underpaid public servants used public property for private purposes. For unemployed young people the only way out was crime and violence.[159]

Even after the end of a conflict, the reflex action of the major donors is to revert to free-market policy.[160] Although the neoliberal policy of the UN, IMF and the World Bank

157 M. Kaldor, *New & Old Wars: Organized Violence in a Globalized Era,* Stanford: Stanford University Press, 2007.

158 A. Storey, *Economics and Ethnic Conflict: Structural Adjustment in Rwanda*, Development Policy Review, vol. 17, no. 1 (1999), pp. 43-63.

159 D. Keen, *Liberalization and conflict*, International Political Science Review, vol. 26, no. 1, (2005), pp. 73-89; This paragraph and the preceding one are largely based on W. Verkoren and G. Junne, *Rechtvaardigheid en geweld: hoe conflicten zijn ingebed in het mondiale systeem* (Justice and violence: how conflicts are an integral part of the global system), H. van Houtum and J. van Vught (eds.), *Eerlijke nieuwe wereld: Voorbij de grenzen van de natiestaat* (Fair new world: beyond the limits of the nation state). Klement, Nijmegen 2012, pp. 132-133.

160 G. Del Castillo, *Rebuilding War-Torn States: The Challenge of Post-Conflict Economic Reconstruction*, Oxford University Press, Oxford 2008.

was slightly moderated in 2005 the main principles remain intact, namely shrinking the state's role in the economy, privatisation, export-oriented economic strategy and attracting foreign investment.[161] However, this often fails to improve the situation. Tadjbakhsh describes how the rapid introduction of market forces in Afghanistan drastically undermined the economic security of the population. Opening local markets caused inflation, an influx of imports that flooded local markets, and growing inequality and unemployment.[162] Turner and Pugh report that in Kosovo 'privatisation transferred assets from governments at knockdown prices, but this largely only benefited the elite, and was conducted without employment protection measures'.[163]

Various authors[164] have therefore advocated a larger role for the public sector. The specific challenges posed by war-torn regions (such as a decimated professional middle class, a low educational level, high unemployment, large flows of migrants to the cities, patrimonialism, extreme social inequality and a very young population) require a tailor-made policy such as the policy to generate employment referred to above. Economic reconstruction is often undertaken by foreign companies that do not always create jobs for local people and leave again in due course.

Such a policy can also create scope for the reapportionment of growth in order to tackle extreme socioeconomic inequality which often gives rise to conflict and also makes people more likely to engage in criminal activities. In many places the policy that has been applied actually increases inequality and reduces stability.[165] Pugh writes that 'the liberal project not only ignores the socioeconomic problems confronting war-torn societies, it aggravates the vulnerability of sectors of populations to poverty and does little to alleviate people's engagement in shadow economies or to give them a say in economic reconstruction'.[166] He also emphasises that the rule of law and justice are not necessarily the same thing; where extreme social inequality exists formal legal institutions have little relevance to many people.

161 M. Pugh, *The Political Economy of Peacebuilding: A Critical Theory Perspective*, International Journal of Peace Studies, vol. 10, no. 2 (2005), p. 25.

162 S. Tadjbakhsh, *Conflicted Outcomes and Values: (Neo)Liberal Peace in Central Asia and Afghanistan*, International Peacekeeping, vol. 16, no. 5 (2009), pp. 635-651.

163 M. Turner and M. Pugh, *Towards a New Agenda for Transforming War Economies*, Conflict, Security and Development, vol. 6, no. 3 (2006), pp. 471-479.

164 Ibid. and M. van Leeuwen, W. Verkoren and F. Boedeltje, *Thinking beyond the liberal peace: the challenge of alternative utopias*, Acta Politica, vol. 47, no. 3, pp. 292-316.

165 See, for example, APFO/IAG/Saferworld, *Enhancing the Capacity of the European Union to Foster Peace and Stability in the Horn of Africa.* Nairobi, Addis Ababa, London 2001, pp. 4-6; N.I. Klein, *The Shock Doctrine; The Rise of Disaster Capitalism*; Penguin Books, London 2007; A. Manji, *The Politics of Land Reform in Africa; From communal tenure to free markets*, ZedBooks, London, New York 2006; C. Musembi, *De Soto and Land Relations in Rural Africa: Breathing Life into Dead Theories about Property Rights,* Third World Quarterly, vol. 28, no. 8 (2007), pp. 1457-1478.

166 M. Pugh, *The Political Economy of Peacebuilding: A Critical Theory Perspective*, International Journal of Peace Studies, vol. 10, no. 2 (2005), p. 25.

A regional approach
Perhaps the most successful peace project ever is the EU, as recently recognised by the Nobel Prize committee. This project focused not on national institutions but on regional cooperation and mutual dependence. In view of the regional character of the nexus between instability, corruption and crime, something could possibly be learned from the European project for unstable regions.

In their book *War Economies in a Regional Context* Pugh and Cooper advocate a regional approach. This should start with the analysis of conflicts, which should be considered much more in their regional context. The same is true of the supervision of peace processes and agreements. Even during peace negotiations actors from neighbouring states which play a role in the conflict should be involved much more closely and the aim should be to achieve regional peace agreement. They also advocate supporting cross-border cooperation between civil society organisations, funding for regional cooperation among governments, and investment in regional infrastructure for transport, energy supplies and communication.[167]

Another important aspect is the often neglected border areas which deserve special attention and investment precisely because this is where the shadow economy flourishes: 'the specific challenges of peacebuilding and economic transformation in borderlands may require the development of innovative approaches that take into account cross-border economic, cultural, and political factors'.[168]

Another proposal of Pugh and Cooper concerns regional economic protection. Organisations such as the Economic Community of West African States and the Balkans Stability Pact could follow the European example and opt for economic integration based on a common customs and trade policy. In West Africa a regional policy on diamond exports could create economies of scale that would make it possible not only to mine diamonds but also to process them.[169]

Comparison of Dutch policy with the recommendations of Pugh and Cooper reveal certain similarities, particularly the importance of a regional analysis, investing in regional infrastructure and encouraging cooperation between government authorities in unstable regions. However, Pugh and Cooper go further, particularly in advocating regional economic integration and protection. The need for investment in border areas is not reflected in Dutch policy.[170]

III.6 Conclusion

This chapter has discussed four approaches and various instruments for combating transnational crime. The approaches and instruments target a variety of actors and have varying effects. None of the approaches or instruments can cover all aspects of

167 Pugh and Cooper, *War Economies in a Regional Context*.

168 Ibid., p. 234.

169 Ibid., p. 231.

170 Letter to parliament about the regional approach in the context of development cooperation, Ministry of Foreign Affairs, 17 November 2011.

transnational crime. The criminal justice approach focuses on the offenders and on eliminating criminal networks, whereas other approaches tend to concentrate more on reducing demand for illicit goods and services or hindering criminal activities. Simultaneous application of the various approaches and instruments is essential to generate synergy between them and thus maximise their impact. In most countries a number of government ministries or other authorities decide on the application of these instruments. Priority should be given to certain forms of transnational crime, and a coordinated approach to them should be adopted. This is known as the whole-of-government approach.

These approaches can, in principle, help to reduce transnational crime in the short term. In the longer term, measures to strengthen the rule of law, good governance and socio-economic development can create an environment in which crime and corruption have less chance to thrive. However, creating such an environment is no simple matter. In Europe it has been the outcome of a historical process lasting centuries. However, this is not a reason for not making the most of the possibilities for promoting the rule of law, good governance and socioeconomic development in other countries.

Issues concerning transnational crime should be approached from an international perspective. First, countries should take account of the effects of their own policy on other countries. It has already been noted above that strict control or a tough approach in one country can have the effect of shifting crime to another country. This is not in itself a reason for not investigating and prosecuting crime, but the introduction of flanking policy could be considered in order to soften the impact on other countries. This is yet another reason for adopting a whole-of-government approach. It has already been noted that among the members of the FATF are various secrecy jurisdictions which can be safe havens for illicitly acquired funds. If the transparency of the financial systems of Western countries is increased money laundering and corruption will stand less chance.

International cooperation is often necessary, but can raise issues of national sovereignty. This issue is considered in the AIV's advisory report entitled 'European Defence Cooperation: sovereignty and the capacity to act', which is also relevant to the subject of combating transnational crime.[171] The concept of national sovereignty denotes a claim to the exercise of exclusive authority by a state – the national power of decision. A distinction can be made between external sovereignty (recognition of the borders of a state and independence within the international state system) and internal sovereignty (the authority of the nation state and the degree of control it can exercise within its territory). International standards laid down in treaties are in keeping with sovereignty in the classical sense as states accede to these treaties voluntarily. In addition, however, there are rules of a peremptory nature (*jus cogens*) by which states are also bound. Examples are the prohibitions on the use of force, torture and slavery.

Globalisation is increasingly confronting nation states with issues they cannot resolve alone. International cooperation is therefore necessary for states wishing to achieve national policy objectives that cannot be achieved without the assistance of other states. The advisory report on defence cooperation therefore concludes that by trying to sustain at any cost the – now increasingly fictitious – notion of autonomous decision-making power, the nation state risks losing influence, effectiveness and, ultimately, the

171 AIV, *European Defence Cooperation: sovereignty and the capacity to act*, Advisory Report no. 78, The Hague, January 2012.

right of co-decision in international forums, all of which are essential for the state's own well-being. As noted above, transnational crime can undermine good governance in a country and hence impair national sovereignty. International cooperation is necessary in order to protect the state and society from this and to maintain the national and international legal order.

The AIV concludes that, despite the limitations of the financial approach, targeting the proceeds of crime is an important way of tackling many forms of crime. It recommends that the government give due consideration to this approach in its international policy in the context of organisations such as the EU and the UN. The preventive, criminal justice and administrative approaches are important in supplementing and reinforcing the financial approach.

The AIV also concludes that the armed forces, including the Royal Military and Border Police, play a major supporting role in fighting transnational crime. Nonetheless, it recommends that even better use be made of the resources of the armed forces in supporting law enforcement. The Ministry of Defence has various capabilities for assisting the Ministry of Security and Justice which could be put to good use both nationally and internationally. This would not only enhance the effectiveness and efficiency of the use of government resources, but would also help to increase public appreciation of the professional armed forces.

The nexus between crime, corruption and instability is most apparent in fragile states. Promoting good governance and the rule of law are essential in combating crime, corruption and instability in such states. However, this is easier said than done. This is due to various factors, notably the difficulty of democratic state-building in patrimonial contexts, frequent underestimation of the importance of informal institutions, the cross-border nature of instability, and the close connection between conflict, corruption and crime on the one hand and dependence on natural resources and a lack of socioeconomic alternatives on the other. Although promoting the rule of law is an important aim in itself, it is unlikely to be successful unless attention is also paid to socioeconomic development and, in particular, the creation of employment. The dominant development paradigm has frequently proved problematic for fragile states and is facing increasing criticism. Such policies do not reduce inequality and they limit the scope for local production and job creation and make countries dependent on the export of natural resources, which is often accompanied by corruption and conflict. Another economic policy is necessary, embedded in a broader regional perspective, which takes account of the cross-border nature of the nexus as reflected in the shadow activities that often take place in border areas.

IV Conclusions and recommendations

The government asked the AIV to produce an advisory report on the nexus between crime, corruption and instability. As noted in chapter I, each of these terms is a portmanteau concept covering a very wide range of phenomena. Drug trafficking, human trafficking, piracy, money laundering, tax evasion and cybercrime have little in common beyond the fact they can largely be classified as transnational crime. Likewise, corruption covers a variety of activities. Instability too assumes various forms and has different gradations. The AIV has therefore been obliged to interpret the request for advice more narrowly. As pecuniary gain is the motive for most criminals, the AIV has chosen to approach the subject from the perspective of restricting profitability. However, measures that affect the profitability of crime are not equally effective for all forms of transnational crime. For example, the (non-commercial) exchange of child pornography cannot be combated by such measures.

The AIV concludes that despite the limitations of the financial approach, targeting the proceeds of crime is an important way of tackling many forms of crime. It recommends that the government gives greater consideration to this approach in its international policy in the context of organisations such as the EU, the UN and other relevant forums. Law enforcement authorities and the Public Prosecution Service are still not always able to make the best use of the financial approach as it requires knowledge of matters beyond the criminal law. Much progress has already been made in the context of the Financial and Economic Crime Programme in increasing the knowledge and strengthening the capacity of the police and criminal justice authorities, but there is still insufficient awareness both in government and among the general public, members of the relevant professions (such as notaries and lawyers) and the business community of the considerable social harm caused by what are termed victimless crimes. These crimes can be given a higher priority by the police if targets are set for which a regional police unit can be held accountable. It is also a matter of focus: almost every crime has a financial and economic component.

The AIV identified four approaches in chapter III of this report. The preventive, criminal justice, financial and administrative approaches all have their limitations and are mutually complementary. Chapter III thus answers the government's question as to what preventive and flanking measures would most effectively complement the criminal justice approach. Synergy can be generated if these approaches are aligned and used together to enhance the effectiveness of any measures and ensure that any undesirable side-effects of one approach are mitigated by the others. The description of the cases in chapter II has shown that many factors are interconnected and influence one another. As the different approaches and tools and their various aspects come within the remit of different government organisations, effective measures to tackle transnational crime require close cooperation between them. Cooperation between civilian and military authorities is one aspect of this, particularly in the case of fragile states but also in the Netherlands. In this integrated approach, cooperation with civil society organisations and international cooperation are also essential for effective measures to combat transnational crime. Often the cooperation of the private sector is necessary for effective investigation and enforcement, for example in the case of due diligence measures, no matter whether this concerns money laundering or natural resources. The AIV would stress the importance of the whole-of-government approach.

Cooperation at international level
Transnational crime is benefiting from the globalisation of the economy, from new technologies such as the internet and from the consequent blurring of national borders. Combating such crime requires very different forms of international cooperation. Where international cooperation falls short, one of the underlying causes is often the reluctance of states to reassess their national sovereignty in order to respond more appropriately to today's global society in which networks play a larger role. Transnational crime cannot be combated effectively unless the exercise of sovereignty is shared with other countries, thereby increasing the capacity to act. In many countries the population is wary of forms of cooperation that might undermine national sovereignty. However, there is little awareness of the scale and consequences of transnational crime and the costs to society. If there were more awareness there might also possibly be a greater willingness among voters and politicians to allow sovereignty to be exercised jointly in combating transnational crime through international cooperation. This could strengthen governance and ultimately benefit national sovereignty.

The AIV considers that three basic points should be made about strengthening international cooperation. First, there is a lack of enforceable and practicable legal obligations in respect of some forms of transnational crime. In the AIV's opinion, the Netherlands should press more forcefully, preferably within the EU framework, for supplementation of the rules of international law. There is also an urgent need to strengthen the international rules governing financial transactions.

One of the fields in which international rules are still being developed and in which international cooperation is still in its infancy is cybercrime. This phenomenon has been briefly described in annexe 1 and covers a rapidly expanding range of criminal activities, including organised crime, which can seriously undermine the national and international legal order and confidence in the financial sector. To an increasing extent criminal transactions and payments for goods and services are routed through virtual links. Owing to the increasing use of the internet for fund transfers and for formal communication with government bodies (e.g. applications for student grants, permits and subsidies) identity theft too deserves a higher priority. There is an urgent need for international measures to counter botnets (networks of tens of thousands of captive computers which can be used to mount cyber attacks and intercept highly sensitive (corporate, government and personal) information) but this is an extremely complex subject owing to the global dimension. Measures to tackle these forms of crime must respect human rights, for example freedom of expression and the right to privacy. In the limited time available, the AIV was unable to examine the subject of international cybercrime and therefore recommends that the government commission a separate advisory report on this subject by a competent body.

Another field in which international rules are evolving is the international arms trade. At the time of writing, a treaty to regulate the international trade in conventional arms, ammunition and parts and components had just been concluded. Once that treaty enters into force, a step will have been taken to regulate the arms trade since legal obligations will arise. What the consequences are in practice will depend mainly on ratification by large arms exporters and on compliance. Second, enforcement and compliance in respect of existing international rules leaves something to be desired. Where a normative framework does exist, application is quite often a problem. This is particularly true of measures to combat money laundering and fraud. Although the FATF has created a comprehensive normative framework for dealing with money laundering and fraud, these offences are still common, even in countries in which the rule of law functions properly. The AIV recommends that the government urge other countries within the EU and the

FATF to do everything in their power to completely abolish secrecy jurisdictions. Countries should oblige financial institutions to keep careful records of the personal data of the holders of financial assets so that there is sufficient certainty about the identity of the ultimate beneficial owner and should require these institutions to transfer the data to the authorities in the event of a criminal, fiscal or confiscation investigation.

Even if there is a treaty that contains enforceable and practicable legal obligations, it is not binding on states that are not a party to it. Such states are therefore not required to apply the rules of the treaty. The Dutch government can call on other governments to ratify treaties and conventions designed to tackle corruption and transnational crime. This would strengthen the international normative framework.

The deficient application of anti-crime treaties and international agreements may be a consequence of political unwillingness of some regimes or of insufficient capacity (too few qualified personnel or inadequate budgets or institutions) in the case of weaker states. Third, strengthening the rule of law must be an objective of foreign policy and development cooperation, especially in countries where the nexus between crime, corruption and instability is the most pronounced. This applies both to the EU, the Schengen area and the Atlantic region and to the world as a whole. In the AIV's opinion, Dutch efforts to strengthen the rule of law (including good governance and anti-corruption measures) should be intensified and given priority in the cooperation with developing countries. More specifically, it is of great importance for our development efforts to pay greater attention to building up the police and criminal justice authorities, particularly in the developing countries that are the source of crime that reaches the Netherlands. The AIV therefore recommends that the Ministry of Security and Justice be more closely involved in development cooperation, particularly in relation to projects and programmes aimed at building up the police and criminal justice authorities. Other ministries too, such as the Ministry of Defence, could make a contribution, for example through the Royal Military and Border Police or through involvement in security sector reform.

In this advisory report the AIV has not been able to examine in detail how development of the police and criminal justice authorities and development of the rule of law in the broader sense could be integrated in practice into national and international development efforts. If desired, the AIV could deal with these important issues in a subsequent report. This is an extremely complex subject, as is apparent from the descriptions of the trade in natural resources in relation to the Democratic Republic of the Congo, cocaine trafficking in relation to Colombia and heroin trafficking in relation to Afghanistan. Relations between the authorities and criminal networks differ from country to country and change over time, as do the relationships between criminal networks and the population at large. Moreover, geopolitical and regional factors also play an important role.

Promoting the rule of law in fragile states is easier said than done. This is due to various factors, notably the difficulty of democratic state-building in patrimonial contexts, the cross-border nature of instability and the close connection between conflict, corruption and crime on the one hand and dependence on natural resources and a lack of socioeconomic alternatives on the other. Although promoting the rule of law is an important aim in itself, it is unlikely to be successful unless attention is also paid to socioeconomic development. An economic policy that diminishes inequality, encourages local production and employment and reduces dependence on exports of natural resources (which are often accompanied by corruption and conflict) would create alternatives to violence, crime and corruption. Moreover, a broader regional perspective that takes account of the cross-border nature of the nexus is necessary.

Tackling corruption is both an important means of helping to achieve social progress elsewhere and an objective implicit in the constitutional task of promoting the international legal order. After all, corruption is a phenomenon that facilitates crime. Sometimes corruption in the form of patronage may even temporarily help to stabilise a situation, for example by generating political support. As a survival strategy patronage can be hard to tackle. Efforts to fight corruption cannot disregard these aspects. Any consideration of possible measures should take into account how corruption is embedded in society and the social functions that corruption and patronage fulfil. Where patronage networks serve as an informal social safety net, the authorities should be helped to develop a formal safety net that provides security for everyone. Another factor that can be of great importance in reducing people's economic dependence on their patron is employment creation.

The private sector can also assist in tackling corruption. There is already an OECD convention that obliges parties to it to criminalise bribery of foreign public officials. The government can also encourage the international business community not to connive in corruption and to strengthen corporate social responsibility. The private sector can help to tackle corruption by claiming compensation where a natural or legal person has suffered demonstrable damage as a consequence of corrupt practices in countries that have ratified and implemented the Council of Europe's Civil Law Convention on Corruption.

In countries where criminal networks fulfil functions in society or sections of society, for example by providing work or security, legal alternatives must be provided in order to improve conditions for the population. In this way, promotion of 'pro-poor growth', designed to increase employment, will assist in developing a state with a functioning rule of law, as employment offers alternatives to crime.

This outline of the complex connections between crime, corruption and instability answers the government's first question, namely how the AIV assesses the problems of organised crime, corruption and instability as outlined in the request for advice.

Certification of natural resources to prevent them from being used to finance violence, oppression or corruption is one way in which the Netherlands too can make a specific contribution, as occurred in the Conflict Free Tin Initiative (CFTI). On closer inspection, however, even this project proves to be vulnerable and complex. The integrity of the certification mechanism is probably the most vulnerable link in a country in which corruption is endemic. Government authorities can support the development of such certification schemes by arranging meetings of interested parties (including civil society organisations) and providing funding to start initiatives. The initiative to establish a European equivalent of section 1504 of the American Dodd-Frank Act, which obliges oil, natural gas and mining companies listed on US stock exchanges to disclose all payments which they make to foreign state actors, merits support. The government has asked what would be the best way to help developing countries resist the destabilising effects of the interlinked problems of crime, corruption and illegal appropriation of natural resources. The discussion of the illicit profits from the extraction of natural resources in the Democratic Republic of the Congo illustrates how this could be done, although certification is a vulnerable and complex tool.

EU/Schengen
The need for international cooperation within the Schengen area (which also includes a number of non-EU member states) is very great. As there are no longer any checks on persons at the internal borders of the Schengen area and the movement of goods and

services in the EU is free, this has in fact created a single space. Cooperation within the Schengen area and within the EU deserves a high priority, but encounters obstacles such as the differences between the legal systems of the member states and the fact that individual member states may have insufficient confidence in the rule of law in other member states. Steps to improve this situation are being taken within the EU, for example as part of accession procedures. However, there is still no mechanism for monitoring the functioning of the rule of law of member states after they have joined the EU. Member states can therefore not hold each other sufficiently accountable for failures in the administration of justice, the police and anti-corruption measures. The rule of law within the EU has been included as a subject in the AIV's programme of work for 2013. The AIV will deal with this issue in that advisory report.

To cater for situations in which traditional forms of criminal justice cooperation are ineffective or inadequate, a European Public Prosecutor's Office could be established alongside Eurojust. Such an institution could, above all, make up for the lack of priority given in the member states to tackling financial crime and could arrange for more effective and efficient enforcement. The AIV advises the government to urge the European Council to make use of the possibility provided by the Treaty on the Functioning of the European Union to establish a European Public Prosecutor's Office. This new institution should be charged solely with the coordination of cases which are brought before the court through the national public prosecutors and involve forms of crime that harm the Union's financial interests.

There is a statutory duty to report unusual transactions, but the transactions actually reported probably form just the top of the iceberg. A lot of money is probably transferred other than through the official banking system, for example through informal systems, over the internet or physically in cash. Within the EU there is a wide variation in the duty to report the movement of cash. The Netherlands should also advocate that measures to control transnational crime should continue to focus on illicit financial flows and that efforts be made to achieve a more standardised approach and better implementation of existing legislation in the member states of the EU. As the EUR 500 note is used almost solely in criminal circles it should be abolished.

The AIV recommends harmonisation of the penalties for non-compliance with the reporting obligation. It also advocates the introduction of stricter selective checks on the movement of cash at the internal borders of the EU member states. For this purpose the police, the Royal Military and Border Police and the customs authorities and fiscal enforcement agencies could work in partnership with their counterparts in other EU member states.

The AIV also recommends that the random checks for human trafficking, people smuggling, arms, jewels and precious metals and identity papers (including checks on outstanding tax debts and the collection of fines) be expanded in close cooperation with neighbouring countries.

The AIV requests that express consideration be given to the further development of the Area of Justice, Freedom and Security within the European Union. The Stockholm Programme, under which the member states of the EU have made a series of agreements about new instruments to be developed, is due to expire in 2014. The Netherlands should make use of the existing momentum to exercise influence over the agenda of the new programme. It should advocate that greater emphasis be put on tackling illicit financial flows in controlling transnational crime. Moreover, the Netherlands should use its best endeavours in support of initiatives to strengthen international cooperation within the EU.

This could be done, for example, by exchanging information about good practices and by strengthening professional capacity in the EU through systematically imparting knowledge and offering courses to all security officials in the EU, in close cooperation with Europol, Frontex and the European Police College. International agreements can be successfully implemented only if those responsible are fully aware of the necessity of international cooperation.

VAT fraud is an intractable problem and is politically sensitive within the EU. The AIV proposes that the government commission a special study of this subject. Those involved should in any event include the Ministry of Finance, the Fiscal Information and Investigation Service (FIOD) and other interested parties. The subject goes beyond the expertise of ordinary law enforcement authorities. Huge criminal profits are being made because the present measures to tackle this fraud are not sufficiently effective. VAT fraud is described in annexe I.

Cooperation at national level
For the investigation and prosecution of transnational crime more frequent use could be made of special project groups designed to tackle one particular form of such crime and one source country or destination country. This could be arranged, for example, through joint investigation teams in which investigating officers of two or more EU member states and relevant EU agencies can participate with the support of Europol or Eurojust. A project group approach brings together people and resources and would facilitate the development of a specific strategy for one form of transnational crime which also takes account of differences between source countries and destination countries. The AIV strongly advocates strengthening the multidisciplinary composition of investigation teams, in particular for the prevention and investigation of financial offences. Resources should be made available for these forms of cooperation. In addition, the internationally oriented criminal investigation capacity of the Dutch police force should also be increased as the force has fewer detectives than its foreign counterparts.

The AIV recommends that the police and criminal justice authorities make more capacity available to handle international requests for legal assistance. Within the EU a growing number of EU instruments require quick and adequate implementation. The Netherlands can in this way build up a reputation as a reliable partner in international police and criminal justice cooperation. Trust and reciprocity are essential elements of high-quality professional international cooperation.

Parts of the armed forces make an important contribution in fighting transnational crime. This is a core task of the Royal Military and Border Police. The Royal Netherlands Navy also plays an important role in intercepting drug shipments, particularly in the Caribbean. The equipment and skills of the armed forces can be used to combat (transnational) crime. These are resources which are not possessed by other government services. Examples are back-up communication equipment, drone aircraft for surveillance duties above the Netherlands and the deployment of special units. The AIV recommends that the resources of the armed forces be put to even better use in support of law enforcement. The Ministry of Defence has various capabilities for assisting the Ministry of Security and Justice which could be put to good use both nationally and internationally. This would not only enhance the effectiveness and efficiency of the use of government resources, but would also help to increase public appreciation of the professional armed forces in buttressing the rule of law.

Finally, the AIV notes that good intelligence about developments that may threaten the security of the Dutch and international legal order from abroad is of crucial importance in the preventive approach to which the government refers in its request for advice and which has been dealt with in chapter III of the report. The General Intelligence and Security Service (AIVD) is responsible for supplying information about networks and persons that can be used to combat certain forms of international crime in situations where the continued existence of the rule of law or the security or other important interests of the state are in jeopardy. The AIV therefore recommends that the government reconsider its plan announced in 2012 to make drastic cuts in the AIVD's budget and foreign capacity as this would severely restrict its operational capacity.

Forms of transnational crime

Forms, scale and consequences of transnational crime
This overview of forms of transnational crime is largely based on The Globalization of Crime report of the United Nations Office on Drugs and Crime (UNODC) and on the 2012 National (Organised Crime) Threat Assessment of the former Dutch Police Services Agency (KLPD). Additional literature has also been consulted. The summary is not exhaustive, if only because every type of crime can have a transnational character and it would not be possible to discuss all forms of crime within the scope of this report. The forms of transnational crime described below either have serious consequences for individuals or societies or have been measured in great detail in terms of annual turnover or annual profit. The annexe deals with chief characteristics, relevant treaties and conventions and the scope and consequences for individuals and societies. The object of the overview is to show the extremely varied nature of transnational crime. It has been written from a general perspective, supplemented with information about the Netherlands. It does not deal with regional legal instruments and issues, with the exception of VAT 'carousel fraud', a major problem peculiar to the EU.

The estimated (financial) scale of the problem is stated for each form of transnational crime. In its report referred to above UNODC emphasises, however, that information about the scale of transnational crime is deficient and often contradictory. Estimates of the scale of the different forms of crime therefore merely provide a broad indication of the magnitude of the problem. The scale of transnational crime can be seriously underestimated because not all types of crime have victims who are prepared to report the offence. It is unlikely, for example, that drug addicts would report drug trafficking. Data on the scale of transnational crime can be revealed to some extent if the police and criminal justice authorities investigate and prosecute specific forms of crime proactively. The extent to which they do this depends on the capacity of the countries concerned to carry out lengthy investigations and on the criteria and priorities they apply in tackling crime. National data on transnational organised crime therefore tend to reflect political priorities rather than the actual nature of the problem.[172] In UNTOC the parties have undertaken to share information with UNODC on arrests and confiscations related to transnational organised crime. However, transnational crime remains a sensitive subject since it tends to reveal the weaknesses of the state, and instances in which data are exchanged internationally therefore remain scarce. Moreover, the quality of the data depends on the type of crime.[173] There are therefore few reliable and accurate estimates of the scale of transnational crime (i.e. data about turnover, profit margins, number of victims and so forth).

People

Human trafficking
The main global legal instrument against trafficking in persons is the human trafficking protocol to UNTOC. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime is intended to combat human trafficking and protect victims. In brief, human trafficking is the exploitation of people by force or deception. In

172 UNODC, *The Globalization of Crime. A Transnational Organized Crime Threat Assessment* (2010), p. 26.

173 Ibid., p. 26.

addition, the Council of Europe has adopted a Convention on Action against Trafficking in Human Beings. The Group of Experts on Action against Trafficking in Human Beings (GRETA) supervises the implementation of this convention by the parties.

Not all countries have laws prohibiting human trafficking; sometimes only human trafficking for the purposes of prostitution is an offence. Nowadays, however, other forms of labour exploitation are also offences in many countries. In addition, not all human trafficking has a transnational nature. The ILO estimates that some 20.9 million people are victims of forced labour globally.[174] Ninety per cent of them (18.7 million) are exploited in the private economy (some 4.5 million of them being victims of forced sexual exploitation). In over 6 million cases human trafficking involves a cross-border element.[175] According to the ILO, 26% of all victims are under the age of 17 years and approximately 5.5 million children perform forced labour. The ILO also states that three quarters of the persons coerced into prostitution reside outside their country of origin. UNODC notes that in the EU an estimated 140,000 people were victims of human trafficking in 2010.[176]

The ILO estimated in 2005 that the annual profit of traffickers in human beings was almost USD 32 billion.[177] And in 2009 it calculated that the total amount of unpaid wages to victims of forced labour was approximately USD 20 billion. This amount was exclusive of income from prostitution.[178]

In the Netherlands the police are required to register victims of human trafficking with CoMensha, the human trafficking coordination centre. Events can strongly influence the number of registrations and the composition of the registered victim population (by sex, age and so forth). The number of registered victims rose from 2000 onwards. Not until 2005 did human trafficking outside the sex industry become a criminal offence in the Netherlands. The number of reports to CoMensha has risen since that date. In addition, male victims have also been registered since that date. Before 2005 all victims registered with CoMensha were women. In 2009, 909 victims of human trafficking were registered in the Netherlands, approximately 15% of whom were men. Minors accounted for between 5 and 28% of the victims in the period 2003-2009. Since 2004 Dutch victims have been the largest group, but there are also many Nigerian, Romanian, Bulgarian and Chinese victims. The number of minors among Dutch victims has exceeded 20% in recent years. At least half of the victims were exploited in the sex industry.[179]

174 Article 2.1 of the ILO Forced Labour Convention, 1930 (No. 29) defines forced labour as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'. The ILO has two conventions on forced labour, namely No. 29 adopted in 1930 and No. 105 adopted in 1957.

175 ILO, *Global Estimate of Forced Labour, results and methodology*, ILO 2012.

176 UNODC, *The Globalisation of Crime. A Transnational Organised Crime Threat Assessment* (2010), p. 43.

177 ILO, *A Global Alliance against Forced Labour*, 2005, pp. 56-57.

178 ILO, *The Cost of Coercion*, 2005, p. 32.

179 Data taken from: National Rapporteur on Trafficking in Human Beings 2010. *Human Trafficking – 10 years of National Rapporteur on Trafficking in Human Beings in the Netherlands* – 8th report of the National Rapporteur. The Hague: BNRM.

Human trafficking has a huge impact on the victims. Human traffickers resort to various methods to coerce their victims into cooperation, such as force, sexual violence, incarceration, isolation from family and friends, intimidation and humiliation. Moreover, victims generally work in bad conditions without adequate accommodation and have too little to eat. They can therefore suffer major psychological and physical harm. The plight of children who have been recruited as child soldiers and have killed people is particularly bad. If victims are forced into prostitution they can become infected with HIV. For relatives the shame of prostitution can be overwhelming and can result in the victim being disowned or killed to save the honour of the family. Forced labour can also adversely affect the labour market position of legal employees. Human trafficking does not generally cause social disruption.

Victims of human trafficking often become trapped between two conflicting sets of legal rules. While they are victims of a serious crime and thus need protection and assistance, they are often present in the country illegally and, from this perspective, are therefore themselves seen as offenders. Which set of rules takes precedence differs from country to country.

People smuggling

As a consequence of global inequality and the restrictive immigration policy of a large number of countries, people from less developed parts of the world are sometimes prepared to take big risks and pay a lot of money in order to enter more prosperous countries illegally, often helped by a criminal gang.

The Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing UNTOC defines the smuggling of migrants as 'the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national'. The parties to the protocol are obliged to criminalise both migrant smuggling and producing, procuring, providing or possessing a fraudulent travel or identity document if this is related to migrant smuggling.

UNODC identifies two major illegal flows of migrants: from Latin America to North America and from Africa to the EU. The flow from Latin America to North America is estimated to consist of approximately three million illegal immigrants a year. Probably 90 per cent of these immigrants are assisted by criminal smugglers, who thereby earn an estimated annual income of USD 6.6 billion. This flow has decreased in size since 2005. The number of migrants travelling from Africa to the EU is much smaller, partly because the sea crossing is difficult. Data show that there were about 55,000 immigrants in 2008, from whom criminal smugglers are estimated to have earned USD 150 million.[180]

The eastern borders of the Schengen area are particularly difficult to guard. Once smugglers and their charges have crossed these borders, their risk of being stopped and checked is greatly reduced. With the exception of mobile checks, border controls have virtually ceased to exist within the Schengen area. The Dutch Police Services Agency does not perceive any major changes in people smuggling through or to the Netherlands. As the Netherlands is not the final destination for the great majority of illegal migrants, the consequences for Dutch society are limited. The Agency was therefore unable to make any

180 UNODC, *The Globalisation of Crime. A Transnational Organised Crime Threat Assessment* (2010), pp. 66-67.

pronouncements about the number of people smuggled to the Netherlands.[181]

As migrants are smuggled across borders at their own request, the adverse consequences for them are generally small, but cases are known in which smugglers have locked up or mistreated migrants or tried to force them to pay more.

Narcotic drugs

There are three important international conventions on narcotic drugs, namely the Single Convention on Narcotic Drugs of 1961 (amended in 1972), the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. The first two mainly concern the fight against illicit trafficking and the distinction between the illicit use of narcotic drugs and their use for medicinal and scientific purposes. The third has extended the scope of the first two conventions to the chemical products used in the manufacture of drugs (precursors) and established a basis for international cooperation. The three conventions grant powers to the Commission on Narcotic Drugs (policy) and to the International Narcotics Control Board (supervision of compliance with the conventions). Both these bodies are functional commissions of the UN's Economic and Social Council.

The Netherlands is not a producer of cocaine and heroin, but its excellent infrastructure is used for the distribution of these narcotic drugs in Europe. According to Europol's 2011 Organised Crime Threat Assessment report (OCTA report), the Netherlands, together with Belgium, is one of the five criminal logistics hubs within the EU and is known as the north-west hub. The port of Rotterdam plays an important role in this connection.[182] For a long time the Netherlands was Europe's second most important gateway for cocaine (after Spain), a position which was due to the presence of major ports and its links with the Netherlands Antilles. Since 2009 the quantity of cocaine shipments intercepted in the Netherlands has fallen sharply, probably due to stricter controls at Schiphol Airport and improved interception of drug shipments in South America. Nowadays, some of the shipments may possibly be routed through Belgium. The Coast Guard for the Netherlands Antilles and Aruba (now the Caribbean Coast Guard) and the Dutch navy are still seizing substantial quantities of cocaine: 6.8 tonnes in 2008.[183] The scale of drug trafficking can also be illustrated by the fact that since 2003 approximately 70% of criminal investigations in the Netherlands have been related to drug offences.[184]

Most narcotic drugs adversely affect the health of those who use them. Cocaine and heroin are highly addictive and addiction can totally disrupt the life of users. Addiction problems have a knock-on effect on both the family of drug users and on their wider social circle. Cocaine and heroin trafficking also lead to social upheaval in various countries: health problems, corruption, arms trading, money laundering, armed crime, prostitution, instability and violence. In Mexico, where cocaine trafficking is accompanied by extreme

181 Dutch Police Services Agency, *National Organised Crime Threat Assessment 2012*, Zoetermeer 2012, pp. 80-81.

182 Europol, *EU Organised Crime Threat Assessment (OCTA) 2011*, pp. 6-7.

183 Ibid., pp. 9-11 and UNODC, *The Transatlantic Cocaine Market, Research Paper*, April 2011, p. 22.

184 Research and Documentation Centre / Trimbos Institute, Nationale Drug Monitor – 2011 annual bulletin, pp. 274-275.

violence, the authorities are scarcely a match for the drug cartels. UNODC notes that the number of murders rises rapidly if a Caribbean country becomes a new transit route for cocaine.[185]

Ecstasy – a synthetic drug – also has a negative impact on the health of users. Excessive use can result in restlessness, anxiety and hallucinations. There is also an increased chance of depression. Protracted use can cause brain damage.[186]

People who use cannabis regularly can become chronically dependent, which is a growing problem worldwide. In addition, cannabis use has been shown by some studies to increase the chances of psychosis and worsen short-term memory.[187] However, the trade in ecstasy and cannabis products has far fewer social consequences than the trade in cocaine and heroin.

Cocaine trafficking

Cocaine is produced in three Andean countries: Bolivia, Colombia and Peru. The great majority of the production is intended for two destinations: North America and the EU. According to the Dutch Police Services Agency, the number of cocaine users in the Netherlands apparently rose from 32,000 to 55,000 in the period from 2005 to 2010, but it attributed this to a different measuring method. The number of users had been underestimated in the past. Since 2006 the Dutch cocaine market has been large and stable.[188]

In the EU demand for cocaine has greatly increased since the turn of the century, although this growth now seems to be stabilising. Most cocaine enters the EU through two regional hubs: Portugal/Spain and Belgium/the Netherlands. The port of Rotterdam is one of the places where cocaine is imported into the EU. Between 2004 and 2007 West Africa developed as a transhipment region for European cocaine. In 2008 approximately 124 tonnes of cocaine with an estimated value of USD 34 billion are believed to have entered the EU. Just as in the case of the trade with the United States, the great majority of the profit (56%) was earned in the destination countries.[189] UNODC estimates that turnover in the cocaine market worldwide fell from USD 165 billion in 1995 to USD 85 billion in 2009. Of this 99 per cent goes to drug traffickers and the rest to the farmers who grow coca.[190]

Heroin trafficking

Heroin is produced by chemical means from the opium poppy plant. Most of the heroin-consumed in the EU comes from Afghanistan, but heroin is also produced in South-East Asia. The heroin from Afghanistan is mainly exported to the Russian Federation and to

185 UNODC, *The Transatlantic Cocaine Market*, *Research Paper*, April 2011, p. 54.

186 UNODC, *Get the Facts About Drug*s p. 7, UNODC, *World Drug Report 2012*, p. 12.

187 UNODC, *World Drug Report 2011* p. 5, pp. 177 and 184.

188 Dutch Police Services Agency, *National Organised Crime Threat Assessment 2012*, Zoetermeer 2012, pp. 37-38.

189 UNODC, *The Globalisation of Crime. A Transnational Organised Crime Threat Assessment* (2010), pp. 5-6.

190 UNODC, *World Drug Report 2011*, pp. 124-125.

western Europe. The majority of the profits are made by criminal networks along the route, which consist of both well-organised groups and small entrepreneurs. The heroin enters the West European market through what is known as the Balkan route, in which the Netherlands serves as a distribution centre. To satisfy the estimated demand of approximately 87 tonnes (worth approximately USD 20 billion) an estimated 140 tonnes must leave Afghanistan.[191] UNODC estimates that the worldwide turnover in opiates (including heroin) was worth approximately USD 68 billion in 2009. Drug traffickers therefore made a profit of approximately USD 7 billion.[192]

The number of heroin users in the Netherlands is not rising and the population of users is ageing: the number of heroin users with a serious addiction is approximately 18,000.[193]

Synthetic drugs

Synthetic drugs are made of chemical substances. According to the World Drug Report 2012 ecstasy is produced and used in many countries. In the recent past it was mainly produced in Western Europe. Although the Netherlands and Belgium are still important producers, the production of ecstasy has increased in North America in recent years. The majority of the substances needed for ecstasy production currently come from South and South-East Asia.[194]

Although the World Drug Report 2012 does not mention the amounts involved in the trade in synthetic drugs, it does provide an indication of the scale of the problem. For example, 3.9 million ecstasy tablets were discovered at the border between Canada and the United States in 2010. According to UNODC this is the largest number of tablets found in five years. This shows that Canada is an important ecstasy producer.[195] Ecstasy is used on a scale comparable to that of cocaine.

For the synthetic drug market the Netherlands is not only a distribution centre but also an important country of origin. Although there are signs that the production of ecstasy and amphetamines is gradually shifting to Eastern Europe, Europol states that the Netherlands is still the country of origin most frequently named in connection with interceptions of ecstasy and amphetamines worldwide.[196] Despite the fact that the Dutch Police Services Agency had no clear picture of the scale of the production and consumption of synthetic drugs in the Netherlands, it believes that the majority of the synthetic drugs produced in the Netherlands are exported.[197]

191 UNODC, *The Globalisation of Crime. A Transnational Organised Crime Threat Assessment* (2010), pp. 6-8.

192 UNODC, *World Drug Report 2011,* pp. 45-46.

193 Dutch Police Services Agency, *National Organised Crime Threat Assessment 2012*, Zoetermeer 2012, p. 42.

194 UNODC, *World Drug Report 2012,* pp. 54 and 69.

195 Ibid., p. 54.

196 Ibid., p. 149.

197 Dutch Police Services Agency, *National Organised Crime Threat Assessment 2012*, Zoetermeer 2012, p. 50.

Cannabis

Cannabis remains the most widely used illicit substance worldwide.[198] According to UNODC, cannabis (marihuana) is cultivated in practically every country in the world, usually for domestic consumption. The international trade in cannabis is therefore small in comparison with consumption.[199] UNODC estimates that between 2.8 and 4.5% of the world's population between the ages of 15 and 64 used cannabis at least once in 2009.[200]

Cannabis resin (hashish) is generally not produced in the country of consumption. Production is concentrated geographically in Afghanistan and Morocco, while demand comes mainly from Western Europe, the Near and Middle East and East and South-East Asia.

Relatively little is known about the total volume of cannabis production. UNODC estimates, for example, that the production of cannabis was between 13,300 and 66,100 tonnes in 2008.[201] In view of the huge difference between the upper and lower limits of this estimate, little can be said about the scale of the trade in cannabis or of the profit made in this connection.

The Netherlands is an important production, storage and distribution country for cannabis products. The raw materials for the production of marihuana are fairly easy to purchase in the Netherlands. Production appears to be shifting to Germany and Belgium. The Netherlands is an exporter of cannabis, but there is no clear information about the scale of the export.[202] It is also an important source of seeds and cuttings for cannabis plants as well as of new technology and know-how for the cultivation of plants.[203]

Goods

Illicit arms trafficking

One reason why it is difficult to estimate the value of illicit arms trafficking is the lack of continuity: the flows are episodic and very dependent on political events in different parts of the world. This is why the flows change frequently. As soon as an armed conflict breaks out somewhere in the world, shipments of illicit arms will soon be en route there. The Small Arms Survey 2001 estimated the scale of the illicit trade in firearms at 10 to 20% of the legitimate trade in small arms (then valued at around USD 1 billion), out of a total legitimate arms trade of USD 5-7 billion.[204] Since that date no new estimates have been

198 UNODC, *World Drug Report 2012,* p. 1.

199 UNODC, *Estimating illicit financial flows resulting from drug trafficking and other transnational organised crimes*, Vienna, 2011, p. 48.

200 UNODC, *World Drug Report 2011*, p. 175, UNODC, *World Drug Report 2012*, p. 69.

201 Ibid., p. 72.

202 Dutch Police Services Agency, *National Organised Crime Threat Assessment 2012*, Zoetermeer 2012, p. 255.

203 Europol, *Serious and Organised Crime Threat Assessment 2013*, The Hague, 2013.

204 Small Arms Survey 2001, p. 167.

published by the Small Arms Survey or any other organisation. The UNODC report gives a specific example as an indication: in 2007/2008 approximately 40,000 Kalashnikovs worth an estimated USD 33 million were smuggled into South Sudan.[205]

The consequences of illegal arms trafficking are considerable, especially in the destination countries. Usually the weapons are used to unleash or sustain a domestic conflict. The violence committed with the weapons undermines the state and results in grave human rights violations. Generally, the economy of the destination country is dislocated or economically important regions come under the control of warlords or criminals. Illegal arms trafficking causes great social dislocation and much personal suffering.

In addition, there is illegal trafficking in larger weapons systems. There are no estimates of the scale of the illicit trafficking in such systems. According to the Stockholm International Peace Research Institute the Netherlands has ranked among the world's 15 largest weapons exporters in the past 15 years. These are mostly exports of parts (such as electronics) for large weapon systems, which are unlikely to be traded illicitly. In addition, the Dutch government has sold much surplus military materiel in recent years. The Netherlands also has shipyards where naval vessels are built. No small arms are produced in the Netherlands. The Netherlands is probably not a source country for illicit exports of small arms, but in view of its excellent infrastructure it may well serve as a transit country for illicit arms.

The Dutch Police Services Agency noted that illicit trafficking in firearms was not a priority for the law enforcement authorities and that there was therefore little information about it. The Agency pointed to the sharp rise in firearms presented for destruction after a criminal case. The number rose from 1,146 in 2009 to 2,257 in 2011. The Agency did not make any pronouncements about the possible scale of this trade in the Netherlands.[206] Nonetheless, it did state that it was fairly insignificant and was conducted by small, loosely organised traffickers. The trade is mainly carried on by Dutch criminals. Illicit arms trafficking in the Netherlands does not produce large profits and is almost always secondary to other criminal activities.[207]

Environmental crime

There are many forms of transnational environmental crime. Traditionally, they are divided into two categories. One is environmental pollution, mainly the dumping of hazardous waste and the illicit trade in ozone-depleting substances. The other is the illicit trade in natural resources.

As regards the transport of hazardous substances across borders, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was concluded in 1989. The convention aims to protect human health and the environment against the adverse effects of moving hazardous wastes across borders and obliges states to criminalise illegal traffic in such wastes. The convention is supplemented by a protocol on liability and compensation for damage resulting from transboundary movements of hazardous wastes and their disposal. In addition, the parties to the convention have adopted a large number of non-binding policy guidelines.

205 UNODC, *The Globalisation of Crime. A Transnational Organised Crime Threat Assessment* (2010), pp. 8-9.

206 Dutch Police Services Agency, *National Organised Crime Threat Assessment 2012*, Zoetermeer 2012, p. 83.

207 Ibid., p. 85.

Examples of hazardous wastes are end-of-life electronic and electrical devices, end-of-life motor vehicles and chemical waste. In practice, hazardous wastes are still exported illegally. Various methods can be used for this purpose. For example, wastes may be exported on the pretext that they are second-hand goods intended for recycling or that they are not hazardous or they may be intermingled with non-hazardous substances. A positive development is that both retailers and recycling centres are selling less and less scrap to shady dealers they might suspect will break the rules; this reduces the likelihood of this equipment disappearing into an illicit market.[208] The Dutch Police Services Agency noted that there is only a small chance of discovering an illegal movement of waste. Insufficient capacity and expertise are available for supervision, enforcement and investigation.[209]

Illegally exported hazardous wastes are often dumped or processed inexpertly, thereby posing major risks for public health and the environment. Water, air and soil can become polluted with hazardous substances, causing people in the vicinity to fall sick. As workers who handle the waste usually do not wear protective clothing or have other safety equipment, their health is often at great risk. By contrast, the risks for the countries where the hazardous substances originate are very small.

Two conventions are of particular importance in relation to the second category of environmental crime, i.e. the illicit trade in natural resources. These are the Convention on Biological Diversity (CBD) and the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). The UNODC report deals with the trafficking of endangered species from Africa and South-East Asia to Asia as a whole and the trafficking of timber from South-East Asia to Europe and other parts of Asia.

Large parts of Africa and South-East Asia are home to a considerable number of endangered species. As the enforcement capacities of the states in these regions are often weak, there are opportunities for poaching. The UNODC report notes that the trade attracts both well-organised groups and opportunistic informal participants. It is estimated that the trade in elephant ivory is worth USD 62 million and the trade in rhino horn USD 8 million annually. Tiger trafficking generates some USD 5 million annually.

Trees can be illegally felled for various reasons, for example to create agricultural land or produce charcoal or timber. The World Bank estimates that the annual worldwide proceeds of illegal logging is approximately USD 10-15 billion. Illegally harvested timber is often sold using fraudulent documents. These documents are usually not forged, but are instead obtained from corrupt officials. For example, the document may untruthfully specify that the timber is of a non-protected type or from an area where felling of the particular type of protected timber is permitted. This makes it difficult to distinguish between legal and illegal timber transports. Since 2010 the importation of illegally harvested timber into the EU has been prohibited.[210] In 2009 imports of illicitly sourced wood-based products to the EU from China and South-East Asia were estimated at some USD 2.6 billion and from South-East Asia to China at about USD 870 million.[211] Often these products are then re-exported from China.

208 Ibid., p. 221.

209 Ibid., pp. 228-229.

210 See: <http://ec.europa.eu/environment/forests/timber_regulation.htm>.

211 UNODC, *The Globalisation of Crime. A Transnational Organised Crime Threat Assessment* (2010), pp. 9-10.

Illegal logging causes a loss of biodiversity. Biotopes disappear and certain plants and animal species become endangered. Wood-burning also causes an increase in greenhouse gases. In addition, there are economic and social costs. A forest can be a source of income for the rural population. And, needless to say, no taxes are paid on illegally harvested timber.

Trade in counterfeit products

A counterfeit product infringes a patent, registered trademark or other form of intellectual property right. A trademark gives consumers information about the quality, properties and manufacturer of the goods. Counterfeit products wrongly give the impression of being of the same quality and having the same properties as the real products and originating from the same trusted manufacturer.

A large number of treaties and agreements regulate specific forms of intellectual property. The treaties of the World Intellectual Property Organisation (WIPO) deal with subjects such as patents, industrial designs, rules of origin, trademarks, trade names and copyright.[212] And members of the World Trade Organisation have concluded the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

Recently, Australia, Canada, the EU, Japan, Morocco, Mexico, New Zealand, Singapore, the United States, South Korea and Switzerland have reached agreement on the Anti-Counterfeiting Trade Agreement (ACTA). This agreement creates an international legal framework for the enforcement of intellectual property rights. The countries concerned considered that it was not possible to achieve sufficient compliance with existing treaties in international forums such as the World Customs Union, the World Intellectual Property Organisation and the World Trade Organisation. ACTA will take effect once it has been ratified by six states. A large majority of the European Parliament voted against ACTA in July 2012. This will prevent its ratification by the EU and its member states. It follows that the EU and its member states are not bound by the agreement.

UNODC estimates that the market for counterfeit goods in the EU was worth USD 8.2 billion in 2008.[213] Counterfeit goods worth almost USD 1.8 billion were seized in 2011 at the borders of the countries that are members of the World Customs Organisation.[214]

Counterfeit products are often manufactured using cheap, illegal labour and in poor working conditions. Production of such goods disrupts competition and can jeopardise the health of workers. In addition, environmental standards are often ignored, thereby causing harm to the environment. In practice, counterfeit products are often of inferior quality and their use can therefore have serious consequences for the safety and health of consumers. If a medicine is not efficacious, this has consequences first and foremost for the patients since their health does not improve. Moreover, diluted medication can result in the generation of drug-resistant pathogens. According to the World Health Organisation, only one per cent of the market value of counterfeit medicines is generated in countries with effective regulatory systems and market controls, including most EU member

212 For the treaties administered by WIPO see: <http://www.wipo.int/treaties/en/>.

213 UNODC, *The Globalisation of Crime. A Transnational Organised Crime Threat Assessment,* 2010, p. 181.

214 *Customs and IPR report 2011*, World Customs Organisation, p. 9.

states.[215] The policy agenda on falsified medicines and medical aids of the Ministry of Health, Welfare and Sport cites a survey by Pfizer in which the market value of counterfeit medicines in the Netherlands is estimated at over EUR 79 million a year. According to the same survey, between 50 and 90% of medicines sold online in the Netherlands are counterfeit.[216]

Other forms of transnational crime

Maritime piracy

Maritime piracy is unlike most other forms of transnational organised crime because it does not involve trafficking. Sometimes the aim is to gain control of a vessel or cargo and sometimes to kidnap the crew for ransom. The ransoms demanded have risen sharply in recent years, reaching a record level of USD 5.5 million in 2010. The economic damage as a consequence of piracy off the coast of Somalia was estimated at between USD 4.9 and 8.3 billion in 2010. On average a Somali pirate earns between USD 30,000 and 40,000 a year, although some have earned as much as USD 78,000 a year. This is very different from the Somali GNP per capita of USD 500.

In a joint report the International Maritime Bureau and Oceans Beyond Piracy state that in 2011 violent Somali hijackers attacked at least 3,863 seafarers, of whom 555 were taken hostage.

The United Nations Convention on the Law of the Sea requires states to cooperate in the repression of piracy on the high seas. It confers on the parties the 'right of visit', in other words the power to board suspect ships on the high seas and to seize ships under the control of pirates, confiscate the property on board and arrest and prosecute the pirates. However, the convention does not oblige the parties to prosecute, but leaves it to them to regulate this in their national jurisdiction and decide for themselves whether they consider it appropriate to prosecute.

Maritime piracy does not occur in Dutch waters, but as a mercantile nation the Dutch have a major interest in combating piracy elsewhere in the world. This is why the Netherlands is participating in anti-piracy operations off the coast of Somalia. The international community is, in fact, in agreement that the solution to the problem of piracy must be found ashore. However, the initiatives undertaken by various countries and organisations in combating piracy off the coast of Somalia do not yet provide an adequate answer to the problem. What is still lacking is a comprehensive and shared analysis of the problem, which also takes into account the lack of good governance, the lack of economic development, the absence of legal authorities and the lack of knowledge of how piracy is funded. In December 2010 the AIV published an advisory report on combating piracy at sea.[217]

215 WHO, *Medicines: spurious/falsely-labelled/falsified/counterfeit (SFFC) medicines, Fact sheet* No. 275, May 2012.

216 Ministry of Health, Welfare and Sport, *Beleidsagenda vervalste geneesmiddelen en medische hulpmiddelen* (Policy agenda on falsified medicines and medical aids), The Hague, July 2011.

217 Advisory Council on International Affairs (AIV), *Combating piracy at sea: a reassessment of public and private responsibilities*, advisory report no. 72, The Hague, December 2010.

Cybercrime

Cybercrime is a term for crimes that target computer networks or use them as a tool. The internet provides exceptional opportunities for crime because it is a worldwide network that provides real-time connections and is decentralised and based on digital information. It enables people throughout the world to cooperate together in a lateral network. Cybercrime can be committed for a variety of motives, for example for revenge, gain, curiosity or enhancement of reputation. The term cybercrime covers a wide range of offences, including identity theft, certain forms of intellectual property theft and trade in child pornography.[218]

Identity theft is very much on the increase. Identity theft involves the theft of personal information (such as passwords or identification numbers). Criminals can use this information in various ways, for example to steal money. The most recent techniques used to obtain identity information online can be broken down into three categories: (i) phishing (deceiving internet users into divulging their personal information); (ii) malware (the use by the victim of unintentionally installed software which collects and transmits personal information); and (iii) hacking (illegally accessing computer systems remotely). The criminals can sell the data to persons able to exploit them. On the basis of data from the United States, UNODC estimates that a sum of USD 1 billion is earned annually from identity theft. The damage is mainly of a financial nature.

Digital networks can also be used for the theft of intellectual property, for example the technical data of products being developed by a company. The commercial damage caused by this type of crime is hard to estimate, but is probably much greater than that caused by identity theft.

Until recently, the production and acquisition of child pornography were highly risky activities, often carried out by amateurs who disseminated the material within social networks. With the growth of the internet it is feared that the greater accessibility of child pornography could lead to greater demand and thus greater profitability in the production and sale of these materials. It is possible that such profitability could attract the attention of organised crime groups, although this has not been observed to date. UNODC puts the size of the child pornography industry at USD 250 million.[219] Child pornography is distributed not only through commercial websites but also on websites on which images are exchanged free of charge. According to the Dutch Police Services Agency, there was little evidence of commercial production and dissemination of child pornography in the Netherlands as there has been no research into this subject. Some child pornography websites are operated on Dutch servers. Moreover, the non-commercial production and dissemination of images of sexual abuse of children does occur in the Netherlands. Non-commercial dissemination is often arranged on a voluntary basis between users in peer-to-peer networks on which material is exchanged in encrypted form.[220] The production of child pornography has an enormous impact on the mental welfare of the victims; children can be traumatised for life and the parents and other relatives also suffer deeply.

218 B.J. Koops, '*The Internet and its Opportunities for Cybercrime',* December, 2010. Transnational Criminology Manual, M. Herzog-Evans, ed., vol. 1, pp. 735-754, Nijmegen: WLP, 2010.

219 UNODC, *The Globalisation of Crime. A Transnational Organised Crime Threat Assessment* (2010), pp. 12-13.

220 Dutch Police Services Agency, *National Organised Crime Threat Assessment 2012*, Zoetermeer 2012, p. 92.

Negotiations in the United Nations on an anti-cybercrime convention have not yet borne fruit, partly because of differences of opinion about human rights aspects. This is because the freedom of the internet is at issue. The Council of Europe's Convention on Cybercrime is the most comprehensive international legislative instrument for combating cybercrime to date. The convention harmonises the substantive and procedural criminal law of the parties and requires states to establish basic digital investigation powers. Most members of the Council of Europe have ratified the convention. The Russian Federation is one of the countries that has not yet ratified it. On the other hand, the convention has been ratified by the United States and Japan, which are not members of the Council of Europe. Various other countries outside the Council of Europe have also used the convention as an example or are intending to accede to it. At the request of the General Assembly of the United Nations, UNODC recently published a study on cybercrime.[221] This deals mainly with prevention and criminal law aspects.

In practice, cooperation between states continues to be difficult. Obtaining evidence is also problematic because cybercrime often leaves few traces. Its characteristics often make it difficult to determine who exactly has committed a computer offence. For example, a criminal may steal the credit card data of someone in a different country, store them on a server in a third country and sell them to a person in yet another country. It can therefore be difficult to trace the offender and gather sufficient evidence to obtain a conviction, if for no other reason than that the power of investigation is subject to territorial limits and legal assistance procedures are often time-consuming.

VAT fraud

VAT fraud is a form of crime peculiar to the EU. Since 1993 there has been a common VAT system for EU member states. At that time it was agreed that intra-Community transactions would be zero-rated. This is still the situation. The most common and widespread form of VAT fraud is Missing Trader Intra-Community (MTIC) fraud, which involves a sham cross-border supply and incorrect application of the zero rate.

There are two types of MTIC fraud: acquisition fraud and carousel fraud. Acquisition fraud is complex. The Dutch Tax and Customs Administration describes the process as follows. Trader A in the United Kingdom supplies goods to trader B in the Netherlands. As this is an intra-Community supply (a cross-border supply within the European Union) trader A supplies the goods at the zero rate. Trader A does not charge VAT to trader B and need not therefore remit VAT to HM Revenue and Customs in the United Kingdom. Trader B then sells the goods in the Netherlands to trader C. Trader B charges VAT on the sale and is therefore obliged to remit this VAT to the Dutch Tax and Customs Administration, but does not do so. Trader C has paid VAT to trader B and is therefore entitled to deduct that amount as input tax. In this example trader B is the defaulter since it does not remit the VAT it has received to the Tax and Customs Administration. Traders A and C may also be party to the fraud, but this need not be the case. In its initial stage carousel fraud resembles acquisition fraud. However, in the case of carousel fraud the process repeats itself over and over. Hence the name carousel fraud.[222]

221 UNODC, *Comprehensive Study on Cybercrime*, Vienna, February 2013.

222 Netherlands Court of Audit, *Intracommunautaire BTW-fraude, Terugblik* (Intra-Community VAT Fraud Review), The Hague 2012, p. 7.

By the time the Tax and Customs Administration discovers the fraud, the fraudulent business has usually disappeared and the private company (BV) has often been wound up – hence the name missing trader fraud. Businesses of this kind generally commit this fraud over a period of months and then simply abscond with the VAT.

Missing Trader Intra-Community Fraud requires the participation of a minimum of three legal entities (one of which is registered in a different EU member state from the other two) and the passing of invoices between these legal entities and a legal entity that charges VAT but does not remit it. Perpetrators must know the system well and how it can be abused. Starting capital is also necessary.

The fraud can be made even more opaque by involving many legal entities in different countries. Investigation requires the intensive exchange of data between national authorities and between services within countries. Another reason why the fraud is difficult to trace is that the differences between legitimate and fraudulent transactions are very small. According to the Tax and Customs Administration, the timely international exchange of data is still difficult to arrange.[223] However, anti-fraud units do appear to give due priority among themselves to requests for information. Nevertheless, between 2009 and 2011 almost 50% of all Dutch requests for information from other EU member states were answered too late. Conversely, according to an estimate of the Dutch central liaison office, almost 35% of the standard requests for information received in 2010 and 2011 were answered too late by the Dutch Tax and Customs Administration. This delay was mainly attributable to the time needed by the regional tax offices to answer the questions and return their replies to the central liaison office.[224] The Netherlands Court of Audit has stated that it is still unclear what effect this delay has on anti-fraud operations.[225]

A 2009 joint report of the national audit offices of the Netherlands (*Algemene Rekenkamer*), Germany (*Bundesrechnungshof*) and Belgium (*Rekenhof/Cour des comptes*)[226] notes that it is difficult to determine at EU level exactly how much tax is lost as a result of MTIC fraud. However, the amounts involved are clearly huge. According to an estimate in 2003 of the Economic and Monetary Affairs Committee of the European Parliament the shortfall of VAT remittances in EU member states is approximately EUR 100 billion annually.[227] Although this amount also includes all other forms of VAT fraud, according to the Netherlands Court of Audit it is generally assumed that carousel fraud accounts for a large proportion. The economic consultancy Reckon has estimated the size of the VAT gap.[228] This gap is defined as the difference between accrued VAT receipts and the theoretical net VAT liability for the economy as a whole, based on macroeconomic figures. The estimate was approximately EUR 106.7 billion for the EU as a whole in 2006. This includes all types of VAT fraud, including MTIC fraud.

223 Ibid., p. 12.

224 Ibid., p. 12.

225 Ibid., p. 17.

226 Netherlands Court of Audit, *Intra-Community VAT Fraud*, The Hague 2009.

227 Netherlands Court of Audit, *Intra-Community VAT Fraud Review*, The Hague 2012, p. 39.

228 Reckon, *Study to quantify and analyse the VAT gap in the EU-25 Member States*, London 2009.

According to a Netherlands Court of Audit report on an intra-Community VAT fraud dating from September 2012, the Dutch tax loss from carousel fraud was approximately EUR 39 million a year in the period 2008-2011.[229] That was less than the figure of EUR 131 million a year which was the tax loss in the period 2003-2007. The decline is probably due to the greater priority given to tackling carousel fraud and the fact that the United Kingdom has applied the reverse-charge mechanism to mobile phones and computer parts since 2006. The reverse charge mechanism means that only the trader who has paid VAT can reclaim it if the goods are exported.

These estimates show that the scale of VAT fraud is greater than that of worldwide trafficking in cocaine and heroin together. Another characteristic of VAT fraud is that it is a victimless offence: there are no clearly identifiable individuals who are victims. Such offences are quite often given low priority in investigation and prosecution. However, society as a whole is basically the victim because the authorities lose substantial tax revenues. Another striking characteristic is that there is no need for the criminal to launder the proceeds, since the returned VAT has been paid out by the tax authorities and therefore already has the appearance of legitimate income.

A consequence of VAT fraud is loss of revenue for the EU and national governments. Governments lose substantial tax revenue because VAT has not been remitted but has been claimed. VAT remittances are an important source of income for the EU. Bona fide businesses may also be affected. The Tax and Customs Administration can impose substantial tax assessments and fines on haulage companies that have wittingly or unwittingly become involved in VAT fraud.

Money laundering, corruption, document fraud and violence

Money laundering, corruption, document fraud and violence are criminal offences in many countries and are also instrumental in the commission of other crimes. For example, money laundering is usually necessary in order to convert the proceeds of crime into legitimate money, false documents obtained by bribing officials are necessary to move illegally harvested timber, and even in the Netherlands port and airport staff may be bribed to cooperate in the importation of drugs.[230] Money laundering, corruption, document fraud and violence are often secondary criminal activities necessary to commit transnational crime and benefit from the proceeds.

Money laundering involves concealing the source of proceeds gained from crimes (including corruption) and the creation of a seemingly legitimate origin. In itself the financial transaction is not illegal, but it is an offence because it concerns money that has been earned illegally by means of the predicate offence. Money laundering provides criminals with ostensibly legitimate funds which they can use, for example, to fund illegal activities or even to invest in the legitimate economy. Criminals usually invest not in the most lucrative sectors but in projects where there is the least chance that the criminal origin of the funds will be discovered.[231] Examples of sectors used for laundering criminal

229 Netherlands Court of Audit, *Intra-Community VAT Fraud Review*, The Hague 2012, p. 4.

230 Dutch Police Services Agency, *National Organised Crime Threat Assessment 2012*, Zoetermeer 2012, p. 238.

231 UNODC, *Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes*, 2011, pp. 9-10.

funds are property, gambling, foreign exchange offices and travel agencies.[232] The proceeds of criminal activities can be used to buy cars, antiques, boats, precious stones and jewellery for cash, but may also be invested in property, the hotel and catering sector or the transport industry.

Criminals will not always wish to avoid paying tax on the income from criminal activities. A criminal organisation can launder money by creating sham turnover from a legitimate business which generates large amounts of cash and paying tax on this. The tax remittances are then the costs of the money laundering. Money laundering need not therefore involve tax evasion.

UNTOC and UNCAC obliges states to criminalise money laundering, but various other conventions also contain provisions on money laundering.

The consequences of money laundering are mainly of a social nature, for example disruption of the property market and tax avoidance and evasion. It is unclear how much Dutch and other criminal networks invest in property.

Corruption is a subject that is high on the agenda of many international organisations and governments. This is hardly surprising in view of the harm it causes, as explained in chapter I. Organisations that devote much attention to corruption and fighting corruption are not confined to those with a mandate in the field of development cooperation, such as the World Bank and UNDP. The Council of Europe too has conventions and working groups that deal specifically with these subjects. The approach taken by the Council of Europe consists of three elements: setting rules, supervising compliance with the rules and providing technical assistance for compliance with the rules. The Council of Europe has concluded three anti-corruption conventions: the Criminal Law Convention on Corruption, the Civil Law Convention on Corruption and the Additional Protocol to the Criminal Law Convention on Corruption. There are also a number of recommendations for combating corruption. Particular mention should be made of the Group of States against Corruption (GRECO), which consists at present of 48 European states and the United States. Membership is open to every state that ratifies the relevant conventions of the Council of Europe. GRECO has put in place a system of peer evaluation procedures to assess to what extent the members comply with the relevant conventions. There are also many non-governmental organisations that advocate the need to fight corruption and try to foster awareness of the problem. Perhaps the best known example is Transparency International. This organisation publishes an annual report ranking most countries based on perceived levels of public sector corruption.

232 Ibid., p. 116 and M.E. Beare, *Responding to transnational organised crime*, in: Routledge Handbook of Transnational Organised Crime, p. 269.

Annexe II

Request for advice

Mr F. Korthals Altes
Chairman of the Advisory Council
on International Affairs
P.O. Box 20061
2500 EB The Hague

Date 31 January 2012
Re Request for advice on the nexus between crime, corruption and instability

Dear Mr Korthals Altes,

Transnational crime has a disruptive and destabilising impact on many countries and regions. Together with the Ministers of Security & Justice and Defence, we would therefore like to ask the AIV for an advisory report on ways of strengthening international cooperation on preventing and combating this phenomenon.

As a result of globalisation, organised crime has taken on a pronounced transnational character. The issue is closely linked in many countries to political corruption and to the illegal appropriation of countries' natural wealth and mineral resources for the benefit of special interests. Global and local factors reinforce each other in this process. Transnational organised crime is spreading in the shadow of globalisation, sometimes visibly but more often invisibly, 'like an assassin taking aim at global stability'.[1] In combination with political corruption it is undermining or hampering the growth of state structures and public agencies, resulting in far-reaching destabilisation in some regions. This makes transnational crime a complex problem whose solution demands close international cooperation and an integrated approach.

Reports

In his book *Illicit: How Smugglers, Traffickers and Copycats Are Hijacking the Global Economy*, Moisés Naím discusses an 'explosion' of illicit trade. Factors such as globalisation, new technologies and national governments' limited oversight of transnational networks, Naím writes, have given illegal activities a whole new dimension.

The *EU Organised Crime Threat Assessment* (OCTA) issued annually by Europol gives a clear picture of the reality of organised crime in Europe.

A global overview can be found in the UN Office on Drugs and Crime (UNODC) report *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, which examines 16 forms of crime. In terms of value flows and degree of organisation, drug trafficking is the most extensive form of transnational crime. The report makes clear that the problem encompasses multiple other forms of illegal activity, however, ranging from environmental

1 Speech on security policy by the Minister of Foreign Affairs in Breda on 24 May 2011.

crime and trafficking in endangered species to the production of a great variety of counterfeit products.

The report shows that illegal goods and services find their way to rich destination countries by being intermingled with legal trade. It concludes that law enforcement, while important, is not sufficient: for every criminal gang that is eliminated another one is there to take its place. The solution must be sought in a broader international strategy focused on combating trafficking flows as a whole, disrupting illegal markets and strengthening the rule of law.

The last chapter of the UNODC report is devoted to 'regions under stress': regions where conflicts, transitions and crime form a dangerous combination with far-reaching disruptive consequences that can create failed states. A recent study by the Netherlands Institute of International Relations 'Clingendael', entitled 'Building Resilience to Transnational Organised Crime in Fragile States', points to a vicious circle in which fragile states risk being caught. Even in developing and transition countries that would not usually be characterised as fragile or failing, corruption and crime undermine the proper functioning of state institutions. Politics can in such conditions be entangled with organised crime to varying degrees.

In his book *The World of Crime: Breaking the Silence on Problems of Security, Justice and Development across the World*, Professor Jan van Dijk highlights the far-reaching consequences of political corruption and crime for governance structures and development potential in weak and fragile states. Van Dijk states that without a properly functioning justice system, government and society are helpless in the face of mushrooming crime. He therefore advocates devoting considerable attention in development strategies to building and strengthening the rule of law. Specifically, he favours the establishment of specialised, well equipped anti-mafia and anti-corruption units.

Many of the countries in question also face the problem of 'resource capture', in which private if not criminal interests gain control of mineral and other natural wealth that should benefit the country's entire population. Professor Paul Collier of Oxford University discusses this at length in a book with the revealing title *The Plundered Planet*.

These are all serious obstacles to reducing poverty or achieving other major development objectives such as good governance, human rights and environmental preservation.

Consequences for the Netherlands

In a world where distances are shrinking and borders are losing their significance, these developments affect Dutch society in palpable ways, both in the European part of the Netherlands and in the wider Kingdom. The effects could be felt even more strongly in the future if the downward spiral of instability and crime continues. With its open economy, the Netherlands is highly dependent on a stable, orderly international environment. This applies equally to the Kingdom's Caribbean countries, located in a vulnerable region crisscrossed by drug trafficking routes from South to North America and to Europe in particular.

As set out in the coalition agreement, the government is working to tackle crime more directly and effectively. Many criminal organisations operate transnationally, in part to stay outside the radar of national authorities. This makes international cooperation essential in combating crime.

This includes cooperation within the European Union. The EU is increasingly becoming a common judicial area with free movement of persons, goods and services and with common

legislation. This increasingly necessitates a common approach to crime within Europe. The Justice and Home Affairs Council, in which the Netherlands is represented by the Ministers for Immigration, Integration & Asylum Policy (on behalf of the Minister of the Interior) and of Security & Justice, is responsible for this common approach. The EU is also working to strengthen controls at its common external borders; the agency Frontex was established for this purpose. Moreover, special attention is being paid to the Union's neighbouring countries.

In his speech to the Ambassadors' Conference on 17 January 2011, the Minister of Security and Justice stressed the importance of capacity building in the countries where transnational crime affecting the Netherlands originates. He called on the Ministry of Foreign Affairs to step up diplomatic and financial efforts to this end.[2]

In criminal investigations and international cooperation, the Public Prosecution Service plays the lead role, while the Minister of Security and Justice sets the main policy priorities. Other ministries and agencies can also be involved in such activities, and their interests and functioning can be affected. The complex and far-flung nature of transnational crime means that the issue relates, directly or indirectly, to many different ministries' policy areas. It therefore calls for a comprehensive approach, with the different ministries and other government bodies reinforcing and complementing each other's efforts and policy. Law enforcement agencies, too, regularly deal with the international dimension of crime: mainly the Public Prosecution Service and police, but also specialised investigative agencies like the Fiscal Information and Investigation Service (FIOD), the Social Security Intelligence and Investigation Service (SIOD) and the VROM Intelligence and Investigation Service (VROM-IOD). By the very nature of its work, the Royal Military and Border Police deals with foreign countries as it monitors the Netherlands' borders and, via Frontex, the EU's external borders, combating such crimes as passport and visa fraud, people smuggling and drug trafficking.

The armed forces also play a major role in combating various forms of transnational organised crime. The coalition agreement calls the military 'a full partner in the fight against drugs, terrorism, illegal immigration and piracy'. For example, the armed forces have been deployed at sea to combat drug trafficking in the Caribbean and have supported the Kingdom of the Netherlands' Caribbean Coastguard, in both cases under the authority of the criminal justice system. The armed forces also contribute to global security, for example in counter-piracy operations off the Somali coast and through Frontex.

During stabilisation missions, the most rapid possible restoration of law and order is a crucial objective, so as to prevent the emergence of a power vacuum that criminal gangs could exploit. The lesson of past stabilisation operations is that creating a safe environment for ordinary people is vital to an operation's success. Establishing a properly functioning police force is thus a key aspect of reconstruction.

Questions

Against this background, the government would request that the AIV address the following questions.

1. How does the AIV assess these problems of organised crime, corruption and instability? What Dutch and European interests are at stake? What should we focus on? How

2 Speech by the Minister of Security and Justice on capacity building in the field of police and criminal justice, Ambassadors' Conference, 17 January 2011, and report of the discussion.

could international efforts to prevent and combat transnational crime be strengthened, especially in unstable regions, using an integrated approach? What preventive and flanking measures would most effectively complement a criminal justice approach? How can illegal markets be disrupted, as the UNODC suggests, and how can the Netherlands help develop international strategies and initiatives?

2. What is the best way to help developing countries resist the destabilising effects of the interlinked problems of crime, corruption and illegal appropriation of natural wealth? How could building the police and justice system, as well as promoting the rule of law more broadly, be better integrated into national and international development programmes?

3. How can the Netherlands use a comprehensive approach to make the best possible contribution in this field? In what ways could the different ministries strengthen each other's efforts, and how could their different programmes be most effectively integrated into a policy to combat transnational organised crime in transition and developing countries, particularly in countries from which crime spreads to the Netherlands? How can the Ministry of Foreign Affairs' financial instruments be optimally employed for this purpose? In the light of the quote from the coalition agreement cited above, how does the AIV view the role of the armed forces in the fight against transnational organised crime?

We look forward to receiving your report.

Yours sincerely,

Uri Rosenthal
Minister of Foreign Affairs

Ben Knapen
Minister for European Affairs and International Cooperation

List of persons consulted

Name	Position/organisation
Ms M. de Blok	Law Enforcement and Crime Prevention Department, Ministry of Security and Justice
J.B. de Bourbon Parme MA	Special Envoy for Natural Resources, Ministry of Foreign Affairs
Dr I. Briscoe	Senior Research Fellow at the Netherlands Institute of International Relations 'Clingendael'
Professor H.G. van de Bunt	Professor of Criminology at the Erasmus University
J. Demmink	Former Secretary-General at the Ministry of Security and Justice
P. van Dijk	Policy officer, Directorate-General for Tax and Customs, Implementation Policy Unit, Ministry of Finance
W. Faber	Lecturer in Financial and Economic Crime, Police College
Professor C.J.C.F. Fijnaut	Tilburg Law School, University of Tilburg
S. van de Geer	Cybercrime Programme Manager, Law Enforcement and Crime Prevention Department, Ministry of Security and Justice
C. van Heuckelom	Head of Unit, Criminal Finances & Technology, Operations Department, Europol
C.G. Holl	Coordinating policy officer, Financial Markets Department, Ministry of Finance
A. IJzerman	Deputy Director-General for Administration of Justice and Law Enforcement, Ministry of Security and Justice
R.P. de Jager	Team leader, National Crime Squad (in the course of being set up)
F.E. Jansen	Police – Financial and Economic Crime Programme Manager and Police Confiscation and Seizure Implementation Manager
Professor G.C.A. Junne	Professor of International Relations, University of Amsterdam
J.A. Kamminga	Policy Adviser, Directorate-General for Tax and Customs Taxation Policy Unit, Ministry of Finance

P.M. Kraan	Natural Resources Focal Point, Ministry of Foreign Affairs
Lt. Gen. J.A.J. Leijtens	Commander, Royal Military and Border Police
J.D. Nollet	Head of Unit, Analysis & Knowledge, Operations Department, Europol
A. Ortiz Lopez-Camara	Senior Specialist, Strategic & External Affairs Unit, Governance Department, Europol
M.M.A. Oskam	Senior policy officer, Law Enforcement and Crime Prevention Department, Ministry of Security and Justice
Professor M. Pugh	Research Professor of Peace and Conflict Studies, University of Bradford
Ms E.E. Riep	Policy officer, European and International Affairs Department, Ministry of Security and Justice
Professor D. Rozenblit-Siegel	Professor of Criminology, Willem Pompe Institute, University of Utrecht
G.W.L. Schutte	Directorate-General for Tax and Customs, Taxation Policy Unit, Ministry of Finance
Professor A.C.M. Spapens	Professor of Criminology, Tilburg Law School, University of Tilburg
Ms L.J. Timmer	Personal adviser to the Commander of the Royal Military and Border Police
B. Waites	Senior Specialist, Office of the Director, Governance Department, Europol

List of abbreviations

BIBOB	Public Administration (Probity Screening) Act
CFTI	Conflict Free Tin Initiative
DRC	Democratic Republic of the Congo
EU	European Union
FARC	Fuerzas Armadas Revolucionarias de Colombia
FATF	Financial Action Task Force
FIOD	Fiscal Information and Investigation Service
ILO	International Labour Organisation
KLPD	Dutch Police Services Agency (of the former regional police)
OCTA	Organised Crime Threat Assessment
OECD	Organisation for Economic Cooperation and Development
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organised Crime
VAT	Value-added Tax

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