

COUNTER- FEITING & TERRORISM

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POUR LA PROTECTION INTERNATIONALE DE LA PROPRIÉTÉ INTELLECTUELLE

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FORWARD

Still all too often considered as a minor offence, industrial and commercial counterfeiting currently represents a real threat to both the global economy and consumers alike, to the environment or the stability of States.

While counterfeiting harms the companies that fall victim to it, therefore ruining innovation and destroying jobs, it hurts consumers, who put their health and safety at risk by purchasing products that do not meet the safety standards in force. It is also the source of significant losses in tax revenues for States, eventually resulting in declining growth and therefore fewer public services for citizens.

This phenomenon, which is becoming increasingly worrying, needs people to become fully aware of its consequences, along with a widespread mobilisation.

Despite a certain unity, there is still too much discrepancy between the perception of the consequences of counterfeiting and the findings made in the field by right holders and operational law enforcement services. The links between counterfeiting, organised crime and terrorism have been clearly proven and this report details a number of real examples in supporting the fact that counterfeiting is largely in the hands of major criminal networks and directly participates in the financing of terrorist groups.

This report aims to reveal all the ramifications of counterfeiting, including the very darkest. The items highlighted will accelerate the introduction of effective measures to bring a halt to the development of this phenomenon.

The fight against counterfeiting can be operational only if it is associated with the unified strengths of all, rights holders, customs, police and law enforcers, magistrates, intermediaries (sales, transport, payment, etc.), along with legislators and policymakers. The information of the last link in the chain – the consumer – is also crucial for an optimal result.

The Union des Fabricants (UNIFAB) was designated by the Prime Minister to represent the private sector in the inter-ministerial group on counterfeiting. It is with this report that our association of over 200 members (companies, groups, professional federations) representing all business sectors (luxury, medicines, software, sports, toys, automobile, consumer goods, perfumes and cosmetics, musical and cinematographic edition, wine and liquor, horticulture, etc.) wishes to take on its role.

Christian Peugeot
Chairman of UNIFAB

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INTRODUCTION

Remember that counterfeiting is defined as the reproduction or total or partial use of an intellectual property right without authorisation from its owner.

It currently represents up to 10% of world trade and costs an estimated 40,000 jobs per year in France and 2.5 million to G20 countries¹. In 2009, the OECD assessed the global financial impact of counterfeiting at between \$250 billion and \$500 billion. We estimate that in 2015, "counterfeiting will represent a turnover of over \$1.700 billion world-wide². This is more than the value of drugs and prostitution combined"³.

The counterfeiter therefore aims to create confusion between the original product and the counterfeit product, in order to benefit from another's reputation or the result of investments made by the true holder of an intellectual property right. From a legal viewpoint, digital piracy (music, film, software, book, graphic) is therefore a form of counterfeiting, as is the production of fake brand items.



Counterfeit Market in Thailand,
See: <http://forum.horlogerie-suisse.com/viewtopic.php?t=3050>

In France, counterfeiting is governed by the Code of Intellectual Property in Articles L 335-2 to L 335-9 for the infringement of copyright and related rights, L 513-4 for the violation of pictures and models, L 613-3 for the infringement of patents, and L 713-2 and L 713-3 for the infringement of trademarks and services.

1 BASCAP "Role and responsibilities of intermediaries: fighting counterfeiting and piracy in the supply chain", 2015.

2 Frontier Economics; "Estimating the global economic and social impacts of counterfeiting and piracy", 2011.

3 ONUDC, Zoom on illicit trade of counterfeit goods and transnational organised crime.

In France, counterfeiting is covered under both civil and criminal law. Thus, under criminal law, counterfeiting is punishable by three years imprisonment and a 300,000 euro fine, with penalties increased to five years' imprisonment and a 500,000 euro fine when the acts are committed by an organised group, or when they concern products that are hazardous to consumer health or safety.

However, the proven presence of counterfeiting within terrorist organisations raises questions about the adequacy of current criminal penalties, and particularly how they are applied.

Terrorism is also punishable under the Criminal Code. This defines a terrorist act as an act pertaining to "an individual or collective undertaking aimed at seriously disturbing public order by intimidation or terror" (Article L 421-1 CC amended by Law of 13 November 2014).

It covers two categories of offences:

- First, existing offences committed in relation to a terrorist undertaking. It therefore concerns common crimes in specific circumstances which give them a specific nature;
- Second, a number of offences defined independently, without reference to an existing offence.

The funding of a terrorist undertaking therefore represents a specific offence (Article 421-2-2 of the Criminal Code). Which is punishable by 10 years' imprisonment and a fine of 225,000 euros. However, the penalty is increased to 20 years' imprisonment, with a fine of 500,000 euros for those directing or organising a terrorist group.

Unifab' publication of this report aims to provide an insight into the links between terrorism and counterfeiting, as well as demonstrating that this illegal activity is a favourite method for financing terrorist actions.

This study deals with industrial and commercial counterfeiting, in addition to the infringement of copyright. However, it excludes the falsification of means of payment and administrative papers. Moreover, it is primarily based on information collected from companies, the media, professional and public organisations, and European and international agencies.

Although very many references underpin the comments of this study, it should be noted that it is difficult to relate examples corroborated by public authorities illustrating the links between counterfeiting and terrorism, these two underground activities are concealed and subject to covert investigations.

"There is a well-established link between organised criminal groups and counterfeit products, although we sound the alarm, as the infringement of intellectual property is becoming the favourite method of financing for terrorists. It is important to remember that cross-border organised criminal groups are involved in the manufacture and distribution of counterfeit and pirated goods on a regional scale, which is becoming increasingly global. This generates high illegal profits, which lead to the spread of such crimes and which are also invested in a huge structure of other organised cross-border crimes which are often fatal." It is in these terms that already in 2003, Ronald K. Noble, then Interpol's Secretary General, highlighted the existence of close links between counterfeiting and organised crime⁴.

Two years later, Ronald K. Nobel underlined the importance of fighting against counterfeit and piracy: "No country can alone overcome such offenses. In these times where police officials have focused on terrorism and other forms of serious crime, it is important that they do not underestimate the damage that infringements of intellectual property cause to our economies, nor the potential danger they pose to public safety"⁵.

In September 2013, Senator Richard Yung, author of a draft bill to strengthen the fight against counterfeiting, recalled that "trade in counterfeit goods helps finance many Mafia and terrorist organisations dealing counterfeit products to launder dirty money".

After much hesitation, in March 2014, France adopted a new law strengthening the fight against counterfeiting. However, it is regrettable that this legislative work has not led to the identification of links between counterfeiting, organised crime and terrorism, even though MPs taking part in parliamentary debates were able to recall them.

Senator Yvon Collin declared⁶ "in any case, powerful criminal networks often hide behind the producers of counterfeit products; do not forget that counterfeiting is

4 R. K. Noble "Links between infringements to intellectual property rights and terrorism financing", 16th of July 2003.

5 Comments gathered at the opening of the conference on the fight against counterfeiting and piracy, 2005.

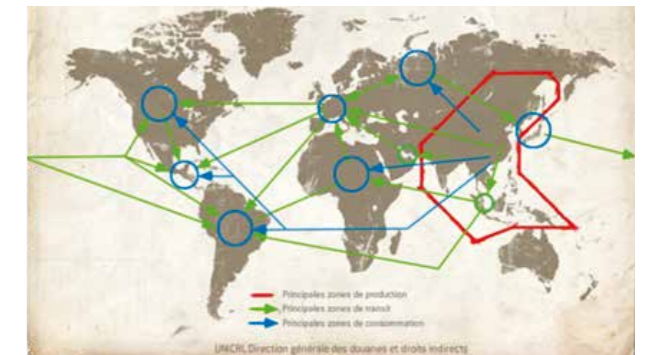
6 Comments gathered during a public hearing at the Senate on November 2013.

also a way for terrorists or criminal groups to diversify their sources of income, considering lower penalties. The importation or smuggling of counterfeit goods are indeed less heavily punished than drug trafficking, and in this respect, constitute a "premium" of lower risk for an equivalent, if not higher, profit."

Senator Nicole Bonnefoy completed these remarks and underlined the interdependence of counterfeiting with organised crime and terrorist organisations: "outside any legal framework, the manufacture and sale of counterfeit products also participate in the exploitation of human beings and illegal work, and in many cases, are used to finance Mafia and terrorist organisations activities."

A Transcrime⁷ report clearly established that counterfeiting became the activity that raised the most money for Mafia-type organisations. Within the European Union, counterfeiting represents nearly 43 billion euros per year, against about 28 billion euros for all forms of drug trafficking (heroin, cocaine, cannabis, amphetamines, ecstasy).

The main players in counterfeiting, according to the report, are located in the Italian Camorra, Asia - particularly China - along with Russia and other Eastern European countries.



See: <http://tpeluttecontrelecontrefacon.eclablog.com/carte-du-traffic>

On September 2nd, 2014, the revenue Court drew the public authorities' attention to the issue of the fight against counterfeiting in its summary proceedings⁸ on the public policy on the topic. In this report, the Court made six recommendations to strengthen the effectiveness of public action in this area, which it now considers as "suffering from limits". In particular, the last recommendation tends to provide Justice, with more severe repressive measures.

7 http://www.ocportfolio.eu/_File%20originali/Presentation/2_OCP_Final%20Conference_Illicit%20markets_FINAL.pdf

8 <https://www.ccomptes.fr/Publications/Publications/La-politique-publique-de-lutte-contre-la-contrefacon>.

It is undeniable that over recent years, counterfeiting has taken on a new dimension: it is now closely linked to organised crime. Therefore, during discussions on the adoption of the Law of 11 March 2014 to strengthen the fight against counterfeiting, by detailing the Commission's conclusions, the reporter Michel Delebarre recalled that "international counterfeiting flows seem increasingly more related to cross-border criminal organisations, which find that counterfeiting generates a more profitable traffic, which is criminally and financially less risky and much less severely prosecuted by States than for example drug trafficking"⁹.

In March and November 2015, the minister for the budget, Christian Eckert, stated at the Customs' annual press conference that there was now an undeniable link between counterfeiting and terrorism, especially with regard to the Paris terrorist attacks of January 2015:¹⁰ "it has been proven that many Jihadists are at the heart of counterfeit trafficking".

Just before the printing of this report, the deputy Philippe Gosselin has, as part of the bill for a Digital Republic, tabled an additional amendment to set up a "duty of care" towards actors of the Internet regarding counterfeiting. This amendment is in the line with the one existing before in the area of the fight against acts of terrorism and their apology¹¹.

Today, counterfeiting no longer represents just an economic cost to businesses affected by it, it also constitutes a problem of organised crime for the public authorities. Even more than its new aspect linked to organised crime, governments are indeed more worried by its links to terrorism.

However, criminal organisations and terrorist groups are not homogenous entities. According to a dossier on piracy, *Les Yeux du Monde*, "their aims diverge, as organised crime primarily seeks financial profit, while terrorist networks require sources of funds, which are mainly comprised of different forms of illegal trafficking. This is how, piracy and counterfeiting connect to organised crime and international terrorism"¹².

Louise Shelley, a professor at George Mason University, Virginia, has constantly reminded us about the danger posed by the links between terrorism and organised crime, "the fight against terrorism passes via the fight against crime. Connections are more than obvious and the police must react extremely quickly to address them"¹³.

In order to give a practical dimension to all these statements, Unifab demonstrate, links between counterfeit and terrorism, especially in terms of financing will be demonstrated in four parts:

- The interdependence between counterfeiting, organised crime and terrorist cells;
- Implication of identified terrorist networks in the counterfeit industry;
- Reasons why terrorist groups are more and more attracted by this lucrative activity;
- Funding mechanisms of terrorism by counterfeiting.



Campaign UNODC, "Counterfeit: don't buy into organized crime". See: <http://www.unodc.org/counterfeit/fr/index.html>

⁹ Senate, ordinary session 2013-2014, report n°133 written on the draft law of Mr. Richard YUNG and some of his colleagues, tending to strengthen the fight against counterfeiting, by Mr. Michel DELEBARRE.

¹⁰ C. Eckert, press conference, 17 March 2015, customs results for 2014. (...) "Fighting against counterfeit allows also to fight against terrorism (italique)".

¹¹ Amendement presented by M. Gosselin: "Sans préjudice de dispositions législatives ou réglementaires plus contraignantes, tout opérateur de plateforme en ligne est tenu, à tout le moins, d'agir avec diligence en prenant toutes mesures raisonnables, adéquates et proactives afin de protéger les consommateurs et les titulaires de droits de propriété intellectuelle contre la promotion, la commercialisation et la diffusion de produits contrefaisants tels que définis aux articles L521-1, L615-1 et L716-1 du Code de la propriété intellectuelle".

¹² The dossiers of the Yeux du Monde, Piracy, a crime that is almost perfect, Rémy Sabathie, number 4, April 2014.

¹³ L'Obs, Syria: Daesch has a broader diversity of income than some countries, 15 March 2015.



I – A PROVEN LINK BETWEEN COUNTERFEITING AND ORGANISED CRIME

MANY CASES HAVE DEMONSTRATED THAT COUNTERFEITERS ARE INCREASINGLY ASSOCIATED WITH ORGANISED CRIME AND, FREQUENTLY, TERRORIST ORGANISATIONS, WHICH ARE DIVERSIFYING THEIR SOURCES OF FUNDING¹⁴.

Companies, which are the first targets of counterfeiters, are far from the only parties affected. Consumers, for whom counterfeit represents a real threat to their health and safety, should be aware and alerted about counterfeiting too because, being a part of the black market trade, it escapes from necessary checks to obtain legal certifications.

CRIMINALS' FAVOURITE FORM OF TRAFFICKING

According to the United Nations Commission on Crime Prevention and Criminal Justice recalled that counterfeiting is now the second largest source of criminal incomes worldwide¹⁵.



Study on counterfeiting of medicines, see <http://tpe-medicaments.e-monsite.com/>

Counterfeiting affects all business sectors, from luxury products to mass-market consumer goods (food, drugs, alcohol, cigarettes, cosmetics, hardware, auto spare parts, toys, tools, hygiene products, horticultural products etc).

¹⁴ Countering the Financing of Terrorism, published by Thomas J. Biersteker, Sue E.

¹⁵ Held on the 12th May 2014.

As this illicit activity avoid controls, counterfeiting must be considered as potentially dangerous. It appears that nearly one in three consumers in the world, suffers from disorders related to unsafe, fraudulent or counterfeited products, which represents a significant source of profits for international and local criminal organisations¹⁶.

States, the third victim of counterfeiters, suffer from both losses in tax revenues – counterfeiters do not pay taxes or duties – in addition to economic and social losses, as counterfeiting destroys jobs¹⁷.

The surge, in recent years, in counterfeiting is mainly due to its links to criminal activities and terrorism. The design of fake products has risen from just a cottage industry – small clandestine workshops – to a real industrial organisation, relying on expensive and modern facilities. By changing its nature, counterfeiting has become truly global. **Terrorist networks now organise the manufacture and distribution of counterfeit to finance their military operations: counterfeiting is increasingly organised, structured and extensive.**

Thus, at the United Nations Commission on Crime Prevention and Criminal Justice of 12 May 2014¹⁸, Michèle Ramis, French Ambassador for the fight against organised crime, underlined the criminal nature of counterfeiting.



Counterfeit production facilities in Ho Chi Minh (Vietnam)

Michel Quillé, Deputy Director of Europol, points out that organised crime has expanded its field of action and that counterfeiting, which hitherto was spared by organised crime, is now one of the affected economic activities. It is no longer limited to well identified sectors, such as clothing or spare parts for cars¹⁹.

Organised in networks, counterfeiters have links with other types of crime, such as fraud, forgery of official documents, tax evasion and even human trafficking (mainly for labour exploitation purposes), as well as links with criminal groups, such as Mafia organization. Therefore, the profits generated by counterfeiting are then used to finance other forms of criminal activities²⁰.

Regularly, the police discover large amounts of counterfeited items during searches for other illegal items (narcotics and weapons).

Counterfeiters no longer act alone and punctually, but instead have become real international entrepreneurs who are connected to extremely large organised networks. Counterfeiting has never seemed so highly structured. Criminal networks have been able to adapt and benefit from the globalisation of markets and the economy, along with the development of new technologies and the Internet. The new face of organised crime increasingly looks like a typical commercial company with fully flexible structures, making it dangerously reactive to changes in its surroundings.

Today, there is no shortage of information to confirm that counterfeiting has become a form of full-fledged organised crime. In terms of human resources, counterfeiters often direct their traffic like real companies, which they manage almost commercially.

Counterfeiters often have very expensive high-tech industrial equipment for production.

Regarding the scale of production, they are now capable of producing large quantities of counterfeit goods, hence generating high profits in very short delays.

The supply and delivery of products, have an international dimension and are no longer confined within the borders of a particular country.

The United Nations Office against Drugs and Crime (UNODC), which also participated in the United Nations Commission on Crime Prevention and Criminal Justice of 12 May 2014, released a report on the illegal trafficking of counterfeit goods and cross-border organised crime, in which it highlights the links between criminal groups and counterfeiting. Thus, *“as a global crime, totalling several billions of dollars, organised criminal groups do not hesitate to step into the trade of counterfeit goods.”*

This observation highlights the opportunism of organised criminal groups: criminal groups exist anywhere money can be made illegally. This explains the growing link between the smuggling of counterfeit goods and organised crime, as well as their tendency to move towards activities that are traditionally considered to be financial crimes.

Corruption is intrinsically related to the smuggling of counterfeit goods, particularly when they are shipped internationally. Coercion and extortion are also associated with the practices of the organised crime of counterfeiting. For example, some retailers are forced to sell counterfeit products alongside their legal stocks²¹.

In addition, it is interesting to note that the organised crime networks involved in counterfeiting, and which come from different countries, develop closer ties, having recognised the potential synergies for collaboration²².

AN ACTIVITY VALUED BY TERRORISTS

It is first possible to explain this new interest by the cooperation between terrorist networks and organised crime itself.

Thus, in *Les Yeux du Monde*, journalist Rémy Sabathie highlights the growing links between organised crime and Terrorist networks in the domain of piracy: *“organised crime, which is well entrenched in counterfeiting and particularly in the area of piracy, tends to gain control of the entire production and distribution chain of pirated films.”*

*However, some terrorist groups are experiencing the same phenomenon while retaining false political demands, while their core business is now redirected to lucrative trafficking, such as piracy”*²³.

Researchers of the RAND Corporation²⁴ also highlighted the links between piracy and terrorism. In their opinion, terrorist groups have hence decided to diversify their funding sources and adopt methods of organised crime by choosing film piracy.



The piracy of DVD finances terrorism. Le Temps. See <http://letemps.ch/Page/Uuid/d74e1a92-1ca4-11de-ad82->

For some terrorist cells, this transfer is inevitable, so as to finance their recruitment campaigns of soldiers and their operations (intelligence gathering, training, weapons, attacks). The piracy of CDs or DVDs also enables a greater propaganda of terrorist groups. **They would sell DVDs with pictures of the Jihad, for example, which also participates in gaining new followers.**

16 From counterfeiting to Crime-counterfeiting, Pierre DELVAL, http://www.centif.sn/Pierre_DELVAL_counterfeiting.pdf

17 Frontier economics, “The impact of counterfeiting on Governments and consumers - a report by BASCAP”, 2009.

18 United Nations Commission for crime prevention and Criminal Justice (CPCJP 2014), Organised crime and the illegal trade of counterfeit goods and false medicines. A challenge for public health and safety , 12 May 2014.

19 CEES, Cercles des Etudes Economiques et Sociales, Conférence- débat : La réponse européenne au défi des nouvelles criminalités, par Michel Quillé, le 10 février 2015 à Grenoble, <http://www.cees-grenoble.fr/evenement-41-la-reponse-europeenne-au-defi-des-nouvelles-criminalites-par-michel-quille.html>

20 2015 Report on “The situation of counterfeiting in the European Union” EUROPOL and OHMI, <https://oami.europa.eu/ohimportal/documents/11370/80606/2015+Situation+Report+on+Counterfeiting+in+the+EU>

21 ONUDC, Dossier - focus on: The illegal traffic of counterfeit goods and cross-border organised crime.

22 2015 Report on “The situation of counterfeiting in the European Union” EUROPOL and OHMI, <https://oami.europa.eu/ohimportal/documents/11370/80606/2015+Situation+Report+on+Counterfeiting+in+the+EU>

23 The dossiers of the Yeux du Monde, Piracy, a crime that is almost perfect, Rémy Sabathie, number 4, April 2014.

24 The RAND Corporation, founded in 1945, is an American non-profit making institution which aims to improve policies and the decision-making process through research and analysis.

This diversification spreads confusion between organised crime, terrorism, counterfeiting, three illicit activities. Many journalistic enquiries moreover demonstrate these links.

Roslyn A. Mazer, a lawyer and journalist, former member of the Criminal Division of the US Department of Justice, wrote a study on counterfeiting and its links with other forms of criminal activity. She explains that *“recent developments suggest that many governments suspected of supporting Al-Qaida are corrupted by, or at least ignorant of, the highly lucrative trafficking of counterfeit and pirated products, which generate enormous flows of money for the benefit of terrorists”*²⁵.

Salima Tlemçani, author of an article entitled *“Arms trafficking in Europe/the GIA network”* says that *“in southern Europe, after Marseille, Spain is a second gateway for drugs, counterfeit and smuggled products, thanks to which Islamists generally finance their activities”*²⁶.

According to a report by Ficci and EY²⁷, **the links between counterfeiting, piracy, smuggling organisations and terrorist networks are based around four main points:**

Operational: while criminal organisations and terrorist networks are increasingly co-operating with each other, it is essentially done around the domains of counterfeiting, piracy and smuggling. It has been observed that the criminal group D-Company moved towards terrorism by carrying out the Bombay attacks in 1993, after having invested the counterfeit films industry.

Logistical: organised crime and terrorists find in counterfeit a new funding method more lucrative than other traffics.

Ideological: while, usually, the goals of criminal organisations and terrorist networks differ according to their ideologies, they are increasingly tending to cooperate with each other - especially around funding. According to Louise Shelley, *“terrorists companies have become diversified multinationals, which, although they stress the ideology, primarily operate like businesses”*²⁸.

Financial: criminal organisations involved in counterfeiting, piracy and even smuggling, have the common objective of providing financial support to terrorist organisations.

At the US-Africa summit in August 2014, the Heads of States discussed the difficulties related to terrorist groups operating in Africa:

*“The issue of terrorism in West Africa raises a very sensitive question: counterfeiting. The market for counterfeit goods is indeed a growing source of funding for organised criminal groups, and particularly terrorist groups. Since the 1980s, the market for counterfeit goods has kept on growing, taking advantage of the transportation revolution and the globalisation of trade. There is now a real market for counterfeit products, and counterfeiters are organised into highly sophisticated international networks (multiple intermediaries, shell companies, etc.)”*²⁹.

Therefore, for a number of years it has been possible to identify different terrorist networks attracted by counterfeiting. Recently, this attraction has increased further by strengthening the financial power of terrorist networks, such as Islamic State.

25 “From T-Shirts to Terrorism”, Washington Post, 30 September 2001.

26 Salima Tlemçani, “Weapons trafficking in Europe”, The GIA network, 11 January 2000.

27 Counterfeiting, Piracy and Smuggling, growing threat to national security: [http://www.ey.com/Publication/vwLUAssets/EY-Government-and-Public-Sector-Growing-threat-to-national-security-an-analysis/\\$FILE/EY-Counterfeiting-piracy-and-smuggling-Growing-threat-to-national-security.pdf](http://www.ey.com/Publication/vwLUAssets/EY-Government-and-Public-Sector-Growing-threat-to-national-security-an-analysis/$FILE/EY-Counterfeiting-piracy-and-smuggling-Growing-threat-to-national-security.pdf)

28 Le Point, Interview with Louise Shelley, Terrorist organisations are multinational companies, 15 January 2015.

29 Infoafrique.com, 1 November 2014, on US- Africa summit, of 4 to 6 August 2014.



II - TERRORIST ORGANISATIONS INVOLVED

This *“new generation”* is far from being the first to be interested in counterfeiting.

Already in 1993, following the first attacks on the World Trade Center, the FBI had gathered strong evidence that the perpetrators had financed the bomb placed in the car, by selling fake clothes in a Broadway store³⁰.

Three years later, over 100,000 counterfeit Nike t-shirts were sold at the Atlanta Olympic Games to finance terrorist actions³¹. As a result, Omar Abdel-Rahman was sentenced to 240 years in prison for participating in a terrorist undertaking aiming to destroy historic American sites. *“The bulk of the plot included five explosions in the space of ten minutes, to destroy the UN headquarters, the Lincoln and Holland tunnels, the George Washington Bridge and a federal building housing the FBI, according to the prosecution”*³².

30 Impact of counterfeiting and piracy in Europe, CEIPI Final Report, Y. Reboul, E. Py, S. Thomas, 9 July 2004.

31 See The Michigan Journal of Business, Counterfeit Goods and Their potential Financing of International Terrorism.

32 F. http://www.liberation.fr/monde/1995/10/02/abdel-rahman-juge-coupable-de-complot-a-new-york_148171

EXAMPLES OF TERRORIST ORGANISATIONS LINKED WITH COUNTERFEITING

Information that has been gathered over the years proves the existence of close links between networks of counterfeiters and a number of identified terrorist organisations.

As UNIFAB already stated in its 2012 report³³, several terrorist networks are becoming increasingly involved in counterfeiting.

Here are some illustrations demonstrating the extent of words were chosen to demonstrate that these connections are not isolated examples or recent developments, even if the trend is increasing dangerously for a few month.

Here are some examples showing the scale of the situation, which were chosen in order to demonstrate that connections are neither isolated examples nor recent facts, even if the trend is dangerously increasing since a few month.

33 UNIFAB Report of 2012 on the links between counterfeiting and organised crime.

1. THE IRA

There is evidence that in Northern Ireland, the Irish Republican Army (IRA), is involved in counterfeiting activities³⁴.



See: <http://www.belfasttelegraph.co.uk/news/northern-ireland/islamic-state-and-ira-terror-differ-only-in-scale-says-mp-31044961.html>

In the 1990s, two IRA members set up a laboratory that was 20 kilometres from Miami, with funds of \$ 60,000³⁵. The vials were provided by a legal firm based in Atlanta, allegedly as part of the "Desert Storm" Operation. The false labels were manufactured in a farm in Northern Ireland. The counterfeit drugs for veterinary use only contained water without any active ingredient. However, there was a slight difference: they were presented in 500 ml bottles, while the originals were in bottles of 100 ml.

In March 1991, a raid in Florida allowed to uncover 30,000 labels for these veterinary drugs and growth hormones. Around 700,000 animals have received injections. The scandal was discovered by the laboratory Merck and the offender was ordered to pay a fine of \$6 million³⁶.

Since 2000, many paramilitary and terrorist groups have sought to increase their funding methods by turning to counterfeiting, which as a result, has taken on a new dimension.

Thus, the British police have confirmed³⁷ that "in Northern Ireland, terrorists sell counterfeit and pirated

34 Transnational Organized Crime, Routledge, 2009, p73.

35 Peter Lowe, Counterfeiting: links to organized crime and terrorist funding, Journal of Financial Crime, Vol 23, 2006.

36 http://www.lexpress.fr/actualite/societe/sante/contrefacon-faux-medicaments-vraies-menaces_1285097.html

37 At Interpol's first international conference on intellectual property.

goods such as CDs, DVDs, cigarettes and branded clothing so as to fund their terrorist activities"³⁸.

In 2002, the police considered that two thirds of the PIRA's (Provisional Irish Republican Army) income came from piracy³⁹. This information was confirmed in the 2008 Anti-Counterfeiting Group report, which underlined that the weapons bought by Irish Republican Army had been funded through the sale of different counterfeit products.

In Belfast, in January 2003, the local press reported that a Republican terrorist group was planning to bomb a market known to be a hub for counterfeiting. This operation aimed to hit a police unit which monitored counterfeits in this market⁴⁰.

Interpol believes that these organisations control the markets, through which most counterfeit goods pass and even introduce a tax/royalty on the stalls of vendors who want to set up there⁴¹.

2. ETA

From the early 1970s, the Basque separatist group, Euskadi Ta Askatasuna, established a complex financial network, so as to ensure its terrorist activity. Gradually, the group diversified its criminal activities, and included counterfeiting in its sources of income⁴². It was proven that **ETA controlled the sale of counterfeit clothes and bags in southern Spain**⁴³. Investigations also highlighted its involvement in the trafficking of fake cigarettes.

3. THE FARC

The FARC (Revolutionary Armed Forces of Colombia), the oldest guerrilla group, has made **the sale of pirated discs a source of income, even more profitable than kidnappings for ransom**⁴⁴.

38 See International Anti-Counterfeiting Coalition (USA), "White paper: the negative consequences of international intellectual property theft", January 2005.

39 Dossiers of Yeux du Monde, Piracy, an almost perfect crime, number 4, April 2014.

40 "Proving the connection: links between intellectual property theft and organised crime", Alliance Against Counterfeiting and Piracy, www.aacp.org.uk/Proving-the-Connection.pdf

41 See Document "Links between intellectual property crime and terrorist financing" and final report of the CEIPI, "Impact of counterfeiting and piracy in Europe" 9 July 2004.

42 Exposing the ETA financial network, John Solomon, <http://www.ccf.org/publication/pdf/ExposingtheETAfinancialNetwork>.

43 Victor Trocki, "Rise in Counterfeit Market Linked to Terrorist Funding" Carratu International (26 June 2002). <http://www.pressbox.co.uk/Detailled/6073.html>

44 Seminar on money laundering and the funding of terrorism, held in Nouakchott from 23 to 27 July 2007.



See: <http://www.miamiherald.com/news/nation-world/world/americas/article1964970.html>

4. HEZBOLLAH

The role played by counterfeiting in funding Hezbollah has repeatedly been shown, as well as the common interests in this traffic with the terrorist group Al-Barakat in Brazil, Argentina and Paraguay⁴⁵.

In February 2000, an individual who was suspected of collecting funds for Hezbollah was arrested for hacking. The authorities discovered that the defendant also sold audio CDs and video games to fund an organisation affiliated to the terrorist group. Some of the disks discovered also contained images and films of terrorist attacks as well as interviews with the bombers: these images were used as propaganda for Hezbollah⁴⁶. The counterfeits, which were first sent to a free trade area in South America by Hezbollah, were then smuggled to other countries -to avoid import duties-, then sold through a network of supporters and activists from the Middle East. The money generated by this activity was finally handed over to Hezbollah.



See: <http://journal-neo.org/2015/01/17/rus-v-hezbollah-vy-yavleny-ocheredny-e-agenty-mossad/>

45 Terrorist and Organized Crime in the Tri border Area (TBA) of South America, Rex Hudson, https://www.loc.gov/rr/trd/pdf-files/TerrOrgCrime_TBA.pdf

46 R. K. Noble, "The links between intellectual property crime and terrorist financing".

In the US, in 2000 as part of the operation "Smokescreen"⁴⁷ the federal authorities dismantled a vast Hezbollah funding network of cigarette smuggling and counterfeiting of fiscal stamps⁴⁸, set up by Mohamad Youssef Hammoud, who lived in North Carolina. The profits from this trafficking were then transferred to Hezbollah leaders in Lebanon. This traffic appears to have raised at least \$8 million.

In October 2003, in Beirut, the Lebanese authorities discovered containers filled with counterfeit brake pads and shock absorbers worth 1 million euros. The investigation revealed that the profits from the delivery were destined for supporters of Hezbollah⁴⁹.

In 2004, by tracing the profits from the sale of counterfeit goods from Paraguay, US Intelligence also found the involvement of a Hezbollah's cell⁵⁰.

Yves Mamou, a writer and reporter for Le Monde, published a book entitled "A long spoon to the devil," in which he detailed the different battles of the pharmaceutical industry. Referring to Hezbollah's involvement in the trafficking of counterfeits, he reported that "Brital (a village of Lebanon) is at the heart of the Hezbollah empire: a village of crime, trafficking of stolen cars, hashish smuggling and trafficking of spare parts. (...) In order to cover the cost of free hospitals, clinics, food stamps and the salaries of permanent staff, Hezbollah resorts to drug trafficking, counterfeiting, counterfeit currency... If you buy a Madonna CD in Beirut, there is a good chance it was pressed on behalf of Hezbollah in Brital"⁵¹.

Hezbollah is also frequently cited as being involved in counterfeiting medicines. In March 2006, the US Joint Terrorism Force, an inter-agency initiative led by the FBI, arrested 19 individuals involved in a counterfeiting network for drugs used to treat sexual dysfunction. The criminal group was operating in Lebanon, Canada, China, Brazil, Paraguay and the United States. Five members of this network were Canadian and, according to the Vancouver Sun, which is alleged to have had access to American documents of the indictment, some of the \$500,000 related to the monthly traffic was paid to Hezbollah⁵².

47 Operation Smokescreen Presentation, Charlotte FBI Office/JTTF, 2005.

48 Centre for analysis of terrorism, March 2015, report on FUNDING OF TERRORISM: The smuggling and counterfeiting of cigarettes.

49 Interpol, Press release n° 11/2004.

50 "Links between counterfeiting and other serious organized crime", The Anti-Counterfeiting Group, February 2008.

51 Yves Manou, A long spoon for the devil, Léo Scheer Editions, April 2010.

52 http://www.iracm.com/wp-content/uploads/2013/09/A-Rapport-Etude_IRACM_Contrefacon-de-Medicaments-et-Organisations-Criminelles_FR_FINAL-copie-2.pdf p.56.

An Israeli study⁵³, also confirmed that Hezbollah was increasingly focused on the development of counterfeiting activities. Counterfeiting is indeed considered as less contrary to their religious values.

5. HAMAS

Corruption and counterfeiting feature amongst the main concerns of Palestinians on the West Bank. "The counterfeiting of foodstuffs and drugs, tax evasion and traffic of petrol, as well as unnecessary intermediaries" are on the rise in the Territories, according to a report by Transparency Palestine⁵⁴.

The FBI revealed that Hamas raised funds and support from criminals who are either directly members of the terrorist group, or share the same ideology. FBI investigations have made it possible to update many very lucrative criminal activities including, drug trafficking, bank fraud, counterfeiting, etc.

Hamas, Fatah and members of the Palestinian Authority are suspected of participating in these activities, particularly on the West Bank and Gaza. The US authorities consider that part of the sums raised by Middle Eastern terrorist groups come from illegal activities in the United States, including counterfeiting.

Ali Nizar Dahroug and his uncle Mohammad Dahroug, a Hamas activist, are suspected of financing Hamas with the incomes they earned from the traffic of counterfeit goods. When Ali Nizar was arrested in Paraguay in June 2002, authorities found many counterfeited items in his possession⁵⁵.

6. AFGHAN TERRORIST GROUPS, AL-QAÏDA AND OTHER AFFILIATED GROUPS

In an interview published in Le Monde⁵⁶, Pierre de Bousquet de Florian, former director of the DST (Directorate of Territorial Surveillance renamed DGSI, General Directorate for Internal Security), said that Afghan terrorist networks existed "thanks to crime, robberies, reproduction of Credit cards [...], and the counterfeiting of designer clothes"⁵⁷.

Interpol also believes that Al-Qaïda and affiliated groups received between \$300 and \$500 million

53 Roi Kais, Hezbollah funding terror with fake medicine, 9 October 2012.

54 The east the day, 30 April 2015, <http://www.orientlejour.com/article/922534/une-ong-denonce-la-corruption-et-la-contrefacon-dans-les-territoires-palestiniens.html>

55 Hamas: Politics, Charity, and Terrorism in the Service of Jihad, Par Matthew Levitt. Edition of 12 September 2002.

56 "Al-Qaïda can strike when it wants", Le monde, 12 September 2002.

from their "supporters" over the past decade. This includes funds originating from both legal and illegal activities, including the trade of counterfeit goods⁵⁸. Documents from Al-Qaïda propaganda recommend to trade counterfeit products to generate more funds to finance terrorist operations⁵⁹.

In November 2003, a trafficking of counterfeited products between France and Italy was dismantled. This led to the arrest of 13 members belonging to the Takfirist branch. They were suspected of having supplied weapons and false documents to Algerian terrorists via a network funded thanks to counterfeit clothes⁶⁰.

Following the Madrid bombings of March 11th, 2004, orchestrated by the terrorist network Al-Qaïda, the former Spanish Minister of the Interior, Angel Acebes⁶¹, said that "one of the suspects arrested was already a well-known counterfeiter"⁶².

In April 2006, an AFP report indicated that a dozen people had been arrested simultaneously in the south of France and Italy, as part of an investigation into funding terrorist activities.

The investigation revealed that the suspects, close to the Salafist Group for Preaching and Combat (GSPC), obtained their resources from different criminal activities, including counterfeiting⁶³.

In 2007, US federal authorities dismantled an international network of counterfeit clothing based in New York. At least three of those arrested had links to the Islamist terrorist organisation Jamaat ul Fuqra, which operated in the United States⁶⁴.

In 2008, a Pakistani named Saifullah Anjum Ranjha, a resident of the United States involved in a network of drug trafficking, cigarette smuggling and counterfeiting, and arms trafficking, was convicted of money laundering and financing terrorism⁶⁵. From October

58 OECD, The economic impact of counterfeiting and piracy, 2008, <http://www.oecd.org/dataoecd/13/12/38707619.pdf>

59 See Aforementioned CEIPI report.

60 "A counterfeiting network possibly related to terrorism, is dismantled", Le Monde, 19 November 2003.

61 From Balenciaga to Bombs: How Terrorist Groups Are Exploiting the Global Counterfeit Goods Trade for Profit and Murder», by Zachary A. Pollinger, April 2008.

62 www.a-cg.com, "Links between counterfeiting and other serious organised crime", February 2008.

63 AFP news flash of 19 April 2006.

64 Source: BASCAP, Cases highlight counterfeiting links to terrorists, 1 December 2007.

65 Centre for analysis of terrorism, March 2015, report FUNDING OF TERRORISM: The smuggling and counterfeiting of cigarettes.

2003 to September 2007, some of that gain (\$2.2 million) was transferred to members or supporters of Al-Qaïda through a money transfer company called Hamza Inc. and owned by Ranjha⁶⁶.



See: <http://www.metronews.fr/info/maroc-une-cellule-d-aqmi->

Recently, the leader of a terrorist group affiliated to Al-Qaïda in the Islamic Maghreb (Aqmi), Mokhtar Belmokhtar, involved in cross-border trafficking, was so successful in the trade of counterfeit cigarettes, that he was nicknamed by the authorities "Mr. Marlboro"⁶⁷. His involvement in terrorism has been reported on numerous occasions⁶⁸.

Mokhtar Belmokhtar's group claimed responsibility for the terrorist attacks of Bamako on March 6th, 2015⁶⁹, and those of Ouagadougou the 15th of January 2016⁷⁰.

7. THE D-COMPANY OF INDIA

Originally, D-Company⁷¹ was a criminal organisation that drew its profit from trafficking drugs, arms and precious metals, along with prostitution, counterfeiting and extortion. In the early 1990s, D-Company decided to infiltrate the Indian film industry. It now controls most of the black market of counterfeit cultural products in Bombay. D-Company's involvement in the 1993 attacks in Bombay, which killed 257 people, is also commonly recognised⁷².

66 US v. Saifullah Anjum Ranjha, MJG-07-0239, 2007.

67 Le Figaro, Terrorists invest in counterfeiting, 22 February 2015.

68 Centre for analysis of terrorism, March 2015, report Funding Of Terrorism: The smuggling and counterfeiting of cigarettes.

69 See Le Point, Mali: the Belmokhtar group claims responsibility for the attack in Bamako, 7 March 2015.

70 Ajouter source: <http://tempsreel.nouvelobs.com/monde/20160118.OBS2965/burkina-faso-mokhtar-belmokhtar-l-insaisissable-djihadiste-du-desert.html>

71 Criminal organisation led by the Indian Dawood Ibrahim. This gang is alleged to participate in different criminal and terrorist Islamic activities in Southern Asia, particularly in Mumbai, India and the area of the Persian Gulf.

72 CF2R <http://www.cf2r.org/fr/notes-actualite/inde-liens-entre-le-crime-organise-et-le-terrorisme.php>

D-Company very quickly developed links with Al-Qaïda and other terrorist groups in Kashmir.

According to observers, its transformation into a terrorist entity supporting other terrorist groups, coincides with its entry into the trade of counterfeiting, which has enabled it to considerably increase its income⁷³.

8. LASHKAR-E-TAIBA IN PAKISTAN

According to official Pakistani sources, 15%-20% of the budget of these terrorist groups in Waziristan is provided by cigarette smuggling and counterfeiting⁷⁴.



See: <http://thediplot.com/2012/07/is-let-turning-against-pakistan/>

The pro-Taliban tribes of Waziristan indeed appear to control production centres in several districts in the border area of Afghanistan, particularly Swabi, Mardan, Nowshera, Charsadda, Landi Kotal and Bara. The smuggling and distribution channels are in the hands of the Pakistani Taliban and the terrorist group Lashkar-E-Taiba.

73 The dossiers of Yeux du Monde, Piracy – an almost perfect crime, Rémy Sabathie, number 4, April 2014.

74 Centre for analysis of terrorism, March 2015, report FUNDING OF TERRORISM: The smuggling and counterfeiting of cigarettes;

THE NEW GENERATION OF TERRORIST - COUNTERFEITERS

1. THE TERRORIST ATTACKS IN PARIS IN JANUARY 2015

The January 2015 terrorist attacks in Paris confirmed terrorists' interest for counterfeiting, a source of income that is deemed to be easy.

As Le Figaro pointed out in its article of February 22nd, 2015, "the Kouachi-Coulibaly generation is increasingly turning towards selling fake brands, a lucrative and low-risk sector"⁷⁵.



See: http://www.huffingtonpost.fr/2015/01/07/je-suis-charlie-origine-createur-joachim-roncin-slogan-logo-solidarite-charlie-hebdo_n_6431084.html

Those behind the Paris terrorist attacks of January 7th, 8th and 9th, 2015, "lived from drug trafficking, but also and particularly, from the sale of counterfeit products, including Nike trainers."

Furthermore, it seems that the authorities already knew about the terrorists' involvement in the trafficking of counterfeit products. According to the magazine Le Point⁷⁶: "Said Kouachi was caught by customs at Roissy airport two years ago in an attempt to fraudulently import products: he was receiving fake Nike trainers from China by parcel post. The offence resulted in just a fine."

⁷⁵ <http://www.lefigaro.fr/actualite-france/2015/02/22/01016-20150222ART-FIG00194-les-terroristes-versent-dans-la-contrefacon.php>

⁷⁶ Le Point, The customs were on the heels of Said Kouachi, 4 February 2015.



See: <http://edition.cnn.com/p>

A survey conducted by L'Express⁷⁷ also reported that the judicial police were aware of the involvement of Chérif Kouachi in counterfeit goods trafficking: "Chérif's telephone conversations and his contacts seemed to show that he was then starting in the counterfeiting of clothing and sports shoes. According to police officers, he was leaving the terrorist world to focus on petty crime. No signs of danger were detected. So in June 2014, monitoring of the Kouachi brothers was stopped permanently, with the police concentrating on other suspects. Just seven months later, the Kouachi brothers burst into the Newsroom of Charlie Hebdo"...

According to L'Obs⁷⁸, Cherif Kouachi sent over 8,000 euros to China via Western Union. "These transfers were made to pay for counterfeit shoes. They were purchased in Asia before being resold for cash by Kouachi in France. Some of the weapons used in the attacks were bought via this traffic."

Hélène Crocquevieille, general director of French Customs, has indeed declared that "sportswear shoes traffic of the Kouachi brothers underlined the close links between counterfeit and the financing of terrorism".

Reading all this information, one can only regret that the public authorities categorise counterfeit as a "petty crime," while in reality it represented a major funding method of organised crime in general and terrorism in particular.

Today, terrorists profile has changed and almost each deviant individual can evolve from simple delinquency to terrorism. For sometimes isolated counterfeiters, counterfeit is the opportunity to finance itself fast, whilst progressing unnoticed.

⁷⁷ L'Express, The Kouachi brothers: revelations in Yemen, 10 January 2015.

⁷⁸ L'Obs/Society/Terrorism, the chase for cash, 18 March 2015.

2. THE TERRORIST ATTACKS IN PARIS IN NOVEMBER 2015

On Friday 13 November 2015, a series of coordinated terrorist attacks claimed by Islamic State occurred in Paris and its northern suburbs Saint Denis.

With 132 people killed and more than 300 injuries, these attacks were the deadliest on France since World War II.

Here again, the link between counterfeiting and terrorism is significant.

Indeed, among the methods used by Daesh to finance its terrorist networks, counterfeiting, particularly clothes, hold a dominant position.



Attacks in Paris: How does Daesh finance its terrorist networks? Television news TF1 - 23 november 2015

Also, it has been stated that two people involved in the Paris attacks - Ibrahim and Salah Abdeslam - were living in Molenbeek, a Belgium city known for its poor social-security context⁷⁹. Marked by a high delinquency rate, Molenbeek is considered as a notorious radicalisation place⁸⁰. Thus, the newspaper "Le Point" reports: "Whether it is Charlie Hebdo attack, Brussels Jewish Museum attack in 2014, or the one carried out in the Thalys, the name of Molenbeek is always quoted. This is here that the Kouachi brothers and Amedy Coulibaly obtained a part of their arsenal"⁸¹.

Françoise Shepman, mayor of Molenbeek, also clearly expressed the relationship between terrorism and counterfeiting: "(...) I clearly said that if the Federal would help Molenbeek (...) it was necessary to act at the level of intelligence but also by given us the capacity to fight delinquency, drug trafficking, counterfeiting and offences to social laws...In my opinion, there is a great

⁷⁹ <http://www.slate.fr/story/110345/molenbeek-commune-djihadistes>

⁸⁰ http://www.francetvinfo.fr/faits-divers/terrorisme/attaques-du-13-novembre-a-paris/enquete-sur-les-attentats-de-paris-attentats-de-paris-la-ville-de-molenbeek-plaque-tourmente-du-terrorisme-islamiste_1178875.html

⁸¹ "Sur la piste des tueurs", Le point 2254, 19 novembre 2015.

proximity between these phenomenon and radicalism. They infect community life and we note that they are thugs who became radicalized"⁸².

Molenbeek is indeed the theatre of plenty of counterfeit seizures for a couple of years. In 2012, almost three tons of counterfeit shoes, clothes, perfumes and accessories were seized by security forces in a hangar of the municipality⁸³.

Similarly, about 9000 counterfeit goods were discovered by the police in this town in 2009⁸⁴.

3. THE CONFLICT IN SYRIA

Taking advantage of the chaos in Syria, traffickers have made the country into the largest producer of false Captagon, an amphetamine used by fighters, which is very popular in Gulf States. Classified by the French Agency for Safety of Health Products as a narcotic product, Captagon is a psycho-stimulant based on hydrochloride fenetylline. Originally, this drug, which is easy to forge, was strictly reserved for hospital staff and prescribed to patients suffering from narcolepsy and attention disorders.

The traffic of this false product would seem to have become the nerve of the war in Syria. The recent peak in the traffic of Captagon pills in the Middle East would indeed be directly related to the conflict in Syria, according to the Lebanese newspaper "The Daily Star" and the American weekly magazine "Time".



See: <http://reseauinternational.net/la-chimie-des-coups-detat-les-printemps-arabe-et-le-putsch-de-kiiev-ont-ete-accomplis-grace-aux-amphetamines-ces-pitules-de-thorreur/>

⁸² http://www.rtf.be/info/dossier/attaques-terroristes-a-paris/detail_molenbeek-francoise-schepmans-raconte-les-sept-jours-qui-me-marqueront-le-plus?id=9142358

⁸³ <http://www.rtl.be/info/regions/bruxelles/molenbeek-pres-de-3-tonnes-d-articles-de-contrefacon-trouves-dans-un-hangar-295558.aspx>

⁸⁴ <http://www.policelocale.be/5340/fr/nouvelles/archives-2009/des-milliers-de-produits-de-contrefacons-saisis.html>

Some pharmaceutical companies have been asked to produce fake Captagon tablets. Thereafter, illegal operators have begun to manufacture products which contained no fenetylline, but rather a combination of substances that mimic the effects of the original product. It is therefore these fake products that currently predominate the illegal markets. From the start, the main market for Captagon has been in the Middle East, where it is in great demand by the young and where it even gained a reputation of being an aphrodisiac in the early 1980s⁸⁵.

In Syria, according to a survey by Reuters, the money obtained from sales has enabled forces to arm themselves. The false Captagon itself is used by fighters, who see in it a way to resist many hours in battle, without fear or fatigue. The explosion in the use of Captagon has spread to the entire Gulf region, and today it is in the greatest demand in Saudi Arabia⁸⁶.

According to "Time", the fake Captagon pill, which only costs a few cents to produce, is sold at up to 15 euros. These sums are spent on buying weapons.

Colonel Ghassan Chamseddine, head of the Lebanese anti-drug office, told "Time", that "in a few operations, traffickers can easily raise \$300 million, which means a lot of weapons".



See: http://cdn-parismatch.ladmedia.fr/var/news/storage/images/paris-match/actu/international/le-captagon-la-drogue-qui-ravage-la-syrie-717790/7460554-1-fre-FR/Le-captagon-la-drogue-qui-ravage-la-syrie_article_landscape_pm_v8.jpg

4. ISLAMIC STATE

As they have become financial experts, the different jihadist movements like to diversify their income sources so as to maximise their profits. Since the beginning of the conflict, at the border between Turkey and Syria, cigarette smuggling has doubled, oil smuggling has quadrupled and mobile phone smuggling has increased 6-fold⁸⁷.

In his documentary, "Daech, the birth of a terrorist State"⁸⁸, the film director Jérôme Fritel accurately described the workings of Islamic State, whose fortune now amounts to \$2.000 billion⁸⁹. He further explains that "Daech benefits from diversified funding sources."

Indeed, Islamic State, a terrorist group which is now structured like a real multinational company, has chosen cigarette smuggling and counterfeiting to fund, alongside many other forms of funding, with in pole position, oil.

Louise Shelley hence described the different sources of Islamic State's revenues⁹⁰; "they are involved in cigarette smuggling, drugs, counterfeiting, false documents..."

Lastly, it should be noted that numerous french who wish to meet Daech in Syria, use counterfeit to fund their departure.



See: http://www.marianne.net/Etat-islamique-ou-quand-la-guerre-est-aussi-une-question-de-lexique_a243562.html

Some observers have even come to the conclusion that all "terrorist groups are involved in counterfeiting in one way or another." This is rightly so, because counterfeiting is "a direct way to raise funds"⁹¹.

⁸⁷ L'Express, jihadisme: money – the nerve of the "holy war," 22 January 2015.

⁸⁸ Report broadcast on the channel Arte on 10 February 2015.

⁸⁹ According to report co-written by Damien Martinez.

⁹⁰ L'Obs, Syria: Daech has a greater diversity of income than some countries, 15 March 2015.

⁹¹ FraudAid, Rise in counterfeit market linked to terrorist funding.



III – COUNTERFEITING, A LOGICAL CHOICE FOR TERRORISTS

Counterfeiting is indeed seducing: still too weakly punished by legislation, both abroad and in France, it is highly profitable, and costs relatively little.

This traffic is now clearly part of these highly lucrative, low-risk sectors, which drain an entire parallel economy where many extremist groups thrive. From the manufacture to the distribution, all the chain is controlled and it becomes difficult to refrain the counterfeit expansion in a world where it is dealt as a minor offence, where as its consequences are majors today.



New-York- 2013- Seizure of a hundred of pants of different brands

Counterfeiters adapt the modus operandi and the shipment routes to every product and national legislations⁹².

⁹² 2015 Report on "The counterfeiting situation in the European Union," EUROPOL and OHMI, <https://oami.europa.eu/ohimportal/documents/11370/80606/2015+Situation+Report+on+Counterfeiting+in+the+EU>

PENALTIES ARE TOO WEAK

Despite all the dangers presented by counterfeiting, it still does not feature as a priority for different States, in terms of dealing with organised crime. In some countries, the criminal aspect is not even taken into consideration!

This major shortcoming certainly helps to make counterfeiting a very attractive activity for faudsters and criminals. Many, see in the absence of serious punishment as a deterrent against counterfeiting, the explanation for its growing success.

1. LEGISLATION IS NOT DISSUASIVE

From a criminal point of view, the risks are lower, including in France, which is far from being one of the most permissive countries in this area. In France, the commission of the offense of counterfeiting in an organised group is punishable by five years' imprisonment and a 500,000 euro fine. While the import, export, production, and the illegal manufacture of drugs in an organised group is punishable by more severe penalties (30 years in prison and a 750,000 euro fine or life imprisonment for ringleaders). Although the comparison between counterfeiting and drugs can easily be made, both in terms of the methods used and players involved, it is clear that the level of penalties are totally different.

While the law of March 11th, 2014 strengthened the fight against counterfeiting, it has not really increased criminal penalties against counterfeiters. Only goods which are dangerous for the health or safety of humans or animals have been taken into account. These goods are now punished by the law, as well as for organised groups, by five years' imprisonment and a 500,000 euro fine.

Unfortunately, these sentences still appear to be far too short, given the actual consequences of fake products; even though many are dangerous, or even fatal. By contrast, when it concerns dangerous products administered through drugs or other products such as alcohol, these acts are similar to the administration of harmful substances punished by the Criminal Code according to the physical harm caused to man. Punishments may well reach up to 20 years' imprisonment. This is a long way off the 5 years' imprisonment, introduced by the amendment of the Act of March 11th, 2014, which is supposed to reinforce the fight against counterfeiting...

2. PENALTIES THAT ARE RARELY ENFORCED

If legislation was to be further stiffened, the main problem lies in the fact that actual sentences, are most often well below what the law provides. **It is therefore regrettable that justice does not consider counterfeiting as dangerous as it seems necessary to raise awareness to the judges towards the dangers and various consequences of counterfeit in order for them to warrant more severe sentences.**

Sentences imposed on those convicted of infringements of intellectual property are very much lower than those imposed in drug-related cases. This definitely makes counterfeiting a particularly attractive trade for criminals.

Judges, who can be lenient in cases of counterfeiting, do not even consider prison sentences. Financial penalties, when pronounced, are way too low in comparison with the huge profits that a counterfeiter may hope for.

Hence, in 2013, out of 171 convictions, only 24 resulted in actual prison sentences, of which the average did not exceed seven months, while the law provides for up to 5 years in jail!⁹³

Ultimately, it seems necessary to raise magistrates' awareness about the risks of counterfeiting, so that they can impose more severe penalties.

⁹³ Ministère de la justice, Convictions entered onto criminal records in 2013, 13 March 2015. See <http://www.justice.gouv.fr/budget-et-statistiques-10054/etudes-statistiques-10058/les-condamnations-inscrites-au-casier-judiciaire-en-2013-27720.html>

3. THE LACK OF HARMONISATION

Even within the European Union, all countries do not protect intellectual property rights in the same way. For example, in Bulgaria, Estonia, Romania, and Slovenia, the penalties provided are quite close to French sentences; usually including 3 years' imprisonment, or 5 years in case of aggravating circumstances. Other Member States provide ridiculous penalties that are totally disconnected from the reality of counterfeiting.

In Belgium, until recently, the legislation only provided for imprisonment "of eight days and a fine of 143 euros to 11,000 euros". Since the law of 2007, prison sentences in Belgium have ranged from 1 year to 5 years, while fines have varied between 500 euros and 100,000 euros⁹⁴. Despite this improvement, it still remains too low with the views of the impact of this illegal activity.

In practice, these disparities worsen the phenomenon of "forum shopping" within the European Union. Counterfeiters indeed choose to conduct their activities in Member States which have more permissive legislation. Criminal proceeding itself also lacks harmonisation at a European level. It is thus regrettable that a European Public Prosecutor has still not been established.

An article in the newspaper Les Echos on March 6th, 2015⁹⁵, rightly stressed that "the free movement of citizens within the European Union and the splitting at the national level of legal jurisdictions are a real gift for serious crime".

Many observers note that it is urgent to give the European Union a European Public Prosecutor to coordinate criminal policies and repressive actions of the 28 Member States. In 2013, the Commission launched two draft regulations at the same time, one of which provided for the creation of this prosecutor, its jurisdiction was however limited to the fight against fraud in the Community budget. It is essential to broaden its jurisdiction. It is therefore necessary that it tackles all cross-border crimes, terrorism, humans trafficking and the sexual exploitation of women and children, the illegal trafficking of drugs and weapons, money laundering, corruption, counterfeiting, IT crime, and all forms of organised crime⁹⁶.

⁹⁴ See <http://www.cecbelgique.be/contrefaçon-risque-d-amende-et-de-confiscation-s43161.htm>

⁹⁵ Lesechos.fr, A European legal area to fight against organised crime, 6 March 2015.

⁹⁶ Comments, particularly by Mrs Chantal Ingham, professeur expert au Groupe ESC Dijon-Bourgogne-See <http://www.lesechos.fr/idees-debats/cercle/cercle-126492-un-espace-judiciaire-europeen-pour-lutter-contre-la-grande-criminalite-1099537.php>

4. TOWARDS A GROWING AWARENESS?

The worrying rise in counterfeiting, especially as a way to fund terrorism, unquestionably requires a stricter enforcement of the law.

At the end of the chain, this relative feeling of impunity also explains the motivations of counterfeit buyers. According to an IFOP study published in December 2012 by Unifab⁹⁷, over half of the buyers of counterfeit products would be more restrained in their approach if they considered the risk incurred to be real.

The fairly lax application of the law on this issue, a feeling that is felt both by counterfeiters and consumers, falsely suggests that this illegal activity is tolerated, despite its obvious links with organised crime.

However, the application of the necessary strengthening of the criminal policy against counterfeiting is still pending.

A HIGHLY LUCRATIVE ACTIVITY

As proved all along this report, trade in counterfeit goods is one of the most lucrative criminal activities.

As such, a survey showed that for traffickers of fake cigarettes, it is enough for just one in ten packets to pass through the net, for the traffic to be profitable⁹⁸.

As part of 75 international prosecutions specifically aimed at actions financing terrorism since 2001, it appears that the smuggling and counterfeiting of cigarettes account for over 20% of criminal funding sources for terrorist organisations⁹⁹.



See: <http://www.lefigaro.fr/actualite-france/2012/07/10/01016-20120710ARTFIG00537-dix-milliards-de-cigarettes-frelatees-fumees-en-france.php>

⁹⁷ Survey IFOP, UNIFAB, september 2012, n°110211- Cf. http://www.ifop.fr/media/poll/2030-1-study_file.pdf

⁹⁸ See Le Soir, Wednesday 18 August 2004, "counterfeiting funds terrorism" by the journalist J.F. Deliege.

⁹⁹ See Centre for analysis of terrorism, March 2015, report FUNDING OF TERRORISM: The smuggling and counterfeiting of cigarettes.

Likewise, the trafficking of pirated CDs has become a very profitable source of illegal income, as have the trafficking of narcotics, theft and arms sales.

It is also known that today, in Europe, a kilo of cannabis could be sold for up to 2000 euros, while a kilo of counterfeit CDs could reach 3,000 euros¹⁰⁰.

In 2002 the magazine "Time" already highlighted the financial benefits represented by counterfeiting relative to other traffic, "a drugs dealer buys a kilo of cocaine for about \$47,000 and can hopefully sell it on the street for about \$94,000: he therefore makes a profit of 100%. However, for the same lay-out - and a much lower risk - an enterprising counterfeiter can buy pirated copies of advanced software and resell them at a profit of 900%"¹⁰¹.

Sandro Calvani, former director of the Research Institute on the Interregional Crime and Justice of the United Nations, highlighted the extremely high profitability of the trade in counterfeited products, calling it a real "gold mine" for all criminal organisations¹⁰².

We can also note that counterfeiting is one of the favourite criminal techniques in the money laundering process. Dirty money generated by other illicit trafficking (drug trafficking, human trafficking, etc.) is reinvested in the production of counterfeits, which is deemed to be a less serious crime and therefore, less heavily punished.

The process is very well summarised in the OECD report on the economic impact of counterfeiting, confirming the link between the market for illegal copying and organised crime. The study highlights the high profits under these activities, which exceed those of drug trafficking, and the low risk of getting caught, coupled with low penalties. All these items contribute to creating a particularly attractive environment for these illegal activities¹⁰³. Within this counterfeit market, trafficking fake medicines is particularly lucrative.

Therefore, on the same principle as the comparison made between hashish and pirate CDs, we can observe that if a kilo of heroin generates a return of about 200%, a kilo of the active ingredient of Viagra suggests almost a 2,000% profit.

According to a recent survey¹⁰⁴, counterfeit medicines are up to 25 times more profitable than drug trafficking. According to Bernard Leroy, director of the IRACM (International Research Institute Against Drug Counterfeiting), "the return on investment is spectacular. While \$1,000 invested in drug trafficking can raise \$20,000, the return from counterfeit medicines can reach 200,000 to 500,000 euros".

An article in the Michigan Journal of Business sees counterfeiting as a real opportunity for terrorist organisations. This activity is "fast, simple, and highly lucrative. Counterfeiting and piracy are easily accessible industries that guarantee terrorist organisations a certain level of anonymity. Moreover, the profits generated by the sale of counterfeit goods are significantly higher than those generated by other illegal products"¹⁰⁵.



IV - THE TERRORIST-COUNTERFEITER, A PROVEN BUSINESS MODEL

Terrorist organisations' involvement in the traffic of counterfeit goods is usually twofold. Thus, according to Interpol, counterfeiting can finance terrorist groups directly and/or indirectly¹⁰⁶.

Directly, the terrorist group organises and manages the production as well as distribution of counterfeit goods and receives the profits. Counterfeiting is then one of a number of branches of its criminal activity. Furthermore, most often it will be the most lucrative branch, which will enable it finance terrorist attacks, amongst other things.

Indirectly, it is the supporters or members of criminal organisations who are involved in the trade of counterfeit products and pay back their profits to terrorist groups. In both cases, counterfeiters use complex and organised set-ups to sell counterfeit products, and use their profits for acts of terrorism.

COMPLEX FUNDING METHODS

Attracted by returns on investment and penalties that serve as little dissuasion, terrorists are involved in the traffic of counterfeit goods as real business leaders, and do not hesitate to diversify distribution channels to better conceal their source of incomes.

1. DIVERSIFIED DISTRIBUTION CHANNELS

Counterfeiters can sell their counterfeit products through many different distribution channels: in stores, at the entrances of the metro, on the sly, but also on the Internet, the leading selling vector of counterfeit goods.

¹⁰⁰ European Union customs web site.

¹⁰¹ See Time of 18 November 2002, "Busting Software Pirates" by Jennifer L. Schenker.

¹⁰² UNICRI, "Counterfeiting, a global spread, a global threat", 2007.

¹⁰³ OECD, The economic impact of counterfeiting and piracy, 2008, <http://www.oecd.org/dataoecd/13/12/38707619.pdf>

¹⁰⁴ Eco flash, False medicines are 25 times more profitable than drug trafficking, 23 September 2014.

¹⁰⁵ The Michigan Journal of Business, Counterfeit Goods and Their potential Financing of International Terrorism.

¹⁰⁶ Peter Lowe, Counterfeiting: links to organized crime and terrorist funding, journal of financial crime, vol 13, 2006.

Like legitimate businesses, distribution is vital for the operations of counterfeiters, who use and abuse the weaknesses of the infrastructure and supply chains to cover their tracks and make detection more difficult¹⁰⁷.

The “Jupiter VI” operation, which was conducted by Interpol in 2014, in collaboration with the police and customs services of around a dozen countries, clearly illustrates the numerous distribution channels of counterfeit goods. Indeed, this operation resulted in the seizure of over \$27.4 million worth of counterfeit goods across 10 Latin American countries, in addition to the arrests of almost 800 people¹⁰⁸. These goods were sold on markets, in shopping centres, via street vendors, as well as on social networking sites.

These networks are often complex and highly organised. Some counterfeit goods are hence produced in Europe and sent to a free trade area by a group of supporters of the movement. Counterfeit goods are then smuggled to another recipient country, so as to avoid import taxes. There, they will be sold via a group of supporters and militants. The amounts hence generated will be subsequently transferred to the organisation.



See: <http://counterfeit-busters.skyrock.com/2982506737-UN-TOUR-DU-MONDE-DE-LA-CONTREFAÇON.html>

A large number of complaints and criminal actions involve repeat offenders, who are highly organised, with a discreet modus operandi, based on that of narcotics, especially in some sensitive areas. Some of these individuals own a number of homes (where they store counterfeits), stores (walls and businesses), all of which is paid for in “cash”, very often with front men appearing to be owners.

107 2015 Report on “The situation of counterfeiting in the European Union,” EUROPOL and OHMI, <https://oami.europa.eu/ohimportal/documents/11370/80606/2015+Situation+Report+on+Counterfeiting+in+the+EU>

108 <http://www.interpol.int/fr/Centre-des-m%C3%A9dias/Nouvelles/2014/N2014-083/>

In some cases, traffic is even organised from the very prison where the criminals are serving their sentences...

2. THE DARK SIDE OF ONLINE COUNTERFEITING



See: <http://www.cnac-contrefaçon.fr>

Internet has become the distribution channel for counterfeit goods par excellence, because of its apparent anonymity, its ability to operate across different jurisdictions and its potential to present sophisticated replicas in seemingly official online boutiques¹⁰⁹.

The rapid expansion of e-commerce platforms (Ebay, Priceminister, Alibaba...etc.) and social networks (Facebook, Twitter, Instagram... etc.), allowed counterfeiters to expand considerably their operating field.

Despite anti-counterfeiting policies implanted by some of these new actors, their websites continue to harbor advertisements of counterfeit goods.

Social networks represent counterfeiters’ privileged area. It is quite common to see profiles mingling glorification of terrorism and sale of counterfeit goods.

More broadly, internet is full of websites failing to respect the protection of personal data. The purchase of counterfeit goods online will expose consumers to many troubles: spams, computer virus, theft of personal and banking data.

109 2015 Report on “The situation of counterfeiting in the European Union,” EUROPOL and OHMI, <https://oami.europa.eu/ohimportal/documents/11370/80606/2015+Situation+Report+on+Counterfeiting+in+the+EU>

While the sale of counterfeits to the general public now occurs primarily on the web, upstream traffic is often organised on the underground internet, the Darknet. This problem hit the headlines at the end of 2013, with the FBI closing the site Silk Road¹¹⁰.

According to US authorities, the site was a vast online black market where hundreds of kilos of drugs and other illicit goods and services, were regularly bought and sold, along with counterfeit products.

Specifically, Silk Road was based on one key principle: anonymity. The site, which was hidden in the “deep web” (i.e the part of the web which is not indexed by traditional search engines) was limited to users in the digital decentralised network Tor, which guarantees complete anonymity. Launched in 2011, Silk Road thus enabled its users to buy or sell any product, including drugs.

According to Paolo Garoscio, a journalist for EcoQuick¹¹¹, Silk Road was generating so much illegal trafficking, including the sale of drugs, weapons and even killings (...) that the FBI estimated the site’s turnover at \$1.2 billion over the two and a half years that it was open.

The “deep web”, which is frequented by counterfeiters for its anonymity and inability to trace payments, now occupies a prominent place in the funding of terrorism.

3. THE USE OF DISGUISED DONATIONS

Unifab’ report entitled, “The impact of counterfeiting seen by companies in France”¹¹² demonstrated that, regarding fundamentalist terrorist groups in North Africa, some of the money from counterfeiting is sent by supporters; either in cash or in the form of “charity donations” via some mosques, imams and non-profit making Islamic organisations. All these transactions leave no paper trace, and there is no way to check the origin or final destination of the funds.

Thus in some cases, particularly war zones, traffics are organised by terrorist organisations or Jihadists in guise of humanitarian aid (former Yugoslavia)¹¹³.

110 Le Monde, Silk Road is closing – so what?, 3 October 2013.

111 EcoQuick, The Bitcoin lets anyone finance terrorism relating to the jihad, 8 July 2014.

112 Unifab report, “The impact of counterfeiting seen by companies in France; links with terrorist groups, April 2010. Cf. <http://www.unifab.com/images/Avril2010rapport.pdf>

113 Centre for analysis of terrorism, March 2015, report FUNDING OF TERRORISM: The smuggling and counterfeiting of cigarettes

Another example reported by L’Express shows that the Syrian rivals of the Front Al-Nusra (linked to Al-Qaida) and Islamic State may register the funds raised under the cover of charity work, with Qatari, Kuwaiti, Saudi and even European donors¹¹⁴...

For example, in November 2012, court monitoring found that the cultural and solidarity association Anatolia Paris (Acsap) via two of its members, funded the DHKP-C, an extreme left-wing Turkish revolutionary party, considered as a terrorist organisation by the European Union for its involvement in fifty murders in Turkey. In December 2013 the Paris Court of Appeal sentenced the two French people involved to between 2 ½ years and 7 years imprisonment¹¹⁵.

During the Danish customs’ seizure of a container containing false shampoos, creams, eaux de cologne and perfumes, the sender confessed having links to the Al-Qaida network. The investigation, which was conducted in Denmark, the United Kingdom and the United States, tried to establish whether the funds from trafficking were directly paid to the terrorist organisation, whether in full or in part, or delivered indirectly through the “Zakat”, i.e. a diversion of Muslim alms¹¹⁶. “Numerous investigations have already been able to prove that the sale of counterfeits leads to very substantial gains with minimal risk taking, generating an underground economy whose profits are donated largely to religious bodies, prisoners, or are transferred to bank accounts abroad”.

These different circuits sometimes take the form of opaque flows due to the anonymity of authors and inability to trace money.

114 L’Express, jihadism: money – the nerve centre of the “holy war,” 22 January 2015 – Chapitre “revenues”.

115 See site <http://www.turquie-news.com/rubriques/france/18402-france-2-a-7-ans-de-prison-aux.html>

116 Report, The impact of counterfeiting seen by companies in France; the links to terrorist organisations, April 2010.

OPAQUE FUND TRANSFERS

By which financial channels are profits from the traffic of counterfeit goods routed to terrorist organisations?

1. THE ROLE OF BANKS

An investigation revealed that several banks participated in the financing of terrorist groups. For example, in the 1980s and 1990s, terrorist groups used major international banks for their financing. The Pakistani bank BCCI went bankrupt in 1991 after financing criminal activities such as the money laundering of Colombian cocaine cartels for twenty years. Even the bank HSBC had some involvement in this affair. Meanwhile, Osama Bin Laden held a personal account with the Swiss bank UBS, where illicit funds were deposited. After the attacks of September 11, 2001, the banks were forced to tighten their anti money laundering controls.



What is delinquency?

See: <https://tpedelinquancefinanciere.wordpress.com/>

"Terrorists then turned towards smaller banks in countries with strict banking secrecy and lax regulation," says Damien Martinez, co-founder of the Centre for the Analysis of Terrorism. These included banks from Eastern Europe countries, such as the Balkan States and the Horn of Africa, such as Somalia or Sudan. However, Kenya and Tanzania have undertaken a big clean-up operation over the past few years, by closing 500 NGOs that were being used as a smokescreen by terrorist organisations: these associations, which are very porous, have a lot of cash. Their donation campaigns make it easy for them to collect money and launder it into the banking system. "However, banks have been identified and information services can track movements on an account, underlines Damien Martinez. The worst is when terrorist money leaves the banking system, because then there is no longer a tool to control it" ¹¹⁷.

¹¹⁷ Le Journal du Dimanche, terrorists are financed without international institutions, 15 February 2015.

More recently, Amedy Coulibaly obtained funding from banks. While his accomplices were engaged in counterfeiting, Amedy Coulibaly completed the "operational" budget of the two Kouachi brothers by taking out a simple consumer credit with a well-known organisation" ¹¹⁸.

According to L'Obs¹¹⁹, "several notes written by Tracfin services – the organisation that fights against clandestine financial flows – detail how Amedy Coulibaly and his companion Hayat Boumeddiene took more steps to obtain cash (...) With fake pay slips and under the pretext of wanting to buy a car, she managed to borrow the sum of 27,200 euros from Financo, a consumer credit company. A few days later, she bought a second hand Mini Cooper before selling it again in Belgium. (...) Meanwhile, Amedy Coulibaly, applied for and obtained a credit of 27,000 euros from Mercedes for the purchase of a car he sold five days later."

Islamic State is also increasingly turning towards self-financing. Thus, Jean-Charles Brisard, an expert in terrorism, explains that "Daech no longer raises money on the outside, but rather raises it by controlling 20 oil wells and 14 banks in Iraq and Syria" ¹²⁰.

Once again, banks play a major role in the joint financing of terrorism. The vicious circle with counterfeit in its middle can take place.

Once the money has been obtained from banks, the terrorists invest it in the counterfeiting activity. The profits obtained through the sale of counterfeit goods are then redistributed to terrorist groups via different circuits.

2. THE ANONYMITY OF BITCOINS

The bitcoin, a virtual unit of account stored on an electronic device, enables a community of users to exchange them for goods and services without having to resort to regulate currency¹²¹.

To pay for their purchases on the Darknet, surfers use this virtual currency, which guarantees confidentiality. Transactions are anonymous and the seller does not know the buyer. The only information revealed is the delivery address.

¹¹⁸ Le Figaro, Terrorists dabble in counterfeiting, 22 February 2015.

¹¹⁹ L'Obs, Society, Terrorism: the chase for cash, 18 March 2015.

¹²⁰ Le Journal du Dimanche, Terrorists are financed without international institutions, 15 February 2015.

¹²¹ See Banque de France, Focus: The dangers related to the development of virtual money: the example of the bitcoin, n°10, 5 December 2013.

The guarantee of anonymity offered by Bitcoin transactions on the internet means that no personal information is necessary to carry out exchanges, and transaction costs, which are reputed to be low, have attracted the interest of a growing number of Internet users.

These transactions on the net, which are completely occult, enable any user to purchase any product without leaving any trace of his purchase anywhere.

By its opaque character, the bitcoin encourages circumvention of the rules in the Fight Against Money Laundering and the Financing of Terrorism (LCB-FT).



See: <http://www.getbitcoinsquick.com/>

This risk is also the subject of a focal point in the 2011 activity report of the TRACFIN, which identifies the use of the virtual currency, and particularly the bitcoin, as being at the origin of a specific risk in terms of LCB-FT¹²².

Internationally, the Financial Action Task Force (FATF) adopted and published guidelines for new payment methods, which also mention the risk of LCB-FT related to virtual currencies which are exchangeable or reimbursable¹²³.

The company Ookawa Corp, a digital communications company, was able to relate the links between terrorist organisations and bitcoin. "It is in a PDF file posted on a blog that the man, who calls himself Amreeki, explains how the bitcoin is the ideal way to finance the Islamic war. And most worrying is that his arguments are perfectly consistent. As he pointed out, bitcoin transactions are anonymous and it suffices to have just a little knowledge of cryptology to even make them untraceable. This is enough to enable everyone to finance terrorist groups in all impunity" ¹²⁴.

¹²² See page 21 et seq. of 2011 business report, http://www.economie.gouv.fr/files/RAVTracfin_09082012.pdf

¹²³ Following on from its meeting of 19 and 21 June 2013 These guidelines are available by clicking on this url: <http://www.fatfgafi.org/media/fatfi/documents/recommendations/Guidance-RBA-NPPS.pdf>

¹²⁴ <http://ookawa-corp.over-blog.com/2015/02/le-bitcoin-permet-a-n-importe-qui-de-financer-le-terrorisme-lie-au-jihad.html>

Thus, "if an individual were able to buy drugs with apparent impunity, it would be even easier to finance a terrorist group through bitcoins, as there is not even any risk related to the receipt of the goods" ¹²⁵.

3. THE PROLIFERATION OF INTERMEDIARIES

The blackening of money practised by terrorist organisations relies on a basic clandestine principle, which enables it to bypass the traditional banking system.

This principle is called Hawala, an Arabic term that could be translated as "trust".

The Hawala operates thanks to agents¹²⁶ which transfer quickly over long distances – often from one country to another – bypassing the traditional banking system and without any direct transmission of means of payment.

Take the example of a person A, living in a given country, who wishes to transfer funds to a person B living in another country. By going through a hawala network, in his country, A will approach an "exchange agent" X, who is called a "hawaladar" and send him the sum which he wishes to reach B.

The hawaladar X will then contact a hawaladar Y, who lives near B, and ask him to pay the amount that A wants to transmit to him. In return, the hawaladar X will reimburse the hawaladar Y, by paying the amount due or by the import of goods for example, according to the agreement between the two hawaladars.

According to this system, there is no direct transfer of money between A and B. The hawaladar Y advances the sum to the hawaladar X. Therefore, the "sustainability" of the system depends only on the confidence that different players accord each other. These transactions, which are not recorded, are not based on any contract or legislation. Thus, capital movements are carried out discreetly.

These circuits, which are mainly used by criminal and terrorist organisations, are obviously very controversial. Indeed, the fact that a hawala network guarantees certain anonymity, that transactions escape regulations and that they cannot be traced, earn it a bad reputation. These hawala networks are indeed frequently used in money laundering operations or as a platform for the funding of terrorism.

¹²⁵ <http://www.economiamatin.fr/news-bitcoin-jihad-terrorisme-financement-monnaie-virtuelle>.

¹²⁶ Counterpart in Money and Finance, Hawalas: an alternative to the banking system, 24 August 2012.

Therefore, on the arrest of three North African nationals, who tried to travel to Somalia via the Democratic Republic of Congo, the investigation found that all three had been recruited to go to foreign “*jihadist*” camps in Somalia and all had received an amount equivalent to 7600 euros by the hawala of one of their fellow citizens, an established trader in Senegal. The order provider was a member of a salafist movement, based in the country of origin of these individuals, and acting on behalf of the recruiter in Somalia. The three people were in continual contact with the leaders of these terrorist groups in their home country, Kenya, and especially Somalia¹²⁷.



See: <https://www.contrepoints.org/2012/08/24/94908-les-hawalas-une-alternative-au-systeme-bancaire>

127 GAFI Report, The Funding of terrorism in West Africa, October 2013 - See <http://www.fatf-gafi.org/media/fatf/documents/reports/ft-en-afrique-de-louest.pdf>

CONCLUSION

Counterfeiting threatens the economy of all developed and developing countries. It has changed its face in just a few decades, becoming largely industrialised and now affecting all economic sectors. It has particularly turned into a form of organised crime that finances terrorist organisations. **Today, everyone must understand that the consequences of counterfeiting go beyond just affecting the interests of rights holders: people’s interest as a whole, is threatened.**

This shifting of the harm caused by counterfeiters, from private interest to public interest, raises another issue: the punishment to apply. As general interest is infringed, only a real penal deterrent may lead to a more effective fight against counterfeiting.

The gap between the reality of counterfeiting and its treatment by French, European and international institutions, is almost unreal.

The consumer, not always aware of the danger, is tempted to buy fake products, as they are available to everyone and affordable by all. In the consumer’s mind, these counterfeit products can be perceived as harmless, and seem allowed in a certain way!

Unifab hopes that this study will contribute to a better consideration of the problem generated by counterfeiting – both nationally and internationally – and more specifically in terms of its ramifications with terrorism.

The fight against counterfeiting indeed requires an ongoing commitment from all parties.

10 RECOMMENDATIONS FROM UNIFAB TO FIGHT COUNTERFEITING MORE EFFICIENTLY

1. HARMONIZE INTERNATIONAL LAWS

- Strengthen harmonization in criminal laws. In Europe with the creation of a European Public Prosecutor’s Office able to pursue counterfeiters in any Member State.
- Bring criminal sanctions in line at international level in order to avoid the phenomenon of “forum shopping”, used by counterfeiters.
- Provide and enforce the control, the seizure and the destruction of fake goods in transit by competent authorities, for all intellectual property rights.
- At European level, recognize counterfeiting as a criminal offense governed by Article 83 of the TFEU (Treaty on the Functioning of the European Union), for which European Union can adopt directives establishing minimal rules concerning the definition and sanctions of these criminal offences.

2. CONDEMN COUNTERFEITING AS A FINANCING OF TERRORISM

- As proposed by FATF, and based on the International Convention on the Financing of Terrorism, establish as a criminal offence, the financing of terrorism as well as the financing of terrorism organisations and individuals, even if there are no links with one or more terrorist acts, in all countries.
- Promote the endorsement of an anti-counterfeiting amendment by the Palermo convention against transnational organised crime, in order to consider fake goods trafficking as serious as drugs and arms.
- Promote the adoption of a resolution by the United Nations condemning counterfeiting as a way of financing terrorism.

3. SPECIALISE JURISDICTIONS

- Confer an “IP” bloc of skills to a limited numbers of criminal courts in order to ensure a better coherence in the judges approach.
- Develop the specialization of judges and decision-support with the recruitment of legal experts. Notably, the appointment of judges to IP department should be preceded by a specific training dealing with counterfeiting issues.
- Specialize, at initial and continuous levels, judges and State law enforcement with dedicated training courses.

4. STRENGTHEN ACTION ON THE INTERNET

- Apply a “duty of care” for Internet actors, so that they take all reasonable measures to fight against counterfeit. à placer ou ? and adequate
- Obtain from websites, including those based outside but selling to France, to communicate information about the seller under a simplified procedure.
- Prohibit anonymity and having professional sellers identify themselves in accordance with the same criteria used in the real economy (bank details, references number).
- Heighten awareness of judges, so that they enjoin e-commerce platforms which have been convicted of counterfeiting, to publish the judgment online, on the home page of their website.
- Provide, in case of digital counterfeiting, for additional penalties, for example, the temporary prohibition to sell online on all the sites targeted by the convicted cyber-vendor.
- Legally bind online payment systems to communicate their information to law enforcement authorities, when asked to.

5. EMPOWER ALL INTERMEDIARIES

- Involve all actors. Since technical and financial intermediaries as well as people in the advertising sector are involved in the distribution of counterfeited products, they should also be involved in the fight against counterfeiting. This will require a stronger legislative framework and an increased accountability of protagonists.

- Provide in professional fairs and trade shows, procedures to fight against counterfeit. Promote agreements between organisers, chambers of commerce and industry and private sector.

6. PROVIDE INOVATING TOOLS

- Provide for anti-counterfeiting associations the possibility of a civil action alongside with victims.

- Enhance technical tools of fake detection (i.e: scanners, specialized MDD teams).

- Create geographical area of "zero tolerance" based on the "French Authentic charter" signed by local authorities and Unifab.

7. STRENGTHEN COOPERATION

- Make the fight against counterfeiting a recurrent topic in major international meetings.

- Reinforce partnership with sensitive countries.

8. IMPLEMENT DISSUASIVE SANCTIONS (INCREASE PENALTIES AND COMPENSATIONS)

- Increase penalties to 7 years of imprisonment and a fine of 700,000 euros in case of counterfeit committed by an organized group.

- Insert counterfeit by an organized group within the list of crimes which can be committed "in relation with an individual or a group aiming at disturbing public order through intimidation or terror".

- Provide for additional sanctions, such as temporarily prohibit companies which have been convicted for counterfeiting, to export their products, etc, in all countries.

- Outlaw, by a joint directive from Ministries of Justice and of the Interior, the qualification of "street peddling" for known counterfeiting.

- Make the counterfeiting of goods dangerous for the health or safety of humans and animals, an autonomous infringement, and considerably increase penalties.

9. IMPROVE THE OPERATIONAL RESPONSE (REINFORCE THE AGENTS MEANS OF ACTIONS AND BRING BACK COUNTERFEITING AT THE HEART OF PUBLIC POLICY CONCERNS)

- Develop strategic monitoring and facilitate the exchange of information between different law enforcement authorities.

- Include the fight against counterfeiting into the police performance indicators in order to make it an institutional reflex and a governmental priority.

- Avoid all measures which could facilitate the work of counterfeiters and make the copy easier (for instance, plain packaging. The plain packaging simplifies counterfeiters production chain and complicates the work of operational services in charge of the fight against counterfeiting).

10. BETTER INCREASE AWARENESS OF ACTORS AND GENERAL PUBLIC

- Broaden awareness-raising to all actors.

- Educate our youth. For example, introduce the notion of Intellectual Property in civics of middle-schoolers.

- Involve tourism operators.

NOTES

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