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, right 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
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 countries. 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 $1.7 trillion world-wide’. This is more than the value of drugs and prostitution combined.1

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.

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’s 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 crime.2

Two years later, Ronald K. Noble underlined the importance of fighting against counterfeiting 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’.

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’.3

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 declared “in any case, powerful criminal networks often hide behind the producers of counterfeit products; do not forget that counterfeiting is 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 Bonnely 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 Transcrime 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 European countries.

1 OASCAP “Role and responsibilities of intermediaries: fighting counterfeiting and piracy in the supply chain”, 2013.
3 ONUDC, Zoom en 1 click trade of counterfeit goods and transnational organised crime.
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.
7 http://www.occurrences.eu/Portail/occurrences/PresentationOCP_Final%20Conference_Illicit%20markets_FINAL.pdf
8 https://www.oecd.org/Publications/Publications/La-politique-publique-de-lutte-contre-la-contrefacon.

On September 2nd 2014, the revenue Court drew the public authorities’ attention to the issue of the fight against counterfeiting in its summary proceedings4 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 in particular considers as ‘suffering from limits’. In particular, the last recommendation tends to provide Justice, with more severe repressive measures.
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: 13 “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 line with the one existing before in the area of the fight against acts of terrorism and their apology 9.

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 homogeneous 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” 9.

In order to give a practical dimension to all these statements, Unifab demonstrate, links between counterfeiting 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 counterfeiting industry;
- Reasons why terrorist groups are more and more attracted by this lucrative activity;
- Funding mechanisms of terrorism by counterfeiting.

11 - 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 FUNDING

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 alert 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


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).

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9 Senate, ordinary session 2013-2014, report n°123 session 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. “Taux préjudices de devises légales ou imposantes plus contraignantes, bâtarles de plateforme en ligne et, a tout le moins, d’agir avec diligence en prévenant 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 contrefaits tels que abusés aux articles L-421-1, L-421-5 et L-176-1 du Code de la propriété intellectuelle.”
12 The dossiers of the Yeux du Monde, Piracy, a crime that is almost perfect, Rémy Sabatier, number 6, April 2014.
13 L’Obs, Syria, Daesh has a broader diversity of income than some countries, 15 March 2015.
14 Countering the Financing of Terrorism, published by Thomas J. Biersteker, Sue F.
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 organisations.

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 jobs.

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 2014, Michel Quilllé, 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 cars.

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 activities.

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 stocks.

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 collaboration.

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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 links: “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.”

Researchers of the RAND Corporation 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.

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’ (EUROFISON), and OHMI: https://iarc-europe.eu/whmisearch/docu-
ments/1137860633015-SituationReportvonCounterfeitingv1.4e4EU
23. The dossier of the Yves 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 analyses.
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-Qaeda 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”

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”

According to a report by Ficci and EY, 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 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”

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.”

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.

According to Louise Shelley, Terrorist organisations are multinational companies, 15 January 2015.

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 store.

Three years later, over 100,000 counterfeit Nike t-shirts were sold at the Atlanta Olympic Games to finance terrorist actions. 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”

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 report, 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.

28 Le Point, Interview with Louise Shelley, Terrorist organisations are multinational companies, 15 January 2015.
32 http://lexvo-liberation.fr/nouvelles/1995/10/02/abdell-rahman-jupe-cou-pable-de-complot-a-new-york_148171
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 activities.56

In the 1990s, two IRA members set up a laboratory that was 20 kilometres from Miami, with funds of $60,000.57 The vials were provided by a legal firm based in Atlanta, Alabama, for a tax/royalty on the stalls of vendors who want to set up operations.58

Interpol believes that these organisations control the markets, through which most counterfeit goods pass and even introduce a tax/fraud on the stalls of vendors.59

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.60

Thus, the British police have confirmed that "in Northern Ireland, terrorists sell counterfeit and pirated goods such as CDs, DVDs, cigarettes and branded clothing so as to fund their terrorist activities."61

In 2002, the police considered that two thirds of the PIRA's (Provisional Irish Republican Army) income came from piracy.62 This information was confirmed in the 2008 Anti-Counterfeiting Group report, which underlined that the weapons bought by Irish Republican Army had been funded though the sale of different counterfeit products.63

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 market.64

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 $4 million.65

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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 income.72 It was proven that ETA controlled the sale of counterfeit clothes and bags in southern Spain.73 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.74

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 Paraguay.75

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 Hezbollah.76 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.

In the US, in 2000 as part of the operation "Smokescreen"77 the federal authorities dismantled a vast Hezbollah funding network of cigarette smuggling and counterfeiting of fiscal stamps, 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 Hezbollah.78

In 2004, by tracing the profits from the sale of counterfeit goods from Paraguay, US Intelligence also found the involvement of a Hezbollah’s cell.79

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 “B’alal [a village of Lebanon] is at the heart of the Hezbollah empire: a village of crime, trafficking of network, has cash, very often of heroin 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 Beirut.”80

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 traffic of counterfeit was paid to access to American documents of the indictment, some of the $500,000 related to the traffic of counterfeit was paid to

See: http://journal-neo.org/2015/01/17/rus-v-hezbolla-vy-yavleny-ocheredny- e-agentstv-issledovatelʹ


FINAL-copie-2.pdf p.56.
54 http://www.eregs.co.uk/actions/socgen/sa/centrelocals/fauz-medica-
ments-views-remarks_180907.html.
55 See Interpol’s first international conference on intellectual property.
58 http://www.eregs.co.uk/actions/socgen/sa/centrelocals/fauz-medica-
ments-views-remarks_180907.html.
59 At Interpol’s first international conference on intellectual property.
61 See Dossiers de l’OIT, Piracy, an almost perfect crime, number 6, April 2014.

An Israeli study\(^5\), 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 Palestine\(^6\).

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 the 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 possession\(^7\).

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

In an interview published in Le Monde\(^8\), 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”\(^9\).

Interpol also believes that Al-Qaida and affiliated groups received between $300 and $500 million from their “supporters” over the past decade. This includes funds originating from both legal and illegal activities, including the trade of counterfeit goods\(^10\). Documents from Al-Qaida propaganda recommend to trade counterfeit products to generate more funds to finance terrorist operations\(^11\).

In November 2003, a trafficking of counterfeit products between France and Italy was dismantled. This led to the arrest of 13 members belonging to the Takfinist branch. They were suspected of having supplied weapons and false documents to terrorist via a network funded thanks to counterfeit clothes\(^12\).

Following the Madrid bombings of March 11th, 2004, orchestrated by the terrorist network Al-Qaïda, the former Spanish Minister of the Interior, Angel Acebes\(^13\), said that “one of the suspects arrested was already a well-known counterfeiter”\(^14\).

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 counterfeiting\(^15\).

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 States\(^16\).

In 2008, a Pakistani named Sajidullah Anjum Ranjha, a Hamas activist, is suspected of financing Hamas with the incomes he earned from the traffic of counterfeit goods. When Sajidullah Anjum Ranjha was arrested in Paraguay in June 2003, authorities found many counterfeited items in his possession\(^17\).

7. THE D-COMPANY OF INDIA

Originally, D-Company\(^18\) 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 recognised\(^19\).

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 income\(^20\).

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 counterfeiting\(^21\).
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.

Those behind the Paris terrorist attacks of January 7th 8th and 9th, 2015, “lived from drug trafficking, to terrorism. For sometimes isolated counterfeiters, deviant individual can evolve from simple delinquency to fight delinquency, drug trafficking, counterfeiting 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 delinquent individual can evolve from simple delinquency to terrorism. For sometimes isolated counterfeiters, counterfeit is the opportunity to finance itself fast, whilst progressing unnoticed.

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.

2.1. 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”.

87 "La moitié des terroristes seraient des fabriquants de faux Produits", Le Point, 2254, 19 November 2015.
Some pharmaceutical companies have been asked to produce fake Captagon tablets. Thereafter, illegal operators have begun to manufacture products which contained no fenetylmine, but rather a combination of substances that mimicked 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 high demand by the young and where it even gained a reputation of being an aphrodisiac in the early 1980s.

In Syria, according to a survey by Reuters, the money obtained from sales has enabled forces to arm themselves. The fake 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 Arabia.

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.

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-fold.

In his documentary, “Daech, the birth of a terrorist State”, the film director Jérôme Frisel accurately described the workings of Islamic State, whose fortune now amounts to $2.000 billion. 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 revenues, “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.

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 refren the counterfeit expansion in a world where it is dealt as a minor offence, where as its consequences are majors today.

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”.

III – COUNTERFEITING, A LOGICAL CHOICE FOR TERRORISTS

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86 http://www.parismatch.com/Actu/International/Le-captagon-la-drogue-qui-ravage-la-Syrie_article_landscape_pm_v8.jpg
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, 13 March 2015.
91 FraudAd, Rise in counterfeited market linked to terrorist funding.
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 fraudsters 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 counterfeitors. 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 danger and various consequences of counterfeiting 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.

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

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 euros14. 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. Counterfeitters indeed choose to conduct their activities in Member States which have more permissive legislation. Criminal proceedings itself also lacks harmonisation at a European level. It is thus regrettable that a European Public Prosecutor has not yet been established.

An article in the newspaper Les Echos on March 6th, 201515, 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, human trafficking and the sexual exploitation of women and children, the illegal trafficking of drugs and weapons, money laundering, corruption, counterfeiting, ITR, and all forms of organised crime16.

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 Unifab16, 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 profitable18.

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 organisations19.


94 See http://www.cedre-jugenpstaege.be/confiscation-risque-d-amende-et-de-condamnation-023161.html
95 Lesechos.fr « L’avenir juridique à l’égard des actes de terrorisme » 6 March 2015
98 See Le Soir, Wednesday 18 August 2004, “counterfeiting Ando terrorism” by the journalist J.J. Delage.
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 euros103.

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%”111.

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 counterfeit 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 100,000 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.

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.

IV - THE TERRORIST-COUNTERFEITER, A PROVEN BUSINESS MODEL

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 website.


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


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 difficult. 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 people. 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 organised. Some counterfeit goods are hence produced in Europe and sent to a free trade area by a group of supporters and militants. The amounts were sold on markets, in shopping centres, via street vendors, as well as on social networking sites.

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 boutiques. 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.

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 Road.

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 Garosci, a journalist for EcoQuick, 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 $2.1 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" 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) for 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.
**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.

According to L’OBS, several notes written by Tracfin services – the organisation that fights against clandestine financial flows – detail how Amedy Coulibaly and his companion Hayat Boumeddiene took steps to obtain cash. J. 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 Finance, 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 Brissard, an expert in terrorism, explains that: "Even if no longer raises money on the outside, but rather raises it by controlling 20 oil wells and 14 banks in Iraq and Syria."

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 their goods for services without having to resort to regulated currency. 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.

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 the laundering of money and the financing of terrorism.

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### 3. THE PROLIFERATION OF INTERMEDIARIES

The blackening of money practitioner 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 Hawalas operate thanks to agents which transfer quickly over long distances – often from one country to another – by bypassing the traditional banking system and without any direct transmission of means of payment.

**What is Hawala?**

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 smoke screen 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 suspicious transactions. As he pointed out, bitcoin transactions are anonymous and it suffices to have just a little knowledge of crytology to even make them untraceable. This is enough to establish connections with terrorist groups in all impunity.

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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. Simple.

The Hawalas operate thanks to agents 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 ‘hawalader’ and send him the sum which he wishes to receive B.

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

According to this system, there is no direct transfer of money between A and B. The hawalader Y advances the sum to the hawalader 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 stipulation. 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.
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 “jihadi” 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.


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 JURIDICTIONS

- 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.
- Obtain from websites, including those based outside but selling to France, to communicate information about the seller under a simplified procedure.
- Banonymity 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.

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

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 by 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