

# **The Illicit Arms Trade in States in Transition: A Comparative Study of South Africa and Croatia**

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## **Declaration**

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## **Abstract**

This research study aims to analyze the illicit arms trade in states in transition. While both the study of the illicit arms trade and the study of states in transition per se, are characterized by a variety of concepts and debates within academia, this study attempts to establish a coherent and concise connection between the two. Therefore, the main research question is: *How do the capacity gaps of social control, social welfare, border control and legitimacy contribute to the proliferation of the illicit arms trade in states in transition?*

For the purpose of this study, the researcher uses the theoretical framework based on capacity gaps and functional holes as outlined by Phil Williams (2002). Williams (2002) states that organized crime and transnational organized crime (TOC), which the illicit arms trade is a part of, flourish in states that are weakened by capacity gaps and where the accompanying functional holes open up the way for organized crime and TOC to work with impunity. The seven capacity gaps that Williams (2002) outlines are: social control, social welfare, business regulation, oversight and accountability, border control, legitimacy and electoral norms and patterns. However, this thesis does not focus on all seven capacity gaps; instead, only the capacity gaps of social control, social welfare, border control and legitimacy are analysed. This decision has been based on the literature by Williams (2002), Migdal (1988), Beck and Laeven (2006), who suggest that a state in transition cannot complete its transitional period and become a consolidated democracy if high levels of social control, social welfare, respect for the rule of law and legitimacy are not obtained.

Moreover, this research study conducts a comparative analysis of two states in transition, South Africa and Croatia, which have both been experiencing difficulties with TOC and the illicit arms trade, and where both states still have not completed their transitional period, and are thus not consolidated democracies. This research does not imply that the findings of this study are applicable to all states in transition; the focus is rather on how the four capacity gaps and functional holes that this research focused on contribute to the proliferation of the illicit arms trade in South Africa and Croatia. The findings indicate that due to high levels of corruption within the judicial system and police, the citizens of South Africa and Croatia lack trust in the states' capacity to impose social control, which in turn opens the way for organized criminal groups to work with impunity. Furthermore, the social welfare capacity gap contributes to the rise in levels of organized crime and the illicit arms trade due to the fact that levels of inequality and unemployment force the citizens of South Africa and Croatia to look for alternative survival strategies, usually those that organized criminal groups can

provide them with. Moreover, the lack of resources and corruption among custom officials and police staff, serve as opportunities for organized criminal groups to traffic illicit goods over South Africa and Croatia's borders; thus indicating a functional hole in the states interdictory capacity and an overall gap in the states capacity to control its borders. Lastly, due to the South African and Croatian citizens' lack of trust in the institutions and the state apparatus in general, the capacity gap of legitimacy is visible. This in turn opens the way for organized criminal groups to use patron-client relationships with the citizens of South Africa and Croatia, in order to build and sustain a level of popular legitimacy that the state is lacking.

## Opsomming

Hierdie navorsingsprojek streef daarna om die onwettige handel in wapens as deel van transnasionale georganiseerde misdaad binne state in transisie te analiseer. Alhoewel navorsing in die onwettige handel van wapens, asook die studie van state in transisie gekenmerk word deur vele konsepte en debatte binne die velde; poog hierdie studie om die twee konsepte in 'n duidelike en presiese manier te verbind. In die lig hiervan is die navorsings vraag: Hoe dra die kapasiteitsgapings van sosiale beheer, sosiale welvaart, grens kontrole en legitimiteit by tot die volhoubaarheid van die onwettige handel in wapens in state in transisie? Vir die doel van hierdie studie het die navorser besluit om gebruik te maak van die teoretiese raamwerk gebaseer op kapasiteitsgapings en funksionele-opeeninge soos beskryf deur Phil Williams (2002). Williams (2002) voer aan dat georganiseerde misdaad en transnasionale misdaad, waarvan die onwettige handel in wapens 'n deel uitmaak, floreer in state wat verswak is deur kapasiteitsgapings; en waar bygaande funksionele-opeeninge die weg baan vir transnasionale misdaad om te floreer. Die sewe kapasiteitsgapings soos deur Williams (2002) beskryf is: sosiale beheer, sosiale welvaart, besigheid-regulering, oorsig en aanspreeklikheid, grens kontrole, legitimiteit en verkiesings norme en patrone. Hierdie tesis fokus egter nie op al sewe kapasiteitsgapings nie. Daar word slegs gefokus op die kapasiteitsgapings van sosiale beheer, sosiale welvaart, grens kontrole en legitimiteit. Hierdie besluit is gebaseer op literatuur deur William (2002), Joel S. Migdal (1988), Thorsten Beck en Luc Laeven (2006) en dies meer wat voorstel dat 'n staat in transisie nie die transisie periode kan voltooi en 'n vaste demokrasie kan raak indien hoe vlakke van sosiale beheer, sosiale welvaart, respek vir wet en orde en legitimiteit nie verkry word nie.

Verder maak hierdie navorsing gebruik van 'n vergelykende analise tussen twee state in transisie: Suid Afrika en Kroasië. Beide hierdie state ervaar probleme met trans-nasionale misdaad en die onwettige handel in wapens. Beide het ook nog nie hul transisie periode voltooi nie en is dus nie vaste of gekonsolideerde demokrasieë nie. Hoewel die navorser nie aanvoer dat die bevindinge van hierdie studie van toepassing is op alle state in transisie nie, probeer die navorser vasstel hoe die vier kapasiteitsgapings en funksionele-opeeninge bydrae tot die volhoubaarheid van die onwettige handel in wapens in Suid Afrika en Kroasië. Die bevindinge dui daarop dat as gevolg van hoë vlakke van korrupsie binne die regstelsel en polisie, die bevolking van Suid Afrika en Kroasië nie die staat se kapasiteit om sosiale beheer te handhaaf, vertrou nie. Dit maak die gaping oop vir georganiseerde misdaad om sonder teenkant te handel. Verder, die sosiale welvaart gaping, dra by tot die toename in die vlakke

van georganiseerde misdaad en die onwettige handel in wapens as gevolg van hoë vlakke van ongelykheid en armoede, wat die bevolking van Suid Afrika en Kroasië dwing tot alternatiewe metodes van oorlewing wat gewoonlik deur georganiseerde misdaad groepe verskaf word. Verder, die gebrek aan toerusting en ook korrupsie binne grensbeheer en polisie lede, verskaf die geleentheid vir georganiseerde misdaad groepe om in onwettige goedere te handel. Dit dui op die funksionele gaping in die staat se beheersmeganismes en oor die algemeen 'n gaping in die staat se kapasiteit om grense te beheer. Ten laaste, as gevolg van die gebrek aan vertrouwe van die bevolking in die strukture van die staat Suid Afrika en Kroasië is die kapasiteitsgaping van legitimiteit duidelik teenwoordig. Dit open die weg vir georganiseerde misdaad groepe om populêre gesag op te bou, wat daar nie is by die regering van die lande nie.

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## **List of Acronyms and Abbreviations**

ANC	African National Congress
AIDS	Acquired Immune Deficiency Syndrome
BMA	Border Management Agency
CIA	Central Intelligence Agency
DA	Democratic Alliance
ETA	Basque Fatherland and Liberty
EU	European Union
FBI	Federal Bureau of Investigation
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
HDI	Human Development Index
HDZ	Croatian Democratic Union
IANSAs	International Action Network on Small Arms
ICTY	International Criminal Tribunal for former Yugoslavia
IMF	International Monetary Fund
IRA	Irish Republican Army
ISDSC	Interstate Defense and Security Committee
JNA	Yugoslav National Army
LCY	League of Communists of Yugoslavia
MoD	Ministry of Defense
MoE	Ministry of Economy
MFA	Ministry of Foreign Affairs
MoI	Ministry of Interior
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
NICOC	National Intelligence Coordinating Committee

NP	National Party
SADC	Southern African Development Community
SALW	Small Arms and Light Weapons
SANDF	South African National Defense Force
SAPS	South African Police Service
SARPCCO	Southern African Regional Police Chiefs Co-Operation Organization
SAS	Small Arms Survey
SDP	Social Democratic Party
SFRY	Socialist Federal Republic of Yugoslavia
TOC	Transnational Organized Crime
UN	United Nations
UNC	United Nations Conference on the Illicit Trade of Small Arms and Light Weapons
UNESC	United Nations Economic and Social Council
UN PoA	United Nations Program of Action to Prevent, Combat and Eradicate the Illicit Arms Trade in Small Arms and Light Weapons in All Its Aspects
USA	United States of America
USKOK	Ured za suzbijanje korupcije i organiziranog kriminaliteta (The Bureau for Combatting of Corruption and Organized Crime)
WB	World Bank
WTO	World Trade Organization

## **Chapter I: Introduction**

### **1. 1 Background**

In a world plagued by conflict, poverty, environmental degradation, and the like, organized crime poses yet another concern with which the international community is struggling. Most of us have, at some point in our lives, heard about the concepts of organized crime and mafia; whether through academic research, popular literature, cinematography, or even a personal encounter. However, it is important to note that organized crime as a concept remains contested. This may be due to several reasons, the most prominent of which is the lack of a common theoretical, as well as operational, definition of organized crime in different national and international juridical systems and law enforcement agencies.

Even though organized crime entails a rather large pool of various commodities that are being traded, either between different groups within a country, or across national borders, this thesis will only focus on the transnational dimension of organized crime. In addition, only the illicit arms trade as part of transnational organized crime will be discussed. According to Piotr Patalong (2009), 640 million Small Arms and Light Weapons (SALW)<sup>1</sup> have been estimated to be in circulation worldwide. Based on the wide range of effects on human lives (over 1300 people are killed every day, and at least half a million people are killed by SALW every year (Patalong, 2009)), SALW are often described as the world's authentic "weapons of mass destruction".

It is estimated that approximately 80-90 percent of small arms are traded through legal transactions. According to the Small Arms Survey (SAS)<sup>2</sup>, the dollar value of illicit SALW trade is US\$1 billion, or 10-20 percent of the annual global trade (Schroeder and Lamb, 2006). Nevertheless, even legally traded arms usually end up in the hands of organized

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<sup>1</sup> The 1997 report of the UN Panel of Governmental Experts on Small Arms provides a widely accepted definition of small arms and light weapons, which states that small arms are: revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles, and light machine guns. Light weapons are: heavy machine guns, hand-held underbarrel and mounted grenade launchers, portable anti-tank and anti-aircraft guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems and mortars of less than 100mm caliber.

<sup>2</sup> The Small Arms Survey is an independent research project, located at the Graduate Institute of International and Development Studies in Geneva, Switzerland. It is an annual review of global small arms issues, including stockpiles, legal and illicit arms transfers, effects of small arms and national, bilateral and multilateral incentives for dealing with the problems associated with small arms. <http://www.smallarmssurvey.org/about-us/mission.html> Downloaded: 30.03.2011

criminal groups or members of terrorist organizations<sup>3</sup>. This could be due to several factors, such as poor border control of states involved in the SALW trade, corruption of government officials, lack of respect for the rule of law, and the like (Williams, 2002). These factors are just some of the factors that characterize a state in transition, as outlined by Phil Williams (2002). Williams (2002), Vincenzo Ruggiero (2010), Nick Tilley and Matt Hopkins (2008) suggest that these factors contribute to the exposure of a state in transition to exploitation on behalf of organized crime, particularly with regard to business activities. What is meant by transition is quite contested; however, one could say that transition is a concept, primarily generated through a collapse of the previous regime (Williams, 2002). If taken as such, one could say that the world has witnessed a fair share of transitions in the past decades, including the 1967 assassination of Che Guevara in Bolivia, the fall of the Berlin Wall in 1989, the 1994 end of apartheid in South Africa (Klein, 2007), the breakup of Yugoslavia in 1991 and the 2011 wave of democratization in the Middle East and Northern Africa. Nevertheless, the breakdown of state structures with the expectation of the creation of a new state-form does not only carry positive expectations. The difficulties that a state faces after the breakdown of the old regime are anything but small.

With regard to South Africa, Mark Shaw (1997) contests that the political and social transformation has been profound, but not painless. While political violence has ended, the transition to democracy has been characterized by rising levels of crime (Shaw, 1997). The new democratic order has also seen a dramatic increase in organized crime, with more than 400 criminal organizations engaging in a wide range of illicit activities, such as drug, weapons and vehicle smuggling (du Plessis, 2008; Shaw, 1997). With regard to the proliferation of SALW, Matt Schroeder and Guy Lamb (2006) state that SALW are the principal cause of unnatural deaths in South Africa (30 percent of the total).

Another example of a state in transition is Croatia. Croatia's transition began in the early 1990s, which was generated by the 1991 war of independence from Yugoslavia, in an attempt to make the Croatian state both independent and democratic. While still facing challenges with democratic consolidation, Croatia is also witnessing a rise in the levels of organized crime. According to Thomas Köppel and Agnes Szekely (2002), organized crime in Croatia is intimately connected with the conflicts the country faced during the 1990s. Its history and

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<sup>3</sup> Even though both terrorist groups and organized criminal groups may collaborate and exchange illegal goods, they do not have the same political agendas and aims, due to the lack of ideology in the latter group (Finckenauer, 2005).

politics have provided a fertile ground for the growth of organized crime within the country, as well as throughout the Balkan region. According to a SALW survey from 2006, it was estimated that there are approximately 968,000 weapons in civilian hands, whereof 371,000 are registered and 597,000 unregistered (Pietz, et.al., 2006). While licit arms production is centered only in one facility in Karlovac, and the income from licit arms export is on the rise; the illicit arms trade in Croatia has also been increasing. This is due to several factors, one of which is the fact that Croatia remains a major transit state for firearms trafficked from east to west and into the European Union (EU) (Pietz, et.al., 2006). From the abovementioned, the researcher finds that a comparison between South Africa and Croatia is both timely and adequate. The other reasons for South Africa's involvement in the illicit arms trade will be further discussed in Chapter III; the same will be done with regard to Croatia in Chapter IV. The following part of this Chapter will give a short overview of the literature that will be further consulted in the thesis.

## **1. 2 Literature Review**

This literature review will cover literature concerning states in transition, organized crime, and the illicit arms trade, and organized crime in South Africa and Croatia. The data necessary to contextualize the research problem will also be covered in this literature review.

### ***1.2.1 States in Transition***

The academic debate surrounding the role of the state in the political realm has been, and still is, a contested issue. At one end there are scholars, such as Saskia Sassen (in Williams, 2002), that claim that globalization is challenging the dominance of the state in international relations from above, while sub-national forces are eroding it from below. It is claimed that the state can no longer control many of the activities, which it is supposed to do. According to Sassen (in Williams, 2002) states that lack legitimacy, tend to dissolve into civil war, while those that lack the most basic elements of the governing capacity become failed states (Rotberg, 2003). At the other end of this academic debate are scholars such as Tucidides, Hans J. Morgenthau, and Kenneth Waltz, who argue that the state remains the dominant and defining entity in world politics (in Adigbuo, 2007). The scholars that take this stance derive their assumptions from realist and neorealist theory. In their opinion, the state is robust and still remains the fundamental unit in international relations (Adigbuo, 2007; Williams, 2002).

One of the main issues surrounding the debate about the role of the state is that it is not always clear whether academics and observers in general are in full agreement on what

constitutes a state. Williams (2002) outlines four main interpretations of what a state is: a sovereign territorial entity; a system of rules; a set of institutions; and a set of functions (from a guarantor of security to a provider of economic and social welfare). The next chapter will briefly mention the core issues of this debate surrounding the state and supplement the work by Williams (2002) with authors such as Robert I. Rotberg (2003), Andre Standing (2006) and more.

Furthermore, as the term state is a contested term, so is the term state in transition. While Williams (2002) claims that states in transition are characterized by weaknesses and vulnerabilities, that are exploited by organized criminal groups, transnational organized crime (TOC), warlords and the like, he also claims that to become a state in transition, a state needs to go through a painful and abrupt crisis. This will all be further outlined in the following chapter, and supplemented by the work of authors such as Thorsten Beck and Luc Laeven (2006), Josip Kregar and Antonija Petričušić (2010).

Furthermore, with regard to Africa, Tadah Mentan (2004) claims that Africa is in crisis, which is manifested in: the collapse of most of the continent's domestic economies; marginalization of the continent at the international level (especially in trade); increasing political instability despite the recent adoption of multiparty politics; and the growing interest in violent mobilization by ethnic groups, that believe they have been oppressed by their national governments. He goes on by saying that the African crisis is rooted in the weakness of the state and that African states are often characterized as weak, due to factors that will be further expanded on in Chapter II. If one looks at Williams' (2002) characteristics of states in transition, and Mentans' (2004) characteristics of weak states, could it be concluded that a state in transition is the same as a weak state? This will be further discussed in Chapter II.

It has been mentioned that states in transition face many challenges while in the process of democracy consolidation. Andre Standing (2006) points out that the question of security (national, regional and local) also poses such a challenge to a state in transition. It has been pointed out by Rotberg (2003) that a state's primary role is the provision of security for its citizens. However, Charles Tilly (in Standing, 2006) argues that some governments fabricate threats of external or local nature, and then bill the citizens for the provision of security from that threat. Sometimes, the price the government charges barely covers the costs of protection. Furthermore, when the citizens under that particular government's jurisdiction complain about the price of protection, they are commonly referred to as anarchists or subversives. Tilly (in

Standing, 2006) claims that such governments that set a price for protection but fail to deliver what they promised, operate in essentially the same way as racketeers; meaning they themselves create a threat but then charge for the reduction of the same. These threats are sometimes imaginary, but more often they are the product of that particular governments actions or inactions.

Furthermore, Standing (2006) and Jakkie Cilliers (2010) claim that insecurity coexists with a nation-state that either does not enjoy a monopoly on violence or is incapable or unwilling to use its powers to regulate disputes in certain areas of its domain; thus the provision of non-state protection flourishes. In addition, insecurity and instability is a complex and interrelated problem that is an intrinsic part of the lack of state capacity and the absence of development. This lack of state capacity goes hand in hand with Williams' (2002) characteristics of states in transition. Williams (2002) claims that states that lack capacity and suffer from the aforementioned weaknesses, in fact suffer from capacity gaps and functional holes, such as ineffective criminal justice systems, lack of regulatory frameworks, lack of control and transparency, and the like. These capacity gaps and functional holes will be further explained in Chapter II.

### *1.2.2 Organized Crime and its Transnational Dimension*

As mentioned in the introduction, a shared definition of organized crime does not exist in different national and international juridical systems and law enforcement agencies. However, James O. Finckenauer (2005) mentions eight analytic and defining variables of organized crime:

- 1) lack of ideology; 2) structure/organized hierarchy; 3) continuity; 4) violence/use of force or the threat of force; 5) restricted membership; 6) illegal enterprise; 7) penetration of legitimate business and 8) corruption

Furthermore, the search for a theoretical definition of organized crime has given rise to five main approaches to this topic. Each of these approaches starts from a different ontological vision of the phenomenon and produces multiple ways of defining and understanding it:

- 1) Organizational theory approach (Longo, 2010).
- 2) The 'patron-client' model approach (Matjaž, 2004).
- 3) Third approach: based on a different epistemological perspective, it moves from the analysis of the structure to the analysis of the objectives. This approach conceptualizes organized crime starting from its specific aims which have an entrepreneurial nature. (Longo, 2010; Arsovska and Kostakos, 2008).

4) Social network theory approach (Mcillwain, 1999).

5) System theory approach (Longo, 2010).

Moreover, organized crime is not only an endeavor based within borders of one state, it can also have a transnational dimension. To understand the concept of transnational organized crime (TOC), one must look for the existence or absence of distinct elements which transform occasional alliances among national organized crime groups into transnational crime.

Williams (2001) suggests that TOC is not an organized, monolithic and hierarchical transnational organization; rather a way of shaping and organizing relations among different illicit organized groups, not tangible actors. Thus, this approach does not intend to describe the term transnational crime as global organizations that do not have a national-based structure. Therefore, the right definition of the term transnational is the network dynamics of those criminal activities, which are performed across national borders (Longo, 2010).

According to Standing (2003), Williams' notion of networks, that have assumed center stage in the criminal underworld, for reasons connected to their ability to flow across borders, lacks detail and understanding of the network model.

### *1.2.3 The Illicit Arms Trade*

Louise I. Shelley (1995, 2011) and Williams (1997) claim that a growing realization through the 1980s was that, organized crime with all its dimensions and aspects, was on the rise. This includes the illicit arms trade. It is therefore understandable that this posed a great concern for the international community. Thus, in July 2001, the United Nations convened a Conference on the Illicit Trade of Small Arms and Light Weapons (hereafter referred to as the UNC), with the aim to gain control over the arms trade, particularly in the case of small arms transfers. The UNC brought the need to prevent the proliferation and misuse of small arms and light weapons to international attention. The main consideration of the conference was the Program of Action to Prevent, Combat and Eradicate the Illicit Arms Trade in Small Arms and Light Weapons in All Its Aspects (UN PoA), adopted by the UN Member States, and its interaction with multiple regional measures and initiatives that are already in place (Godnick, 2002). Even though the UN Conference did not live up to the expectations of Non-Governmental Organizations (NGOs) and many governments, it did provide the opportunity to build on regional action when establishing the need for international action (Godnick, 2002).

However, in 2006, a review by several NGOs indicated that as many as 30-40 percent of states still did not have laws and procedures to control the production and export of small

arms. Less than 50 percent of states had control over the transit of small arms, and a mere 20 percent of states had applicable strategies to tighten the overall control of small arms (Kruys, 2009). On this note, Williams (1997) argues that the proliferation of the illicit arms trade and the rise in organized crime is inextricably connected to the weakness of many states in the international system. Whether this is true will be further discussed in Chapters II, III and IV.

To conclude this section, Patalong (2009) claims that SALW are traded through a wide range of international channels. He identifies two ways of licit SALW trade, namely government to government sales and commercial sales, and two ways of illicit SALW trade, namely clandestine operations and black market sales. Even though both clandestine and black market sales of SALW are the main ways in which the SALW trade is proliferating, for the purpose of this chapter only black market sales will be paid attention to and further discussed in Chapter II.

#### *1.2.4 Organized Crime and States in Transition*

Criminal organizations tend to develop and flourish amidst the conditions that undeniably accompany transitions to democracy and the free market. In South Africa for instance, political transition has been accompanied by an upsurge of criminal organizations and an increase in the problems of drug abuse and drug trafficking (Shaw, 1997; Williams, 1997).

Jan Van Dijk (2007) claims that organized crime is more prevalent in countries where the rule of law is less assured, and vice versa. According to Van Dijk (2007), the critical factor for determining the extent of organized crime is: ‘the quality of institutions responsible for the rule of law, including competent police services and independent courts complying with standards of professional integrity’ (Van Dijk, 2007:46).

Moreover, Denise Garcia (2009) and Cilliers (2010) argue that without administration and the application of the rule of law - the nexus between the legitimate and illegitimate activities of business - government, criminals and conflict triggers are difficult to distinguish from one another. Thus, arms flow across borders and involve multiple national and international actors.

In accordance with the aforementioned statement, that criminal organizations tend to develop amidst the conditions that accompany transitions to democracy, Williams (2002) explains this by using a number of capacity gaps and functional holes, which provide a greenhouse effect for organized crime to flourish in. This will be discussed in further detail in Chapter II.

### *1.2.5 The South African State and Organized Crime*

In regard to South Africa, Kevin A. O'Brien (2011) claims that the transition has been a difficult one; nevertheless, relatively smooth when compared to examples of other African countries. However, a number of very serious issues confront the new government and its supporters. Many of these issues surround South Africa's ever-evolving intelligence dispensation, and in the post-apartheid era, reflect many of the same issues that confronted the apartheid state's political and security leadership. On this note, it needs to be acknowledged that South Africa's approach to intelligence today evolved out of the intelligence dispensation which existed under the apartheid regime; thus, this dispensation has both the unique characteristics for a democratic system, but also the failings of a transitional state following liberation (O'Brien, 2011:2).

Williams (2002) mentions that one of the main functions of the state is to provide its citizens with security, if it fails at this task, the state's legitimacy is questioned; thus the state exacerbates a certain weakness. With regard to this, Standing (2006) states that South Africa has never achieved legitimacy and control, a feature of democratic modernizing countries elsewhere. The apartheid government provided a callous form of state control, which was not intended to include the majority; thus, there were large areas where informal, 'traditional' and criminal forms of governance coexisted.

With regard to organized crime, Shaw (1997) claims that the increase in levels of organized crime peaked in 1990, the year in which the political transition began. The illicit arms trade has been on the rise in South Africa, due to its geographical position, where land and sea borders are vast, and sometimes porous, the technological interconnectedness is high, and the banks work properly (Mills and Herbst, 2007:42). These elements that contribute to the proliferation of organized crime in South Africa will be further discussed in Chapter III.

### *1.2.5 The Croatian State and Organized Crime*

Croatia, as well as other Balkan countries, still provides traffickers with illicit small arms and light weapons, as well as smuggling routes that are still intact from the Soviet period. This is mainly due to the recent violent history, in particular the 1990s conflict in former Yugoslavia, and its geographical adjacency to Western Europe.

Glenn E. Curtis and Tara Karacan (2002) claim that since the Dayton Accords<sup>4</sup> ended fighting between Serbia, Croatia and Bosnia in 1995, illegal arms trafficking from the Balkans has increased. Arms trafficking routes were established between 1991 and 1995, due to ongoing conflict in the region. Arms trafficking has expanded as former soldiers became middlemen, former enemies entered cooperative smuggling ventures, and the like. Under these circumstances, the former Yugoslav Republics of Bosnia-Herzegovina and Croatia have turned into major sources of illicit arms to the Irish Republican Army (IRA) and the Basque Fatherland and Liberty (ETA) (Curtis and Karacan, 2002).

Croatia's role as a major source of illicit arms trade has been established through the connection between the Bosnian faction in the Croatian Army, IM Metal arms and ammunition plant in Opal (Croatia) and a group of underworld figures. Croatian arms traffickers were protected by their connection to the Croatian Democratic Union (HDZ), which was the ruling party during the presidency of Dr. Franjo Tudjman, and is still the ruling party. It is claimed that the dealers had connections with Croatia's ministries of defense and internal affairs, customs service, and secret service (Curtis and Karacan, 2002). This leads us back to the nexus between organized crime and Williams' (2002) capacity gaps and functional holes. The illicit arms trade in Croatia will be further discussed in Chapter IV.

### **1. 3 Research Question and Objectives**

This thesis studies illicit arms trade as an example of TOC in South Africa and Croatia. The main research question of this thesis is: *How do the capacity gaps of social control, social welfare, border control and legitimacy contribute to the proliferation of the illicit arms trade in states in transition?* The researcher is trying to better understand why states in transition, in this case South Africa and Croatia are experiencing a rise in the levels of organized crime, particularly the illicit arms trade.

As mentioned in the introduction, illicit arms trade is on the rise in states in transition. What the reasons behind this occurrence are will be discussed, mainly based on the theoretical framework outlined by Williams (2002) and supplemented and supported by a number of other authors, such as Migdal (1988), Tatah Mentan (2004) and Rotberg (2003). In the

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<sup>4</sup> The General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Agreement, Paris Protocol, was a peace agreement reached at Wright-Patterson Air Force Base, near Dayton, Ohio in November 1995. The agreement was signed by the three main participants from the region: Croatian President Franjo Tudjman, Serbian President Slobodan Milošević, and Bosnian President Alija Izetbegović: with the purpose of promoting peace and stability in Bosnia and Herzegovina and to endorse regional balance in and around the former Republic of Yugoslavia (State (2010) <http://www.state.gov/www/regions/eur/bosnia/bosagree.html>, Downloaded: 31.03.2011)

literature review we have seen that there are certain similarities between weak states and states in transition. If a state in transition is depicted as weakened, through the existence of capacity gaps and functional holes, and thus experiences a rise in organized crime, one could say that this rise in organized crime further weakens the state, debilitates the completion of the transitional process and hampers the consolidation of democracy. How these capacity gaps and functional holes contribute to the proliferation of the illicit arms trade and how they contribute to the prohibition of the transitional process in South Africa and Croatia, is the main focus of this thesis. The researcher will conduct a comparative study of South Africa and Croatia in the timeframe from 1990 until mid-2011. This timeframe was chosen because both countries started their transitional process in the beginning of the 1990s, and the historical background of each country will serve as a tool for the researcher to better understand why organized crime seems to be interrelated with the transitional process (Shaw, 1997; Arsovska and Kostakos, 2010). The aim of this research is not to make generalizations about all transitional states that experience high levels of organized crime, but to gain further insight into the issues surrounding illicit arms trade, as an example of organized criminal activity, which may be applicable to other states in transition.

This study will be divided into two parts. The first part will provide a theoretical background to the study of organized crime and states in transition. In this part, the main concepts will be contextualized, the theoretical framework will also be outlined and a historical overview of the two case studies will be presented. The second part will attempt to answer the main research question. For this purpose, the theoretical framework developed by Williams (2002) will be used.

Even though Williams (2002) outlines seven different capacity gaps and functional holes, the author of this thesis has chosen to only focus on four capacity gaps and functional holes in order to see how they contribute to the proliferation of the illicit arms trade in states in transition. These include the capacity gaps of social control, social welfare, border control and legitimacy. The researcher has decided to focus only on these four capacity gaps, instead of all seven, due to their applicability to the specific case studies. The researcher is not implying that these four capacity gaps contribute to the proliferation of the illicit arms trade in all states in transition, but rather outlines how these capacity gaps and functional holes contribute to the proliferation of the illicit arms trade in South Africa and Croatia, as will be further analyzed in Chapters III and IV. Furthermore, the main research question will be accompanied by various research objectives, including the discussion of how the four above-mentioned capacity gaps

facilitate the proliferation of the illicit arms trade in South Africa and Croatia, in order to answer the following sub-questions: *How does social welfare/lack thereof contribute to the proliferation of the illicit arms trade in South Africa and Croatia?; How does legitimacy/lack thereof contribute to the proliferation of the illicit arms trade in South Africa and Croatia?; How does social cohesion/lack thereof contribute to the proliferation of the illicit arms trade in South Africa and Croatia?; and How does strong/weak border control contribute to the proliferation of the illicit arms trade in South Africa and Croatia?*

#### **1. 4 Research Design and Methodology**

The main purpose of this study is to explore how the capacity gaps of social control, social welfare, border control and legitimacy contribute to the proliferation of the illicit arms trade in states in transition. The researcher has chosen to conduct a comparative study of South Africa and Croatia. When conducting a comparative study, the researcher is usually guided by four main objectives. These four objectives are as stated by Todd Landman (2003:5): contextual description, classification, hypothesis-testing and prediction.

Contextual description is the first objective of comparative politics used to describe the political phenomena and events of a particular country or group of countries. This objective is traditionally realized in countries that are different to those of the researcher. This comparison to the researchers own country is either implicit or explicit, and the goal is either to gain more knowledge about the nation studied, more knowledge about one's own political system, or both (Landman, 2003). The author of this study is trying to gain more knowledge about South Africa and Croatia's political systems and the transitional processes, to better understand the differences and/or similarities between the two states. This will further help the researcher to understand the impact of illicit arms trade on the two states.

The second objective when conducting a comparative study is classification. The aim is usually to establish different contextual classifications in order to group a number of countries, political systems, and the like, into distinct categories with identifiable and shared characteristics. This is a necessary component of systematic comparison, which seeks to group many separate entities into simpler categories. This reduces the complexity of the world, given that it seeks out those qualities that countries share and those that they do not share (Landman, 2003:5). Even though the author of this thesis does not anticipate making generalizations about all states in transition, based on the comparison between South Africa and Croatia, the author anticipates finding some differences and similarities, which in turn

may be applicable to future studies about illicit arms trade and its impact on states in transition.

The third objective of comparative research is hypothesis-testing. This objective comes to light once things have been described and classified, whereby enabling the researcher to search for those factors that may help explain what has been described and classified. ‘Comparison of countries allows for rival explanations to be ruled out and hypotheses derived from certain theoretical perspectives to be tested’ (Landman, 2003:6). Those researchers that use this mode of analysis, identify important variables, imply that there is a relationship between them, and then illustrate these relationships comparatively in an effort to generate comprehensive theories (Landman, 2003). In the case of this study, the author is implying that there is a relationship between the rise in illicit arms trade and states in transition.

The last objective of comparative politics is also the most difficult one. Once the hypothesis has been tested, the researcher attempts to make a logical extension, whereby predictions can be made about outcomes in other countries based on generalizations from the initial comparison (Landman, 2003). Even though all four objectives of comparative politics co-exist and are mutually reinforcing, some of them receive more emphasis than others, depending on the researchers’ aspirations (Landman, 2003). While the objective of prediction is equally important, this thesis will mostly focus on the other three objectives.

Furthermore, this research will use the qualitative method. Qualitative research uses a language of cases and context; it examines social processes and cases in their social context, thereby looking at interpretations and creations of meanings in different settings. Qualitative research rarely uses variables or converts social life into numbers. Meaning is captured and discovered once the researcher becomes entrenched in the data. Concepts that are used are in the form of themes, generalizations and motifs, data are in the form of words and images gathered from documents, observations and transcripts. The theory is often inductive, which means that the researcher starts by observing empirical evidence, which will then enable him to develop a theory (Neuman, 2006:60). Given that this thesis uses Williams’ (2002) theoretical framework as a background to the research, one could say that this thesis will use a deductive research path. What is meant by deductive is that the researcher is trying to see whether a certain theory applies to the case studies outlined in the research, (Neuman, 2006:59).

As mentioned before, South Africa and Croatia will be used as the two main units of analysis in this comparative study. In addition, this research is exploratory in nature. This means that the researcher is trying to examine a little understood phenomenon in order to develop ideas and move towards refined research questions by focusing on the ‘what’ question (Neuman, 2006:33). Ultimately, the data gathering process in this thesis is mainly based on secondary data analysis, such as relevant books, journals, newspapers, as well as electronic sources. The research followed a non-linear path, as data was collected as the research study progressed.

### **1.5 Limitations and Delimitations of the Research**

As with all research, this research encountered certain limitations. These limitations arose from two main sources. Firstly, the concept clandestine, which is inherent to the illicit arms trade, implies that reliable data is difficult to attain (Florquin, 2006; Kinsella, 2006). Secondly, the states featured as case studies in this research study (Croatia and South Africa) are states in transition, which suffer from low capabilities; thus official data is harder to obtain than in states that have concluded their transitional process (Landman, 2003). Furthermore, due to lack of funds and limited time, predominantly secondary data is used, which further contributes to the limitations of this study. Moreover, the limited time and length of this research also serve as limitations.

The delimitations of this study arise from the geographical aspect, given that the author is only focusing on South Africa and Croatia and only on states in transition and not states in general. Also, the author has chosen to focus only on the TOC aspect of the illicit arms trade, and more specifically on the black market sales, as one of the aspects of the illicit arms trade, as outlined by Patalong (2009).

### **1.6 Outline of Research Study**

This thesis will be divided into five chapters. Chapter I will serve as the introduction, as well as a preliminary overview of the content and outline of the thesis. Chapter II will serve as a theoretical background for the thesis. The aim of this chapter is to further discuss the concepts and variables, thus implying that the researcher will provide the reader with in-depth conceptualizations and operationalizations. Furthermore, Chapter II will go into more detail with regard to the main theoretical framework, which was briefly discussed in the literature review. The last part of Chapter II will discuss the analytical tools, which will help the author to create a coherent and logical analysis of the reasons behind the proliferation of the illicit arms trade in states in transition. Chapter III will start off with an overview of South Africa’s

history, with special focus on the transitional processes of the state. Chapter III will also present a short overview of the history of organized crime and the illicit arms trade in South Africa, before moving on to the discussion of how the four capacity gaps and functional holes contribute to the rise in levels of the illicit arms trade. Chapter IV will present a short overview of Croatia's history, with special focus on the transitional process of the state. Furthermore, this chapter will also present a short overview of the history of organized crime and the illicit arms trade in Croatia, before moving on to the discussion of the factors that contribute to the rise in the levels of the illicit arms trade. In both Chapter III and IV, the author will attempt to analyze to what extent the capacity gaps and functional holes, outlined by Williams (2002) in Chapter II, in fact exist in South Africa and Croatia, and how they contribute to the proliferation of the illicit arms trade. Chapter V will tie together the first, more descriptive, part of the research with the second part of the study, and summarize the outcomes of the study and discuss possible implications for further research.

## **Chapter II: Theoretical Framework and Concepts**

### **2.1 Introduction**

The aim of this chapter is to conceptualize and operationalize the main concepts that were outlined in Chapter I. Furthermore, the theoretical framework on which this study is based will be outlined and critically discussed. The main concepts of this thesis are as follows: organized crime, transnational organized crime, the illicit arms trade, states in transition, capacity gaps and functional holes. The section on the illicit arms trade will give further insight into the different categories, which the illicit arms trade is a derivative of, as well as provide an overview of the analytical tools relevant to this field. The section on states in transition will discuss the capacity gaps and functional holes, as outlined by Williams (2002). These capacity gaps and functional holes will serve as the theoretical framework for this research project, which will help the researcher answer the main research question as outlined in Chapter I.

### **2.2 States in Transition**

In the first chapter of this thesis, the author mentioned that the concepts of state and states in transition will be further discussed in Chapter II. The author will in the next few paragraphs conceptualize the state and state in transition, as they will be used in this research.

#### ***2.2.1 The State***

What is a state and what are its main roles are the main points that have been part of a long-term debate among academics in various fields. The dispute is for the most part conducted between the scholars within the realist and neo-realist realm, such as Hans J. Morgenthau, Kenneth Waltz, John Mearsheimer, and scholars within the constructivist and neo-liberal realm, such as Alexander Wendt, Robert W. Cox, Robert Keohane. The state, as seen by realists, is still the most important actor in international relations, and the most important determinant of international behavior (Adigbuo, 2007). According to realists, non-state actors, such as multinational corporations and other international organizations (UN, North Atlantic Treaty Organization) and transnational organizations are decidedly less important (Morgenthau, 1946; Keohane, 1986; Waltz, 1979).

Furthermore, one of the main difficulties in the debate over the importance of the state is that observers are not always in full agreement on what constitutes a state. However, for the purpose of this thesis, the concept of the state will be understood as conceptualized by Williams Zartman (1998), Williams (2002) and Rotberg (2003). Zartman (1998) argues that

there are three functions which characterize a state: a) the state as a sovereign authority - the arena of politics and the source of identity; b) the state as an institution - and intangible symbol of identity and a tangible organization of decision-making; and c) the state as the security guarantor for the populated territory under its jurisdiction. Zartman (1998) argues that these functions are so intertwined that it becomes difficult to perform them separately; thus a weakening of one function drags the others with it.

Williams (2002:164), on the other hand, outlines four main interpretations of the state: a) the state is a sovereign territorial entity, which controls the area under its jurisdiction, thus controlling who and what enters; b) the state is a system of rules, and thus the state has both authority over its citizens and obligations towards them; c) the state is a set of institutions and people who act on its behalf; and d) the state is a set of functions, which range from the state as guarantor of order and security, to the role as the manager of economic activity and provider of economic and social welfare. Even though there are several interpretations of what constitutes a state, for the purpose of this study the state will be conceptualized through the four functions as outlined by Williams (2002).

Furthermore, Rotberg (2003) generally agrees with the four main interpretations of the state, as outlined by Williams (2002); however, he expands on point b) the state as a system of rules. Rotberg (2003) claims that the obligation of the state is to provide certain political goods to the citizens under its jurisdiction; however, there is a hierarchy of political goods. Rotberg (2003:3) claims that the state's primary function is to provide the political good of security 'to prevent cross-border invasions and infiltrations, and any loss of territory; to eliminate domestic threats or attack upon the national order and social structure; to prevent crime and any related dangers to domestic human security; and to enable citizens to resolve their disputes with the state and with their fellow inhabitants without recourse to arms or other forms of physical coercion'. Once this primary political good has been delivered to its citizens, the state can then begin to deliver other political goods, such as the possibility for all citizens to participate freely, openly and fully in politics (Rotberg, 2003). If, however, the state fails to deliver the primary political good, its legitimacy will be questioned.

Standing (2006) argues that, where insecurity coexists with a nation-state that either does not enjoy a monopoly on violence or is incapable or unwilling to use its powers to regulate disputes and conflict in certain areas of its domain, the provision of non-state protection flourishes. According to Garcia (2009) and Cilliers (2010), insecurity and instability is a

single, complex and interrelated problem that is an intrinsic part of the lack of state capacity and the absence of development. This lack of state capacity which Garcia (2009) and Cilliers (2010) mention, goes hand in hand with Williams' (2002) indicators of what constitutes a state in transition, which leads to the next section.

### *2.2.2 The State in Transition*

According to Williams (2002:170), a state in transition is characterized by the 'collapse and reestablishment of state structures; major shifts in the principles underlying economic management; a redefinition of the principles and values on which society operates (e.g. who is eligible for participation in political affairs); and a reorientation of relationships with the outside world, usually involving and opening of the economy and the society'.

Furthermore, as a result of the sudden collapse of the former regime, states in transition are characterized by certain weaknesses, which in turn reflect a long-term failure to develop legitimate, sustainable and effective state institutions. The weaknesses are as follows: low levels of state legitimacy; ineffective rules; weak border controls; institutions and government officials that do not represent the interest of the public, but rather serve their own interests; lack of economic and social provision for the citizens; inefficient criminal justice system, and the like (Williams, 2002). In effect, the state cannot carry out the basic functions it is supposed to, as outlined by Rotberg (2003) and Williams (2002). With regard to the ineffective institutions that states in transition are said to be suffering from, Thorsten Beck and Luc Laeven (2006) offer a political economy analysis of the problem, building on North's (in Beck and Laeven, 2006) hypothesis: 'institutions are not usually created to be socially efficient, but are created to serve the interests of those with bargaining power to create new rules'. With regard to institution building, states in transition have the difficult task of opening up to the outside world, both in economic and social terms (Williams, 1997); thus the difficult task of building new market-compatible institutions, as well as the process and success of reforms has varied greatly across states (Beck and Laeven, 2006). Furthermore, Beck and Laeven (2006) claim that institutional development is based on the behavior and incentives of the ruling elite during the transition period. In some states, the elite actively fosters the transition to a market economy with a broad base of participants in the political and economic life through the provision of basic property rights and rule of law. In contrast, there are those states where the elite is mostly concerned with securing property rights for themselves in the formerly state-owned enterprises, with the aim of extracting economic rents and thereby securing economic and political power in the post-transition society (Beck and Laeven, 2006).

These two types of transition are in turn conceptualized as “catalytic transition” and “extractive transition”.

Furthermore, while institutions, both formal and informal, provide the underlying rules that govern transactions between agents in the economy, an absence of effective institutions which govern these transactions enforces the weakness of the state in transition; thus making the line between legal and illegal business transactions quite elusive (Beck and Laeven, 2006; Kregar and Petričušić, 2010).

In accordance with Beck and Laeven (2006) and Josip Kregar and Antonija Petričušić (2010), Amir N. Licht, Chanan Goldschmidt and Shalom H. Schwartz (2007) claim that for a state in transition to surpass the difficulties it is facing and to be able to develop into a consolidated democracy, the need for three diverse types of “institutions” arises. The three institutions that they outline are: the rule of law, absence of corruption and democracy. Even though Licht, Goldschmidt and Schwartz (2007) acknowledge culturally diverse views on all three of these institutions, they claim that no matter the case study, there is no doubt that these institutions are necessary. This goes hand in hand with the World Bank’s (2007) view on what is needed for a state to develop, as well as alleviate poverty, namely good governance and anti-corruption.

In a similar fashion, Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi (2006) and Kim Moloney (2009) state that democratic consolidation can only be achieved through good governance, and this in turn can only be assured through: the governments’ accountability (the country’s citizens are allowed to participate in selecting their government); the governments’ effectiveness (which assures the quality of public services); regulatory quality (the government’s ability to formulate and implement sound policies); rule of law (the citizens need to confide and abide by the rules of society, in particular the police and the courts); and lastly, through the control of corruption (the extent to which public power is exercised for private gain). It appears as though all of the above-mentioned scholars agree on several things: efficient institutions, respect for the rule of law and democratic accountability are the prerequisites for a state to surpass the transition period and become a recognized consolidated democracy.

Moreover, Kregar and Petričušić (2010) claim that studies of transitional states show that the government apparatus is weak, and thus not capable to fight the issues at stake, such as organized crime. Weak states contain the most dangerous elements of instability and are

therefore the most likely source of trouble. They continue by saying that all states have organized crime, but in some instances organized crime has the state, meaning that organized crime is actually in power, while the state serves as a framework of reference, but has no control. They claim that organized crime in transitional states is not just a problem of criminology and deviance; it is in fact a problem of the weak state. This leads us back to the main problem of weak states, namely weak institutions (Kregar and Petričušić, 2010).

With regard to the similarities between states in transition and weak states, one could look at Mentan's (2004) characteristics of weak states and compare those to Williams' (2002) characteristics of states in transition. Mentan (2004:20) claims that for a state to be defined as weak, it must have these characteristics: '1) lack of societal cohesion and consensus on what organizing principles should determine the contest for state power and how that power should be executed; 2) low capacity and/or low political will of state institutions to provide all citizens with minimum level of security and well-being; 3) high vulnerability to external economic and political forces; 4) low degree of popular legitimacy accorded to the holders of state power (i.e. state custodians) by portions of the citizenry; and 5) unskillful flirtations with theopolitics and secularism for purposes of political survival'.

The weaknesses that Williams (2002) argues a state in transition suffers from are very similar to the characteristics of weak states as outlined by Mentan (2004). Williams (2002) claims that a state in transition suffers from low levels of state legitimacy, thus there is a perceived lack of authority and affiliation which coincides with Mentan's (2004) fourth point, as outlined above. Other weaknesses that Williams (2002) outlines are: the lack of provision for citizens (both economic and social); lack of control and transparency; and skewed electoral norms and patterns. This coincides with Mentan's (2004) outline of lack of societal cohesion, as outlined in point one and low capacity and/or political will, as outlined in point two. These weaknesses that Williams (2002) outlines are called capacity gaps, which in turn lead to functional holes, thus forming what he claims to be states in transition<sup>5</sup>. Even though characteristics of weak states and states in transition are similar, and transitional states suffer from certain weaknesses, it needs to be said that not all transitional states are weak states, but can be regarded as weakened.

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<sup>5</sup> Capacity gaps and functional holes will be further analyzed in section 2.5.

## 2.3 The Illicit Arms Trade as a form of Organized Crime

In Chapter I of this thesis, the author briefly outlined the main concepts and variables, which will further be used to understand and analyze the core research question in the context of South Africa and Croatia. It has been mentioned that the research question entails two differing variables; namely the independent, illicit arms trade, and the dependent, states in transition. With regard to the concept of illicit arms trade, in Chapter I the researcher briefly indicated that the illicit arms trade is a subcategory of organized crime. Due to this, conceptualizations of the categories that have generated the illicit arms trade are important in furthering an understanding of the illicit arms trade. These categories are: crime, organized crime, and the transnational dimension of organized crime.

### 2.3.1 Crime and Organized Crime

Nathalie Des Rosiers and Steven Bittle (2004:vii) claim that the question of what is crime seems to warrant a straightforward answer in the form of: 'crime is something that is against the law'. This implies that behind every crime stands the creation of the law that imposes a prohibition on a particular activity, service or commodity within a specific jurisdiction. In addition, Jean-Francois Bayart, et. al. (1999) describe crime as: 'those political, social and economic practices which are the object of a "primary criminalization"<sup>6</sup> either by the laws and other texts of the state which are under discussion, or, more particularly, in international law, or according to international organizations or acknowledged guardians of international morality' (Bayart, et. al, 1999:15). Moreover, Bayart, et. al (1999:16) claim that criminalization needs to be analyzed and understood in relation to 'political strategies, wider social and economic changes and international developments which confer on them a new meaning'. Accordingly, for the purpose of this thesis, crime will be described as those political, social and economic practices that are seen as illegal, by the institutions of the state in question, as well as the international community and international law.

Moreover, with regard to organized crime, it was mentioned in Chapter I that a shared definition of organized crime does not exist in different national and international juridical systems and law enforcement agencies. Finckenauer (2005:68) claims that this lack of a theoretical, as well as an operational, definition generates certain scientific and policy problems 'because of how the problem of organized crime is defined goes a long way toward determining how laws are framed, how investigations and prosecutions are conducted, how

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<sup>6</sup> Secondary criminalization is: 'the formal decision to prosecute the person or persons alleged to have committed a crime' (Bayart, et. al, 1999:13).

research studies are done, and increasingly, how mutual legal assistance across national borders is or is not rendered’.

Nevertheless, Finckenauer (2005) mentions eight analytic and defining variables of organized crime: 1) lack of ideology; 2) structure/organized hierarchy; 3) continuity; 4) violence/use of force or the threat of the use of force; 5) restricted membership; 6) illegal enterprise; 7) penetration of legitimate businesses and 8) corruption. According to Finckenauer (2005), the first variable can be used to distinguish between organized crime and terrorism. Finckenauer (2005) states that the hierarchical structure and continuity give organized crime a well-defined collective identity and collective tasks, and thereby permit it to adjust to the changes in the external environment.

The violence, use of force and intimidation strategies compel some scholars, such as Francesca Longo (2010), to consider organized crime as an ‘anti-state’ activity that threatens national institutions’ capability to maintain monopoly on the legitimate use of force. Both Longo (2010) and Finckenauer (2005) state that, in this perspective, organized crime can be regarded as a political challenge to the state and its role of governing and controlling territory. ‘It has been a mafia that has assumed responsibility for such otherwise governmental functions as contracting for public works, dispute resolution, and especially for providing protection’ (Fickenauer, 2005).

On another side, Raimondo Catanzaro (1993) argues that the use of force as a form of territorial control needs a centralized organization in order to be effective; however, this organizational dimension is located at a sub-national level in order to avoid direct conflict with the state. Catanzaro (1993) argues that organized crime is not interested in defeating the nation-state, but it does need a weak state system to be able to succeed in its activities.

Furthermore, the search for a shared definition of organized crime has generated five main approaches to the study of organized crime (Longo, 2010). These five approaches are mainly concerned with the identification of the semantic meaning of the term organized crime, in addition to looking at the analytical variables and using them to distinguish this particular phenomenon from other forms of crime.

The first approach applies organizational theory to the study of organized crime, whereby it considers organized crime a classical organization and emphasizes the associative dimension as the main variable of this kind of illicit activity. In this approach, the organizational

variables such as hierarchy, differentiation, flexibility and the degree to which an organization can be considered formal are used to distinguish this form of criminality from other forms (Longo, 2010).

The second approach uses the patron-client model to understand and describe the relationship between the members of the group, thereby stressing this to be the main characteristic of organized crime. Jager Matjaž (2004) expands upon this patron-client model, arguing it does not only describe the relationship between the members of the group, but serves as the conceptual foundation for understanding the practice of corruption among the group members.

While the first two approaches are concerned with the structure of organized crime, the third approach is based on a completely different epistemological perspective, given that it is more concerned with the analysis of the objectives of the criminal activity undertaken. The third approach conceptualizes organized crime as being based on aims of entrepreneurial nature. This would imply that organized crime is an economic and financial enterprise which adopts rational (although illegal) strategies and choices, with the aim of maximizing benefits and minimizing the costs of it (Longo, 2010). According to this approach, organized crime is no different to legitimate business when it comes to the aims of its activities.

Jana Arsovska and Panos A. Kostakos (2008) challenge this view, especially when it comes to the illicit arms trade as a subcategory of organized crime. They claim that in this case, the actors' behavior is underpinned by a limited rationality rather than a normative one, given that arms, unlike other goods (such as narcotics), have the characteristic of giving individuals the ability to take or save lives. Hence, the motives for committing arms-related offenses during a conflict between two nations or two gangs are all but economic in nature.

The fourth approach applies system theory to the analysis of organized crime. In this approach, organized crime is considered to be a complex societal phenomenon that is analyzed with the conceptual tools of system analysis (Longo, 2010).

The fifth approach looks at organized crime through social network theory. Jeffrey S. Mcillwain (1999) stresses the relevance of the relationship that links people in the organized crime structure, thereby defining the latter as a social system. Williams (2001) takes this stance even further, by saying that networks cross easily from the illicit to the licit sector. He continues by saying that in the contemporary era, networks have assumed center stage in the

criminal underworld, given that they have the ability to flow easily across borders. Suzan Karstedt (2000), on the other hand, argues that the clan model is dominant in the debate surrounding organized crime. Karstedt (2000) claims that the clan model has proven exceptionally successful in global markets, given that organized crime groups organized along the lines of “premodern” or feudal structures are gaining strength.

Standing (2006) criticizes Williams (2001) and Kersted’s (2000) view, but also does not completely agree with Mcillwains’ (1999) social network theory, saying that there are four distinct, yet intertwined, models of organizing crime (hierarchy, network, market and clan); thus ‘a given criminal entity is unlikely to conform to just one of these models, and is far more likely to contain elements of all or several of the four models’ (Standing, 2006:17). Despite the fact that there are several definitions of organized crime in international academia, for the purpose of this thesis, the researcher has chosen to use the network model of organized crime with regard to both South Africa and Croatia. Therefore, for the purpose of this thesis, organized crime will be understood as those economic and political practices that are organized through highly intertwined networks, and which cross easily from the illegal to the legal economic sector.

### *2.3.2 Transnational Organized Crime*

In the former paragraph, the author has mentioned Williams’ (2001) notion of organized crime based on the social network theory, implying that these networks flow easily across borders. This leads us to another dimension of organized crime, namely transnational organized crime (TOC).

The concept TOC emerged in the 1990s from a complex process of historically interlinked conjunctures that stem from the Cold War order, when a rise in the perception of the globalization of all kinds of movements was noticed (Longo, 2010). Shelly (2011) claims that TOC has been a serious problem for most of the 20<sup>th</sup> century, but only recently has it been recognized as a threat to the world order. In 1994 the United Nations Economic and Social Council (UNESCO) proclaimed that TOC is ‘a new dimension of more “traditional” forms of organized crime and has emerged as one of the most alarming ... challenges for the safety of humanity’ (United Nations Economic and Social Council, 1994:3).

But what is TOC? How does one define it and what are its characteristics and its causes? Longo (2010) states that the term transnational is usually used in the study of international relations to refer to those non-governmental actors who operate across national boundaries.

Williams (2001) has a similar notion of TOC, saying that the paradigm for defining TOC is centered on the networks that organize the supply of illicit goods and services, and the unrestricted trafficking of restricted goods. Thus, TOC is the result of the structuring of cooperative links among national organized crime organizations for enabling the flows of information and enlarging the scope and the level of business. Williams (2001) suggests that networks are the perfect means of conducting business in a globalized world, due to their ability to transcend borders. Williams (2001:74) further states that TOC: ‘is not an organized, monolithic and hierarchical transnational organization’, but rather ‘a way of shaping and organizing relationships among different illicit organized groups’.

Letizia Paoli (2002), on the other hand, suggests that TOC is a paradox, in that it is a “fluid network”, characterized by low levels of organization, but the element of organization does exist. This paradox is implied in the terminology of the term organized crime. Based on Paoli’s (2002) explanation, Longo (2010) suggests a two-level analysis which allows for the possible solution to this paradox of fluid networks of organized crime. Longo (2010:22) states that TOC is ‘a fluid way of acting of several organized ethnic groups which have links with each other for strategic, tactical or logistical reasons, which work across national borders and which violate the laws of several states’. The suggested two-level analysis is based on: 1) the local level, which is described by the organizational model of different ethnic groups; and 2) the global dimension, described through the dynamic of the relationships between and among the different national organized crime groups (Longo, 2010).

This two-level approach to the study of TOC is also visible when looking at different international juridical documents on TOC. In fact, the transnationality of organized crime is not considered to be an ontological defining character, rather a specific modality of acting; and the organizational structure is considered to be the ontological defining variable of organized crime. This is for instance visible in the 2000 UN Convention Against Transnational Organized Crime<sup>7</sup>, where TOC was not defined as a tangible referent object of its norms. Article 2 of the Convention paper defines an organized crime group as: ‘a

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<sup>7</sup> ‘The United Nations Convention Against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, is the main international instrument in the fight against transnational organized crime. It opened for signature by Member States at a High-level Political Conference convened for that purpose in Palermo, Italy, on 12-15 December 2000 and entered into force on 29 September 2003’ (<http://www.unodc.org/unodc/en/treaties/CTOC/index.html>).

structured group<sup>8</sup> of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit' (UNODC, 2004:5).

From the above-mentioned definition, it could be said that this definition operates at the first level of the two-level approach, as suggested by Longo (2010). The term transnational, however, does not refer to the nature of the organized group, but rather to the nature of the offences committed, and is as such stated in the scope of application of the Convention in Article 3. According to the UN definition, organized crime is transnational if: 'a) It is committed in more than one State; b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or d) It is committed in one State but has substantial effects in another State' (UNODC, 2004:6).

The term TOC is disputed, given that authors and organizations around the world use it in different ways to describe different things. In the EU for instance, there is no juridical definition of TOC. In the Tampere program<sup>9</sup> it is stated that the EU Council is committed to fight against serious organized crime and transnational crime, but the program does not define the phenomenon, nor does it use the same label when referring to it (Longo, 2010). In fact, it uses the term international organized crime and transnational crime to refer to the same thing. Madsen (2009) states, however, that there needs to be a distinction between the term transnational crime and international organized crime. He explains this by saying that transnational crimes involve at least two or more sovereign jurisdictions, have to be codified as such in the legislation, and can be criminalized in international law (like weapon trafficking), while the opposite applies for the term international crime (Madsen, 2009:7).

Estella Baker (2003:183) adds to this by saying: 'we may not be able to define what we mean by TOC but we recognize it when we see it'. However, for the purpose of this thesis, the researcher will rely on Madsen's (2009) definition of TOC, which states that TOC are all

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<sup>8</sup> "' Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a develop structure' (UNODC, 2004:5).

<sup>9</sup> A program set to outline an area of freedom, security and justice in the EU. The program was presented in October 1999, in Tampere, Finland. Therefore, it is also known as the Tampere program.  
[http://www.europarl.europa.eu/summits/tam\\_en.htm](http://www.europarl.europa.eu/summits/tam_en.htm) Downloaded: 03.05.2011

those crimes that involve at least two or more sovereign jurisdictions, are codified as such in the legislation and can be criminalized in international law (like weapon trafficking).

### *2.3.3 The Illicit Arms Trade*

In 2002, the estimate of the global value of small arms production was US dollar 7.4 billion. Over 1000 companies manufacture light weapons and ammunition in nearly 100 countries. It is estimated that approximately 80-90 percent (\$4 billion worth) of SALW are transferred legally across national borders, while as much as \$1 billion worth enters the black market (Kinsella, 2006; Patalong, 2009; Schroeder and Lamb, 2006).

Nicolas Florquin (2006) states that there are more than 1200 companies in 90 countries that manufacture SALW and ammunition with government authorization. Patalong (2009) argues that military expenditure is estimated to have been \$1339 billion in 2007, which means that it has increased by 45 percent since 1998. The total value of SALW is estimated to be between \$4-6 billion per year and is still growing. According to the SAS, the number of illegally traded SALW is about 20 percent of the global SALW trade. The International Action Network on Small Arms (IANSA) states that the black market trade in small arms ranges from \$2-10 billion per year (Patalong, 2009; Shah, 2006).

The estimates of how many companies in how many countries in fact manufacture SALW, and how many SALW are traded illegally, differ from author to author and organization to organization. This is probably due to the clandestine nature of the commodity traded and the channels used to enable this trade. Both Kinsella (2006) and Florquin (2006) state that the illicit trade in SALW is difficult to ascertain, but that credible evidence has become increasingly available in recent years, given that arms trade researchers, international organizations and activists have turned their attention to what once was nothing more than a footnote in academia and policymaking on matters of proliferation of arms control.

Patalong (2009) claims that approximately 640 million SALWs are estimated to be in circulation worldwide and are directly responsible for the deaths of at least half a million people every year. (Kinsella (2006) states that far more people are killed by rifles, pistols, grenades and landmines than attack aircraft, missiles and battle tanks; thus small arms are in a very real sense seen by many as weapons of mass destruction (Florquin, 2006; Kinsella, 2006; Patalong, 2009).

SALW are traded and transferred through a wide range of international channels. Patalong (2009) identifies two ways of licit SALW trade and two ways of illicit SALW trade, which

are outlined below. According to Patalong (2009:4), the licit SALW trade is: 1) “government to government transfers”: sales of new weaponry or transfer of military equipment which is no longer used by the supplier’s armed forces’ (Patalong, 2009:4); 2) “commercial sales”: are sales of SALW by governmental or private commercial firms in one country to such agencies in another country. They are usually regulated by the government of the supplying country and have to pass a licensing process, which is finished by an “end user certificate”.

The illicit SALW trade, according to Patalong (2009:5), is: 1) “clandestine operations”: the transfer of light weapons by the government of one country to the military or separatist forces in another country, in order to enhance their capabilities’. Those transfers are usually motivated by political, ideological, religious or other objectives and are sometimes called illicit grey market transfers (Patalong, 2009:5); 2) “black market sales”: are clandestine and illegal sales by criminal or corrupt organizations from one country to unauthorized recipients in another. These include sales of SALW without legal and licensing requirement usually to a country which is under UN arms embargo, to terrorist, organized crime or separatist organizations’. Clandestine operations and black market transfers are the main cause of SALW proliferation worldwide and are considered to be the most dangerous channels of SALW transfers.

Arsovska and Kostakos (2008), on the other hand, suggest three different thematic categories of illicit arms trafficking: a) profit-oriented arms trafficking involving organized crime groups; b) arms trafficking for the purpose of arming criminal-terrorist formations; and c) state-sponsored illicit arms trafficking. They claim that although economic incentives appear to be the strongest in many cases, issues ranging from political, social, cultural, and the like, also frame the illicit market. Kinsella (2006) also claims that the illicit arms trade, especially the trade in SALW, is an economic exchange; however, it is governed by more than market forces. Kinsella (2006), in accordance with Williams (2001), states that the SALW trade is characterized by the same features that can be found in the network forms of economic organization. While all the above-mentioned authors outline several different reasons for and objectives of the illicit arms trade, this thesis will only focus on the black market trade of small arms and light weapons as outlined by Patalong (2009).

## **2.4 Transnational Organized Crime and States in Transition**

According to Shelley (1995), TOC has been a serious problem for most of the 20<sup>th</sup> century, but only after the Cold War has it been considered a threat to the world order, and the state in

particular. There are several ways in which TOC threatens the state. TOC threatens the state by challenging its territorial sovereignty, thus posing a threat to the security of the citizens within the borders of the state (Cilliers, 2010; Garcia, 2009). It undermines political structures, the world economy and the social order of the state in which the organized criminal group is based and/or operates (Shelley, 1995). Not only do these organized criminal groups threaten the state in which they are based, but they also threaten the other three types of states as identified by Williams (2002): host, service and transshipment states.<sup>10</sup>

Furthermore, Phil Williams and Doug Brooks (1999) claim that organized criminal groups seek to co-opt political and military leaders, the judiciary and law enforcement officials through the establishment of covert exchange relationships. To be able to do this, they frequently use bribery or intimidation, or both, to try and secure *carte blanche* for their endeavors. If and when they are successful, the state becomes neutralized and renders the country a safe haven for organized criminal groups to oversee their endeavors domestically and transnationally (Williams and Brooks, 1999:93). Even if the state exhibits a certain capacity for effective interventions in economy and society, the creation of this 'political-criminal' nexus will undermine the willingness of the government to use this capacity against organized criminal groups and TOC. Additionally, pre-existing practices of corruption will make this outcome far more likely. Ultimately, Williams and Brooks (1999) claim that in some countries, the move towards electoral democracy will create major new opportunities for the creation of more exchange relationships between criminals and politicians.

Shelley (1995) and Bayart (1999) agree with Williams (2002) and Williams and Brooks (1999) when saying that, in some cases, organized crime and the state apparatus develop a symbiotic and collusive relationship. Bayart (1999) notices this especially with regard to African states south of the Sahara, where the growing relationship between crime and tenure of public office is particularly strong. Shelley (1995) illustrates the same kind of relationship between crime and politics, using Italy's seven-time Prime Minister, Giulio Andreotti, who has

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<sup>10</sup> *Home state*: states that provide the base of operations from which organized criminal groups operate; *host state*: states that are the destination for many of the illegal products of criminal organizations that are shipped over national borders; *service state*: states with particular sectors of activity (usually financial sector), which can be exploited by organized criminal groups to hide, move and protect the gains of their illegal activities; and *transshipment state*: states that are located on major transit routes for illicit commodities (drugs, arms, illegal aliens, etc.) (Williams, 1997 and 2002).

twice been deprived of his parliamentary immunity based on charges of collaboration with the mafia<sup>11</sup>.

On another note, organized crime strategies, such as corruption of key public officials for the neutralization of state power, as outlined by Williams and Brooks (1999) and Williams (2002), could be said to go hand in hand with Catanzaro's (1993) assessment of what organized criminal groups need in order to be successful, namely a weak state system. Moreover, Migdal (1988) and Zartman (1998) claim that where the state system is weak, where political institutions have lost their legitimacy and security within the state borders is no longer guaranteed, rival social organizations (gangs, warlords, organized criminal groups and the like), that are in conflict with each other, and also with the state itself, will attempt to gain power that has been lost by the state. In conclusion, it needs to be said that organized crime poses a threat to the state in various ways, thus making the state a victim of organized crime. However, the existence of weaknesses within the state apparatus, as outlined through Williams' (2002) capacity gaps and functional holes, turn the state into a facilitator of organized crime. These capacity gaps and functional holes will be conceptualized and operationalized in the next section.

## **2.5 Capacity Gaps, Functional Holes and TOC**

Williams (2002) argues that states in transition have certain weaknesses and vulnerabilities, which provide a greenhouse effect for organized crime. However, this study begs the question: are these weaknesses universally applicable to all states in transition? This will be further studied through a comparison of two states in transition, South Africa and Croatia. The above-mentioned weaknesses are translated by Williams (2002) into seven capacity gaps; hence, areas where the state is incapable of exercising certain basic functions. Moreover, these capacity gaps lead to specific functional holes, which in turn open up the space for organized crime to work with impunity. According to Williams (2002:171), capacity gaps and functional holes are subject to exploitation by criminal organizations in one of two ways: 'either by filling them and, in effect, substituting or compensating for the state, or by exploiting the room for maneuver that they provide'. The capacity gaps and functional holes, and the way in which these are used by organized crime, are outlined in the following table:

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<sup>11</sup> The term mafia has appeared continuously from mid-19<sup>th</sup> century until today, in different literature, political debates, judicial investigations, fiction, and the like. According to the most commonly accepted definition, mafia refers to the regional criminality of Sicily. It can be used to refer to the influence of lobbies and deviant institutions, but also to describe a close relationship between politics, business, crime, and atmosphere of dishonesty, illegality and corruption, which takes the form of favouritism, clientelism, election fraud and the inability to apply the law impartially (Lupo, 2009).

**Table 1: Capacity gaps, functional holes and TOC (Williams, 2002:171)**

Capacity gaps	Functional holes	Implications for organized crime
<b>Social control</b>	-ineffective criminal justice systems	-organized crime operates with impunity
<b>Social welfare</b>	-lack of provision for citizens	-migration to illegal economy -organized crime recruitment -paternalism substitute for state
<b>Business regulation</b>	-lack of regulatory framework	-organized crime as arbitrator, protector, and debt collector
<b>Oversight and accountability</b>	-lack of control and transparency	-opportunity for extensive use of corruption -hijacking of privatization processes
<b>Border control</b>	-weak interdiction capability	-use state for transshipment of various illegal products
<b>Legitimacy</b>	-lack of authority and affiliation	-build on patron-client links and other relationships that are more important than loyalty to the state
<b>Electoral norms and patterns</b>	-campaign financing	-opportunity to influence election outcomes and cut deals with politicians

According to Williams (2002), organized crime tends to develop in response to a particular combination of opportunities on the one side and pressures on the other side. Capacity gaps and functional holes feed all aspects of this equation by offering multiple opportunities and few constraints on organized crime. Even though all capacity gaps and functional holes, as outlined above, are important in the understanding of the core contributing factors to the rise in organized crime, for the purpose of this study, the capacity gaps of social control, social welfare, border control and legitimacy are of particular importance, due to their applicability to the two case studies. The following section will outline the four capacity gaps in further detail.

### **2.5.1 Capacity gap: Social control**

Social control as defined by Migdal (1988:22) is: ‘the successful subordination of people’s own inclinations of social behaviour or behaviour sought by other social organizations in favour of behaviour prescribed by state rules’; meaning, the state will have social control if the people within its jurisdiction abide by and behave according to the rules that the state prescribes, rather than behaving as they please. If a state wants to avoid collapse, social control needs to be increasing. This increase can be measured through three indicators: *compliance* by the populace, level of citizen *participation* in the way the country is governed and the *legitimacy* of the state (Migdal, 1988:32). If all three of these indicators are on high levels, the state will have a high level of social control. If the state, however, does not have a

high level of social control, which leads to decreased legitimacy, and general mistrust in the state, rival social organizations arise. These rival organizations, such as organized criminal groups, provide citizens with different strategies for survival (Migdal, 1988).

Furthermore, organized crime seems to flourish where the development of inadequate criminal justice systems seems to prevail. These justice systems are inefficient, unfair, and do not incorporate measures that are designed to prevent and control different forms of racketeering and money laundering. Williams (2002) claims that this capacity gap has been evident in many states in transition, for example Russia. This leads back to the aforementioned notion that when society is suffering from a crisis or abrupt but beneficial transitions, it is in many instances incapable of enforcing restraint (Williams, 2002). This is usually the case where there is an absence of legislation, and an absence of adequate laws and resources. Due to economic and political restraints that states in transition are facing, the resource constraints that follow limit the training and equipping of effective law enforcement organizations. Therefore, the functional holes that arise as a consequence of this capacity gap enable organized crime to operate with the minimum risk (Patrick, 2006; Williams, 2002). Moreover, the legal capacity gap is not only confined to criminal law; the failure of some states to provide an adequate regulatory framework for business can have implications for organized crime, in that it offers opportunities to fill or to exploit the consequential functional hole (Patrick, 2006; Williams, 2002).

#### *2.5.2 Capacity gap: Social welfare*

Another capacity gap concerns economic management and social welfare, which consequentially leads to the functional hole of lack of provision for the welfare of the citizens. This in turn puts pressure on the citizens to engage in criminal activities, given that the high unemployment rates and hyperinflation in a state in transition serve as obstacles when trying to obtain basic needs. When the state is incapable of providing its citizens with basic needs, rival social organizations provide the citizens with alternative “survival strategies”<sup>12</sup>, as described by Migdal (1988). For instance, when state resources dry up, either due to exogenous reasons or through internal waste and corruption, the citizens are left feeling neglected and alienated, thus causing an atmosphere of dissatisfaction and opposition (Zartman, 1998).

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<sup>12</sup> Strategies of survival are blueprints for action and belief; ‘they provide not only a basis for personal survival but also a link for the individual from the realm of personal identity and self-serving action to the sphere of group identity and collective action’ (Migdal, 1988:27).

### **2.5.3 Capacity gap: Border control**

Williams (2002) outlines border control as another capacity gap that states in transition suffer from. This is due to the shift from the state of affairs in the old regime, where the state was isolated from the world. In order to integrate into the regional and global economic and political life, states in transition display a greater degree of openness to the outside world, thereby encouraging external investment and trade (Shelley, 2011). However, when borders are opened, the control of what and who exits and enters, and thus distinguishing between illicit and licit businesses, becomes more difficult (Raić, 2010; Williams, 2002). This is even more so the case in states in transition that have large geographical areas, long national boundaries and coastlines that are difficult or impossible to patrol; thus leaving the interior of the state vulnerable to penetration by transnational criminal organizations, such as South Africa and Croatia (Berry, et.al., 2003).

### **2.5.4 Capacity gap: Legitimacy**

According to Easton (in Gilley, 2006) legitimacy is a distinct form of political support that concerns evaluations of the state from a public or “common good” perspective. Gilley (2006) claims that a state’s legitimacy is affected by two factors: socio-economic factors and political factors. These socio-economic factors have evolved during the years, so the initial socio-economic determinants that C.E. Merriam (in Gilley, 2006) mentions, external security, internal order, general welfare, freedom and justice, have evolved to include social trust, civil society, attitude congruence, nationalism, economic growth and personal financial satisfaction as the main determinants of a state’s legitimacy, or lack thereof. The political determinants include: political performance, which is the ability of the state to have control over or dominance over rival social organizations; the quality of governance offered by political institutions; control of corruption and the enforcement of the rule of law; effectiveness of the bureaucracy, which can improve the credibility and fairness of public (Gilley, 2006). These political determinants serve as factors that can either enhance or degrade a state’s legitimacy, based on how the citizens perceive the state’s efforts with regard to all of the above-mentioned issues.

While Migdal (1988) claims that legitimacy is the most important indicator of a state’s strength, Williams (2002) mentions legitimacy as another important capacity gap. He continues by saying that there are dimensions of organized crime that suggest authority rather than power: because the wealth that organized crime accrues through its operations is used in some cases to create a base from which it is possible to develop a degree of legitimacy that

can be parlayed into authority structures. This leads to functional holes that are exploited in ways that substitute for the state, thus giving organized crime a degree of legitimacy, at least at the domestic level (Williams, 2002). As a consequence of this, the use of paternalism to build domestic support can be seen as an attempt to transform power based on fear into more legitimate notions of authority and approval. Thus it is clear that organized crime flourishes in societies where kinship, clan relations, family and patron-client relationships are the primary points of loyalty (Matjaž, 2004; Williams, 2002).

In conclusion, when public authority is weak and the state enjoys low legitimacy, illicit forms of authority and affiliation will thrive; thus, capacity gaps and functional holes open the way for organized crime to flourish. The existence of organized crime is an indicator of the state's weaknesses, as outlined by Williams (2002). Furthermore, Williams (2002), Beck and Laeven (2006), Mentan (2006) claim that for a state to complete the transitional process and become a consolidated democracy, a state needs to exhibit high levels of social control, social welfare, respect for the rule of law and legitimacy. If the state does not have the capacity to do so, it exhibits certain weaknesses that are exploited by organized crime, which in turn further weakens the state and serves as a debilitating factor for the completion of the transitional process and the consolidation of democracy.

## **2.6 Conclusion**

The aim of this chapter was to give the reader insight into the main theoretical concepts, to conceptualize and operationalize them, as well as discuss the framework that will be used to explore the relationship between the illicit arms trade and states in transition. The illicit arms trade has been defined in terms of other categories, such as crime, organized crime and TOC. Furthermore, the state in transition has been discussed, by using the term state and identifying what constitutes the latter, in order to further define and discuss what constitutes a state in transition. Moreover, this chapter set out to critically discuss how the capacity gaps and functional holes as outlined by Williams (2002) contribute to the proliferation of the illicit arms trade in states in transition. These capacity gaps are: social control, social welfare, border control and legitimacy. In the next two chapters, the researcher will attempt to outline why these four are of crucial importance with regard to South Africa and Croatia, and describe how the capacity gaps impact upon the proliferation of the illicit arms trade in both states.

## **Chapter III: Case Study - South Africa**

### **3.1 Introduction**

For forty years, South Africa's government, dominated by white Afrikaners, banned the African National Congress (ANC) and other political parties which were intent on ending apartheid. "Apartheid" meaning apartness or separateness, was as much a political as an economic system; not only did it regulate who was allowed to vote and move freely, it used racism to enforce a highly lucrative arrangement for the small white elite who were able to amass large profits from South Africa's mines, farms and factories, because the large black majority was prohibited from owning land. Additionally, the black majority were forced to provide their labor for far less than it was worth, and if they tried to rebel they were beaten and imprisoned (Klein, 2007). South Africa under apartheid has many times been described as a country with Californian living standards for the white population and Congolese living standards for the black population. In the early 1990s history was written anew, as the country embarked on its first national multi-racial democratic elections, and the transitional period began<sup>13</sup>. In this chapter, the researcher will provide a short overview of South Africa's history, paying particular attention to the years of transition. In addition, a short history of organized crime within South Africa will be presented, before embarking upon the main and final part, of analyzing the main contributing factors to the proliferation of the illicit arms trade in South Africa.

### **3.2 A State in Transition: South Africa after Apartheid**

In 1948, when elections were held in South Africa, the ANC tried to create a non-racial society, while the National Party (NP), the winning party, institutionalized racism. For forty years the ANC and other parties' intent on ending this racial segregation, also known as apartheid, were banned. This formed a difficult scenario for change; however, change came about in 1989. In 1989, F.W. de Klerk was elected president, a president who had inherited a situation which allowed him little margin for error and restricted options. While South Africa's former president, P.W. Botha, unintentionally destroyed both the moral legitimacy of white rule and the certainty that white supremacy would last forever, by reforming the apartheid system so that Indians and Coloureds would have parliamentary representation, the problem which de Klerk inherited was no longer a question of how to exclude black people from power, but how to negotiate a constitutional framework which incorporated black political rights (Gutteridge, 1995). The negotiation process between the NP and the ANC, or

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<sup>13</sup> The full timeline of South Africa can be found in Appendix 1.

rather between the two parties' most prominent leaders, de Klerk and Nelson Mandela, had characterized the final phase of apartheid as an endgame in chess (Gutteridge, 1995).

### *3.2.1 The Negotiations*

The negotiations that hashed out the terms of apartheid's end took place on two often intersecting tracks: the political and the economic. Most of the attention was directed at the high-profile political summits between Nelson Mandela and F.W. de Klerk. In order to preserve as much power as possible, de Klerk considered options such as: transforming the country into a federation, guaranteeing veto power for minority parties and reserving a certain percentage of the seats in government structures for each ethnic group - in short, anything to prevent majority rule, given that that would undoubtedly lead to mass land expropriations and the nationalization of corporations. While the political negotiations were leading to the NP's demise, the economic negotiations set out a different path. De Klerk's government had a twofold strategy: first, drawing on the Washington Consensus, they portrayed key sectors of economic decision making, such as trade policy and the central bank, as technical and administrative. After that they used a wide range of policy tools - international trade agreements, innovations and structural adjustment programs - to hand over the control of those power centers to impartial experts, economists and officials from the International Monetary Fund (IMF), the World Bank (WB), the General Agreement on Tariffs and Trade (GATT) and the NP - anyone besides the ANC. Klein (2007) refers to this as a strategy of balkanization<sup>14</sup>, but not of the geography (as de Klerk had originally attempted) but of South Africa's economy. The ANC's original idea of: 'The people shall govern!' would soon become reality, but the sphere over which they would govern was shrinking at a very fast pace (Klein, 2007).

While the negotiations between the NP and ANC were unfolding, the ANC had to simultaneously deal with the most pressing issue: how to turn the promises from the Freedom Charter (1955) – housing, amenities and health care - into practical policies. The most ambitious of their plans was Make Democracy Work, a blueprint for South Africa's post-apartheid future. However, while the party members were hatching out ambitious plans on the one hand, the negotiating team was accepting concessions at the bargaining table that would in turn make all the ambitious plans and their implementation impossible (Klein, 2007). In

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<sup>14</sup> Often used to describe a compartmentalization or separation of a unit of people, most often along the lines of race, ethnicity, religion and class (Frey, 1995). This term is used in instances that resemble the situation in the Balkan region of Southern Europe, where former Yugoslavia was separated along the lines of ethnicity and religion.

1993, negotiations were coming to an end, the only question was that of pros and cons of making South Africa's central bank an independent entity. While the independent central bank was a fringe idea even among free market economists, the NP was so persistent on keeping as much power in the economic sector that the ANC eventually gave up and allowed for the independent central bank (Klein, 2007). This meant that the central bank and the treasury continued to be run by their old apartheid bosses and that 'everything would be lost in terms of economic transformation' (Padayachee in Klein, 2007:202).

### *3.2.2 The Aftermath*

The ANC had the state, but where was the power? The redistribution of land was impossible due to a last-minute add to the negotiation, where the ANC and NP agreed that the new constitution would protect all private property. Job creation for millions of unemployed people was difficult, given that hundreds of factories were about to close because the ANC had signed on to the GATT, the precursor to the World Trade Organization (WTO), which made it illegal to subsidize the auto plants and textile factories. When more money was needed to build more and larger houses for the poor and provide the latter with electricity, it became a task not manageable due to budget constraints, which were a direct consequence of the debt that the apartheid government had quietly passed on to the ANC. Lastly, imposing currency control, which would guard against wild speculation, was not an option, because that would go directly against the \$850million IMF deal, signed right before the elections. If the government was to ignore these commitments, any change would be regarded as evidence of dangerous national untrustworthiness, a lack of commitment to "reform" and an absence of a "rule-based system". The bottom line was that South Africa was free, but simultaneously captured (Klein, 2007). For many anti-apartheid activists and human rights activists, such as Yasmin Sooka, this transition was just business saying: 'We'll keep everything and you [the ANC] will rule in name...You can have political power, you can have the façade of governing, but the real governance will take place somewhere else' (Klein, 2007:204). This is a process of infantilization, which is common to transitional states, where the new government is given the keys to the house but not the combination to the safe.

Despite the fact that the ANC was losing out on the economic negotiations, it did try to hold its promise of redistribution, and used the little resources it had to build homes for the poor, to provide electricity and water in townships. But, weighed down by debt and under international pressure to privatize these services, the government soon began to raise prices. After a decade of ANC rule, millions of South Africans were cut off from newly connected

electricity and water because they could not pay their bills, due to the limited opportunities in the employment sector that has been mentioned. As for the nationalization of banks, mines and monopoly industry, which the ANC and Mandela pledged to do, by 2005 only 4 percent of companies on the Johannesburg Stock Exchange were owned by black people; 70 percent of South Africa's land was still in the hands of white people, who constitute only 10 percent of the total population. Additionally, since 1990 the average life expectancy for South Africans has dropped by 13 years, mainly due to the high level of AIDS-infected people (Mail&Guardian, 2006).

It has been more than a decade since South Africa made its turn from Marxist policy toward Thatcherism, and the trickle-down effects of that experiment are the following:

- Since 1994, when the ANC took power, the number of people living under \$1 a day has doubled, from 2 million to 4 million in 2006 (Baldauf, 2006; UNDP, 2006).
- Between 1991 and 2002, the unemployment rate for black South Africans rose from 23 percent to 48 percent (Wines and LaFraniere, 2004).
- Out of 35 million black South Africans only 5000 earn more than \$60,000 per year, while the number of white South Africans that earn that much and more, is 100 000 (Robinson, 2005).
- The ANC government has built 1,8 million homes, but in the meantime 2 million people have lost their homes (Wines, 2005).
- Due to the fact that almost 1 million people have been evicted from farms in the first decade of democracy, the number of shack dwellers grew by 50 percent. In 2006, 1 out of 4 South Africans lived in shacks which are located in informal settlements, many of whom had no running water or electricity (Wegeriff, Russell and Grundling, 2005; Wines, 2005).

Instead of looking outwards from the beginning, and learning from other states which had undergone transitions, some successfully, some not so much, the ANC, unfortunately only focused inward, rendering South Africa's transition tainted by struggle and false promises. This has had ramifications for South Africa until this day, as will be seen in section 3.5, where the reasons for South Africa's issues with TOC will be analyzed, based on what has been mentioned with regard to South Africa's transition and Williams (2002) capacity gaps and functional holes. The next section, section 3.4, will give a short overview of South Africa's history of crime, organized crime and TOC. The last paragraphs of section 3.4 will be dedicated to the history of the illicit arms trade in South Africa.

### **3.3 TOC and the Illicit Arms Trade in South Africa**

Based on the implementation of new and non-racial forms of democratic governance that have been established at national, provincial and local levels, one could say that the political and

social transition has affected South Africa profoundly (Shaw, 1997). Even though political violence has ended, the transitional period has been characterized by rising levels of crime, organized crime and transnational organized crime. For the purpose of this thesis, the researcher has decided to present a short overview of these occurrences in South Africa since apartheid.

### *3.3.1 Crime*

While there is a clear link between South Africa's transition and the growth in crime rates, as suggested by Mark Shaw (1997), it would be too simplistic to suggest that crime is purely a consequence of the transition. In fact, there is strong evidence to suggest that its roots lie in the apartheid system. Nevertheless, there is no doubt that the increase in criminality in the 1990s and the decade before are closely connected to the political, social and economic changes that have ended apartheid (Shaw, 1997). The increase in crime during and after a transition are not a phenomenon specific to South Africa, but rather a phenomenon consistent with the experiences of other countries undergoing transition to democracy (Shaw, 1997).

In South Africa, crime and politics have been closely intertwined. In an era of race domination, apartheid offences were classified as crimes, while the people engaged in "the struggle"<sup>15</sup>, justified violence as legitimate weapons against the system. This brought on instability, and urged a growing number of South Africans to acquire weapons to settle personal and family disputes (Shaw, 1997). Between 1980 and 1990, the decade in which the apartheid state was most challenged, evidence suggests that crime was at its peak. According to police figures, serious offences rose by 22 percent, less serious ones by 17 percent, murders by 32 percent, rape by 24 percent and burglaries by 31 percent (Shaw and Camerer, 1996). However, crime in South Africa is not a problem solely tied to the apartheid era; the society has always been "crimo-generic"<sup>16</sup>, due to the high levels of inequality and political conflict (Shaw, 1997). As can be seen in Appendix 2, an increase in crime levels has been visible since the transitional period started in 1994. However, while the overall crime levels seem to have declined somewhat since 2006, there is a visible increase in property crimes from 2007 up until 2011 (Bijker, 2010). Nevertheless, South Africa is still experiencing difficulties with relatively high levels of serious crimes: 2 121 887 serious crimes were registered during 2009/2010. The amount of registered serious crimes during 2010/2011 was 2 071 487, which indicates a decrease of -2.4 percent from 2009 to 2011 (SAPS, 2011).

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<sup>15</sup> Original quotation marks as taken from Shaw (1997)

<sup>16</sup> Original quotation marks as taken from Shaw (1997)

### 3.3.2 *Organized Crime and TOC in South Africa*

Since the 1994 transition to democracy, South Africa has witnessed an increase in organized crime (Shaw, 1997). The activities of organized criminal groups in South Africa were a phenomenon which was known very little about until the 1990s. The historical, social and political factors that contributed to the development of organized crime in South Africa were a mystery (Gastrow, 2003). The growth of organized crime after apartheid is often remarked upon, but little understood, and in general, little attention has been paid to its scope and causes (SAIIA, 2003). Due to the lack of knowledge about this phenomenon, and the lack of a generally accepted definition of organized crime in South Africa, the combating of organized crime has been hampered (Lambrechts, 2010). According to Shaw (1997), the number of organized criminal groups in South Africa has been estimated to be 481<sup>17</sup>. The South African Police Service (SAPS) suggested that there were 196 organized criminal groups operating in South Africa in 1996, but the number rose to 230 in 2003 (Gastrow, 2003). Which of these estimates is the correct one is difficult to confirm, due to the fact that organized criminal groups are extremely difficult to penetrate, and developing an accurate picture of their endeavors can take several years (Gastrow, 2003). However, this large and well-organized criminal network within the country, composed of a number of notorious street gangs, has and still contributes to, South Africa's profile of criminal attraction. Street gangs control local narcotics distribution, which spreads beyond national borders. Gang membership and criminality are promoted by high rates of poverty and unemployment, particularly among the black population (Berry, et.al., 2003).

Furthermore, in addition to the gangs that operate within South Africa, SAPS claims that a number of international criminal organizations involving Nigerians, Russians, Chinese, Moroccans and Italians, have been operating in South Africa since the early 1990s (Berry, et.al., 2003; Standing, 2003). These international criminal groups use South Africa as a transit country for narcotics shipments into Europe and the Middle East, as well as for the illicit trade in arms, smuggling of rhino horns and ivory, money laundering and human trafficking (Berry, et.al., 2003).

In a 2003 report produced by the Central Intelligence Agency (CIA) and the Federal Bureau of Investigation (FBI) of the United States, South Africa was identified as one of the most important centers for international criminal activity. The same agencies estimated that there

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<sup>17</sup> This is the number of organized criminal groups as it was in 1997, but the estimate is that this number would have increased by now.

were approximately 32 transnational organized criminal (TOC) groups operating in South Africa at an expense to the government of approximately US\$23 billion per year (Gastrow, 2003). The majority of these groups are not run on the basis of highly structured operations, instead they function as networks; thus, if the key people within such a group get arrested, they are immediately and very easily replaced, so the network can continue to operate (Gastrow, 2003).

The reasons behind South Africa's profile as a highly attractive place for organized crime are many. South Africa's geographical position presents itself as a factor which cannot be omitted when speaking of TOC. South Africa is situated midway on communication routes, which connect South America, South and Southeast Asia, the Middle East and Europe. The long coastline, which requires constant patrol, and the well-equipped deep-water ports at Cape Town, Port Elizabeth and Durban that invite a high rate of sea commerce, render South Africa's efficiency in import-export control complicated (Berry, et.al, 2003). Land borders are long and often unpatrolled, which makes it all the more easy for criminals to traffic narcotics, stolen cars, illegal firearms, diamonds and precious metals, and the like (Berry, et.al., 2003; Mills and Herbst, 2007).

Furthermore, South Africa has the most developed transportation, communications, and banking infrastructure in Sub-Saharan Africa, which serves as an attraction for criminals both inside and outside of the country. South Africa is not only well connected to its neighboring countries, but air connections across the Atlantic make South Africa accessible to the South American drug cartels. In addition, the telecommunications connection across the world is fast and reliable, and with a banking system, well webbed into the global economy, South Africa is a very inviting place for money laundering as suggested by Berry, et.al. (2003) and Mills and Herbst (2007).

In conclusion, the factor which is quite peculiar to South Africa and its profile for criminal attraction is the effect of the apartheid legacy on law enforcement agencies. As Williams (2002) suggests, a state in transition suffers from certain weaknesses; the South African state has also suffered from a weakened security system, i.e. the police and a weakened legal system. Due to this, and other accompanying factors, which will be discussed in section 3.5, the South African society has been characterized by a "culture of violence"<sup>18</sup> (Berry, et.al.,

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<sup>18</sup> Original quotation marks as taken from Berry, et.al. (2003)

2003). This leads to the next section, which will give a short introduction to the history of the illicit arms trade in South Africa.

### *3.3.3 The Illicit Arms Trade in South Africa*

‘In Africa and elsewhere, the illicit arms trade in small arms and light weapons is opaque, amorphous and dynamic. It is also a global enterprise with illicit weapons across Africa coming from virtually every major arms producing country in the world’ (Schroeder and Lamb, 2006:69).

In Chapter I of this study, it was stated that the Small Arms Survey puts the dollar value of the illicit arms trade at US\$1 billion, or 10-20 percent of the global trade. In addition, 640 million SALW are estimated to be in circulation worldwide, and half a million people are killed by SALW every year, which adds to the description of SALW as the world’s authentic “weapon of mass destruction” (Patalong, 2009). However, the clandestine nature of this trade makes it impossible to confirm these estimates, even though progress is being made. It needs to be noted, however, that all around the world, but particularly in Africa, the illicit arms trade is counter-developmental on many levels (Schroeder and Lamb, 2006).

While SALW across Africa come from every major arms producing country, a number of African states also have the capacity to manufacture arms and ammunition, with South Africa topping the list. ‘By 1994 South Africa had established itself as the tenth largest arms producer in the world, with approximately 800 arms and arms component manufacturers employing a workforce of 50,000 (down from 160,000 in the 1980s). Exports accounted for about one percent of the global arms trade, or the equivalent of sales in excess of R.800 million (U.S.\$225,000)’ (Human Rights Watch, 2000).

Furthermore, the need for secrecy that arose from the imposition of international sanctions against the apartheid regime, South Africa’s growing isolation during that period, and the instability within the region of Southern Africa, fostered a siege mentality in the arms export industry and reflected the immorality of domestic policy. This led to the pursuit of lucrative markets, often those that turned out to be located in areas of gross human right abuses, on behalf of the state-owned arms exporter, Armscor (Human Rights Watch, 2000). During the first years of the transitional period, South Africa had issues with law enforcement, transformation of the security forces, and export-import control; thus the data on the arms trade (both licit and illicit) has been difficult to obtain. This is one of the factors that

contribute to South Africa's low score on the Small Arms Transparency Barometer<sup>19</sup> from 2010, which indicates that South Africa is one of the least transparent SALW exporters across the globe (Lazarevic, 2010).

In the following section the researcher aims to answer the main research question: how do the capacity gaps of social control, social welfare, border control and legitimacy contribute to the proliferation of the illicit arms trade in states in transition? To answer this question, the researcher will use Williams' (2002) capacity gaps and functional holes as the main framework. The purpose of these capacity gaps is to see to what extent they exist in South Africa and how they contribute to the proliferation of the illicit arms trade. Therefore, this chapter will attempt to discuss the following questions: does South Africa suffer from a lack of respect for the rule of law, is the state's legitimacy strong, and does the state exercise a high level of social control and provide its citizens with social welfare? This will be done in order to gain further insight into South Africa's difficulties with TOC and the illicit arms trade, for the purpose of answering the main research question.

### **3.4 Capacity Gaps and Functional Holes in South Africa**

While South Africans have the right to vote and majority rule is in place, scholars such as Shauna Mottiar (2002) and the leader of the opposition Democratic Alliance (DA), Helen Zille (2011), argue that South Africa is still not a consolidated democracy. Zille (2011), for instance, argues that even 17 years after apartheid, power on the national level has not changed hands. Only the provincial and local levels have seen power change, which is a sign that South Africa is turning a corner of democratic consolidation. In addition, Zille (2011) argues that many voters still do not understand their rights and responsibilities in a democracy, and lastly, accountability is still a foreign concept to most people. In the next section, the capacity gap of social control will be analyzed. The remaining three capacity gaps that this research is focusing on, social welfare, legitimacy and border control, will be further analyzed in the following sections.

#### **3.4.1 Social control**

It has been mentioned that for a state to be able to maintain social control it needs to develop institutions and authorities that will create and enforce laws and regulations, the most important of which is the respect for the rule of law. With regard to South Africa, the respect

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<sup>19</sup> The Transparency Barometer is intended to encourage individual states to make information about their transfer of SALW, including their parts, accessories and ammunition, open to the world community (Lazarevic, 2010).

for the rule of law, or lack thereof, has its roots in the transitional period of the early 1990s. During the mid-1990s, extraordinary measures were invoked in South Africa for the purpose of nurturing the nation's passage from a violent, divided and oppressive past into a peaceful and democratic future. One of these measures was the partial suspension of the rule of law, which was intended to help facilitate South Africa's successful transition and create the miracle of the 'rainbow nation'. Many other countries have tried to implement the same measures, some of them managed to get involved in genuine transitions, while others remained in the grip of armed conflict. However, while most South Africans are likely to agree that the partial suspension of the rule of law was warranted, the question is: how did this impact on the criminal justice system?

Howard Varney (2010) suggests that this suspension of the rule of law has had a deleterious impact and that South Africa is still struggling to deal with the ramifications of a policy of officially sanctioned impunity. The measures imposed have tended to take on a life of their own, regardless of temporal restrictions. As a consequence, a culture of entitlement to special or lenient treatment for perpetrators has been created, and lasts still until this day (Varney, 2010). This lenient treatment for perpetrators in the case that Varney (2010) mentions, was in the mid-1990s mostly applied to perpetrators under the apartheid regime, but if one looks at Williams' (2002) outline of capacity gaps and functional holes, and the implications thereof for organized crime, one could see some similarities. Williams (2002) mentions that where a state in transition suffers from a lack of social control, which in turn fosters ineffective criminal justice systems, the result will be that organized crime operates with impunity within that state. During the first decade of ANC rule, the South African criminal justice system experienced coordination failures, and suffered from poor management and inefficiency. In addition, the investigation of serious offences and the conviction of people involved in organized criminal activities were hampered by the lack of resources and lack of manpower within the SAPS. Moreover, a study conducted by Ben Roberts (2008) on questions of South Africa's popular legitimacy, showed that while public trust in state institutions was on a slight upturn, trust in the South African Defense Force was only at 49 percent, while trust in the South African Police Force was at 39 percent. The full table indicating the level of public trust in institutions can be found in Appendix 3. Even though the situation in South Africa with regard to popular legitimacy of state institutions is not as severe as in some other states on the African continent, this low score on trust in the SAPS is an indicator of a functional hole in the criminal justice system; thus, it indicates a gap in the state's capacity to maintain social

order (Mattes, 2007; Williams, 2002). While the police are understaffed and lack popular support and trust, the judiciary enjoys high levels of popular legitimacy. Gallup Poll conducted a survey in 2007, where 1000 adults aged 15 and older in South Africa were interviewed. The poll showed that, when asked whether they had confidence in the judicial system and courts in South Africa, 77 percent said yes, in comparison to 53 percent which is the median for the 32 Sub-Saharan African countries (Rheault and Tortora, 2008).

This is an indicator that the judiciary has the capacity to conduct effective and fair prosecution and sentencing of suspected criminals. In addition, such high public confidence represents an important element in anchoring the rule of law (Rheault and Tortora, 2008). However, high levels of corruption within the government indicate that South Africa still needs to improve the criminal justice system, given that government officials who abuse their power do not get proper sentences, due to capacity restrictions and lack of political will (BTI, 2010).

In 2008, South Africa's Finance Minister at that time, Trevor Manuel, claimed that in order to improve South Africa's criminal justice system, priority needed to be placed on funding of the technological infrastructure in the police service, as well as the increase of policing personnel who specialize in crime prevention, detective work, crime intelligence and forensics. Additionally, the Department of Safety and Security aims to increase the number of police officers from 131 000 in 1997/8 to more than 200 000 by 2011 (SAInfo, 2008).

Moreover, another important aspect of social control is the effectiveness of the police and the courts. In Chapter I it was mentioned that a state's main role is to provide its citizens with basic human needs, of which security is the most important one. In addition, the police and military, i.e. security forces, are the main providers of that basic human need. How efficient they are will also have a direct impact on the effectiveness of the social control. With regard to South Africa, it can be said that by the late 1990s, the police were struggling to cope with rising rates of murder, rape, robbery and car hijackings; thus, rendering its image in citizens' eyes as incompetent, toothless and overzealously devoted to human rights. By the late 1990s, South Africa's murder rate was six times higher than that of the United States and five times that of Russia. The criminal justice system was gravely weak; for every 450 crimes reported, there were 100 prosecutions, 77 convictions and only 36 imprisonments (Good, 1997). In a poll conducted by Afrobarometer in 2006, respondents from 18 Sub-Saharan African countries were asked whether they approve of their governments' crime fighting performance; the data suggested that South Africans have some of the worst views on the continent of their

government's efforts to fight crime. 'While popular majorities in ten Afrobarometer countries said their government was handling crime "well" or "very well" in the 2005-2006 surveys, just 35 percent of South Africans were of that opinion, roughly the same number as the Nigerians (33 percent) and Zimbabweans (30 percent). Only Cape Verdeans (23 percent) were more negative' (Mattes, 2006).

Such lawlessness led South Africans to believe that the inability of their government to provide them with security mocked their newfound freedoms. And freedoms, as argued by Steffan Riebe (in Comaroff and Comaroff, 2010), must be carefully policed, a role originally and ultimately entrusted to the state. If, however, the state does not fulfill this function, the people will do it themselves (Comaroff and Comaroff, 2010). This goes hand in hand with Migdal's (1988) notion of weak states and strong societies, where a state incapable of providing security to its citizens will ultimately open up the way for rival social organizations, which provide the citizens of that state with alternative survival strategies.

In South Africa, the lack of security provision for citizens and an ineffective criminal justice system was not only confined within the scopes of crime, but also with regard to the rising levels of organized crime and TOC. In 1997, many of South Africa's 200 licensed airports were without radar, customs or police controls, thus representing a paradise for international crime rings operating Russian-made cargo aircraft illegally. Due to its geographic position and highly developed infrastructure and banking system, South Africa serves mainly as a transit and service state for illicit arms traffickers. However, according to Stan Joubert, the former Superintendent of the Illicit Firearms Unit under the Serious and Violent Crime Division of the South African Police Service (SAPS), the majority of weapons that enter the South African black market are the result of theft from and loss by licensed sources, such as the state security officers in the police and military (Kirsten, 2008).

According to SAPS statistics, the number of firearms recovered by the police is lower than the number of firearms reported; thus, the police capacity to recover illicit firearms is an indicator of their incapacity to monitor the flow in arms, whether illicit or licit. Furthermore, this incapacity on behalf of the police and the aforementioned incapacity of the courts to convict criminals indicate a functional hole in the criminal justice system. Illicit arms traffickers and other TOC groups use this functional hole to their advantage; they provide police officers with financial rewards in exchange for police radios and information about police investigations, so that they may evade arrest, elude the capture of evidence against them

and/or pay for docket against them to be lost. They even provide prosecutors with financial benefits in exchange for the loss of vital evidence against them (Minnaar, 1999; Govender, 2011). Therefore, bribes, and corruption in general, are means for illicit arms traffickers to work with impunity in South Africa. This functional hole in the criminal justice system is an indicator of a gap in South Africa's state apparatus capacity to enforce social control. Kenneth Good (1997) claims that South Africa has experienced a rapid and steep decline in state capacity since the transition period, with this decline being particularly concentrated in safety and security, justice, home affairs, health and police services, and social welfare, which will be further analyzed in the next section.

### *3.4.2 Social welfare*

In a previous section, the Freedom Charter (1955) was mentioned as the main beacon of hope for South Africa during apartheid years. What the Charter implied is that change was needed in South Africa, because it could no longer be a country with Californian living standards for the white population and Congolese living standards for the black population. Naomi Klein (2007) states that during the negotiations in the early 1990s, the ANC realized it could not reclaim and redistribute the country's stolen wealth, so rather than meeting in the middle between California and Congo, the party adopted policies that exploded both inequality and crime to such an extent that South Africa is now closer to Beverly Hills and Baghdad. The country stands today as a living testament to what happens when economic reform is compromised by political transformation.

While the political transition in South Africa created a legal framework for democracy, thus guaranteeing the human rights and dignity of all South Africans, it could not surmount the deep social and economic division. This, however, has not only its roots in the apartheid era, but also in more recent history. In the 2006 Budget Review, emphasis was put on the sharp divisions between the modern economy and the marginalized communities, between formal employment and the insecurity of the unemployed, ultimately between rich and poor. According to Sampie Terreblanche (2002), South Africa's economy can be characterized as: one modern, smart, professional, efficient and globally oriented; the other as neglected, messy, unskilled, downtrodden and thriving on crime and violence. These two economies do not have a connecting staircase between them, according to Thabo Mbeki (in Harsch, 2004). Socio-economic development cannot be separated from the country's political economy. This is the way in which the production, distribution and consumption of wealth are organized within a society, thus determining who wins and who loses.

It has been mentioned earlier that when the ANC came to power, its ability to provide the poorest with the basic needs that they were lacking under the apartheid government was limited by the debt they had amassed during the transition period and the debt inherited from the previous government. Hyperinflation, high unemployment rates and a debilitating external debt, made way for economic hardship, resulting in the lack of provision for the welfare of the citizens (Klein, 2007; Williams, 2002). This lack of provision for the welfare of the citizens serves as a cause for the citizens to seek other survival strategies, often resulting in illicit activities. In addition, this lack of provision of welfare is a functional hole, which is a consequence of a mismanaged economic management and a general lack of developmental capacity on behalf of the ruling government (Williams, 2002). Therefore, South Africa's unemployment rate of 24 percent and the annual inflation rate of consumer prices of 7.1 percent can serve as an example of the above-mentioned scenario, where people turn to the illicit economy to obtain basic human needs, which the state is not providing for them (STATSSA, 2010).

Poverty is concentrated in particular sectors of the population, which are defined by economic and social characteristics that relate to systematic and structural inequalities in a society (Lombard, 2008). The South African macro-economic framework, the Growth Employment and Redistribution Strategy, is embedded in neoliberal capitalism, which addresses poverty and inequality by relying on market and economic growth. Poverty and inequality are linked and treated the same in public discourse, but they are in fact very different. Inequality is measured with the Gini coefficient, which measures the distribution of national income. It varies between 0 and 1, meaning the closer to 1 a country is the more unequal it is. South Africa has a Gini coefficient of about 0,6. When it comes to income distribution, South Africa has surpassed Brazil as the most unequal society in the world, as seen in Appendix 4 (Landman, 2003; Avirgan, 2006; Klein, 2007; World Bank, 2011).

Poverty on the other hand depends on a critical assumption: what level of income constitutes the poverty line? In popular public discourse it is the \$1 dollar a day level that has gained the most prominence. According to this level, 46 percent of South Africans lived in poverty in 2000 (Landman, 2003). According to the World Bank (2011) database, South Africa had 38, 5 percent of people living in poverty in 2000. In 2005, this level went down to 23 percent (World Bank, 2011). Even though the poverty percentage is quite high, it is not among the highest in the world, unlike the Gini coefficient. Thus, a country with high levels of inequality need not necessarily be a country with high levels of poverty, and vice versa (Landman,

2003). Furthermore, even though South Africa has an economic growth rate of 4,9 and a sound and sustainable macro-economic policy, the deep-seeded inequality has not been erased, in fact the divide between the rich and the poor keeps growing (Lombard, 2008).

According to Shireen Hassim (2008), the combination of political development, organized constituencies of poor people and increasing social sector spending has had minimal impact on increasing equality in South Africa. Despite an overall macro-economic framework, which emphasizes fiscal restraint, social welfare spending has increased in the last 14 years, and more dramatically since 2003. Almost one in four South Africans receive some sort of grant, and the predominant majorities are women. South Africa is described as the developing world's largest and most generous welfare state; however, South Africa's Human Development Index (HDI) rating that measures income, life expectancy and education levels, has not made significant improvements since the ANC assumed political power (Hassim, 2008). In fact, the Human Development Report for South Africa in 2003 showed a decline from 0.73 in 1995 to 0.67 in 2003, ranking 120 out of 177 countries evaluated. In the 2010 Human Development Report, South Africa ranks 110<sup>th</sup> out of 169 countries, with an HDI at 0.597 (HDR, 2010). This means that instead of improving on the level of development, South Africa has declined even further since 2003. In addition, the number of households that are deprived of good basic services increased from 5.68 million to 7.25 million between 1996 and 2001 (Hassim, 2008). Hassim (2008) mentions the 1997 White Paper on Social Welfare, which adopted a social development framework as an attempt to solve South Africa's social welfare issues. The White Paper calls for the creation of a welfare system which endorses the development of human capacity and self-reliance within a caring and enabling socio-economic environment, implying that social development and economic development are interdependent and mutually reinforcing. This means that the creation of employment is not only the responsibility of the market, but also of the state (Hassim, 2008). Even though the framing of the capabilities and the language in the White Paper were strong and convincing at first, the commitments to social justice are relatively weak. Social welfare was intended as a safety net for the vulnerable groups, rather than a core characteristic of social democracy. Thus, the South African welfare was to be targeted to the poorest of the poor, a strategy which has resulted in poor-quality programs that are unsustainable and have little political legitimacy (Hassim, 2008).

In accordance with Williams (2002), Hassim (2008) claims that the central problem with social policy in South Africa is the weakness of the state, evidenced by the poor collaboration

between the departments in the social sector and recurring under-spending of budgets. Where a state does not have the capacity to provide its citizens with jobs, thereby depriving them of basic human needs and opportunities to lead the lives they have reason to value, a state exercises a functional hole manifested in the lack of provision for the welfare of its citizens (Williams, 2002). This in turn creates pressure and incentives for citizens to engage in criminal activity, a notion which is consistent with the aforementioned alternative survival strategies, as outlined by Migdal (1988). Increasing inequality, high levels of poverty and unemployment reflect a functional hole in the welfare provision for citizens, which is used by organized criminal groups and TOC groups to recruit people that suffer from the above-mentioned issues, by providing them with jobs and financial incentives; thus indicating a gap in South Africa's capacity to provide social welfare for its citizens. However, while a lack in the state's capacity to provide its citizens with job opportunities is a cause for people to become involved in organized crime, it is also a consequence, given that organized crime costs the state opportunities to provide citizens with jobs, thereby creating a vicious circle (Mail and Guardian, 2011). According to Scheidegger (2008), in order to protect South Africans from negative exposure to economic forces and to reduce levels of inequality, it is necessary to institutionalize welfare and social security. In the next section, the capacity gap of border control will be analyzed to see how it impacts upon the rise in organized crime, TOC and the illicit arms trade.

#### **3.4.3 Border control**

States in transition suffer from capacity gaps and functional holes, according to Williams (2002), with ineffective border control being one of them. This is mainly due to a major shift from the state of affairs in the old regime when the state was isolated from the outside world. States in transition display a greater degree of openness to the outside world, by encouraging external trade and investment. This poses a difficult task of determining who and what enters, as well as distinguishing between the licit and illicit business activities that come with the practice of opening borders (Williams, 2002). The poor border control of states in transition serves as an inviting mechanism for criminal organizations to exploit this weakness for the transshipment of illegal goods (Williams, 2002).

Border control is closely connected to organized crime such as narcotics smuggling, arms trade, human trafficking, and trafficking in other items, which may be either legal or illegal. With regard to South Africa, it was claimed in the previous sections that its profile as the most developed state in Sub-Saharan Africa, and especially in Southern Africa, makes it a very

inviting place for organized criminals and terrorists from other areas (Berry, et.al., 2003). There are several factors that play into this profile: geography, history, highly developed banking systems and infrastructure, as well as South Africa's connectivity with its closest neighbors<sup>20</sup> and Latin America and West Africa (Berry, et.al., 2003).

Border control also has a direct impact on the security of all citizens within a state, therefore 'the safeguarding of the 4500 km land border and 2800 km sea border is a logical extension of the defense of the territorial integrity of the Republic of South Africa, Hlatshwayo said, and the way the land, air and sea borders are managed will be a determining factor contributing to the safety, security and stability of South Africa' (Martin, 2011). Furthermore, South Africa's exposure to organized crime and the rise thereof since the 1980s has its roots in its history, particularly in its apartheid legacy.

In accordance with what Williams (2002) says about states in transition and their issues with turning from isolation into openness, Berry (et.al., 2003) claims that South Africa, until the late 1980s, was largely isolated from the outside world, and also from the international developments that affected organized crime, both domestic and international. The authoritarian and security-conscious environment fostered by the apartheid regime made cross-border criminal activity quite difficult. Nevertheless, as state law enforcement agencies mostly focused on political opponents, they neglected what was boiling up underneath the surface, namely indigenous criminal groups. Additionally, despite the then relatively strict border controls, cross-border organized crime between South Africa and its neighboring countries also expanded, thus forming smuggling networks that crisscrossed the southern cone of Africa (Berry, et.al., 2003).

Moreover, the political changes that occurred in 1994, the year apartheid was replaced by constitutional democracy, created opportunities for indigenous and international organized criminal groups to exploit the low-risk environment that was South Africa (Berry, et.al., 2003; Gastrow, 200; Williams and Brooks, 1999). State structures, which included the security service, were undergoing substantive reform, which weakened them. Border controls relaxed as international trade and tourism increased; thus rendering South Africa an ideal environment for organized crime. By the end of the 1990s, many of the uncertainties that accompanied the transition had subsided, but organized crime had gained a firm hold in South Africa, an issue

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<sup>20</sup> Map of South Africa can be found in Appendix 5.

which still poses difficulties for the South African government and its primary role, security provision for all South Africans (Berry, et.al., 2003; Standing, 2003).

With regard to security provision, the South African government had been taking steps to improve border control. However, let it be said that this is not an endeavor which South Africa can or is doing alone. Several regional initiatives have taken action: Southern African Regional Police Chiefs Co-Operation Organization (SARPCCO), which was established in 1995, is the official body representing police services in the sub-continent; the Southern African Development Community (SADC) established a Drug Control Protocol on the supply and demand of drugs in 1995; and the Interstate Defense and Security Committee (ISDSC) Ministerial Task Force on Border Control was established (Govender, 1999).

Furthermore, the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) obliges the SAPS to prevent, combat and investigate crime (which includes organized crime), as well as maintain public order, protect and secure all South Africans and their property and to uphold and enforce law. The Constitution also regulates the establishment of an intelligence service to support the SAPS in its objectives, such as the prevention and combat of organized crime. Thus the National Intelligence Coordinating Committee (NICOC) was established in 1994 to co-ordinate intelligence. This structure enables the government to receive interdepartmental intelligence pertaining to, inter alia, organized crime and facilitates strategic decision making in this regard (Govender, 1999). Even though these initiatives are of great importance, O'Brien (2011) claims that the South African government is facing grave issues with its intelligence dispensation, which reflects many of the issues which confronted the apartheid state's political and security leadership. The intelligence dispensation that exists today in South Africa evolved out of the intelligence dispensation under the apartheid regime; thus, it has both the characteristics for the democratic system, while also having the failings of a transitional state following liberation (O'Brien, 2011).

In 2009, during a State of Nation speech, South Africa's President Jacob Zuma put high emphasis on security, with special focus on organized crime and the necessity of increasing the capabilities of the criminal justice system. Additionally, he gave a promise to tighten up the regulation of private security industry, a promise to intensify efforts to combat cybercrime and expressed his gratitude to the South African National Defense Force (SANDF) for their contribution to peace building on the African continent (Baker, 2009). President Zuma also called for the establishment of a Border Management Agency (BMA). This idea has arisen

from the long overdue recognition that South Africa's porous borders represent a significant threat to the nation. Border security has in recent years been a task divided between two instances; the SANDF has passed over most of its responsibility for this task to a reluctant and under-resourced SAPS. Therefore, President Zuma's announcement that a BMA will be set up to deal with this critical task has been welcomed with applause (Baker, 2009).

In conclusion, South Africa's border control was relatively strict under the apartheid government; however, as Williams (2002) claims, all states in transition face the difficult task of opening up to the outside world, which can result in the exposure to illicit activities. The South African border control has, after 1994, dramatically relaxed, making South Africa a highly inviting place for organized crime and TOC. While the illicit trafficking in narcotics may be more studied, the illicit arms trade has in the last years been affected by the lack of interdiction capacity on behalf of the state. Joubert (in Kirsten, 2008) claims that most cross-border arms trade involves the movement of weapons out of South Africa and into neighboring countries, rather than the other way around.

However, no matter where the end destination for these weapons is, the fact that the border control is weakened due to a lack of personnel and resources indicates a functional hole. This functional hole is used by TOC and arms traffickers, who pay bribes to customs officials to let them traffic illegal commodities across South Africa's borders (Williams and Brooks, 1999). "Bought"<sup>21</sup> home affairs officials provide organized criminal groups with falsified documentation, enabling the import/export of illegal commodities, which helps traffickers garner huge profits, while at the same time providing the corrupt officials with lucrative deals of their own (Williams and Brooks, 1999; Minnaar, 1999). This is an example of the functional hole of lack of interdictory capacity, which is an indicator of a gap in South Africa's capacity to control its borders. In the following section, the capacity gap of legitimacy will be analyzed to see what impact it has on the proliferation of TOC and the illicit arms trade.

#### ***3.4.4 Legitimacy***

In Chapter II, the notion of legitimacy was mentioned within a wider context of the main indicators of a state's strength as outlined by Migdal (1988). Legitimacy includes the acceptance of the state's symbolic configuration within which the rewards and sanctions are

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<sup>21</sup> Original quotation marks as taken from Minnaar (1999)

packaged; in short, it indicates the people's approval of the state's desired social order through their acceptance of the state's myths (Migdal, 1988:33).

Williams (2002), on the other hand, claims that legitimacy is just one of seven indicators of a state's strength, while the lack thereof is characteristic of state's in transition, where the state apparatus does not have authority and thus lacks acceptance on behalf of the public. Williams (2002) continues by saying that a lack of authority and affiliation is a functional hole, which is easily exploited by organized crime, which in turn substitutes for the state, thus giving organized crime a degree of legitimacy, at least at the domestic level (Williams, 2002). Consequentially, the use of paternalism to build domestic support can be seen as an attempt to transform power based on fear into more legitimate notions of authority and approval. From this it becomes clear that organized crime flourishes in societies where kinship, clan relations, family and patron-client relationships are the primary points of loyalty (Matjaž, 2004; Williams, 2002).

What can be gathered from the above is: 'the more an individual regards legal authorities as exercising legitimate authority, the more likely it is that such an individual will voluntarily obey the law' (Capers, 2011:463). Even though there are several ways in which legal authorities can enjoy legitimacy, history suggests that the effectiveness of legal authorities in maintaining social order benefits from and depends on their ability to motivate voluntary cooperation, which is based on the society's perception of their legitimacy. This builds on the notion that when legitimacy increases, compliance will increase (Tyler, et.al., 2010).

The current political order in South Africa reflects both continuity and change with its apartheid past. While the ANC has continually tried to democratize and transform the lives of ordinary citizens, many of the legacies of the apartheid past remain intact and are conspicuous to many South Africans, and many visitors alike. In addition to economic and social legacies, such as income inequality, relatively high levels of poverty, rising number of shanty townships, and the like, crime, organized crime and TOC can also be regarded as parts of the apartheid legacy (Shaw, 1997). The results of the ANC's attempts to democratize and transform the lives of ordinary citizens have not been satisfactory, as has been seen in section 3.3. The fact that South Africa still has high levels of unemployment, high numbers of people living in poverty and high levels of inequality is an indicator that the state apparatus has certain weaknesses when it comes to providing its citizens with basic human needs. This in turn fosters a lack of authority and affiliation among its citizens, and indicates the state's lack

of legitimacy. Where the state does not enjoy legitimacy, other rival social organizations, such as organized criminal groups or gangs, will flourish (Migdal, 1988; Williams, 2002). Since they are forces that coexist, the state institutions and these rival social organizations have brought on a blend of different political norms, rules and processes. While the existence of rival social organizations may not be compatible with democracy, their existence in South Africa is an indicator of the state's weaknesses.

With regard to the blend of political norms and rules, Williams (2010) suggests that the blending of different norms, rules and institutions facilitates a complex and contradictory legitimization process, which challenges the conventional understanding of authority and democracy in South Africa. While both the central state and the organized criminal groups want to exercise exclusive social control, neither one is able to do so completely. The fact is that the state in Sub-Saharan Africa is often in conflict with other non-state social forces and the existence of multiple legitimacies is well documented. All of these social forces or actors are there to claim authority and approval from the people, but this can only be achieved if a social force has gained the trust of the people. One can only gain trust if they create expectations and promise certain projects, which they in the end keep.

The political changes in South Africa in 1994 resulted in greater expectations for both the delivery of development and the promise for more accountable and participatory politics. However, in the South African case, the delivery of what was promised in the early 1990s has not yet been completed, in fact inequality is on the rise, poverty levels are high, and those that partially received the goods they were promised (such as electricity, water and housing) were shortly after evicted and denied those goods, because they could not pay their bills (Klein, 2007). The ANC saw legitimacy as a question of performance and delivery of political and (mainly) economic goods, while giving relatively little attention to the issues of symbolism and (re)socialization (Mattes, 2007). Legitimacy cannot only rely on the performance and delivery of goods. Robert Mattes (2007) provides three indicators that measure citizen's perception of performance and legitimacy with regard to the new South African political community, the democratic political regime and South Africa's political institutions. Mattes's (2007) results state that the legitimacy of the new South Africa is very high, but the legitimacy of democracy and political institutions is relatively low compared to other African states. As Williams (2002) claims, when public authority is weak, the state enjoys low legitimacy and the public has little or no trust in the political institutions that are there to serve the greater good, other forms of social organizations appear as more trustworthy. In the South

African case, such organizations include the gangs in the Cape Flats, or Russian and Nigerian TOC groups, trafficking illicit goods (such as drugs, weapons, and the like). These organized criminal groups provide their members with tangible benefits from the proceeds of their crime (Kinnes, 2009), while also attracting new members by promising certain things (such as water, electricity, shelter and employment); thereby building trust and affiliation through patron-client relationships with the citizens, which the state is not able to do (Migdal, 1988:27). Based on what has been analyzed in this section, one could conclude that the state in South Africa has a divided legitimacy capacity. While the levels of legitimacy of the new South Africa are high, the levels of legitimacy of democracy and political institutions are relatively low. This indicates that the state does not yet enjoy high levels of overall legitimacy, which serves as a hampering factor to South Africa's efforts to consolidate its democracy, given that a state in transition cannot become a consolidated democracy if high levels of legitimacy are not obtained (Williams, 2002).

### **3.5 Conclusion**

This chapter's main aim was to provide the reader with a better understanding of South Africa's difficulties with TOC and the illicit arms trade. The framework used to answer the main research question of what the main contributing factors to the proliferation of the illicit arms trade in states in transition are, was based on Williams (2002) capacity gaps and functional holes. While Williams (2002) outlines seven capacity gaps, this research has only focused on four of those capacity gaps and functional holes as contributing factor to the rise in TOC and the illicit arms trade. Furthermore, in Chapters I and II the researcher mentioned several indicators that are crucial for a state in transition to become a consolidated democracy, such as accountable and efficient institutions, the respect for the rule of law, efficient criminal justice systems and an efficient and accountable government, as outlined by Williams (2002), Migdal (1988), Beck and Laeven (2006) and Licht, Goldschmidt and Schwartz (2007). If a state in transition has met all of these requirements, only then can it become a consolidated democracy; if not, it is clear that it still faces difficulties with certain capacity gaps. The existence of these capacity gaps within a state in transition open up the way for organized crime to flourish and achieve the authority and legitimacy that the state is lacking. Furthermore, the last capacity gap that has been mentioned as a contributing factor to the rise in TOC and the illicit arms trade is the inefficient border control. While this capacity gap is a characteristic of states in transition, it is not a prerequisite for a state to become a consolidated democracy; however, it does contribute to the rise in TOC and the illicit arms trade.

While South Africa has clearly fulfilled certain criteria on its way to becoming a consolidated democracy, Helen Zille (2011) claims it is still not a consolidated democracy. This is due to several factors: Zille (2011) claims that South Africans do not understand their rights and responsibilities in a democracy; as seen in section 3.5.1 the South African criminal justice systems is still weak, which can be seen in the citizen approval of the courts as illustrated in Appendix 3; also, the citizens trust in the South African Police Service is relatively low, which indicates that security levels are low, thus rendering the state's capacity of maintaining order to be faulty.

Furthermore, the high unemployment rate, high inflation, a large proportion of people living in poverty and the high level of inequality within the South African society, indicates that the state is lacking the capacity for the provision of welfare for its citizens. The porous borders, understaffed police service and lack of monitoring capacity of the border police suggest that South Africa has severe issues with border control. Lastly, the high levels of legitimacy on behalf of the 'new' South Africa, yet low levels of legitimacy for the institutions, indicate that the South African government enjoys low levels of overall legitimacy. In addition to all of the above-mentioned issues, South Africa is struggling with high levels of crime, high levels of organized crime and TOC. The reasons for this have been highlighted through the four capacity gaps and functional holes as outlined by Williams (2002). To conclude, the high level of corruption in the criminal justice system as well as the police force, indicate the lack of the state's capacity to enforce social control, which opens up the way for organized criminal groups to work with impunity. Furthermore, the high levels of unemployment, high levels of inequality and high levels of poverty, indicate a lack in the state's capacity to provide its citizens with social and economic welfare, thus potentially forcing segments of the population to look for alternative survival strategies. The lack of personnel and lack of resources with regard to border control indicates a functional hole in form of lack of interdictory capacity, which in turn opens up the way for TOC and illicit arms traffickers to bribe customs officials and obtain falsified documents in order to make the import/export of illegal commodities more feasible. Lastly, the citizen's low level of trust in democracy and political institutions in SA indicates low levels of state legitimacy, which in turn fosters trust in illegitimate organizations, that build on patron-client relationships and provide the citizens with the benefits the state is not capable of doing.

## **Chapter IV: Case Study - Croatia**

### **4.1 Introduction**

The history of modern-day Croatia can be traced back to 1918 (BBC, 2011). However, its history stretches all the way to the early-late Pleistocene, when the Neanderthal site of early human population, also known as Krapina man (*Homo neanderthalensis krapinaensis*), was established north west of Zagreb, which is the capital of Croatia. This research will however, only focus on the modern-day history and illustrate the key points in Croatia's history<sup>22</sup>. These key points will be of use for the reader to understand the impact that historical events have had on Croatia's transitional period and its issues with crime, organized crime, TOC and the illicit arms trade.

The history of modern-day Croatia can be divided into four periods: the period between 1918 and 1941, also known as the Kingdom of Serbs, Croats and Slovenes; the period between 1941 and 1945, when the Independent State of Croatia was founded on fascist principles, and became a puppet state of Nazi-Germany; the period between 1945 and 1991, also known as a constitutional federal republic of the Socialist Federal Republic of Yugoslavia; and the period from 1991 until today, where Croatia became an independent Republic in 1991.

Even though all of these periods are important for the reader to make a complete picture of Croatia's history, for the purpose of this research, only the years after 1989 will be paid attention to. These years are the crucial years of Croatia's independence and its transitional process; thus, the most important ones for the researcher to establish a concise connection between the transitional process and the issues Croatia is facing with regard to TOC and the illicit arms trade.

### **4.2 Croatia's Independence and Transitional Process**

Throughout history, all states that were in a process of transition, faced challenges of a political and economic character. Croatia was no exception. Issues such as privatization and demonopolization of the media, corruption, the restructuring of the legal system and the development of a civic culture, able to support democratic principles, are all typical of those faced by European post-communist states. However, a feature special to that of the Croatian transition, was that democratization, state-building and war would have to be handled simultaneously (Søberg, 2007).

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<sup>22</sup> The full timeline of Croatia can be found in Appendix 6.

Democratic transitions often involve great uncertainty, given that the rules of the political game are yet to be agreed upon. The transitional period in Croatia started with liberalization and democratization which began with the communist framework; it began while Croatia was a republic in an increasingly dysfunctional federal Yugoslavia. The Croatian transition can be divided into three phases. The initial phase (1989-1995) includes the coming to power of the HDZ, the struggle of state-building, the Homeland War and independence. In this phase, the war and HDZ's state-building project were given priority over democratization and reform. The second phase (1995-1999), also described as the "false dawn of democratization", was a period where war-time policies and institutional setup were institutionalized, and the HDZ was unwilling or unable to adopt a focus on human rights, democracy and reconciliation. The last phase (1999-) is seen as the period of revitalization of Croatian politics and society; a period which represented a second start, which saw the opposition (the Social Democratic Party- SDP) move into office and implement important policy changes and a realignment vis-à-vis the international community (Søberg, 2007).

#### *4.2.1 The Initial Phase*

The transition in Croatia started with the 1989 election of Ivica Račan as the leader of the new and reformed Croatian League of Communists. Račan and his colleagues, the reform communists, set an end to Croatia's reputation as the silent republic and openly challenged Slobodan Milošević's nationalism, which was the driving factor behind Milošević's project of "Greater Serbia", and eventually led Croatia out of the League of Communists of Yugoslavia (LCY) in 1990 (Zubrinic, 1995; Søberg, 2007). However, Croatia was split; not only as a republic but also within the ranks of its communist party, due to the simultaneous existence of liberal elements among both Croats and Serbs, and nationalist elements. Croatian opposition to the Milošević regime was quickly spun as anti-Serb rhetoric by the Belgrade media, and it took place even before Croatia decided it wanted to become an independent republic. In March and April 1990, Slovenia and Croatia held multiparty elections; however, the elections were actually a contest between reform communists, later named the Social Democratic Party (SDP) and the nationalists, the HDZ. The HDZ polarized the electorate and appealed only to ethnic Croat voters, thereby not representing true democracy based on civic values, which later would have consequences for Croatia's transition (HR, 2010; Søberg, 2007). Their victory unleashed an outpouring of nationalist euphoria after decades of suppression of nationalist feelings. The HDZ, led by Dr Franjo Tuđman, who became president in 1990, favored a rebalancing of the state power structure, where Serbs had traditionally been privileged beyond their numerical strength. This attitude proposed a national reconciliation

which meant to enhance pan-Croatian solidarity and not a means by which to bridge the historical antagonism between Croats and Serbs. The HDZ portrayed itself more as an (ethno)-national movement than a regular political party in a multi-party Croatia.

The HDZ approach had many negative consequences for Croatia's transition, of which the following five are most prominent: 1) the HDZ never gained the strength to qualify as a national movement, instead it served as a dividing as much as unifying force in Croatian politics; 2) the power was concentrated in the hands of President Tuđman and the executive branch vis-a-vis the Sabor (Parliament). Tuđman's reign resembled more and more that of self-styled democrats who demonstrated a number of struggles against authoritarian regimes, but when they get the power they are not particularly inclined to foster democratic development; 3) the HDZ prioritized independence and statehood, instead of focusing on the democratic process; 4) HDZ became more and more nationalistic, which could be seen in the persistent coquetting with the rhetoric and symbolism of the fascist Ustaša regime, which made Croatia prone to criticism both domestically and internationally, thus making it more isolated; and 5) HDZ's agenda, rhetoric and symbolism, implied that Tuđman's aim was not to be president of Croatia, but to be president of the Croats (HR, 2010; Sjøberg, 2007). In addition, after the declared independence in 1991, Croatia found itself torn by civil war, known as the Homeland War among Croats, which served as another hampering factor to Croatia's transition. The war ended in 1995, which marks the beginning of the next phase of Croatia's transition.

#### ***4.2.2 The False Dawn of Democratization***

The war in Croatia, Serbia and Bosnia-Herzegovina ended in 1995 with the signing of the Dayton Peace Accords<sup>23</sup>. After the peace agreement was signed, and Croatia regained control of Western Slavonia and Krajina, which were taken by Serb Military forces and the Yugoslav National Army (JNA) during the initial years of the war, new elections were held where Tuđman was reelected president, and the HDZ won as the ruling party. The timing of these elections could be seen as highly calculated on behalf of the HDZ. Given that Croatian citizens were dissatisfied with HDZ's approach to democratization in the previous years, the HDZ saw the end of the military Operation Storm<sup>24</sup> as a means to exploiting the military gains and the political standing of President Tuđman, for the purpose of securing another term in

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<sup>23</sup> For a detailed explanation of the Dayton Peace Accords, please consult section 1.2.5 on page 9.

<sup>24</sup> A large-scale military operation, carried out by the Croatian Armed Forces in cooperation with the Army of Bosnia and Herzegovina, with the aim to gain back control of large parts of Croatia that have been under separatist Serb control since early 1991 (Human Rights Watch, 1996).

office. With this move, not only did it gain another term as the ruling government, but it established itself as the “liberation party”, a status which would bring it a certain form of political legitimacy in the years to come (Pickering and Baskin, 2008).

After the elections in 1995, it seemed as though the scene was set for true democratization of the Croatian society; however, the end of the war failed to produce results on the economic front, and the government continued with its liberal tendencies, of which privatization was the pivotal one. The process of privatization accelerated markedly between 1993 and 1994; however, with it came a consistent problem of corruption, both in the private sector and in government circles, which is still visible (English, 2008). High levels of corruption, domestic and international criticism, and failure to reach a level of democratization which was expected after ten years of independence, signaled the end of the HDZ rule and opened up for the third phase in Croatia’s transition.

#### *4.2.3 The Revitalization of Croatia*

After ten years of HDZ rule, the time for change arrived in 2000, when extraordinary presidential elections were held in 2000, a few months after the death of President Tuđman in December 1999. Stjepan Mesić was elected president, and two center-left coalitions wrestled control of Parliament from HDZ in the legislative elections that were held in January 2000. The leader of the SDP (former League of Communists of Croatia), Ivica Račan was elected Prime Minister (Søberg, 2007). Under Mesić, the Croatian state system had undergone crucial changes, given that the Constitution amended the semi-presidential system and transformed it into a pure parliamentary system (HR, 2010). Mesić became the most popular politician, and the office of the president became the most trusted and transparent institution in Croatia. Additionally, the Račan government went out of its way to work for the integration of Croatia into the international community, and reverse a decade of international isolation which Croatia had suffered under Tuđman. This task was difficult, given that Račan was torn between the demands of the Croatian people on the one side and the international community on the other. The demands on behalf of the international community, that the Račan government arrest Croats accused of war crimes, to end state support for the Croats in Bosnia-Herzegovina and create conditions supporting the return of Croatian Serb refugees, was met with unease on behalf of the nationalist groups in Croatian society. Therefore, Račan compromised with the nationalists by agreeing not to move them from important positions in the military, judiciary and the intelligence services. What came out of this compromise was the delayed reforms in these sectors, which had negative consequences for the transition, as

well as Račan's alienation from his core constituency of pro-Western and anti-HDZ urban voters (Søberg, 2007). This ultimately led to the 2003 parliamentary elections, in which Mesić was elected president again, but the power turned from the SDP into the hands of a reformed HDZ under the rule of Prime Minister Ivo Sanader.

The Sanader government undertook a number of initiatives to show that the HDZ was prepared to depart from the party policies that were put in place in the previous decade. During the Sanader government, Croatia has made significant progress towards Euro-Atlantic integration, which culminated with Croatia's membership in the North Atlantic Treaty Organization (NATO) in 2009 (NATO, 2009). Croatia has improved cooperation with the International Criminal Tribunal for former Yugoslavia (ICTY), and thereby overcome another hurdle on its path toward EU integration. Most ethnic Croats displaced under the Homeland War have returned to Croatia, and Croatia is making significant efforts to bring back the Croatian Serb population which was displaced during the war; however, there are fundamental challenges that Croatia has faced during its transformation. The initial failure to cooperate with the ICTY has been the main barrier for Croatia's integration into the EU, which is connected to the original policies of the HDZ in the first decade of power. The main focus directed at state-building and independence, instead of transition and democratization, served as obstacles to the successful transition process. In addition the state-building project in ethnic terms, and HDZ role in war in Bosnia-Herzegovina, with the aim of annexing Croat-held territories (which was no different than what Serbia originally wanted when Belgrade tried to annex the Serb-held Krajina region in Croatia), tarnished Croatia's reputation internationally (Søberg, 2007).

Furthermore, the legacy of Tuđman's rule was a decade of xenophobia and nationalism, which institutionalized a climate of intolerance toward ethnic minorities that has still not been overcome. Nevertheless, the years after Tuđman's death in 1999, and the regime change in 2000, have painted a different picture of Croatia. Croatia has amended and consolidated its political institutions and electoral system; it has taken steps and come to terms with its obligations towards the status of refugees and minorities, and ultimately, it has made significant progress when it comes to international cooperation and integration, which can be seen in its membership in NATO, and its finalization of the negotiation process with the EU in June 2011, and its finalized accession date as the 28<sup>th</sup> member of the EU on 1 July 2013 (Søberg, 2007; NATO, 2009; Vogel and Gardner, 2011).

In conclusion, while Croatia has made significant progress with regard to international cooperation and integration, issues of corruption, organized crime, high unemployment rates and a lack of trust in the current government, present issues which serve as hampering factors to the consolidation of democracy in Croatia. In the next section, the researcher will give an overview of Croatia's history of organized crime, TOC and the illicit arms trade, before moving on to the final section of capacity gaps and functional holes, through which the researcher wants to find out what the main contributing factors are for the proliferation of the illicit arms trade in Croatia.

### **4.3. TOC and the Illicit Arms Trade in Croatia**

'Over the past two decades, following the disintegration of the former Yugoslavia and the Soviet Union, more than 20 newly independent and quasi-sovereign states were formed. During this, headline-grabbing images of violence and a myriad of special crime reports have persuaded many that the Balkan region in particular is unstable, flourishing mainly on crime and endemic corruption. Very quickly the Balkans, often referred to as a 'gangster paradise', became known for its demagogues, secret police agents and thugs who profited from the regional wars, and from the smuggling of people, arms, cigarettes and drugs' (Arsovska and Kostakos, 2010:113).

Based on this quotation, it is safe to say that trends of increasing levels of crime and TOC are to be seen in all newly independent states of the former Yugoslavia and in the Balkan region in general. Croatia, being the focus of this chapter, is both a state situated in the Balkan region and a former member of the Socialist Federal Republic of Yugoslavia (SFRY); therefore, the researcher has decided to give a short overview of Croatia's history of crime, organized crime, TOC and the illicit arms trade since 1991, the year it became independent.

#### **4.3.1 Crime**

Berry (et.al., 2003) claims that criminal groups in Croatia have been increasingly active in the years after the 1991 War of Independence in former Yugoslavia. In the years between 2000 and 2002 the World Desk Reference (2004) estimated that crime in Croatia increased by 44 percent, while the Croatian Ministry of Interior (MoI) claimed in 2002 that the crime rate in Croatia was very low, with only 1728 criminal offences per 100 000 citizens reported (Ivančić, 2002). The MoI claimed that this number of criminal offences was much lower compared to other European states, such as Germany, where the number of criminal offences was 7625 per 100 000 citizens, and Slovenia, with 3439 criminal offences per 100 000 citizens (Ivančić, 2002).

According to the European Source Book (Aebi, et.al., 2010), the total number of criminal offences per 100 000 citizens in Croatia rose from 1728 in 2002 to 2455 in 2003, culminating

with 2505 in 2007, after a decline from 2648 in 2006. This suggests that the crime trend in Croatia between 2002 and 2007 varied immensely; however, an increase in crime is evident (Aebi, et.al., 2010). Furthermore, while the number of criminal offences per 100 000 in Croatia seems relatively low compared to other European countries, one could say that the size of the Croatian population has a certain impact on this; however, the low rate of reporting criminal offences may also be due to the perceived ineffectiveness of law enforcement officials, such as the police (Arsovska and Kostakos, 2010). This will be further analyzed in section 3.4.1 with regard to the capacity gap of social control as outlined by Williams (2002). In the next section, the trend in organized crime and TOC in Croatia will be outlined.

#### ***4.3.2 Organized Crime and TOC in Croatia***

Organized crime in the Western Balkan states is mostly a developmental issue, which reflects the lack of adequately protected property rights, lack of local employment opportunities, lack of education, and the like (Dobovšek, 2006; Arsovska and Kostakos, 2010). Moreover, organized crime in the Balkans is intimately connected with the conflicts that happened between 1991 and 1999. History and politics have provided especially fertile ground for the growth of TOC in the Balkan region. Centuries of foreign rule and decades of communism have fostered a weak civil society and prevented the establishment of transparent and stable political institutions (Köppel and Szekely, 2002).

In communist and post-communist societies, where planning is centralized but local control is often negligent, criminal networks often emerged within governments; thus the state becomes an exponent of organized crime. An example of this is post-communist Yugoslavia, under the rule of Slobodan Milošević, where plundering of local resources and organized crime became central pillars of economic and political power. Participation in criminal activities, such as trafficking in illicit goods and smuggling of weapons, became the *raison d'être* of the ministerial clique around Milošević; thus, the state became the patron of organized crime (Köppel and Szekely, 2002).

The post-communist transition from totalitarian regime to democracy is often associated with growth of corruption, privatization fraud, protection rackets and other forms of organized crime; in addition, rapid social, economic and political change also contribute to higher crime rates, along with conflicts and political instability (Williams and Brooks, 1999). During the last two decades, the Balkan states have undergone both transition and conflict simultaneously (Arsovska and Kostakos, 2010). During the early 1990s, the wars in Yugoslavia were exploited by the security agents and some criminal segments of the Balkan societies. These

actors used international sanctions, such as the 1992 UN-imposed embargo on Yugoslavia, as money-making opportunities. The UN embargo offered opportunities of oil and arms smuggling on behalf of states in the Yugoslavia, as well as individual citizens that became involved in the business.

Furthermore, smuggling of weapons was commonly associated with nation-building and it was perceived as beneficial by many Balkan people and governments, which suggests that the societies in the Balkan region, and thereby Croatia, have a well-established gun culture, and are therefore crimo-generic. The symbiotic relationship between crime groups and the modern Balkan states evolved as a consequence of the fall of communism. Political-criminal interrelations during the transitional period and the formation of new states after the disintegration of Yugoslavia have left a legacy of institutional ambivalence towards illicit activities (Arsovska and Kostakos, 2010).

In the early 2000s, organized criminal groups in Croatia have been increasingly active and have been implicated in a number of domestic and foreign activities, including racketeering, money laundering, narcotics trafficking, extortion and illicit arms smuggling (Berry, et.al., 2003). On the domestic front, two Zagreb-based organizations were known to dominate organized crime in Croatia in the late 1990s. In 2001-2, the Croatian state recognized and prosecuted only one. The second one, a narcotics-trafficking and racketeering group, run by Vjeko Sliško until his assassination in 2001, has escaped prosecution. This can be due to two reasons: either the state used information from Sliško's group in prosecuting the other group, or Sliško's group bought protection from influential government authorities. In addition, Hrvoje Petrač, known as the most influential figure in the Croatian underworld, was until 2002, when his connection to the two above-mentioned domestic criminal organizations was revealed, only known for his connection to other criminal networks in the Balkan region. Although substantial evidence of his criminal activities has existed for several years, the state never sought to prosecute him (Berry, et.al., 2003).

With regard to TOC, Croatia is an important aim and transit country along the Balkan Route, connecting Turkey, the Middle East and other regions with Western Europe. The most significant and most frequent forms of TOC include illegal migrations, drug smuggling, trade and smuggling of illicit arms, making and distribution of forged money and money laundering (Arsovska and Kostakos, 2010; Berry, et.al., 2003; Dobovšek, 2006). While Croatia has faced issues with both domestic organized crime and TOC, the main focus of this paper is the proliferation of the illicit arms trade; thus, for the purpose of this study, the researcher has

decided to dedicate the following section to Croatia's involvement in the illicit arms trade. This will help the researcher to make the connection between Croatia's transitional period and the proliferation of the illicit arms trade, in order to be able to answer the main research question in section 3.4.

#### *4.3.3 The Illicit Arms Trade in Croatia*

Based on its geographic location in the Balkan region, and its connection to the Balkan Route, as seen in Appendix 7, Croatia has emerged as a major distributor of both licit and illicit arms and explosives in Europe (Howard and Traugher, 2008).

With regard to civilian possession of firearms, the 2005 SAS estimates, as seen in Appendix 8, claim that there are approximately 370 000 registered firearms, suggesting that close to 20 percent of Croatian households have legal weapons. The number of illegal weapons is estimated to be 597,458, according to the SALW Survey (Pietz, et.al., 2006). Thus, a total number of weapons of 1,3 million in a population of 4,6 million, makes Croatia one of the most heavily armed countries of South Eastern Europe (Pietz, et.al., 2006).

However, a more pressing problem is the illicit cross-border trade in SALW. It was claimed in Chapter I that registered SALW producers and law enforcement officers have been involved in the illicit arms trade. In 2005 for instance, the owners of Croatia's largest SALW producer, HS Produkt, Ivan Žapčić and Marko Vuković, were brought before court, along with a Customs Officer, Pero Antunović, accused of having co-operated to smuggle 3810 units of HS-2000 small arms to overseas buyers (Pietz, et.al., 2006; SEESAC, 2006). Furthermore, in July 2005, 13 people were imprisoned for dealing in Soviet-made, hand held anti-tank rockets. These weapons were believed to be destined for the Italian and German markets. Illicit SALW trafficking is not the only problem Croatia is facing; in 2005 four Montenegrins were arrested for smuggling 208 tonnes of gunpowder into the Rijeka harbor. In addition, in 2005, 5100 128mm rockets were exported on a loan to Macedonia, but were never returned (Pietz, et.al., 2006).

According to the MoI, 'the border police confiscated about 58 weapons and 8,100 rounds of ammunition in 41 cases of SALW smuggling in 2004. In 2005, the border police encountered 31 cases of smuggling and seized 62 weapons and 3,200 rounds of ammunition' (Pietz, et.al., 2006:44). Moreover, in 2006 the Croatian border police uncovered a cross-border trafficking ring with contacts in Bosnia and Herzegovina, Croatia and Slovenia. In May 2006, almost 300 000 AK47s and 64 million rounds of ammunition were exported from Bosnia and Herzegovina between June 2004 and July 2005, which is regarded to be the biggest arms

export in Europe since World War II. Most of these weapons and ammunition were sent to Iraq, but according to Amnesty International, up to 90 000 were bought by dealers in the United Kingdom, Germany and Switzerland through a Croatian broker, who also performs business for the USA Department of Defense (Nash and Cahytor, 2006).

The above-mentioned incidents, which have been a feature of Croatian media from the 1990s onward, suggest an increase in TOC and the illicit trade in arms in Croatia after the transitional period started in 1991. What the reasons behind this occurrence are will be further analyzed in the following section; however, let it be said that a history of violence enabled by a prevalent gun culture has had an impact on Croatia's current issues with illicit arms trade proliferation. In the next section, the researcher will assess the illicit arms trade proliferation through the four capacity gaps as outlined in Chapters I and II, in order to answer the main research question: What are the main contributing factors to the proliferation of the illicit arms trade in states in transition?

#### **4.4 Capacity Gaps and Functional Holes in Croatia**

On 8 July 2011, at the Croatia Summit 2011 held in Dubrovnik (Southern Croatia), Croatia's president, Ivo Josipović, stated that Croatia has entered a period of consolidated democracy and the changes are irreversible. However, based on the Freedom House's Nations in Transit 2011 Survey, Croatia receives a 3 on the Democracy Score scale<sup>25</sup>, meaning it is a semi-consolidated democracy. The reasons for this assessment are many; however, a high level of crime and TOC suggest that the criminal justice system is inefficient, which, as seen in the work of Migdal (1988), Williams (2002), Beck and Laeven (2006) and the like, suggests that democratic consolidation is hampered. This capacity gap will be analyzed in the next section in order to see how it contributes to the proliferation of the illicit arms trade in Croatia. The remaining three capacity gaps that this research is focusing on, social welfare, border control and legitimacy, will be further analyzed in the following sections.

##### **4.4.1 Social control**

It was mentioned in Chapter II that in order to maintain social control, a state needs to develop institutions and authorities who will create and enforce laws and regulations, the most important of which are the security services (police and military) and the judiciary, which is responsible for a properly functioning criminal justice system. When these institutions and

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<sup>25</sup> The Freedom House's Nations in Transit 2011 Survey assesses the status of democratic development in 29 countries, based on its Democracy Score and its scale from 1-7: 1-2 indicates consolidated democracies, 3 indicates semi-consolidated democracies, 4 indicates transitional government/hybrid regime, 5 indicates semi-consolidated authoritarian regime, and 6-7 indicates a consolidated authoritarian regime (Freedom House, 2011).

authorities are seen as efficient and legitimate in the eyes of the citizens, the state will have a strong hold on social control. In the case that the state does not have a functioning and just criminal justice system, the police and military are seen as corrupt and unable to provide the citizens with security; the result will be that the state lacks the capacity to maintain social control. This will in turn enable other rival social organizations, such as organized criminal groups, to work with impunity within such a state (Williams, 2002). Whether the state in Croatia lacks this capacity of maintaining social control is the main focus of this section.

In section 2.2.1 it was mentioned that a state has four main characteristics, as outlined by Williams (2002): it is a sovereign territorial entity; it is a system of rules and thus has both authority and obligations towards its citizens; it is a set of institutions; and it is a set of functions (such as the guarantor of order and security). Rotberg (2003) expanded on Williams' (2002) notion of the state being characterized as a system of rules, by saying that the obligation of the state is to provide certain political goods to the citizens; however, a hierarchy of these goods exists. Rotberg (2003:3) claims that a state's primary function is to provide the political good of security 'to prevent cross-border invasions and infiltrations, and any loss of territory; to eliminate domestic threats or attack upon the national order and social structure; to prevent crime and any related dangers to domestic human security; and to enable citizens to resolve their disputes with the state and with their fellow inhabitants without recourse to arms or other forms of physical coercion'. In the case of Croatia, one can say that of the four characteristics of a state as outlined by Williams (2002), Croatia possesses all four of them; however, the question arises of how efficient the state is in providing its citizens with security and enforcing the laws and regulations.

Appendix 9 shows the results from the 2006 SALW household survey of Croatia, conducted by Pietz (et.al., 2006), where they interviewed 1000 respondents from a representative sample of individuals 15 years of age and older, and asked them how they perceive their physical security. Compared to the results of the same survey from 2005, only 5,5 percent thought that their personal security had improved, while 20 percent believed it had deteriorated and the majority stated that it had stayed the same. However, when broken down, 23 percent of urban respondents believed that their personal security had deteriorated, while 15 percent of respondents in rural areas felt the same way. In addition, respondents differentiated economic security and security related to crime. The answers received show a high discrepancy between the rural and urban areas; while people from rural areas perceive their physical security to be

improving, they believe that economic insecurity has become their main problem; this, however, will be discussed in section 4.4.2 with regard to social welfare.

The above-mentioned perceptions of security are a result of the (in)efficiency of the security provision for citizens on behalf of the police and military forces. While over 90 percent of the respondents in the survey<sup>26</sup> believed the police should be the main provider of security, their perception of the police is rather negative. When asked whether they would turn to the police in cases of crime, they all agreed; nevertheless, they thought that the police were often inefficient and corrupt. In larger cities, such as Zagreb and Split, the respondents thought that only the right connections could help to get the police active. When asked about the general efficiency of the police to solve crime and protect people, over 30 percent believed the police were inefficient. Half of the people thought the police's capacity was moderate, while only 12 percent perceived the police as efficient (Pietz, et.al., 2006). Furthermore, when compared to a public opinion poll conducted throughout the Balkans, the level of distrust towards the police among Croats was alarming: 51 percent of Croats said they distrusted the police, while only 26 percent replied to the contrary; in addition, 84 percent in this poll thought bribery was common or widespread in the police (Pietz, et.al., 2006; SEEB, 2006).

Moreover, it has been mentioned that in order to maintain social control, the state needs institutions that will enforce and regulate the law. One such institution is the judiciary, which is the main determinant of how efficient the criminal justice system is. In Croatia, the criminal justice system has gone through many changes; first of all, the change from an authoritarian to democratic regime, which was accompanied by bountiful reforms and adjustments. The judicial reform efforts in Croatia began in late 2000, with a series of reform plans and strategies issued in the intervening years. These plans and strategies were accompanied by new legislation and other measures. While the judicial and administrative reforms have yet to become consolidated both with the democratic values and principles, they also need to be consolidated so that their impact can be routinely felt by the public. However, extensive judicial delays, that seem to be the norm, as well as the public's perception of corruption as endemic to the public services (particularly the judicial system), are both obstacles to the full consolidation and reform of the judiciary (Pietz, et.al., 2006).

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<sup>26</sup> More than 30 key informants were interviewed over a period of three months. These included: staff from key national SALW control agencies within the Croatian government, employees from international organizations and a number of journalists, NGO's, war veterans and academics (Pietz, et.al., 2006).

Nevertheless, the Croatian parliament adopted a National Anti-Corruption Program for 2006/8 which included measures intended to root out corruption in the judiciary. The Ministry of Justice, the Criminal Justice Directorate, state and judicial bodies, in short, all those responsible for the National Program, have provided mini programs for the implementation of measures from the Program (Pietz, et.al., 2006). Despite the initiative, and the additional measures needed to make the Program feasible and thus minimize or completely eradicating corruption in the judiciary, the public still has its concerns. The public has raised its concerns that existing laws are not, and have not, been adequately implemented, that the fines and punishments, especially with regard to those crimes that involve the illegal possession of weapons, are not adequate. Furthermore, the public has raised its concerns with the police's poor handling of crimes and the lack of legal punishment by the courts (Pietz, et.al., 2006).

According to the Balkan Monitor (2010), Croatia was the only country in the region, where confidence in the judicial system has grown since 2008: 44 percent respondents stated that they had a lot or some trust in the judiciary, compared to 29 percent in 2008, as seen in Appendix 10. However, this indicates that the public trust in the judicial system has not yet reached satisfactory levels.

Furthermore, in 2008, more than seven in ten respondents, 77 percent in Croatia, believed that corruption was widespread through the government, and more than eight in ten, 83 percent, said that corruption was widespread in business (English, 2008). By 2010 the number of people who believed that corruption was pervasive in the government reached 89 percent, while those who believed that corruption was pervasive in business was 93 percent. In addition, the number of Croats who were satisfied with the government's efforts to fight organized crime rose by five percentage points, to 17 percent since 2008, which was an improvement from the years before, but 83 percent were still dissatisfied, which indicates a lack of effort on behalf of the government; thus, a lack of state capacity to combat organized crime (Balkan Monitor, 2010).

Bojan Dobovšek (2006) claims that a lack of satisfaction on behalf of Croatian citizens may be due to the fact that the judiciary has problems when prosecuting crimes, which stem from issues with detecting and citing of proof of crime, and also with problems that stem from secrecy and intimidation of witnesses. The interrogation of witnesses has been difficult due to the lack in protection capacity. This lack of protection capacity is visible in several cases where journalists, lawyers and businessmen with links to organized crime were threatened or

killed. On 23 October 2008, Ivo Pukanić, the publisher of the leading weekly newspaper, *Nacional*, was killed after an explosive device was detonated beneath his car outside the magazine's offices. His marketing manager, Niko Franić, 38, was also killed in the blast. Pukanić and Franić were known for investigations into corruption and organized crime. Earlier in the same month, Ivana Hodak, the daughter of a prominent lawyer, was shot and killed in front of her house in Zagreb. The Interior and Justice ministers were fired immediately after the murder and the Croatian government announced a crackdown on organized crime, a pledge which does not seem to have had any immediate effect (Pancevski, 2008).

While Croatia has made legislative changes in hope that this will bring change in the practice of detecting and prosecuting of crime, there is still no developed international cooperation in the field of detecting and combating organized crime. While the EU has put pressure on Croatia to reform its judicial system and to improve legal regulations, corruption in the government and business has increased, as seen above. According to Williams (2002), where law enforcement is ineffective, organized crime will have the chance to work with impunity. In the case of Croatia, the connection between organized crime and the political and jurisdictional institutions is not systematic, but it is present (Dobovšek, 2006).

Despite the EU's pressures on Croatia to reform its judiciary and make further efforts to fight corruption and organized crime, the European Commission adopted a report on 2 March 2011 where it criticizes Croatia for shortcomings in reforming its judiciary and in fighting corruption and organized crime (Vogel, 2011). The report states that there are numerous deficiencies; the newly established structures for dealing with corruption and organized crime, of which USKOK (Ured za suzbijanje korupcije i organiziranog kriminaliteta - The Bureau for Combatting of Corruption and Organized Crime) is the most prominent one, have not been fully tested in practice and are not yet fully staffed. The courts have yet to rule on most high-level corruption cases and Croatia has not yet addressed impunity for war crimes, which have not been investigated or prosecuted. Additionally, new bodies governing the judiciary also need to create a "convincing track record"<sup>27</sup> in appointing and promoting judges and prosecutors (Vogel, 2011).

In conclusion, from the above-mentioned one could say that the dissatisfaction on behalf of Croatian citizens with the way the judiciary and courts, as well as the police, are performing

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<sup>27</sup> Original quotation marks as taken from Vogel (2011)

their jobs and the efforts they have made since the early 1990s to prevent crime and organized crime are an indicator of the state's inability to enforce the law. Furthermore, the spread of conflict in the successor states of former Yugoslavia, the resurgence of nationalism and a weak justice system, have all contributed to the nurturing and rise in organized crime and TOC in the Balkan region. During the war between 1991 and 1995, organized criminal groups established close links to the political and economic establishment, as well as to former members of the security and intelligence service, mainly through the use of corruption (Curtis and Karacan, 2002; Köppel and Szekely, 2002). This goes hand in hand with Williams and Brooks' (1999) statement about the political-criminal nexus and the fact that pre-existing practices of corruption contribute to the establishment of this nexus. Corrupt politicians, businessmen and court executives have all contributed to an inefficient criminal justice system, which enables criminals and organized criminal groups to work with impunity. Thus, the inability to enforce the law and the respect for the rule of law, and enabling a rise in organized crime and TOC, is an indicator of the gap in the Croatian state's capacity to maintain social order, as outlined by Williams (2002). However, there are other reasons that serve as enabling factors for the rise in TOC and the illicit arms trade in Croatia. These will be further analyzed in the following sections.

#### **4.4.2 Social welfare**

According to Predrag Bejaković (2008), in Croatia, as in many other transitional states, the absence of democratic, economic and regulatory institutions and the lack of experience in the payment of taxes, leads to avoidance and evasion of tax payment, corruption, extortion and many other illegalities, which in turn weaken the capacity of the state to provide its citizens with both economic and social welfare. The reasons for this are many. In Croatia, there is a general lack of knowledge of the phenomenon *there is no such thing as a free lunch*. Even though it is declining, there is still high and widespread paternalism in Croatia, a belief that the government can and should provide the citizens with diverse public goods and pay for those goods out of its own sources; however, the citizens seem to be forgetting that the government cannot have sources to pay for public goods if the citizens refuse, or do not see it as necessary to pay taxes (Bejaković, 2008). Furthermore, Croatia has a pension system that stems from the time the country was under the communist rule of Tito; however, there is a lack of confidence in the public pension system by young workers, who are forced to pay 15 percent of their gross income into the public pension system, which is on the verge of bankruptcy. This may be due to the demographic composition of Croatia, where people above the age of 64 comprise 16,9 percent of the population, and people between the age of 15 and

64 comprise 68,1 percent, but the level of unemployed people in the latter demographic group is 17,6 percent (CIA, 2011); thus, there are not enough young employed people who can pay 15 percent of their gross income into the pension fund, rendering it therefore almost bankrupt. In addition, those young workers do not believe that the existing system will provide them with the equal amount of material security in their old age; therefore, Croatia has a large number of young people that avoid paying this particular tax (Bejaković, 2008).

Moreover, Bejaković (2008) claims that there is general public trust in the efficiency of the welfare program, due to limited availability of sources, which in addition are not very well targeted towards the most vulnerable in the Croatian society. The impression that the government is spending a large amount of money on various social programs that achieve little distribution, and instead of reducing inequality, the welfare system acts to enhance it, is prevalent. Furthermore, there is widespread dissatisfaction with public administration in Croatia. Citizens perceive it as inadequate and as one of the key impediments to the successful transition from a centralized system to a more democratized society and free-market economy. Public administration is the weakest link in the institutional development transition process; it is an obstacle to economic growth, and it does not reach the institutional development necessary for the effective implementation of newly accepted laws and regulations. The tax administration is of particular importance, because the perceived inefficiency and corruption, as well as all the above-mentioned reasons are contributing factors to the dissatisfaction of the citizens and their unwillingness to pay taxes (Bejaković, 2008).

In turn, this unwillingness to pay taxes leads to a lack of sources for the government to provide its citizens with the public goods they need, as well as a lack of sources in State Treasury to pay its citizens their monthly wages, fostering in turn an ambient of unemployment, which instead of declining in the last years has grown from 16,1 percent in 2009 to 17,6 percent in 2010 (CIA, 2011). High levels of unemployment and the lack of social and economic provision for citizens leads to the need for other means of survival, or other survival strategies, as outlined by Migdal (1988) in Chapter II. These survival strategies that Migdal (1988) outlines are presented to citizens on behalf of rival social organizations, such as organized criminal groups. Where high levels of unemployment prevail and survival strategies present themselves in the illicit economy, the percentage that this illicit or underground economy comprises from the total Gross Domestic Product (GDP) will inevitably rise as well (Ott, 2002).

The existence of the underground economy is not a phenomenon specific to any one state, it is a phenomenon that can be found in developed and developing states; but in the last 15 years, particular attention has been paid to transitional states, among which Croatia is an example. For these states, higher rates of economic growth, lower rates of unemployment and the rapid expansion of the private sector can result in a rapid and successful transition, while lower rates of economic growth, higher rates of unemployment and the powerful role of the government, can lead to unequal distribution as well as a slow and unsuccessful transition to the market and a slow process of democratic consolidation (Ott, 2002).

This can be seen in the case of Croatia, which was once one of the wealthiest republics within Yugoslavia, but suffered an economic collapse during the 1991-95 war, as output collapsed and the country missed the early waves of investment in Eastern and Central Europe after the 1989 fall of the Berlin Wall. Between 2000 and 2007, Croatia's economic fortune saw a slight improvement, with a moderate GDP growth between 4 and 6 percent, led primarily by a rebound in tourism and credit-driven consumer spending. During the same period, the inflation rate remained tame, allowing for a stable kuna currency. However, Croatia is still facing problems with regard to a relatively high unemployment rate, a growing trade deficit and uneven regional development. In addition, the privatization efforts have been slow and at times hampered by stiff public and political resistance, due to the paternalistic culture within Croatia, where the state still has a large role in the economy (CIA, 2011).

The youth unemployment rate (15-24 years of age) in Croatia, as a percentage of the labor force (15-74 years of age), can be seen in Appendix 11. With regard to the youth unemployment rate, Croatia, together with Spain and Greece, is leading. The general unemployment rate is estimated to be 17,6 percent, according to the CIA (2011). The reasons for this rise in the unemployment rate from 2008 until 2011 are closely interlinked with the global financial crisis, which started in mid-2007. However, what one could conclude from this unemployment rate and the escalated and more frequent incidents of organized crime in 2008, which have been mentioned in section 4.4.1, is that they are closely interlinked and not just coincidental. Furthermore, deep-seeded economic problems and Croatia's liberalized market economy have all contributed to a rise in organized crime and TOC. In liberalized market economies organized crime tends to be "private", which means that entrepreneurial groups take advantage of different government policies, such as the prohibition of narcotics, weapons and prostitution, using the scarcity of these products as a business advantage (Köppel and Szekely, 2002). This can be seen with regard to the illicit arms trade which has

increased after the war (Pietz, et.al., 2006). ‘Robbed of trade revenue and legitimate supplies of weapons, the constituent republics, including Croatia, turned to smuggling. Those criminals of yesteryear became the powerful businessmen of today. Nobody asks these businessmen how they earned their first million. But this first million is the key to their social position and their success. They didn't break their connection with organized crime’ (Prodger, 2009). Goran Malić and Goran Flauder (in Prodger, 2009) claim that organized crime has become part of the establishment, to the point that Croatia is regarded to be a mafia with a state, as opposed to being a state with a mafia. This goes hand in hand with the capacity gaps and functional holes as outlined by Williams (2002), given that organized criminal groups take advantage of opportunities in the illegal economy, and provide citizens deprived of basic human needs with financial benefits in exchange for their service in the criminal enterprise. Therefore, as Migdal (1988), Ott (2002) and Williams (2002) claim, where unemployment rates are high and the government lacks the capacity to provide its citizens with social and economic welfare, the levels of crime and organized crime will increase, as can be deducted from the case of Croatia. Therefore, all these factors are indicators of a lack of the Croatian state’s capacity to provide its citizens with material and social security. The next section of this chapter will focus on the capacity gap of border control.

#### **4.4.3 Border control**

According to the Government of Croatia (Vlada, 2007), most of Croatia’s borders, which can be seen in Appendix 12, are the oldest in Europe. The northern and western borders are old and stable, while the eastern borders are a result of constant contraction and loss of territory, which began with the expansion of the Turkish Empire and continued until 1945 when borders between the republics in Yugoslavia were drawn after World War II. The borders of the Republic of Croatia are 3320km long, with land borders comprising 2372km and the maritime border comprising 948km. Croatia borders on five states with regard to land border: Bosnia and Herzegovina (1009.1km), Hungary (355.5km), Montenegro (22.6km), Slovenia (667.8km) and Serbia (317.6km); and with four states with regard to the territorial sea of each state, which accounts for 66.75km: Italy (27.1km), Slovenia (12.1km), and Montenegro (27km). The fourth state is Bosnia and Herzegovina, whose demarcation line with the Republic of Croatia lies within the internal waters of the Republic of Croatia, and accounts for 15km of maritime border (Vlada, 2007).

While border security with Hungary and Slovenia is relatively good, Croatia’s long coastline and its longest land border, shared with Bosnia and Herzegovina, have and continue to

constitute major problems with regard to border management, especially with regard to the prevention of the illicit arms trade. As mentioned in section 4.3.3, the MoI has confiscated about 58 weapons and 8100 rounds of ammunition in 41 cases of SALW smuggling in 2004. In 2005, the border police encountered and seized 62 weapons and 3200 rounds of ammunition in 31 cases of SALW smuggling, which may indicate both a rise in the amount of weapons smuggled per case, as well as an improvement of the border police's efforts to detect cases of SALW smuggling (Pietz, et.al., 2006). However, the actual figure of successfully smuggled SALW is probably higher, based on the fact that the size and equipment of the border police is still not sufficient. The border police face serious staff shortages, out of the 8500 envisaged positions, only 4000 were filled in 2006 (Pietz, et.al., 2006)..

Furthermore, Croatia has 189 border crossings, 20 of which are considered very important; however, police or customs can be avoided if one uses any of the 200 local roads that connect Croatia with Bosnia and Herzegovina, which are an effect of the multiple challenges that Croatia faces with regard to border control. These challenges are mainly due to shortages of personnel, skills, technology and equipment. Moreover, security and protective agencies are just beginning to evolve into effective barriers against international trafficking (Curtis and Karacan, 2002). According to the Croatian Customs Service, many crossing points are inadequately equipped and search equipment, such as X-ray vehicles and radiation detectors for cargo scanning, are particularly lacking. Moreover, despite the fact that customs officers receive regular training, procedures for inspection of military goods shipments and related documentation are not part of the training (SEESAC, 2006).

With regard to the illicit arms trade, in Chapter I, Patalong (2009) outlines four types of arms trade, two of which are legal and two illegal. The two illegal ones are divided into black market sales and clandestine operations. Both types of illicit arms trade are evident in the case of Croatia (Curtis and Karacan, 2002; Pietz, et.al., 2006). Since the Dayton Peace Accords ended the fighting in Serbia, Bosnia and Croatia in 1995, illegal arms trafficking from the Balkans has increased, due to fragmented and corrupt law enforcement in most of the region (Curtis and Karacan, 2002). Arms trafficking routes, which were established during the conflicts between 1991 and 1995, expanded as former soldiers became middlemen, traffickers took possession of arms, former enemies entered into cooperative smuggling ventures and customs officers, prone to corruption, let arms traffickers pass without properly checking their documentation (Pavlina, 2011). Therefore, these conditions, combined with the rough and often inaccessible terrain between Bosnia and Herzegovina, enabled these two states to

become major sources of illegal arms to both the IRA and the ETA (Curtis and Karacan, 2002).

Despite the fact that Croatia has been involved in the smuggling of weapons to separatist organizations such as the IRA and ETA, Croatia is mainly a transit state for the shipment of SALW along the Balkan Route to EU states, particularly the Netherlands, Germany and Italy (Raić, 2010). Additionally, there have been cases where Croatian arms dealers were protected by their connections with the HDZ. Not only were members of the HDZ involved in illicit arms trade affairs, as well as Croatia's ministers of defense and internal affairs, customs service and secret service (Curtis and Karacan, 2002). Journalist Jasna Babić (2001) characterizes this as 'a classic example of a well-organized mafia, composed of classic criminals and portions of the state apparatus'.

From the above-mentioned examples, it is clear that Croatia has been and still is facing multiple challenges with regard to the combating of organized crime, TOC and the illicit arms trade. The geographical position of the Croatian state, its history of violence and a prevalence of gun culture are only some of the reasons why Croatia has been and still is facing difficulties with its border control and the implementation of rules and regulations that meet the high standard as that of the states within the EU. Another reason for the ineffective border control is the lack of regional cooperation and adherence on behalf of the Croatian government to international agreements and norms (SEESAC, 2006).

However, since 2004 Croatia has taken a number of steps to ensure that it is participating fully in the relevant regional and international agreements, including the arms transfer control agreements. The twin prospects of EU and NATO membership were, and are, the main motivating factors for this progress. The steps towards reaching EU standards started in 2001 with the implementation of the CARDS 2001 Program on Integrated Border Management Twinning Project, and continued with the Twinning Project in 2003 to increase capacity building at the Border Police Directorate, and standards and conditions for safe and cost-effective border control (Pietz, et.al., 2006). In 2005, the Croatian government adopted two additional strategies under the 2001 CARDS Program: the Border Police Development Strategy and the Integrated Border Management National Strategy.

Furthermore, Croatia ratified the UN Firearms Protocol in 2005 and became signatory of the UN PoA in 2001. With regard to the EU Code of Conduct on Arms Exports, which Croatia

committed to in 2005, the criteria of the Code have not been properly incorporated into domestic legislation. While the Croatian arms transfer system distinguishes between commercial and state-authorized transactions, where the commercial transfer undergoes more rigorous assessment process, the state-authorized transfers do not. Additionally, the SALW transfer undergoes less rigorous assessment processes, due to the fact that its transfer is only monitored by the MoI, instead of the MoI, Ministry of Defense (MoD), the Ministry of Foreign Affairs (MFA) and Ministry of Economy (MoE) (SEESAC, 2006). Furthermore, lack of transparency on behalf of the arms transfer licensing process opens way for the proliferation of the illicit arms trade from and to Croatia. With a transparency score of 10,74 in 2010 and a score of 10,50 in 2011 on the Small Arms Transparency Barometer, Croatia is in the bottom half of the states that report on their arms transfers (SAS, 2011). Additionally, the score has not declined dramatically since 2010, but it has nevertheless declined, indicating that less effort has been put into documentation and reporting of arms transfers.

With regard to regional cooperation, the Croatian chief of police, Oliver Grbić, stated in an interview with Ante Raić (2010) that cooperation between Croatia and its neighboring countries has improved dramatically since 1995. In September 2010, a secure conference link was established between Zagreb and Beograd (the capital of Serbia) for the purpose of forming a center for the fight against organized crime and terrorism among the police of Croatia and Serbia. This video link is useful because it provides every-day quality communication on all the issues that are mutual for the two states, as well as enabling faster decision-making on important subjects and lowering the costs of cooperation.

Furthermore, Grbić (in Raić, 2010) stated that the main task of the chiefs of police in Croatia, and in all of its neighboring states, is to create legal precedents, for the purpose of attaining a higher qualitative level of cooperation and to use all the available instruments in the field of international police cooperation. He also claimed that the Croatian police are effective on all levels of regional cooperation; however, he sees the regional cooperation as most effective in the fight against TOC. Smuggling of drugs and weapons along the Balkan Route is seen as the most pressing issue, given that these forms of smuggling have been established during the conflicts in former Yugoslavia since 1991 and are therefore deeply rooted in all states of former Yugoslavia (Curtis and Karacan, 2002).

Grbić (in Raić, 2010) states that the biggest challenge for Croatia on the way of becoming an EU member state and for the implementation of Croatia in the Schengen border system<sup>28</sup> continues to be the 1009.1 km long border with Bosnia and Herzegovina. While Croatia has made certain improvements with regard to border control, including buying technical equipment, educating the border police, improving the infrastructure, informatization of the outside border, improving the coast guard, and the like, there is still room for improvement (Raić, 2010). Grbić (in Raić, 2010) states that TOC and the illicit arms trade are two of the most pressing issues for Croatia, while the main security issue is corruption. If one wants to eliminate threats of TOC and illicit activities in general, one first needs to address the issue of corruption both within business and government. Otherwise, the situation mentioned above, where diverse ministries, customs services and secret services were involved in the illicit arms trade in and from Croatia, will continue to be a national as well as a regional issue (Grbić, in Raić, 2010).

From the above-mentioned, one could conclude that Croatia has made certain progress with regard to the fight against organized crime. It has also established cooperative links with its neighboring states with regard to fighting TOC and the illicit arms trade. However, the lack of transparency of arms exports, high levels of corruption within government and business, adjacency to the crime-ridden states of former Yugoslavia and Croatia's history as being one of the major sources of illegal arms to both black markets in Europe and separatist groups, are all factors that contribute to the functional hole of weak interdiction capability. This functional hole is a result of the states' capacity gap with regard to effective border control as outlined by Williams (2002). In the next section the researcher will analyze Williams' (2002) capacity gap of legitimacy.

#### **4.4.4. Legitimacy**

As seen in Chapter II, the definition of legitimacy by Migdal (1988) is: the acceptance of the state's rules of the game, its social control as true and right.

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<sup>28</sup> 'The Schengen area and cooperation are founded on the Schengen Agreement of 1985. The Schengen area represents a territory where the free movement of persons is guaranteed. The signatory states to the agreement have abolished all internal borders in lieu of a single external border. Here common rules and procedures are applied with regard to visas for short stays, asylum requests and border controls. Simultaneously, to guarantee security within the Schengen area, cooperation and coordination between police services and judicial authorities have been stepped up. Schengen cooperation has been incorporated into the European Union (EU) legal framework by the Treaty of Amsterdam of 1997. However, all countries cooperating in Schengen are not parties to the Schengen area. This is either because they do not wish to eliminate border controls or because they do not yet fulfill the required conditions for the application of the Schengen *acquis*' (Europa, 2011).

In Croatia the socio-economic factor of general welfare, as seen in section 4.4.2 is not at a satisfactory level, given that a large proportion of the population is unemployed, thereby exhibiting a gap in the state's capacity to provide its citizens with social and economic welfare. Furthermore, the socio-economic factor of internal order, as seen in section 4.4.1 is a factor that contributes more to the lack than the abundance of legitimacy of the Croatian state, given that the level of trust in the police and courts, which are the main institutions that enforce the law, is not at a high level.

With regard to the political determinants as outlined by Easton (in Gilley, 2006) in Chapter II, particularly the state's ability to control corruption, Croatia scores low. As can be seen in the Global Corruption Barometer (Transparency International, 2010), the answers among Croats to the question of how the level of corruption in this country changed in the past three years, were: 10 percent said it had decreased, 33 percent said it had stayed the same and 57 percent said it had increased, despite the government's efforts to fight corruption. When asked: How would you assess your current government's actions in the fight against corruption? the answers were: 56 percent think it is ineffective, 28 percent think it is effective, and 15 percent think it is neither. Furthermore, when asked which institutions and to what extent they are affected by corruption, the Croats answered as seen in Appendix 13. Additionally, according to the Gallup Balkan Monitor, (2010) Croat's perception of corruption within government and business rose from 2008 to 2010, which is a clear indicator of the government's lack of effort to fight corruption.

Moreover, the Balkan Monitor (2010) conducted a survey in which respondents were asked about their satisfaction with the current government and institutions and their performance, which can be characterized as one of the political determinants that affect a state's level of legitimacy as outlined by Gilley (2006). When asked whether they feel that there is a party or politician that represents their political views, 62 percent of Croats answered no. However, in 2006 the number of people that answered no was 71 percent, which means that the current government is improving when it comes to the notion of affiliation, and exhibits that the rules of the game have become more and more accepted by the citizens. Nevertheless, over two thirds of Croats do not see the government's efforts to fight organized crime as effective enough, as seen in section 4.4.1, which means that the government's performance is not seen as satisfactory.

Furthermore, when it comes to Croatia's concerns with the illicit arms trade, as seen in section 4.3.3, one could say that the smuggling of arms increased after the war ended in 1995, which can be connected to the decreasing legitimacy of the government and the president in power at that time. In 1990, when Croatia fought for independence, and the HDZ questioned the legitimacy of the old order, it established itself as the alternative government and gained its legitimacy through relatively free and fair democratic procedures (Čular, 2000). However, after the war ended in 1995, the HDZ's decreasing popularity, and rhetoric of nationalism which favored ethnic Croats beyond any other ethnic groups within Croatia, exhibited the functional hole of affiliation among the rest of the citizens. This opened up the way for former enemies and people from different ethnic groups to enter into smuggling ventures, thus fostering authority and affiliation among Croatian citizens, built on patron-client relationships (Curtis and Karacan, 2002).

With regard to the current government in power, the reformed HDZ, the recent protests in Croatia that occurred during the first two quarters of 2011 indicate that the democratic principles of freedom of assembly and freedom of protest are upheld. However, the nature of the protests, which revolved around the difficult economic situation in the last three years, the ineffective fight against corruption and organized crime, and high levels of unemployment, culminated in the demand of the citizens for the current government to step down. This indicates that the government is not living up to the expectations of the citizens; it is not providing them with the political goods that are a crucial part of a democracy, and thus exhibits a decline in legitimacy, which in turn opens the way for rival social organizations, such as organized criminal groups, to build authority and affiliation based on patron-client relationships (Williams, 2002; Economist, 2011a). It needs to be said that in all states in transition, the level of political legitimacy that the government and the state in general enjoy, will inevitably vary over time; therefore, the Croatian case is not an exception in this regard. However, in order to become a consolidated democracy, a state in transition needs to exhibit high levels of legitimacy (Williams, 2002; Gilley, 2006).

#### **4.5 Conclusion**

This aim of this chapter was to provide the reader with a better understanding of the reasons behind Croatia's difficulties with TOC and the illicit arms trade that have been on the rise since the early 1990s. The framework based on Williams (2002) capacity gaps and functional holes that was applied to South Africa was also applied to Croatia. Additionally, the literature by Migdal (1988), Beck and Laeven (2006), and Licht, Goldschmidt and Schwartz (2007)

outlined in Chapter II, which suggests that a state in transition cannot become a consolidated democracy without high levels of social control, social welfare, respect for the rule of law and legitimacy, was used to supplement Williams' (2002) framework, both with regard to South Africa and Croatia.

From the above-mentioned examples, Croatia has clearly fulfilled certain criteria on its way to becoming a consolidated democracy; and while president Josipović claimed on 8 July 2011 at the Croatia Summit, that Croatia has entered a period of democratic consolidation, Freedom House (2011) still holds its reservations, and states that Croatia is still only a semi-consolidated democracy. This is due to several factors: the criminal justice system is still weak; the trust in the judicial system, the police and the courts is still low (only 30 percent of Croats trust the judicial system and courts, according to English (2008)); when it comes to the citizens approval of the governments crime fighting performance, more than two thirds of Croats believe it to be ineffective; high levels of corruption, which the government is fighting, but not fast enough, indicate that the state has a gap in its capacity to maintain social order.

Furthermore, the high unemployment rate, high inflation, and the high level of inequality within the Croatian society indicate that the state is lacking the capacity for the provision of welfare for its citizens, which forces the citizens to seek other survival strategies. This was to be seen in 2008, right after the effects of the global financial crisis hit Croatia, levels of unemployment skyrocketed and incidents of organized crime intensified. Moreover, the understaffed police service and lack of monitoring capacity of the border police suggest that Croatia still has issues regarding the border control. Nevertheless, several initiatives for the improvement of the border control have been initiated in the last four years, and Croatia is almost completely aligned with the Schengen border system. Lastly, the relatively low levels of political legitimacy on behalf of the government and institutions indicate that the Croatian government lacks authority and affiliation, thus opening the way for organized crime and the illicit arms trade to build on patron-client relationships, thereby fostering affiliation and trust which the state is incapable of doing.

## **Chapter V: Comparison and conclusion**

### **5.1 Introduction**

This final chapter aims to summarize and connect the different aspects and findings of this research study. The first part of this chapter will outline the progress of this study by briefly stating the aim, purpose, research question, research design and theoretical approach as outlined in Chapter I. The second part of this chapter will evaluate this research study and summarize the findings of both Chapters III and IV, and compare the two case studies that have been used in this research. The last part of this chapter will outline the possible implications for both South Africa and Croatia with regard to TOC and the illicit arms trade, as well as the consolidation of democracy, and indicate possible areas for further research on this topic.

### **5.2 Progress of Research Study**

In Chapter I of this thesis, the researcher mentioned that SALW are considered to be the world's authentic "weapon of mass destruction", given that they kill over 1300 on a daily basis and at least half a million every year (Patalong, 2009). While SALW can be traded both through licit and illicit routes, most of them end up in the hands of organized criminal groups and/or terrorist organizations. Furthermore, as explained in Chapter II, Kregar and Petričušić (2010) claimed that all states have organized crime, but in some instances organized crime has the state, meaning the organized crime holds the power, which the state is lacking. What can be gathered from this is that organized crime exists in all states, whether strong or weak, but it flourishes in those states that are weakened by specific factors. These factors can be translated into seven capacity gaps and functional holes, as outlined by Williams (2002). Williams (2002) claims that the existence of these capacity gaps and functional holes characterizes states in transition, while the lack thereof is an indicator of a strong state. This thesis aimed to analyze the proliferation of the illicit arms trade, as a part of TOC in states in transition using the framework outlined by Williams (2002). Furthermore, this thesis set out to conduct a comparative study of two states in transition, South Africa and Croatia, in order to gain more knowledge about the political systems and transitional processes in both states, and to better understand the similarities and differences between the two states. The researcher wanted to know whether these similarities and differences would prove to have a different impact on the outcome of this study. While the researcher does not aim to make generalizations about all transitional states that experience high levels of TOC, the researcher wanted to gain further insight into the subject of illicit arms trade in South Africa and Croatia, which then may be

applicable to other states in transition. Hence, the underlying rationale of this study was to examine the relationship between the illicit arms trade and states in transition, which would contribute to the field of study of states in transition and provide a possible frame of reference for future research on this topic. Consequently, an aspect of the complex relationship between the illicit arms trade and states in transition is the variety of possible contributing factors to the proliferation of the illicit arms trade, which formulated the main research question: ***How do the capacity gaps of social control, social welfare, border control and legitimacy contribute to the proliferation of the illicit arms trade in states in transition?***

In a two-fold approach, this research firstly set out to provide a theoretical background to the study of organized crime in states in transition; while secondly aiming to answer the main research question. For this purpose, the theoretical framework developed by Williams (2002) was used. While Williams (2002) defines seven capacity gaps and functional holes that both contribute to the rise in TOC, they also serve as characteristics of states in transition. However, this research has only focused on four of those capacity gaps and functional holes: social control, social welfare, legitimacy and border control. The researcher has decided to focus only on those four, based on an analysis of the literature by Migdal (1988), Williams (2002), Beck and Laeven (2006) and Licht, Goldschmidt and Schwartz (2007) who claim that a state in transition cannot finalize the transitional process and become a consolidated democracy if high levels of social control, social welfare, respect for the rule of law and legitimacy are not obtained. The gap in the state's ability to maintain social control, social welfare, legitimacy and to enforce the rule of law, contributes to the rise in organized crime and TOC, which in turn weakens the state even further, and hinders it from completing the transitional process and becoming a consolidated democracy.

While Chapters I and II served more as a theoretical background, Chapters III and IV set out to analyze how the four aforementioned capacity gaps and functional holes contribute to the proliferation of the illicit arms trade in South Africa and Croatia.

### **5.3 Comparison and Evaluation of the Research Study**

This final evaluation of the research study will summarize the findings with regard to both case studies, before moving on to the overall results and concluding remarks. This research set out to find out how the four capacity gaps of social control, social welfare, border control and legitimacy contribute to the proliferation of the illicit arms trade in states in transition. A comparative study of South Africa and Croatia was chosen to enlighten the researcher about

the similarities and differences between the two states, so that the researcher and the reader could better understand each respective state's issue with TOC and the illicit arms trade. In the next few paragraphs the researcher aims to outline the differences and similarities with regard to the transitional period and TOC, before moving on to the last part, where each capacity gap will be compared in South Africa and Croatia.

### *5.3.1 Similarities and Differences between South Africa and Croatia*

While the history of South Africa and Croatia is quite different, it still has certain similarities. Both states are highly fragmented with regard to ethnicity and religion. However, while a Serbian nationality was coerced onto all other ethnic groups within former Yugoslavia, thereby fostering a national identity based on one transcendent nationality, in South Africa, the search for a South African identity was hampered by a small white minority, who advocated for segregation rather than unity. Furthermore, while Croatia had to deal with civil war, state-building and democratization simultaneously, South Africa never actually erupted into civil war, even though it was on the brink of it during the negotiating years and first years of transition. Furthermore, both states have different political systems, given that Croatia is a parliamentary republic and South Africa is a constitutional parliamentary republic, or a presidential republic. Moreover, one of the most prominent differences between the two states is their geographical size, which may contribute in different ways to the capacity gap of border control; however, that will be discussed later on.

While there are undoubtedly many differences, there are also many similarities, especially with regard to the transitional period. Both South Africa and Croatia have experienced difficulties with privatization, and demonopolization of the media, corruption and reform of the legal system. In short, both states have gone through a period of infantilization, which, according to Klein (2007), is common to transitional states. Furthermore, both states have seen a rapid increase in unemployment, poverty, corruption within business and government, crime and domestic and transnational organized crime. Additionally, both South Africa and Croatia have experienced an increase in the illicit arms trade, particularly in the period after 1991 when both states embarked upon a period of transition. In the next few paragraphs a summary and comparison of the capacity gaps and functional holes as outlined by Williams (2002) will be given, in order to aid the reader in understanding the differences and similarities between South Africa and Croatia.

### *5.3.2 Social control*

With regard to social control and the institutions and authorities that are meant to enforce the law, such as the police and the courts, South Africa has been exhibiting a gap in this regard. The criminal justice system has suffered from poor management and coordination failure. Investigation of serious offences and the conviction of people involved in organized crime were hampered by the lack of resources and lack of manpower within the SAPS, as well as the use of bribes of police officers and judges by organized criminal groups to avoid investigation and prosecution (Minaar, 1999; Govender, 2011). Moreover, a study conducted by Mattes (2007) showed that public trust in the police and the SADF was only at 48 and 50 percent respectively. According to Gallup Poll (Rheault and Tortora, 2008), the judiciary in South Africa enjoyed more legitimacy in 2007, compared to the results from 1997 (Good, 1997). On another hand, the efficiency of the police in fighting organized crime, as perceived by the public, is one of the worst in the continent, given that only 35 percent of South Africans characterized the police efforts as ‘well’ or ‘very well’ (Mattes, 2006).

In comparison to South Africa, Croats have similar views of the police, given that 51 percent distrusted the police, even though they see it as the main security provider (Pietz, et.al., 2006). The judiciary in Croatia, in comparison to South Africa, enjoys much less popular support; 30 percent of Croats stated that they trust the judicial system and courts (English, 2008). This is probably due to the fact that the judiciary has shown a lack of capacity to prosecute crimes, which stems from issues of detecting and citing of proof of crime. Additionally, organized criminal groups intimidate witnesses and prosecutors, and bribe judges in order to avoid prosecution (Dobovšek, 2006; Prodger, 2009). Furthermore, the efforts of the government to fight organized crime and TOC are inefficient due to lack of experience, lack of manpower and lack of technical equipment.

While the difficulties that Croatia and South Africa are facing with regard to the capacity gap of social control may be of different magnitude, the fact that both states have exhibited problems with corruption of government officials, the police and courts, is alarming. If one wants to enhance the state’s capacity to enforce social control, one first needs to address issues of corruption, which is endemic to these two states.

### *5.3.3 Social welfare*

With regard to the capacity gap of social welfare, South Africa has been described as a country with Congolese standards for the black population and Californian living standards for the white population (Klein, 2007). The deep social and economic division between black

and white, between rich and poor, has taken its toll on South Africa, both before and during the transition. A Gini coefficient of 0.6 suggests that the gap between the rich and poor is on the rise. The number of people living in poverty is estimated to be 23 percent of the total population (World Bank, 2011). Moreover, while South Africa is described as the developing world's most generous welfare state, based on the fact that one in four people receive some sort of grant, the HDI (HDR, 2010) ranks South Africa 100<sup>th</sup> out of 169 countries; indicating that the level of development is not satisfactory. This in turn means that the state is exhibiting a lack in its capacity to provide its citizens with jobs, which would make their life easier, while simultaneously lowering the level of unemployment and poverty. Furthermore, this lack of provision for the welfare of the citizens has fostered a rise in organized crime and TOC and created incentives for people to get involved in organized crime, as it presents them with rival survival strategies and provides them with financial benefits (Migdal, 1988; Mail and Guardian, 2011). This rise in organized crime and TOC is a product of the capacity gap of social welfare, but also a factor that causes further rise in unemployment, given that these rival social organizations cost the government both jobs and money (Mail and Guardian, 2011).

In comparison to South Africa, Croatia has not been hit equally hard by rising levels of people living in poverty, but the unemployment rate in Croatia has been increasing during the transitional period, especially between 2009 and 2010, when it grew from 16,1 to 17,6 percent (CIA, 2011). Additionally, the level of youth unemployment in Croatia is, after Spain and Greece, the highest in Europe (Economist, 2011b). Furthermore, the payment of taxes is a new phenomenon in Croatia, which in combination with corruption, extortion and other forms of illegal activities, leads to the weakening of the state's capacity to provide its citizens with social and economic welfare. This has in turn made the underground economy in Croatia flourish and take up a large part of the total GDP (Ott, 2002). Furthermore, the illicit arms trade business that was developed during the Homeland War has made a handful of people, mostly former soldiers and former enemies, turn into renowned businessmen, who until this day have not cut their ties with organized crime, and render Croatia a mafia with a state, rather than the other way around (Prodger, 2009). These organized criminal groups use patron-client relationships and promise financial benefits to those that are deprived of basic human needs due to a lack of opportunities in the legal economy, and provide them with alternative survival strategies within the illicit economy (Migdal, 1988; Williams, 2002).

#### *5.3.4 Border control*

Border control in South Africa was relatively strict under the apartheid regime; however, under the transitional period the border control has relaxed, making it difficult to determine who and what enters South Africa. Furthermore, border control has a direct impact on the security of all South Africans. However, the 4500km land border and the 2800km sea border, and the deep-water harbors in Port Elizabeth, Durban and Cape Town, and the lack of resources, technical equipment and trained manpower, make the monitoring and detecting of illicit trafficking in diverse commodities quite difficult. Moreover, the security of South Africa and the efficient monitoring of its borders is a task for both the South African government as well as the governments of its neighboring countries. Therefore, several regional initiatives, such as SARPCCO, ISDSC and the like have taken action. Nevertheless, the border security in South Africa is not at a satisfactory level given that the SAPS is reluctant and under-resourced and the customs officials are prone to corruption, thus making South Africa's borders porous and easily penetrated by TOC and illicit arms traffickers (Williams and Brooks, 1999; Baker, 2009).

Croatia has also had difficulties with its border control, especially with regard to the 1099,1km long border with Bosnia and Herzegovina. Many of Croatia's crossing points are inadequately equipped; customs officers are not adequately trained and are in addition prone to corruption. Furthermore, Croatia established arms trafficking routes with other European states during the Homeland War, which last until this day. The existence of these routes and the fact that they are still intact is due to many reasons: the customs officers are corrupt and let arms traffickers cross the border without properly checking their documentation (Pavlina, 2011), former soldiers became middlemen, and the HDZ has provided arms traffickers with protection in exchange for financial benefits (Babić, 2001). Additionally, Croatia has, like South Africa, established regional initiatives, such as the CARDS 2011 Program on Integrated Border Management to combat TOC and the illicit arms trade. The purchase of new technical equipment, infrastructure improvements and the education of the border police are still in progress. However, the most pressing issue that Croatia is facing while trying to improve its border control is the fact that organized criminal groups bribe customs officers, border police, government officials and judges in order to succeed in their criminal endeavors without being caught and prosecuted (Raić, 2010; Curtis and Karacan, 2002).

### 5.3.5 *Legitimacy*

The last capacity gap that this research has addressed is legitimacy. Legitimacy as discussed in Chapters II, III and IV can only be achieved if the citizens of a particular state accept the state's rules of the game and its social control as true and right. Legitimacy of a state can be seen in the degree of affiliation and authority it exhibits over its citizens. If a state does not have legitimacy, rival social organizations will flourish. Examples of such rival social organizations are organized crime groups, TOC groups and gangs on the Cape Flats in South Africa. All of these organizations want to achieve authority and affiliation among the citizens in South Africa, by presenting their own rules, norms and institutions. Williams (2010), suggests that blending of different norms, rules and institutions facilitates a complex and contradictory legitimization process, which challenges the conventional understanding of authority and democracy in South Africa. Neither the state nor these rival social organizations can exercise exclusive control to the fullest of their ability (Williams, 2010). This contradictory legitimacy in South Africa, and the political transition that followed after apartheid, have had an impact on the way South Africans see authority and affiliation. According to Mattes (2007), the legitimacy of the new South Africa is very high, but the legitimacy of democracy and political institutions is very low compared to other African countries. This is mainly based on the perception of performance and the delivery of goods that the government had promised, but has not been able to deliver (Mattes, 2007). Because the government has not been able to deliver the goods it has promised, other rival social organizations have emerged. Organized criminal groups promise certain benefits, such as water, shelter, employment and the like, to all those who are deprived of basic human needs, thereby generating affiliation and trust, which in turn enables them to exercise authority, at least on the domestic level (Williams, 2002; Migdal, 1988). This is a clear indicator of the state's gap in the capacity to maintain legitimacy as outlined by Williams (2002), given that the citizens in South Africa turn to rival social organizations that have managed to build affiliation and loyalty based on patron-client relationships.

Croatia, as with South Africa, has organized criminal groups that foster loyalty vis-à-vis the state, based on patron-client relationships. With regard to the legitimacy of the state apparatus in Croatia, in a survey conducted by Balkan Monitor (2010), 62 percent of respondents answered 'no' when asked whether they feel that the current government reflects their political views. Furthermore, when asked about the government's efforts to fight corruption and organized crime, 52 percent said it was inefficient. While the government of Croatia enjoyed high levels of legitimacy in the first years of independence and transition, in 1995

after the Homeland War ended, the legitimacy of the HDZ, which was in power at that time, declined dramatically due to a nationalist rhetoric, which favored ethnic Croats beyond any other ethnic group in a very ethnically complex society. This indicated that the government was not capable and/or willing to foster affiliation among all citizens in Croatia, which resulted in the rise in organized criminal groups, particularly arms traffickers who fostered affiliation and loyalty based on patron-client relationships, like in South Africa. In comparison to South Africa, where the institutions and democracy enjoy lower levels of legitimacy, the level of legitimacy that democracy in Croatia enjoys is high, while the government and institutions exhibit a far lower level of popular support. This is mainly due to the perceived corruption among government officials, the judiciary, political parties and parliament (Transparency International, 2010).

#### *5.3.6 Comparative Conclusion*

While the researcher acknowledges the possibility that other factors, which have not been included in this research, may also contribute to the proliferation of the illicit arms trade in states in transition; with regard to this research, the four capacity gaps that have been analyzed have all contributed in their own way to the proliferation of the illicit arms trade in South Africa and Croatia. In both South Africa and Croatia, the low levels of trust in the judicial system and the police, due to high levels of corruption in both instances, indicate that the state has difficulties to impose social control. This in turn opens up the way for organized crime to work with impunity, given that organized criminal groups use bribes to obtain information from police officers about raids, and pay money in exchange for evidence against them to be lost. With regard to the other capacity gap, neither South Africa nor Croatia has managed to provide its citizens with social welfare to the extent that the citizens then would not need to look for alternative survival strategies. High levels of unemployment and inequality, as well as high levels of people living in poverty, especially in South Africa, all lead to the functional hole of lack of provision for the welfare of the citizens, which in turn opens the way for organized criminal groups to recruit the most vulnerable members in society and provide them with the material and social benefits that the state is failing to do. With regard to the third capacity gap of border control, both South Africa and Croatia have experienced difficulties when it comes to monitoring what comes in and out from their respective territories. This is due to a number of factors: lack of trained manpower, lack of resources, corruption among custom officials and police, as well as the geographical adjacency to crime-ridden neighboring areas, especially in the case of Croatia. These are all factors that contribute to the lack of interdiction capacity which enables organized criminal

groups to traffic illicit goods across borders with minimum risk, but maximum profit. Lastly, the last capacity gap of state legitimacy contributes to the rise in the illicit arms trade in both South Africa and Croatia, given that both states lack the needed level of trust and affiliation among their citizens. This in turn forces the citizens to seek trust and affiliation among other social organizations, such as organized criminal groups, illicit arms traffickers and the like, which build on patron-client relationships in order to maintain the legitimacy that the state is lacking.

Furthermore, the weaknesses that characterize a state in transition, as outlined by Williams (2002), lack of social control, due to inefficient criminal justice systems, lack of provision for the welfare of the citizens, low levels of legitimacy and porous borders, have contributed to the rise in organized crime, TOC and the illicit arms trade in both South Africa and Croatia; which further weakens an already weakened state, debilitates the transitional process and hampers the consolidation of democracy. As seen from the statements by Helen Zille (2011) in section 3.4 and Freedom House (2011) in section 4.4, neither South Africa nor Croatia are fully consolidated democracies, indicating that the aforementioned weaknesses are still prevalent. However, the weaknesses have not come as a surprise, based on a history of violence, a prevalent gun culture and the practice of corruption. Williams and Brooks (1999) claim that the transition to electoral democracy creates major new opportunities for the establishment of more exchange relationships between criminals and politicians and pre-existing practices of corruption make the creation of the 'political-criminal' nexus more likely. In Croatia, the 'political-criminal nexus has been seen in that the HDZ has protected organized criminals and illicit arms traffickers from prosecution, in exchange for financial benefits (Babić, 2001). In South Africa it has mostly been visible in the connection between customs officials, home affairs officials and judges (Minnaar, 1999; Govender, 2011). Before corruption is eradicated to the fullest of the state's capacity, problems with organized crime, TOC and the illicit arms trade will continue to plague South Africa and Croatia, and hamper their outlooks for becoming consolidated democracies.

#### **5.4 Implications for Further Research**

Several implications and recommendations for further research can be inferred from this research. Firstly, while this research focused only on factors such as capacity gaps, outlined by Williams (2002), other factors such as geographic location, culture, history and the like have an enabling effect on illicit activities, especially on TOC. Therefore, the possibility of incorporating those factors into a more comprehensive framework could be explored.

Secondly, despite the fact that this research has conducted a comparative study of South Africa and Croatia, as examples of states in transition, it has by no means established a general picture of states in transition and their issues with organized crime, TOC and the illicit arms trade; therefore, more case studies are necessary to confirm the findings here; e.g. comparative studies of several other states in Southern Africa, South-Eastern Europe and Latin America. Thirdly, while this research has provided an in-depth analysis of how the four capacity gaps as outlined in the framework by Williams (2002) contribute to the proliferation of the illicit arms trade, a more in-depth analysis of the remaining three or all seven capacity gaps with regard to the illicit arms trade in states in transition is warranted. Lastly, while due to a lack of funds and limited time, this research only used secondary data, the researcher anticipates that field research could contribute to further research.

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## Appendices

### **Appendix 1: Timeline of South Africa (Compiled from BBC, 2011)**

**4<sup>th</sup> century**- migrants from the North settle and join the indigenous Sen and Khoikhoi people

**1480s** - Portuguese navigator Bartholomeu Dias is the first European to travel round the southern tip of Africa

**1652** - Jan van Riebeeck, founds the Cape Colony at Table Bay

**1795** - British forces seize Cape Colony from the Netherlands. Territory is returned to the Dutch in 1803; ceded to the British in 1806

**1816-1826** - Zulu empire expanded by Shaka Zulu

**1835-1840** - Boers leave Cape Colony in the 'Great Trek' and found the Orange Free State and the Transvaal.

**1856- 1880** - Natal separates from the Cape Colony; Boers proclaim the Transvaal a republic; Diamonds discovered at Kimberley; Britain annexes the Transvaal; Zulus in Natal defeated by the British

**1880-81** - first Anglo-Boer War

**Mid 1880s** - Gold is discovered in the Transvaal: beginning of gold rush

**1899** - The second Anglo-Boer War begins

**1902** - Treaty of Vereeniging ends the second Anglo-Boer War

**1910** - Formation of Union of South Africa by former British colonies of the Cape and Natal, and the Boer republics of Transvaal, and Orange Free State.

**1912** - Native National Congress founded, later renamed the African National Congress (ANC)

**1913** - Land Act introduced to prevent blacks, except those living in Cape Province, from buying land outside reserves

**1914** - National Party founded

**1918** - Secret Broederbond (brotherhood) established to advance the Afrikaner cause.

**1919** - South West Africa (Namibia) under South African administration

**1948** - Policy of apartheid (separateness) adopted as National Party (NP) takes power.

**1950** - Population classified by race. Group Areas Act passed to segregate black and white people. Communist Party banned. ANC responds with campaign of civil disobedience, led by Nelson Mandela.

**1960** - Seventy black demonstrators killed, also known as the Sharpeville Massacre. ANC banned

**1961** - South Africa leaves the Commonwealth and becomes a republic. Mandela heads ANC's new military wing that launches sabotage campaign

**1960s** - International pressure against government: South Africa excluded from Olympic Games.

**1964** - ANC leader Nelson Mandela sentenced to life imprisonment

**September 1966** - Prime Minister H. Verwoerd assassinated

**1970s** - More than 3 million people forcibly resettled in black 'homelands'

**1976** - More than 600 killed in clashes between black protesters and security forces during uprising in Soweto

**1984-89** - Township revolt, state of emergency

**1989** - FW de Klerk replaces PW Botha as president, meets Mandela. Public facilities desegregated. Many ANC activists freed

**1990** - ANC unbanned, Mandela released after 27 years in prison. Namibia independent

**1991** - Start of multi-party talks

**1993** - Agreement on interim constitution

**April 1994** - ANC wins first non-racial elections. Mandela become president, Government of National Unity formed, Commonwealth membership restored, remaining sanctions lifted. South Africa takes seat in UN General Assembly after 20-year absence

**1996** - Truth and Reconciliation Commission chaired by Archbishop Desmond Tutu begins

**1996** - Parliament adopts new constitution. National Party withdraws from coalition

**1998** - Truth and Reconciliation Commission report brands apartheid a crime against humanity; ANC accountable for human rights abuses

**1999** - ANC wins general elections, Thabo Mbeki elected president

**2000** - ANC prevails in local elections. Recently-formed Democratic Alliance captures nearly a quarter of the votes

**April 2001** - 39 multi-national pharmaceutical companies halt a legal battle to stop South Africa importing generic Aids drugs

**May 2001** - allegations of corruption surrounding a 1999 arms deal involving British, French, German, Italian, Swedish and South African firms. In November, the government is cleared of unlawful conduct

**October 2002** - Bomb explosions in Soweto and a blast near Pretoria are thought to be the work of right-wing extremists. Separately, police charge 17 right-wingers with plotting against the state

**May 2003** - Walter Sisulu, a key figure in the anti-apartheid struggle, dies

**November 2003** - Government approves major program to treat and tackle HIV/Aids. Cabinet had previously refused to provide anti-Aids medicine via public health system

**April 2004**- Ruling ANC wins landslide election victory, gaining nearly 70 percent of votes. Thabo Mbeki- second term as president

**June 2005** - President Mbeki sacks his deputy, Jacob Zuma, in the aftermath of a corruption case

**August 2005** - Around 100,000 gold miners strike over pay

**2006** - Former deputy president Jacob Zuma is acquitted of rape charges by the High Court in Johannesburg. He is reinstated as deputy leader of the governing African National Congress

**September 2006**- Corruption charges against former deputy president Zuma are dismissed

**April 2007** - President Mbeki, urges South Africans to join forces to bring rapists, drug dealers and corrupt officials to justice

**May 2007** - Cape Town mayor Helen Zille elected new leader of the main opposition Democratic Alliance (DA)

**June 2007**- public-sector workers take part in the biggest strike since the end of apartheid

**December 2007** - Zuma is elected chairman of the ANC

**2008** - Wave of violence directed at foreigners hits townships across the country

**September 2008** - judge throws out corruption case against ruling ANC party chief Zuma

**2009**- Appeals court rules that state prosecutors can resurrect their corruption case against ANC leader Jacob Zuma, opening the way for Mr Zuma's trial to be resumed, just months before general election.

**April 2009** - corruption case against Jacob Zuma dropped; May- Zuma elected president

**July 2009** – violent protests in township: residents complaining about poor living conditions

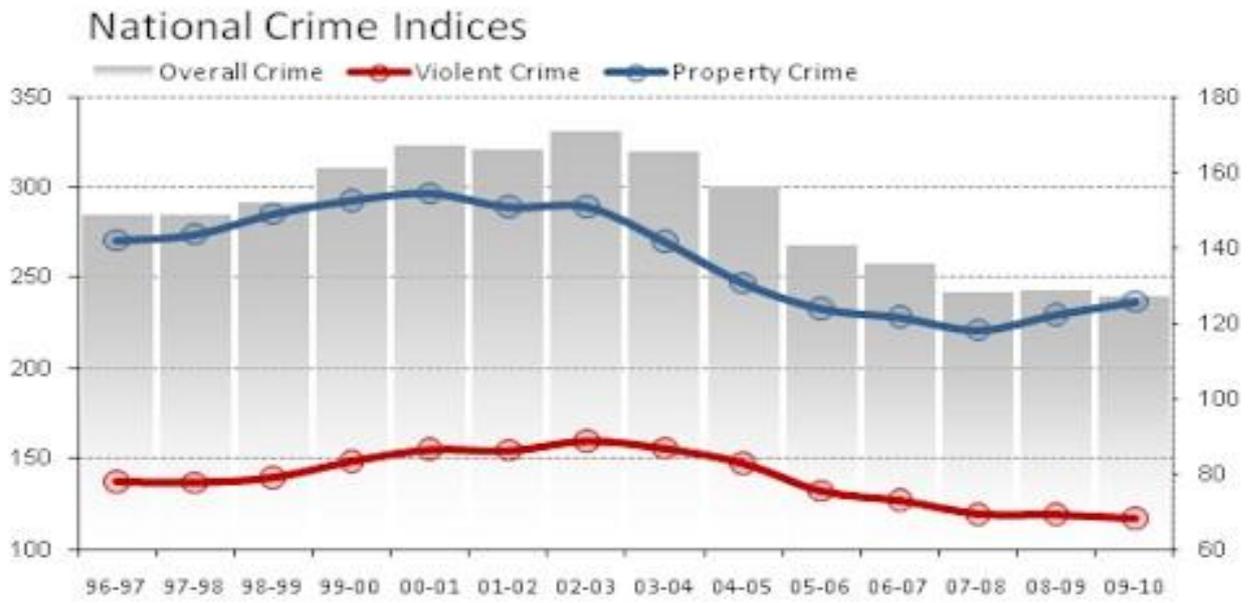
**June 2010** - South Africa hosts the World Cup football tournament

**August 2010** - Civil servants stage nation-wide strike

**May 2011** - Local elections: opposition DA nearly doubles its share of the vote since the last poll

President Zuma mediates in Libyan conflict

**Appendix 2: Total crime in South Africa (Bijker, 2010)**



**Appendix 3: Public trust in institutions in South Africa 1998-2007 (Roberts, 2008)***Table 1: Trust in Institutions,\* 1998–2007 (ranked in descending order by levels of trust in 2006)*

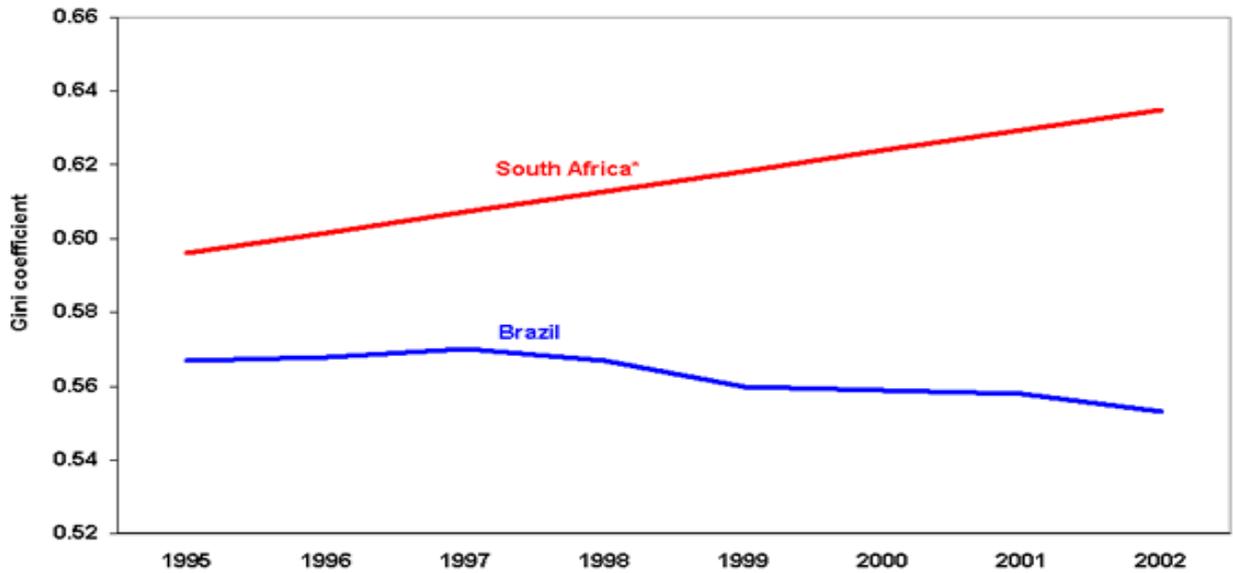
Trust in:	1998	1999	2000	2001	2003	2004	2005	2006	2007
Churches	82	81	74	81	84	81	81	82	82
The SABC	..	..	..		75	73	71	72	..
The Independent Electoral Commission (IEC)	..	54	49	63	63	69	65	68	..
National government	47	60	43	52	57	69	64	59	52
Big business	56	55	39	43	57	55	53	56	..
Parliament	..	..	..	..	57	65	59	55	46
Your provincial government	41	50	34	..	52	63	59	54	..
Courts	42	45	37	45	50	58	56	52	49
Defence Force	48	..	45	49	62	56	59	49	..
Your local government	37	48	32	38	45	55	48	44	34
The police	42	47	39	40	42	46	45	39	39
Political parties	30	39	29	27	..	..	42	37	27
Average (all items)	47	53	42	49	59	63	59	56	47
Sample size	2 182	2 672	2 611	2 530	4 980	5 580	5 733	5 843	3 163

Sources: HSRC EPOP survey 1998–2001; HSRC SASAS 2003–2007

\*Percentage saying that they 'strongly trust' or 'trust' in each of the following institutions in South Africa at present. Figures shaded in green indicate year-on-year improvements in trust, while figures in orange represent year-on-year declines in trust.

**Appendix 4: The Gini coefficient of South Africa and Brazil-compared (Avirgan, 2006)**

**Figure A. GINI co-efficients for South Africa and Brazil, 1995-2002**



\*South African GINI co-efficient linearly interpolated between 1995 and 2002.

Source: Data and analysis from NALEDI, South Africa ([www.naledi.org.za](http://www.naledi.org.za)) and DIEESE, Brazil ([www.dieese.org.br](http://www.dieese.org.br)).

### Appendix 5: Map of South Africa (Midrand, 2011)



## **Appendix 6: Timeline of Croatia (Compiled from Ramet and Matić, 2007; BBC, 2011)**

**Early-late Pleistocene** – Neanderthal site of an early human population known as Krapina Man north-west from Zagreb

**End of 3<sup>rd</sup> century CE**- Roman emperor Diocletian constructs a huge palace in Split

**4<sup>th</sup> and 5<sup>th</sup> century CE**- invasion by Huns and Germanic tribes

**Early 7<sup>th</sup> century**- arrival of Slavs, settling on the territory of present-day Croatia, including the Adriatic coast

**803**- Croatia under Charlemagne and convert to Christianity

**840-80**- growth of the Croatian medieval state under Dukes Trpimir, Domagoj and Branimir

**910-28**- King Tomislav unites Pannonian Croatia and Adriatic Croatia

**1058-89**- expansion of the Kingdom of Croatia during the consecutive rule of King Petar Krešimir and Dmitar Zvonimir; incorporation of Byzantine Dalmatia and integration of Dalmatia, Croatia and Pannonia

**1097**- death of last Croatian King Petra Svačić

**Circa 1100**- Baška Tablet, the first inscription in the Croatian language written in Glagolitic alphabet

**1102**- Union between Hungary and Croatia

**1526**- Ottoman army defeated the Hungarian army: much of Croatia and Hungary under Ottoman rule

**1527**- Ferdinand I of the Habsburg dynasty crowned king of Croatia

**1699**- parts of Croatia that were under Ottoman rule, assigned to the Habsburg Empire

**1827**- Hungarian language= language of instruction

**1832**- first political document written in Croatian

**1847**- Croatian language replaced Latin as the official language in the Croatian Parliament

**1868**- signing of Nagodba (Compromise) in which Budapest guaranteed the Croats some of their historic political rights, including the use of Croatian in official contexts, but Croatia was stripped of all real elements of statehood

**1914-18**- Croats participate in World War I

**29 October 1918**- The Parliament declared the dissolution of Croatia's union with Austria and Hungary. Dalmatia, Slavonia and Croatia proclaimed an independent state and entered into the new State of Slovenes, Croats and Serbs

**1 December 1918**- State of Slovenes, Croats and Serbs enters into the Kingdom of Serbs, Croats and Slovenes, renamed Yugoslavia in 1929

**1929**- royal dictatorship by King Aleksandar

**1941-45**- Yugoslavia partitioned as a result of World War II and fascist occupation; Croatia independent, but was actually a Nazi-Fascist puppet state, led by the Ustaša party

**1941-** uprising of Croatian anti-fascists marked the beginning of the Partisan struggle against occupation and the Ustaša regime

**1945-** Croatia incorporated into socialist Yugoslavia, as one of six constituent republics

**1948-** beginning of Soviet-Yugoslav rift

**1965-** economic crisis led to the introduction of some elements of market economy

**1974-** new constitution for the SFRY strengthening the position of the republics and autonomous provinces vis-à-vis the federal center

**1980-85-** economic crisis followed by skyrocketing inflation and a drastic decline in the standard of living

**May 1990-** first multiparty parliamentary elections in Croatia since World War II; Croatian Democratic Union (HDZ) wins elections and Franjo Tuđman becomes president

**August 1990-** Serbian radicals, allied with Belgrade set up barricades along highways in the Knin area in Croatia, launching a rebellion

**December 1990-** Serbs in Knin declared Serb Autonomous Oblast of Krajina

**February-March 1991-** Serb-Croat violence in Pakrac

**19 May 1991-** Croatia conducts a referendum on independence; 94 percent voted for independence

**25 June 1991-** Croatia declared independence

**3 July 1991-** occupation of Baranja region of eastern Slavonia by the Yugoslav People's Army (JNA) marking the formal inception of war in Croatia

**July 1991-** November 1995- war in Croatia (known among Croats as the Homeland War)

**January 1992-** European Union recognizes Croatia as an independent state

**May 1992-** admission of Croatia to the United Nations

**21 November 1995-** signing of Dayton Peace Accords ends the War in Yugoslavia

**December 1999-** death of President Tuđman

**January 2000-** coalition led by Social Democratic Party (SDP) won the parliamentary elections; SDP leader Ivica Račan elected prime minister

**January 2000-** Stjepan Mesić elected to a five-year term as president in Croatia

**November 2003-** HDZ led by Ivo Sanader won parliamentary elections, Sanader as prime minister

**18 June 2004-** the Council of Europe granted Croatia the status of an official candidate for the EU

**March 2005 -** EU delays talks on Croatia's membership because of failure to arrest Gen Ante Gotovina, who is wanted by the Hague tribunal on war crimes charges

**October 2005 -** EU accession talks go ahead even though Gen Gotovina remains at large

**December 2005 -** Fugitive Croatian General Ante Gotovina, sought by the Hague tribunal on war crimes charges, is arrested in Spain.

**2006** - European Commission publishes report of Croatia's progress towards EU membership: more needs to be done to tackle corruption and intolerance of non-Croats

**November 2007** - Parliamentary elections: HDZ wins most seats but needs coalition partners to secure a majority

**March 2008** - Croatian ex-generals Ante Gotovina, Ivan Cermak and Mladen Markac go on trial at Hague war crimes tribunal on charges of killing Croatian Serbs in 1990s. They deny the charges

**2008** - NATO summit in Bucharest invites Croatia to join alliance

**October 2008** - Government announces major drive against organized crime following a series of killings linked to the mafia

**November 2008** - European Commission says Croatia is likely to end accession talks by 2009 and become a member by 2011, but demands tougher action against corruption and organized crime

**2009** - Slovenia threatens to block neighbouring Croatia from joining the EU in a continuing dispute over borders; Croatia joins NATO; The European Union cancels the next round of EU membership talks with Croatia, citing a lack of progress in resolving a long-standing border row with neighboring Slovenia

**July 2009** - Prime Minister Ivo Sanader resigns, Parliament approves Mr Sanader's deputy, Jadranka Kosor, as prime minister

**November 2009** - Slovenia lifts block on Croatia's EU membership talks; Croatian EU membership talks resume

**2010** - Ivo Josipović of the opposition Social Democrats wins presidential election; visit of President Josipović to Belgrade signals thawing of relations with Serbia

**November 2010** - Zagreb court convicts six men for mafia-style murder of investigative journalist Ivo Pukanic in October 2010; Seen as a significant act of reconciliation between Croatia and Serbia, Serbian President Boris Tadić visits Vukovar, where he apologizes for the 1991 massacre of 260 Croat civilians by Serb forces

**April 2011** - Two senior Croatian generals - Ante Gotovina and Mladen Markac - are convicted for war crimes against Serbs in 1995 by the UN War Crimes Tribunal in The Hague

### Appendix 7: Smuggling Routes through the Balkans (FAS, 2000)

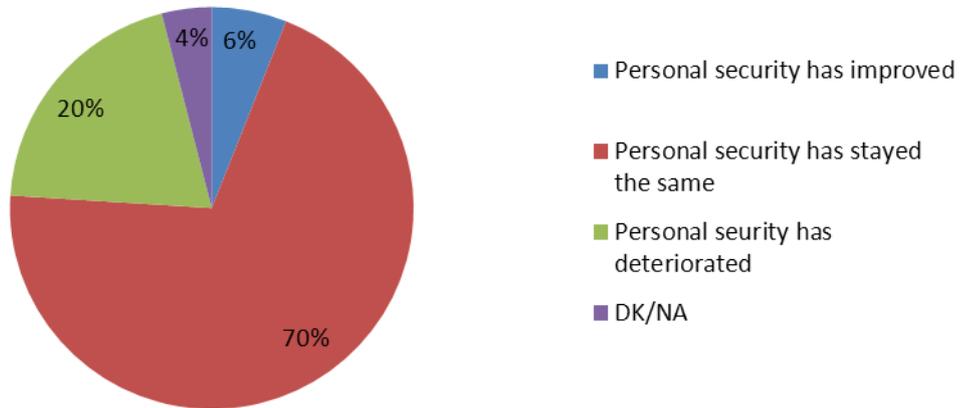


**Appendix 8: Distribution of weapons in Croatia (Pietz, et.al., 2006)**

<b> Holders</b>	<b> Quantity</b>	<b> Source</b>
<b>Registered civilian possession</b>	<b>371, 702</b>	Ministry of Interior (MoI)
<b>Estimated illegal civilian possession</b>	<b>597, 458</b>	Calculation based on household survey questions
<b>Police service weapons</b>	<b>38, 700</b>	Estimate based on number of police personnel
<b>Police stored weapons</b>	<b>54, 146</b>	Ministry of Interior (MoI)
<b>Croatian Armed Forces</b>	<b>260, 689</b>	Ministry of Defense (MoD)
<b>Estimated Total</b>	<b>1,322,695</b>	

**Appendix 9: Perceptions of physical security in Croatia (Pietz, et.al., 2006:25)**

**Compared to one year ago, how do you think that the level of your own personal security has changed? Frequencies.**



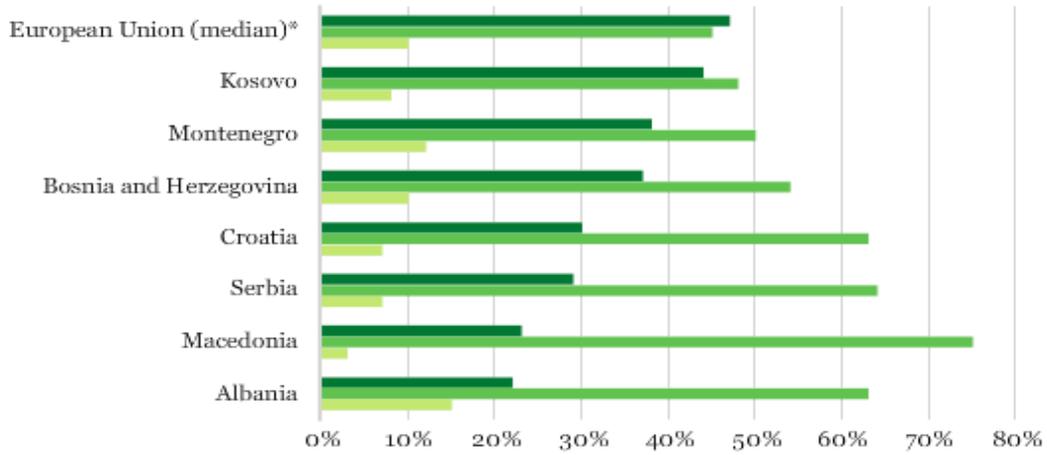
**Appendix 10: Confidence in the judicial system and courts (English, 2008).**

*In this country, do you have confidence in each of the following or not?*

*How about the judicial system and courts?*

Results from polling conducted in 2006 and 2007 throughout Europe

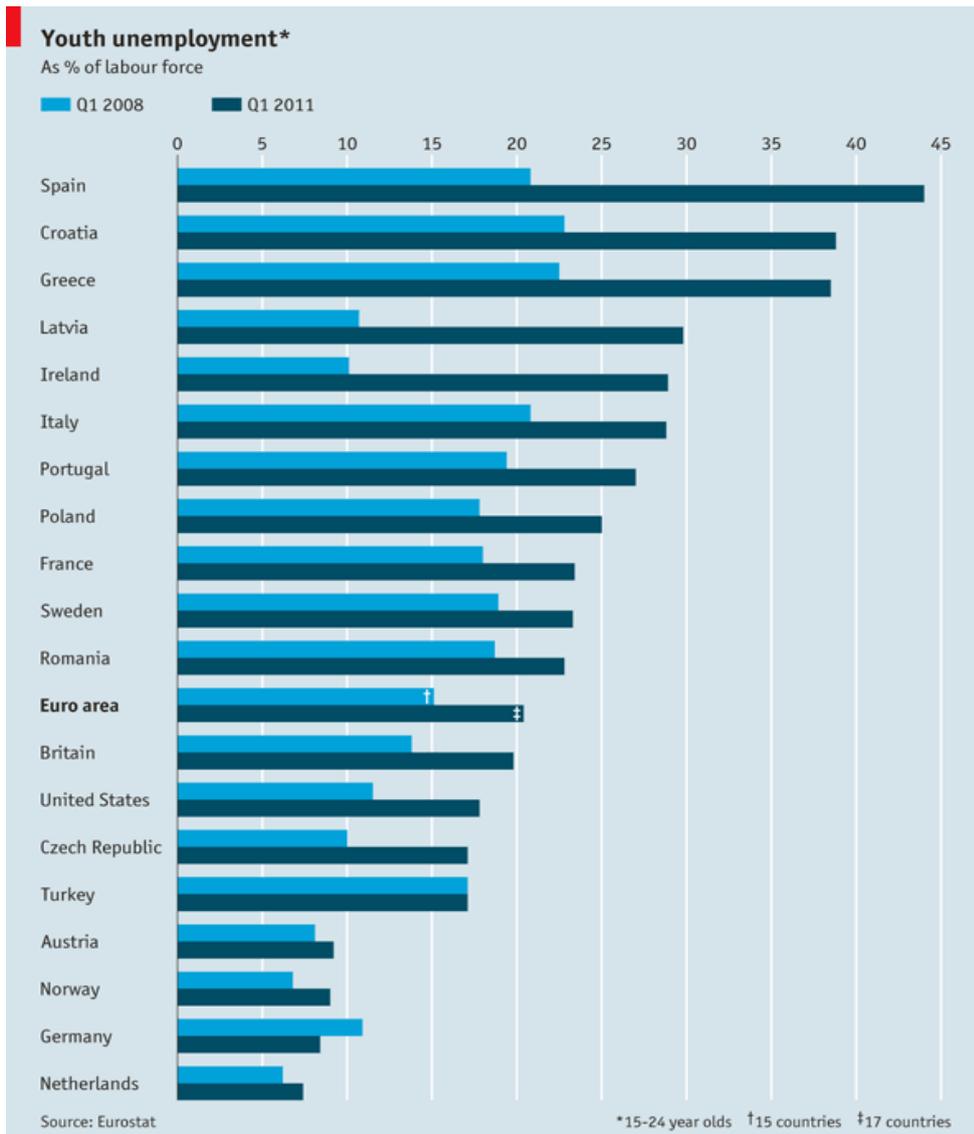
■ Yes    ■ No    ■ Don't know/Refused



\*Includes all European Union member countries, except Luxembourg and Malta.

GALLUP POLL

**Appendix 11: Youth unemployment rate in Europe (The Economist, 2011b)**



Appendix 12: Map of Croatia (Nation Master, 2011)



**Appendix 13: Corruption perception Croatia (Transparency International, 2010)**

**To what extent do you perceive the following institutions in this country to be affected by corruption? (1-not at all, 5-extremely corrupt)**

Political parties	Parliament	Police	Business	Media	Public officials	Judiciary	NGO	Religious bodies	Military	Education
4.0	4.0	3.7	3.9	3.2	3.8	4.1	2.8	2.7	2.7	3.4