

**GUILTY UNTIL PROVEN INNOCENT: A
COMPARATIVE ANALYSIS OF ORGANIZED
CRIME LAWS IN THE UNITED STATES, ITALY,
JAPAN, AND ECUADOR**

*Christina M. Strompf**

I. INTRODUCTION	27
A. <i>The Historic Roots of Organized Crime and the Mafia</i>	28
1. Japan.....	28
2. Italy	29
3. The United States	29
4. Ecuador	30
B. <i>Relevance of Organized Crime Today</i>	30
II. A BRIEF OVERVIEW OF RELEVANT ORGANIZED CRIME LAWS	33
A. <i>The United States</i>	33
1. Government.....	33
2. Organized Crime Groups	33
3. Law and its Changes	34
4. Impact of the Law	37
B. <i>Italy</i>	38
1. Government.....	38
2. Organized Crime Groups	38
3. Law and its Changes	39
4. Impact of the Law	41
C. <i>Japan</i>	41
1. Government.....	41
2. Organized Crime Group.....	42
3. Law and its Changes	43
4. Impact of the Law	45
D. <i>Ecuador</i>	45
1. Government.....	45
2. Organized Crime Group.....	46
3. Law and its Changes	47
4. Impact of the Law	48

* Christina Strompf is a Juris Doctor Candidate for May 2017 at Nova Southeastern University Shepard Broad College of Law. She received a Bachelors Degree in Sociology and Business Studies from Drew University. Christina would like to thank her colleagues at the ILSA Journal of International & Comparative Law for their hard work and dedication on this article. She would also like to extend a heartfelt thank you to Professor Mark Dobson for his time, comments and guidance throughout the writing of this article. Lastly, Christina would like to thank her friends and family, specifically her parents, for their unending support and encouragement throughout her law school career.

III. GLOBAL ECONOMY & TRANSNATIONAL ORGANIZED CRIMES	24
IV. COMPARISONS.....	51
V. CONCLUSION	51

I. INTRODUCTION

“[T]he ‘relative power’ of criminal networks will continue to rise, and some countries could even be taken over and run by these networks.”¹ The Federal Bureau of Investigation (FBI) defines “organized crime” as “any group having some manner of formalized structure and whose primary objective is to obtain money through illegal activities.”² The FBI believes that even if key individuals within these organizations are removed, “the depth and financial strength of the[se] organization[s] often allow it to continue.”³

When people think of organized crime, usually, they have an image of Marlon Brando sitting in a dark room at a large desk portraying Vito Corleone in the movie “The Godfather.”⁴ In “The Godfather”, Corleone is a notorious mob boss who orders “hits” on people and the members of his “family” participate in carrying out these hits as well as various other illegal activities.⁵ Throughout the film, Corleone speaks at length about family, friendship, business, and loyalty and shows the true influence the mafia has on society and the stigma that is associated with mafia affiliations.⁶ One of Corleone’s famous quotes illustrates this point: “[i]t’s true I have a lot of friends in politics, but they wouldn’t be so friendly if they knew my business was drugs instead of gambling which they consider a harmless vice. But drugs, that’s a dirty business.”⁷ This image, although not far from the truth, portrays a problem that society has faced since the nineteenth century.⁸

1. KRISTIN M. FINKLEA, CONG. RES. SERV., R40525, ORGANIZED CRIME IN THE UNITED STATES: TRENDS AND ISSUES FOR CONGRESS 15 (2010).

2. *Organized Crime*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/investigate/organized-crime> (last visited Oct. 15, 2016) [hereinafter FED. BUREAU OF INVESTIGATION].

3. *Id.*

4. *Biography for Don Vito*, INT’L MOVIE DATABASE, <http://www.imdb.com/character/ch0000791/bio> (last visited Oct. 15, 2016).

5. *The Godfather Plot Summary*, INT’L MOVIE DATABASE, http://www.imdb.com/title/tt0068646/plotsummary?ref_=tt_stry_pl (last visited Oct. 15, 2016).

6. *Id.*

7. *The Godfather Quotes*, ROTTEN TOMATOES, <https://www.rottentomatoes.com/m/godfather/quotes/> (last visited Oct 15, 2016).

8. *Origins of the Mafia*, HISTORY (2009), <http://www.history.com/topics/origins-of-the-mafia>.

Organized crime groups have both a local and global presence through use of the Internet and other technology.⁹

When analyzing different countries around the world, it is important to note that although the United States, Italy, Japan, and Ecuador have similarly structured governments, the laws that are in place to combat organized crime vary greatly.¹⁰ Interestingly, only Italy, Japan, and Ecuador have recently codified changes to their organized crime laws while the United States has simply broadened the scope of existing laws.¹¹ Nevertheless, these laws have a major impact on the citizens that call each country “home.”

A. *The Roots of Organized Crime and the Mafia*

1. Japan

The origins of the Mafia date as far back as 1612.¹² Surprisingly, these roots are not from Italy but rather Japan.¹³ The Japanese Mafia, today known as the “Yakuza”, trace its origin to the “Kabuki-mono.”¹⁴ The Kabuki-mono was a group of rogue samurai who would terrorize citizens for fun.¹⁵ Although the Kabuki-mono was the first formalized organized crime group in Japan, the Yakuza drew its direct ancestry from the Machi-yokko.¹⁶ The Machi-yokko, skilled gamblers and Japanese citizens, took up arms to defend their villages against the Kabuki-mono.¹⁷

9. FED. BUREAU OF INVESTIGATION, *supra* note 2.

10. *See generally* North America: United States, *The World Factbook*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html> (last visited Oct. 15, 2016); *See generally* South America: Ecuador, *The World Factbook*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-worldfactbook/geos/ec.html> (last visited Oct. 15, 2016); *see generally* Europe: Italy, *The World Factbook*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/it.html> (last visited Oct. 15, 2016); *See generally* East & Southeast Asia: Japan, *The World Factbook*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ja.html> (last visited Oct. 15, 2016).

11. *See* William L. Anderson & Candice E. Jackson, *Law as a Weapon: How RICO Subverts Liberty and the True Purpose of Law*, THE INDEP. REV. (2004), <http://www.independent.org/publications/tir/article.asp?a=215>.

12. Adam Johnson, *Yakuza: Past and Present*, ORGANIZED CRIME REGISTRY (1998), <http://orgcrime.tripod.com/yakuzahistory.htm>.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. Johnson, *supra* note 12.

“Yakuza” is a blanket term used to describe “Japanese gangsters.”¹⁸ Within the Yakuza there are approximately 3,200 organized crime groups.¹⁹ Approximately 1,400 of those groups are affiliated with one of the three main organized crime groups in Japan.²⁰ Today’s Yakuza have undergone periods of restoration, occupation, and modernization and are still the predominant organized crime group in Japan.²¹

2. Italy

Until the mid-nineteenth century, numerous foreign invaders controlled Sicily, a Region of Italy.²² After years of foreign rulers, Sicilians joined together to form the “Mafioso” to protect themselves from another foreign invasion.²³ During its original formation, there was no criminal intent associated with being a member of the “Mafioso.”²⁴ It was not until the end of the nineteenth-century that the “mafie” [sic] emerged.²⁵ This “mafie” is synonymous with the criminal organization people are familiar with today, the Sicilian Mafia.²⁶

3. The United States

Stemming from these Italian roots, the American Mafia rose to power in the 1920s due to Prohibition and mass immigration into the United States from Italy.²⁷ Small criminal organizations existed before Prohibition, but the enforcement of Prohibition legislation “facilitated the consolidation of the power of criminal organizations.”²⁸ With the rise of federal enforcement of Prohibition laws, the American Mafia organized bootlegging operations both

18. Ben Bullock, *What is the Origin of Yakuza*, SCILANG.JAPAN, <http://www.sljfaq.org/afaq/yakuza.html> (last visited Oct. 15, 2016).

19. JAPAN SUBCULTURE RESEARCH CTR., <http://www.japansubculture.com/resources/yakuza-organisations/> (last visited Oct. 15, 2016).

20. *Id.*

21. Johnson, *supra* note 12.

22. *Origins of the Mafia*, *supra* note 8.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Organized Crime*, UNITED STATES HISTORY, <http://www.u-s-history.com/pages/h1596.html> (last visited Oct. 15, 2016).

28. *Organized Crime—History*, LAW LIBR.—AM. L. & LEGAL INFO., <http://law.jrank.org/pages/1624/Organized-Crime-History.html> (last visited Oct. 15, 2016).

nationally and internationally.²⁹ These organizations were typically found in neighborhoods that were specifically ethnically dense.³⁰ This occurred because immigrant populations tended to settle in neighborhoods with fellow immigrants from the same place since they all spoke the same or similar language.³¹

4. Ecuador

Unlike Japan, Italy, and the United States, Ecuador's plight with organized crime is fairly new.³² Due to political instability and porous borders, Ecuador has become vulnerable to the influence of organized crime networks primarily from Peru and Colombia.³³ This influence impacts Ecuador's economy nationally as well as globally due to the import and export of drugs.³⁴

B. Relevance of Organized Crime Today

The topic of organized crime laws is particularly important because the FBI reports that the global economic impact of organized crime's influence in all sectors of the economy is around one trillion dollars annually.³⁵ In 2009 alone, it was estimated that organized crime generated \$870 billion in profits.³⁶ In order to make money, the mafia participates in various illegal activities.³⁷

29. *Organized Crime*, *supra* note 27.

30. *Organized Crime—History*, *supra* note 28.

31. *Id.*

32. Cristina Chuquimarca Mosquera & Bertha García Gallegos, *Ecuador*, INT'L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE, ILLICIT NETWORKS AND POLITICS IN LATIN AMERICA 161 (2014).

33. *Id.*

34. *Id.*; U. N. OFF. ON DRUGS & CRIME, *Transnational Organized Crime: The Globalized Illegal Economy*, UNODC, <https://www.unodc.org/toc/en/crimes/organized-crime.html> (last visited Oct. 15, 2016) [hereinafter UNODC].

35. FED. BUREAU OF INVESTIGATION, *supra* note 2.

36. UNODC, *supra* note 34.

37. FED. BUREAU OF INVESTIGATION, *supra* note 2.

Organized crime rings manipulate and monopolize financial markets, traditional institutions like labor unions, and legitimate industries like construction and trash hauling. They bring drugs into our cities and raise the level of violence in our communities by buying off corrupt officials and using graft, extortion, intimidation, and murder to maintain their operations. Their underground businesses—including prostitution and human trafficking—sow misery nationally and globally.³⁸

Contrary to media depictions and stigma associated with mafia participation, it can be argued that if used correctly, the mafia could work in conjunction with the government to shut down underground terrorist cells.³⁹ Organized crime groups are seemingly the right individuals to defeat terrorist groups because they show no reverence for laws and can financially afford to hire well-trained soldiers.⁴⁰ These groups can do what the government cannot because “[d]emocracies are trammled by too many laws and rules safeguarding individual rights.”⁴¹

The idea of using the mafia to aid governmental forces is not far fetched. There have been instances, both past and present, of the United States Government using the Italian-American Mafia for assistance in combating foreign and domestic terror.⁴² For example, during World War II, the United States government worked with Charles “Lucky” Luciano, an infamous Italian-born American mobster based in New York who is credited for engineering the structure of modern organized crime in the United States.⁴³ During his incarceration for extortion and prostitution, Luciano offered to help in the war effort by using his criminal connections in Italy to advance the Allies’ cause.⁴⁴

The head of the Counter Intelligence Section, Captain Wallace S. Wharton, asked for members of the New York mafia with ties to Italy so the government could use formal connections that mafia members established in Italy to ensure that the United States military would not be met with

38. *Id.*

39. Ross Hinds, *The One-Eyed Mafia Boss who could Help Defeat ISIS*, GRINBERG NEWS, (Nov. 2015), <http://www.grinbergnews.com/the-one-eyed-mafia-boss-who-can-help-us-crush-islamic-state/>.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Lucky Luciano Biography*, BIO. <http://www.biography.com/people/lucky-luciano-9388350#criminal-exploits> (last visited Oct. 15, 2016).

44. *Id.*

violence.⁴⁵ Luciano suggested that the government send him to Sicily to speak with the natives in the event that the Allies decided to invade Sicily.⁴⁶ The goal with sending Luciano to Sicily was to win over the support of the Sicilian natives so that instead of fighting the United States, they would support U.S. war efforts.⁴⁷

Not only did Luciano travel to Sicily to calm the natives, he also helped the United States military leaders with developing the most effective attack plan.⁴⁸ By using Luciano's plan, the United States casualty rate was far lower than that of the British who did not follow Luciano's attack plan.⁴⁹

Another example of cooperation between the United States government and the mafia occurred when ISIS threatened New York City. Giovanni Gambino, the son of John Gambino a prominent Mafia figure from "La Cosa Nostra", fired back by stating that the mafia was ready to fight ISIS.⁵⁰ Gambino stated, "the rise of global terrorism gives the Mafia a chance to show its good side."⁵¹ Gambino goes further to state that "[t]he Mafia has a bad reputation, but much of that's undeserved."⁵² Sources within the mafia stated that they are "better-positioned to provide security than federal agencies like the FBI and [the] Department of Homeland Security."⁵³

The purpose of this article is to discuss the different laws in place in the United States, Italy, Japan, and Ecuador to combat organized crime and how organized crime impacts the national and global economy. This article will be broken down and analyzed by country. It will first discuss the type of government each country has in place. It will then discuss the specific types of both legal and illegal activities that each country's organized crime group participates in. There will then be a discussion of the laws in place to combat organized crime and how these laws have changed over time to adapt to the growing number of people involved in organized crime. Often times, the type of organized crime a country's people participate in dictates the laws that are in place. Then, there will be a discussion of the overall impact that

45. Tim Newark, *Lucky Luciano and WWII's Operation Husky*, ST. MARTIN'S PRESS (July 9, 2011), <http://www.thehistoryreader.com/modern-history/lucky-luciano-wwiis-operation-husky/>.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. Clark Mindock, *NYC Islamic State Plot: Italian Mafia Warns ISIS to Stay Away from New York*, INT'L. BUS. TIMES (Nov. 23, 2015), <http://www.ibtimes.com/nyc-islamic-state-plot-italian-mafia-warns-isis-stay-away-new-york-2196169>.

51. Joe Tacopino, *Mobster's son: Tell us Where ISIS is and fuhgeddaboutit*, N.Y. POST (Nov. 23, 2015), <http://nypost.com/2015/11/23/the-mafia-is-prepared-to-protect-new-york-city-from-isis/>.

52. Mindock, *supra* note 50.

53. *Id.*

the laws are having on participation in organized crime. Due to the underground nature of organized crime, determining the impact of a law is often difficult to measure because the number of individuals actively participating in organized crime is not publicized. There will then be a brief discussion of the impact organized crime has on the global economy and its implications on international business. Lastly, there will be a brief conclusion and opinion about what steps countries should take to remedy this issue.

II. A BRIEF OVERVIEW OF RELEVANT ORGANIZED CRIME LAWS

A. *The United States*

1. Government

The United States has a federal presidential republic form of government with a President at the helm.⁵⁴ The President is up for election every four years and cannot hold office for more than two consecutive terms.⁵⁵ The government is made up of three branches: the Executive, Legislative, and Judicial.⁵⁶ The Executive Branch is administered by the President where (s)he enforces the laws that Congress makes.⁵⁷ The Legislative Branch consists of members of Congress who make the laws.⁵⁸ The Judicial Branch, headed by nine Supreme Court Justices, interprets the laws according to the United States Constitution.⁵⁹

2. Organized Crime Groups

Because the United States has become so diverse, there are different organized crime groups from around the world carrying out illegal activities there.⁶⁰ Each group participates in different types of organized crime.⁶¹ The

54. North America: United States, *supra* note 10; South America: Ecuador, *supra* note 10; Europe: Italy, *supra* note 10; East & Southeast Asia: Japan, *supra* note 10.

55. *Id.*

56. *Id.*

57. HARRY S. TRUMAN LIBR. & MUSEUM, https://www.trumanlibrary.org/whistlestop/teacher_lessons/3branches/1.htm (last visited Oct. 15, 2016) [hereinafter TRUMAN LIBR.].

58. *Id.*

59. *Id.*

60. FINKLEA, *supra* note 1, at 15–16.

61. *See id.* at 17–20.

primary groups are: Eurasian/Russian, Asian, Italian, and Balkan.⁶² The less popular groups include Middle Eastern and African.⁶³

Eurasian and Russian groups participate in extortion, abduction, human smuggling, prostitution, drug trafficking, theft, money laundering and various types of fraud.⁶⁴

Asian groups participate in drug trafficking (heroin) and human trafficking.⁶⁵ They are also involved in: money laundering; counterfeiting; fraud; kidnapping; automobile, software, and clothing theft.⁶⁶

Italian groups primarily deal in gambling, loan sharking, drug trafficking, and money laundering.⁶⁷

The Balkans participate in gambling, extortion, robbery, counterfeiting currency, drug trafficking, human smuggling, real estate fraud, money laundering, witness intimidation, and murder.⁶⁸

Although they are less prominent, the Middle Eastern and African groups are still participants in organized crime in the United States.⁶⁹ The Middle Eastern group participates in organized theft, financial fraud, money laundering, and cigarette smuggling.⁷⁰

The African group, particularly people of Nigerian decent who participate in organized crime, participate in heroin trafficking, money laundering, and various types of fraud, including: insurance; bank; auto; healthcare; identity; and document fraud.⁷¹

3. Law and its Changes

In 1978, the United States Congress enacted the Racketeer Influenced and Corrupt Organizations Act, or RICO statute.⁷² RICO focuses on:

62. *Id.* at 16.

63. *Id.* at 20.

64. *Id.* at 17.

65. FINKLEA, *supra* note 1, at 18.

66. *Id.*

67. *Id.* at 19.

68. *Id.* at 19–20.

69. *Id.* at 20.

70. FINKLEA, *supra* note 1, at 20.

71. *Id.*

72. *Racketeering/RICO*, FINDLAW, <http://criminal.findlaw.com/criminal-charges/racketeering-rico.html> (last visited Oct. 15, 2016).

[P]rohibit[ing] conducting the affairs of any ‘enterprise’ (defined broadly to include just about any form of human endeavor) through ‘a pattern of racketeering activity’ (defined as two or more criminal acts from an extremely broad list, that are related to each other, that [persist] or threaten to persist over a period of time).⁷³

The RICO statute has a procedural effect rather than a deterrent effect because the statute was not put into place to deter organized crime activity but rather to assist prosecutors in charging individuals with RICO violations.⁷⁴ By defining the commission of a series of distinct crimes as a single offense, RICO avoids “a variety of traditional, procedural, evidentiary, and jurisdictional rules that tend to discourage prosecuting separate offenses together.”⁷⁵

An example of RICO’s procedural effect is how the statute “includes as ‘predicate acts’ . . . such crimes as murder, robbery, bribery, and arson, which normally are violations only of state law, thus permitting them to be investigated and prosecuted by federal officials in federal court.”⁷⁶ Wording the statute this way also impacts organized crime groups that operate in multiple states.⁷⁷ Normally, these offenses would have to be prosecuted separately in the state that they occurred.⁷⁸ However, because the RICO statute defines these offenses as “‘part of a single pattern’ the entire pattern can be prosecuted together as a single crime in any federal district where one of the predicate acts occurred.”⁷⁹

The penalties for violation of the RICO statute are fairly harsh. There is both a fine and imprisonment if an individual is found guilty of a RICO violation.⁸⁰ The maximum punishment that a person can be sentenced for on a single RICO charge is “imprisonment for twenty years (life if any of the predicate acts charged, such as murder, would permit such punishment), and a fine of \$250,000.00 or twice the proceeds of the offense.”⁸¹

73. Gerard E. Lynch, *Rico*, ENCYCLOPEDIA.COM (2002), <http://www.encyclopedia.com/history/united-states-and-canada/us-history/rico#3403000224>.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. Lynch, *supra* note 73.

79. *Id.*

80. *Id.*

81. *Id.*

In addition to a fine and imprisonment, there is also a punishment of “forfeiture of property.”⁸² This means that there is a “mandatory penalty . . . of not only any proceeds or property derived from the proceeds of the crime but also of any interest the defendant holds in the enterprise or any property of any kind that provides a source of influence over the enterprise.”⁸³ The mandatory forfeiture has a significant impact on a defendant’s case because RICO allows the government to get a restraining order *before* trial begins to freeze the defendant’s assets that are subject to the forfeiture.⁸⁴

Title 18 Section 1963 of the United States Code Annotated states:

A temporary restraining order under this subsection [18 U.S.C.A. §1963 (2)] may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this subsection and that provision of notice will jeopardize the availability of the property for forfeiture. . . .⁸⁵

Mandatory forfeiture causes issues for defendants because it could hamper the defendant’s use of property to obtain adequate legal counsel.⁸⁶ In a 2003 case, *U.S. v. Saccoccia*, Saccoccia’s criminal defense attorneys were required to turn over the attorney’s fees Saccoccia paid them because “the fees [were] property subject to forfeiture.”⁸⁷ The district court granted the United States’ motion to compel to retain the attorney’s fees and the attorneys appealed.⁸⁸

The Court of Appeals vacated the forfeiture award against the attorneys and remanded the case because defendants must forfeit “tainted” property defined as property that is “(i) acquired by committing the offense, and (ii) constituting, or derived from, any proceeds obtained, directly or indirectly from its commission.”⁸⁹ “In the event that tainted property is unavailable for

82. *Id.*

83. Lynch, *supra* note 73.

84. *Id.*

85. 18 U.S.C. § 1963.

86. Lynch, *supra* note 73.

87. *United States v. Saccoccia*, 354 F.3d 9, 11 (2003).

88. *Id.* at 9, 11.

89. *Id.* at 12.

forfeiture (as when it has been transferred to a third party), the government may recover ‘substitute’ property.”⁹⁰

Because the language of the statute is worded as such, it “does not afford an avenue through which the government may reach a third party’s untainted assets as a substitute for tainted assets which the third party has already transferred prior to the date of forfeiture.”⁹¹ The forfeiture, however, “relates back” to the time that the property was obtained by the violation and is not only recoverable from the defendant but also from anyone else that the defendant gave that property to even if it was a bona fide payment for legitimate goods or services.⁹²

Unlike Italy, Japan and Ecuador, the United States is the only country that has not codified any changes to the law since it was passed in the 1970s.⁹³ The only aspect of the law that has changed, in practice, is the statute’s expanded use to include not only organized crime participants but also business owners.⁹⁴ “For every John Gotti who is brought down by RICO, many obscure business owners and managers are also successfully prosecuted under this law.”⁹⁵

Business owners can be charged with a RICO violation if the federal government decides to target them and charge them under RICO.⁹⁶ This expanded use began with former mayor of New York, Rudy Guiliani’s prosecution of Michael Milken and other Wall Street figures in the 1980s.⁹⁷ Because of this, today, federal prosecutors use RICO to win “easy convictions and prison terms” for people who “run afoul of federal regulations” during the ordinary course of business.⁹⁸

4. Impact of the Law

Critics of RICO argue that the statute has “little to no effect on stopping or inhibiting crimes” but rather allows federal prosecutors to “circumvent the constitutional separation of powers between the national and the state

90. *Id.*

91. *Id.* at 13.

92. Lynch, *supra* note 73.

93. Anderson & Jackson, *supra* note 11.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. Anderson & Jackson, *supra* note 11.

governments.”⁹⁹ Some critics also call for RICO to be repealed because it is not “serv[ing] as a shield for the innocent . . . [and] . . . adds nothing of value in terms of new prohibitions of truly criminal behavior, [but rather] . . . adds powerful weapons to the prosecutors’ arsenal.”¹⁰⁰

A. Italy

1. Government

Italy’s government is a Democratic Republic that is headed by a President who is independent from all three branches of the government.¹⁰¹ The President is elected every seven years by a college comprised of the parliament and three representatives from each region of Italy.¹⁰² The President serves as a “focal point between the three branches of government: he is elected by the lawmakers, he appoints the executive, and is the President of the Judiciary.”¹⁰³ The President is responsible for appointing a Prime Minister and the Council of Ministers.¹⁰⁴ The Prime Minister and the Council of Ministers hold all executive power.¹⁰⁵ Italy’s Parliament is made up of two houses: the Senate of the Republic and the Chamber of Deputies.¹⁰⁶ These two houses perform identical functions due to “full bicameralism.”¹⁰⁷ The houses make the laws of the country and establish the political guidelines that the Executive has to follow.¹⁰⁸

2. Organized Crime Groups

Italy has a number of crime families.¹⁰⁹ A study done in 2013 by Università Cattolica and the Joint Research Centre [sic] on Transnational

99. *Id.*

100. *Id.*

101. *Italian Politics–Government*, UNDERSTANDING ITALY, <http://www.understandingitaly.com/profile-content/government.html> (last visited Oct. 15, 2016).

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Italian Politics*, *supra* note 101.

107. *Parliament*, SENATO DELLA REPUBBLICA, <https://www.senato.it/3801> (last visited Oct. 15, 2016).

108. *Id.*

109. Chris Matthews, *Fortune 5: The Biggest Organized Crime Groups in the World*, FORTUNE, Sept. 14, 2014, <http://fortune.com/2014/09/14/biggest-organized-crime-groups-in-the-world/>.

Crime “estimated that mafia activities generate revenue of \$33 billion, mostly divided among Italy’s four major mafia gangs.”¹¹⁰ These families participate primarily in sex exploitation; firearms trafficking; drug sales; counterfeiting; gambling; usury (loansharking); and extortion.¹¹¹ The Camorra, one of Italy’s wealthiest organized crime families, has been in existence since the nineteenth-century.¹¹² It is estimated that its revenue is around \$4.9 billion.¹¹³

The ‘Ndrangheta mafia is also one of Italy’s prominent organized crime groups.¹¹⁴ According to a study by the Demoskopika Research Institute, in 2013, the ‘Ndrangheta made more than \$48 billion through drug trafficking and illegal garbage disposal.¹¹⁵ This is more money than Deutsche Bank and McDonald’s combined and 3.5 percent of Italy’s Gross Domestic Product (GDP).¹¹⁶ The issue of organized crime is becoming so severe in Italy that Pope Francis, the leader of the Catholic Church, called on Italy’s mafia groups to “stop doing evil . . . [and] relinquish their blood-stained money . . .”¹¹⁷

3. Law and its Changes

In response to recommendations from international organizations as well as the high number of corruption scandals in recent years, Italy has devoted significant efforts to deal with its rampant corruption issues.¹¹⁸ In 2014, Italy codified Law No. 114 of 11 August 2014.¹¹⁹ This law

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. See Agnes France, ‘Ndrangheta Mafia ‘Made More Last Year than McDonald’s and Deutsche Bank’, THE GUARDIAN, (Mar. 26, 2014, 3:21pm), <https://www.theguardian.com/world/2014/mar/26/ndrangheta-mafia-mcdonalds-deutsche-bank-study>.

115. *Id.*

116. *Id.*

117. *Id.*

118. Marilena Hyeraci & Francesca Petronio, *A Strengthening of Anti-Corruption Legislation in Italy*, ETHIC INTELLIGENCE (2009) <http://www.ethic-intelligence.com/experts/9105-strengthening-anti-corruption-legislation-italy/> (last visited October 15, 2016).

119. *Id.*

[i]ntroduced, in the context of contracts for certain listed services particularly exposed to the risk of mafia infiltration . . . a general duty for public administrations and public entities to obtain from the service providers a declaration of non-involvement in criminal proceedings for serious violations, including the crime of mafia organization.¹²⁰

In 2015, Italy again codified changes to its Criminal Code.¹²¹ On June 14, 2015, Italy enacted “Provisions on Crimes Against the Public Administration, Mafia—Type Associations and False Accounting” otherwise known as Law No. 69 of May 6, 2015.¹²² Italy’s major change was to increase the scope of the statute that was already in place rather than crafting an entirely new statute.¹²³ The changes apply to “criminal conduct against the state, organized crime activities, and false accounting reporting.”¹²⁴

This change increased the prison terms upon conviction for crimes against the “public administration.”¹²⁵ These crimes include: “embezzlement; corruption in the exercise of a public function; corruption constituting an act contrary to official duty; corruption associated with judicial acts; and undue inducement to give or promise a profit.”¹²⁶ The change also increased prison sentences for individuals found guilty of participating in organized crime.¹²⁷

There was also a major change in the way courts grant parole.¹²⁸ Now, in order for a criminal defendant to qualify for parole, the criminal defendant must: “deposit with the court an amount equivalent to the profit generated by the crime or the amount unduly received by the public official charged with the crime, without prejudice to the payment of further compensation for damage caused to the public administration.”¹²⁹

120. *Id.*

121. Dante Figueroa, *Italy: New Legislation Against Public Corruption & Organized Crime*, THE LAW LIBR. OF CONG. (June 25, 2015), <http://www.loc.gov/law/foreign-news/article/italy-new-legislation-against-public-corruption-and-organized-crime/>.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. Figueroa, *supra* note 121.

127. *Id.*

128. *Id.*

129. *Id.*

Additionally, the new law enforces a monetary fine against defendants that is equivalent to the amount improperly obtained to the benefit of the aggrieved public entity.¹³⁰ Lastly, the changed law increased prison sentences for “organized crime activities carried out by three or more persons when, among other situations, force or intimidation or weapons or explosive materials are used.”¹³¹

4. Impact of the Law

It is too soon to determine if the changes in the law have impacted Italy’s rate of participation in organized crime activities. According to the Organization for Economic Co-operation and Development’s (OECD) Economic Survey on Italy, “reducing corruption and improving trust must remain a priority.”¹³² It further reported that “Italy’s Prosecutors and Judges are doing their best to prosecute bribery offenses, including those of legal entities.”¹³³ Because of this, it is believed that although there are still obstacles facing Italy when dealing with organized crime, they can be overcome.¹³⁴

A. Japan

1. Government

Japan’s government is made up of three branches: the Cabinet (executive), the Diet (legislative), and the Courts (judicial).¹³⁵ The Prime Minister is the head of the Japanese government and (s)he is appointed by the Emperor, who is the ceremonial head of state, through nomination by the Diet.¹³⁶ The Diet is bicameral, consisting of the House of Representatives and the House of Councillors [sic], which are responsible for all legislative matters.¹³⁷ The Supreme Court of Japan consists of fourteen judges that

130. *Id.*

131. Figueroa, *supra* note 121.

132. ETHIC INTELLIGENCE, *supra* note 118.

133. *Id.*

134. *Id.*

135. KIDS WEB JAPAN, <http://web-japan.org/kidsweb/explore/government/> (last visited July 7, 2016).

136. Asian for Educators, *The Government of Modern Japan: The Branches and Their Functions*, COLUMBIA UNIV., http://afe.easia.columbia.edu/special/japan_1950_govt.htm.

137. *Id.*

determine the constitutionality of laws.¹³⁸ Most of the money in organized crime comes from drug trafficking.¹³⁹ The second most lucrative source comes from gambling and extortion.¹⁴⁰ Last, is “dispute resolution.”¹⁴¹

2. Organized Crime Group

Japan’s “mafia” is known as the “Yakuza.”¹⁴² In Japan, there are twenty-one major Yakuza groups that comprise more than 53,000 members.¹⁴³ The three largest groups are: the “Yamaguchi-gumi”, the “Inagawa-kai”, and the “Sumiyoshi-kai.”¹⁴⁴ These groups make their money through both illegal activities as well as legitimate businesses.¹⁴⁵ The Yakuza groups claim that they are humanitarian groups because they keep order in Japan.¹⁴⁶ These groups are so well known and revered in Japan that they have office buildings, business cards, fan magazines, and comic books that detail their exploits.¹⁴⁷

The Yakuza has control over Japan’s entertainment industry as well as influence in construction, real estate, currency exchange, labor dispatch, Internet technology, and financial industry.¹⁴⁸ They are also involved in blackmailing company executives, politicians, and bureaucrats to maximize profits in their interest areas.¹⁴⁹ “The United States Treasury Department has labeled the Yamaguchi-gumi a transcontinental organized crime group and even placed sanction on the second tier group that rules them” because “[i]n order to conduct its criminal activities, the Yakuza has relationships with criminal affiliates in Asia, Europe, and the Americas.”¹⁵⁰

138. *Id.*

139. Matthews, *supra* note 109.

140. *Id.*

141. *Id.*

142. Jake Adelstein, *The yakuza: Inside Japan's murky criminal underworld*, CNN (Dec. 16, 2015, 3:46 AM), <http://www.cnn.com/2015/09/15/asia/yakuza-yamaguchi-gumi-explainer/> [hereinafter CNN].

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. Adelstein, *supra* note 142.

148. *Id.*

149. *Id.*

150. *Id.*

The Yakuza however, is not all bad.¹⁵¹ Examples of the Yakuza's humanitarian side came after the 1995 Kobe earthquake and the 2011 Tohoku tsunami.¹⁵² After these natural disasters, the Yakuza were the first to provide aid by using their "gang connections and efficiency to move supplies to unaffected areas to the people in need of food, blankets, and medicine."¹⁵³ They also opened up offices and facilities to people affected and rented a helicopter for faster relief.¹⁵⁴

3. Law and its Changes

Japan first enacted a law in 1991 to combat organized crime known as the "Anti-Boryokudan Law."¹⁵⁵ In Japanese, "Boryokudan" means "violence groups."¹⁵⁶ This law was put in place to regulate Yakuza activity.¹⁵⁷ The Diet stated that in order for a group to be considered "Boryokudan", the group needed to meet three criteria.¹⁵⁸ The first is "regardless of the group's purpose, it must allow members to take advantage of the gang's influence in order to maintain their daily lives, accumulate wealth or execute their business."¹⁵⁹ The second is "a certain percentage of the gang members must have criminal records."¹⁶⁰ Lastly, "the gang must be hierarchically organized under the control of an individual representing the gang."¹⁶¹

Even if all three of these criteria are met, the Commission that reviews each group must hold a hearing so that members of the group, as well as a "panel of witnesses" (lawyers), can make statements on the group's behalf before officially designating a group "Boryokudan."¹⁶² The initial enactment

151. Justin Velgus, *Yakuza: Kind-hearted Criminals or Monsters in Suits?*, GAIJINPOT (Oct. 4, 2012), <https://injapan.gaijinpot.com/play/culture/2012/10/04/the-yakuza-kind-hearted-criminals-or-monsters-in-suits/>.

152. *Id.*

153. *Id.*

154. *Id.*

155. Edward F. Riley Jr., *Criminalizing Yakuza Membership: A Comparative Study of the Anti-Boryokudan Law*, 13 GEO. WASH. GLOBAL STUD. L. REV. 801, 807 (2014).

156. *Id.* at 808.

157. *Id.* at 807.

158. *Id.*

159. *Id.*

160. Riley, *supra* note 155 at 808.

161. *Id.*

162. *Id.* at 809.

of this law had minimal impact on the Yakuza or its membership.¹⁶³ In fact, it may have done more harm than good because instead of the Yakuza operating in plain sight, this pushed the Yakuza operations underground.¹⁶⁴

In 2007, the Diet again made changes to the law.¹⁶⁵ The 2007 changes addressed “Yakuza rituals and the hierarchal nature of the Yakuza organization.”¹⁶⁶ This change criminalized certain Yakuza recruitment methods such as “finger-cutting” and “coerced tattooing” as well as providing governmental support for individuals who were attempting to leave the Yakuza.¹⁶⁷ During this revision, the government did not revise any of the penal provisions.¹⁶⁸ The government believes that because of this change in the law, Yakuza membership has decreased.¹⁶⁹ It appears however, that the Yakuza may have just made themselves less visible and only reveal their Yakuza status when it is advantageous to do so.¹⁷⁰

The most notable change occurred on July 26, 2012 when Japan codified “Revisions of the Organized Crime Group Countermeasures Law.”¹⁷¹ This revision allows police to designate organized crime groups as “extremely dangerous” and then arrest any member of that group without issuing a cease and desist order, if he (or she) makes unreasonable or illegal demands towards an ordinary citizen.¹⁷² The changes in the law also allow the Prefectural Centers under the Elimination of Organized Crime to start legal procedures to forbid the Yakuza from using business offices if they are deemed to be “extremely dangerous.”¹⁷³

This change in the law comes as no surprise to the Japanese populous. In addition to changes in the law, the Japanese Diet set up these “Prefectural Centers” in order to “eliminate” the Yakuza.¹⁷⁴ This reaction was a direct

163. *Id.* at 810.

164. *Id.* at 811.

165. Riley, *supra* note 155 at 813.

166. *Id.*

167. *Id.*

168. *Id.* at 814.

169. *Id.* at 815.

170. Riley, *supra* note 155 at 816.

171. Jake Adelstein, *Japan's Newest Anti-Yakuza Laws Allow Instant Arrests*, WIRE, (July 30, 2012, 12:54 PM), <http://www.thewire.com/global/2012/07/japans-newest-anti-yakuza-laws-allow-instant-arrests/55198/>.

172. *Id.*

173. *Id.*

174. *Id.*

result of a public outcry to rid Japan of the Yakuza after an escalation of gang wars between various Yakuza factions.¹⁷⁵

4. Impact of the Law

Although changes to the law were codified to make participation in Yakuza more challenging, in 2015, the largest group of Yakuza, the Yamaguchi-gumi, split into two main factions: the “Yamaguchi-gumi” and the “Kobe Yamaguchi-gumi”.¹⁷⁶ This split is incredibly dangerous because it could create a gang war involving all twenty-one designated crime groups in Japan.¹⁷⁷ The new faction has already set up alliances with other organized crime groups.¹⁷⁸ The last Yakuza split was in 1984 and caused “several years of epic warfare marked with assassinations, attempted bombings and gun battles”¹⁷⁹

A. Ecuador

1. Government

Ecuador has a Representative Democracy system of government.¹⁸⁰ This government is comprised of three branches: Executive, Legislative, and Judicial.¹⁸¹ The President serves as both the head of the state and head of the government and is elected every four years.¹⁸² The Executive Branch includes twenty-eight ministries.¹⁸³ The Legislative Branch consists of the national assembly and has the power to pass laws.¹⁸⁴ The Judicial Branch is Ecuador’s Supreme Court and is independent of the Executive and Legislative Branches.¹⁸⁵ The Supreme Court consists of the National Court

175. *Id.*

176. Adelstein, *supra* note 142.

177. *Id.*

178. *Id.*

179. *Id.*

180. Jason Halberstadt, *Ecuador Government Overview & History*, ECUADOREXPLORER.COM, http://www.ecuadorexplorer.com/html/government_and_economy.html (last visited Oct. 15, 2016).

181. *Id.*

182. MICHIGAN STATE U., *Ecuador: Government*, GLOBALEDGE, <http://globaledge.msu.edu/countries/ecuador/government> (last visited Oct. 15, 2016).

183. *Id.*

184. *Id.*

185. *Id.*

of Justice and the Constitutional Court of Judges.¹⁸⁶ There is an autonomous electoral agency called the Tribunal Supremo Electoral.¹⁸⁷ Ecuador had a Congress until 2008 when President Rafael Correa dissolved it.¹⁸⁸ Upon dissolving the Congress, Correa convened a “special constitutional assembly” which wrote a new Ecuadorian Constitution.¹⁸⁹

2. Organized Crime Group

Unlike the United States, Italy, and Japan, Ecuador’s organized crime problem is fairly new.¹⁹⁰ Although there is no exact date when organized crime began in Ecuador, government figures show that in 2010, violence of all crimes rose 15 percent in one year.¹⁹¹ Murders alone have doubled “over the last twenty years to nearly 19 per 100,000 residents.”¹⁹² Much of this violence is attributed to the extensive issue of drug trafficking.¹⁹³

Roughly a decade ago, drug trafficking in Ecuador was a “relatively small law enforcement problem.”¹⁹⁴ Due to Ecuador’s geographic location, between Colombia and Peru, Ecuador has become the site of illegal drug trafficking for international distribution.¹⁹⁵ “Mexican, Russian, Chinese, and Korean drug mafia members regularly visit to arrange deals . . . [and] . . . [g]rowing amounts of cocaine paste are brought [to Ecuador] to be processed because of the Colombian government’s crackdown on illicit labs.”¹⁹⁶ Ecuador is “vulnerable to transnational organized crime due to weak public institutions, porous borders, and corruption.”¹⁹⁷ It is estimated that “200 tons of cocaine, or one-quarter of all that’s manufactured yearly in Colombia and Peru, transits through Ecuador.”¹⁹⁸ Ecuador also traffics the chemical

186. *Id.*

187. Halberstadt, *supra* note 180.

188. *Id.*

189. *Id.*

190. Chris Kraul, *Drug Trafficking on the Rise Through Ecuador*, L.A. TIMES, (June 26, 2011), <http://articles.latimes.com/2011/jun/26/world/la-fg-ecuador-drugs-20110626>.

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. U.S. Dep’t of State, Bureau of Int’l Narcotics & Law Enforcement Affairs, Country Report: Ecuador 158 (2014).

196. Kraul, *supra* note 190.

197. U.S. Dep’t of State, *supra* note 195.

198. Kraul, *supra* note 190.

precursors for drugs other than cocaine or heroin.¹⁹⁹ Chemical precursors are compounds that are needed in the “synthetic or extraction process of drug production.”²⁰⁰

3. Law and its Changes

Ecuador’s 2008 Constitution categorized drug abuse as a “public health problem.”²⁰¹ Because of the rise in addicts in Ecuador, on December 17, 2013, the Ecuadorian National Assembly passed a new Ecuadorian criminal code.²⁰² The National Council for Narcotic and Psychotropic Substances announced a new scale in order to differentiate between drug users, micro-traffickers, and large-scale traffickers.²⁰³ This was done in order to identify the level a person was considered and to control prison sentences.²⁰⁴ The National Council for Narcotic and Psychotropic Substances is an administrative institution that was set up to exclusively “take charge of drug control.”²⁰⁵

Before the change in the law, “possession of anything up to one gram of heroin and fifty grams of cocaine were considered ‘minimum’ and essentially decriminalized”²⁰⁶ Now, these quantities are considered “high” and come with a prison sentence.²⁰⁷ This was done to have a more uniform system of sentencing.²⁰⁸

Surprisingly, in 2014, Ecuador released “500 drug mules or low-level traffickers in a move aimed [at] alleviat[ing] prison crowding.”²⁰⁹ Initially, Ecuador treated addiction like it was a health problem rather than a crime.²¹⁰

199. U.S. Dep’t of State, *supra* note 195.

200. *Precursor Chemical*, THEFREEDICTIONARY.COM, <http://www.thefreedictionary.com/precursor+chemical> (last visited Oct. 15, 2016).

201. U.S. Dep’t of State, *supra* note 195.

202. *Id.*

203. Aaron Daugherty, *Ecuador Toughens Drugs Laws, Muddles Policy*, INSIGHT CRIME (Sept. 10, 2015), <http://www.insightcrime.org/news-briefs/ecuador-president-proposes-tougher-punishment-for-microtraffickers>.

204. *Id.*

205. *Ecuador*, TNI DRUGS & DEMOCRACY, <http://www.undrugcontrol.info/en/countryinformation/latinamerica/ecuador/item/204ecuador?pop=1&tmpl=component&print=1> (last visited Oct. 15, 2016).

206. Daugherty, *supra* note 203.

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

Recently however, the government appears to be recriminalizing drug use.²¹¹ This is in opposition with the work Correa did in 2014.²¹² Because of the new push to criminalize low-level drug offenders in 2015 by Correa, Ecuador's issue of prison overcrowding will continue to rise.²¹³

4. Impact of the Law

Because the issue of organized crime and the recently codified laws in Ecuador are so recent, there is not a wealth of information on the impact of these laws. In 2016, Ecuadorian authorities “lashed out” against a recently published drug report conducted by the United States State Department.²¹⁴ The State Department's 2016 International Narcotics Control Strategy Report, which discusses drug trafficking trends around the world, labeled Ecuador as a “major transit country” and noted the “continuing presence of transnational organized crime groups . . . [such as] . . . the Zetas, the Sinaloa Cartel, the Gulf Cartel, and the Revolutionary Armed Forces of Colombia”²¹⁵ Ecuador's Chief of Police stated that although this study has been “accurate” in prior years, “recent police investigations had found ‘no links to such cartels.’”²¹⁶ Ecuadorian officials also stated that in 2015, the government seized eighty-tons of drugs and over 400-tons in the last eight years.²¹⁷ Although both governments may be reporting accurate statistics, there is speculation that due to recent tension between Ecuador and the United States, these reports could be somewhat exaggerated to benefit each side's point of view.²¹⁸ The passage of this new Criminal Code does provide law enforcement with new tools for surveillance and operations however, the “lack of regimented investigative training hinders the ability to successfully prosecute transnational crime.”²¹⁹

211. *Ecuador*, *supra* note 205.

212. Daugherty, *supra* note 203.

213. *Id.*

214. Lucia Bird, *Ecuador Rejects US Drug Trafficking Report Findings*, INSIGHT CRIME (Mar. 8, 2016), <http://www.insightcrime.org/news-briefs/ecuador-rejects-us-drug-trafficking-report-findings>.

215. U.S. Dep't of State, *supra* note 195; Bird, *supra* note 214.

216. Bird, *supra* note 214.

217. *Id.*

218. *Id.*

219. U.S. Dep't of State, *supra* note 195.

III. GLOBAL ECONOMY & TRANSNATIONAL ORGANIZED CRIME

“Transnational organized crime is big business. In 2009 it was estimated to generate \$870 billion—an amount equal to 1.5 percent of global GDP. That is . . . the equivalent of close to 7 percent of the world’s exports of merchandise.”²²⁰

In 2009, the General Assembly of the United Nations estimated that the “value of illicit trade around the globe was estimated at \$1.3 trillion and is increasing.”²²¹ For criminal acts to be considered “transnational”, the criminal actions must be “profit-motivated” and be “of an international nature where more than one country is involved.”²²²

According to the United Nations Office on Drugs and Crime, the most lucrative types of transnational organized crime are: drug trafficking; human trafficking; smuggling of migrants; illicit trading in firearms; trafficking in natural resources; illegal trade in wildlife; sale of fraudulent medicines; and cybercrime.²²³ Almost all of these crimes bring in over one billion dollars of revenue annually.²²⁴ A breakdown of the types of crimes based on the estimated annual value they bring shows that drug trafficking continues to bring in the most money annually.²²⁵ In 2009, it was reported that the total value for drug trafficking was a staggering \$320 billion.²²⁶ Calculated in that \$320 billion is the \$85 billion in the global sale of cocaine.²²⁷

This issue is not, however, only an economic one because transnational organized crime also has a major impact on the local governments and people living in these areas.²²⁸ Giving these criminal groups such large sums of money allows them to have a “direct impact

220. UNODC, *supra* note 34.

221. General Assembly of the United Nations, *Thematic Debate of the 66th session of the U.N. General Assembly on Drugs & Crime as a Threat to Development on the Occasion of the U.N. International Day against Drug Abuse & Illicit Trafficking* (June 26, 2012) [hereinafter U.N.G.A.]. All Permanent Rep. and Permanent Observers to the U.N., Letter dated June 15, 2012 from All Permanent Rep. and Permanent Observers to the United Nations addressed to the President of the General Assembly (June 26, 2012) [hereinafter U.N. GAOR.].

222. UNODC, *supra* note 34.

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. UNODC, *supra* note 34.

228. *Id.*

on governance.”²²⁹ This allows for corruption and the “buying of elections.”²³⁰ It also “destabilizes countries and entire regions, thereby undermining development assistance in those areas.”²³¹

These organizations “undermine development by eroding social and human capital.”²³² This means that in areas where there is a large organized crime presence, skilled laborers are likely to leave work and those seeking educational opportunities will be impeded from gaining access to schooling.²³³ The presence of organized crime in a location will also drive away both “foreign and domestic investors [because they] see crime as a sign of social instability, and crime drives up the cost of doing business.”²³⁴

Transnational organized crime also impacts legitimate businesses when illegal goods displace the original products, because they are made and sold at a much lower price.²³⁵ The impact of transnational counterfeiting in the United States alone is astounding. “It is estimated that 7 percent of our annual world trade—\$600 billion worth—is counterfeit or pirated; that fakes are believed to be directly responsible for the loss of more than 750,000 American jobs”²³⁶ This does not mean that just a few fake handbags are making their way around the world.

[E]verything from baby formula to medicine is counterfeited, with tragic results; . . . counterfeiters and the crime syndicates they work with deal in human trafficking, child labor, and gang warfare; and . . . counterfeiting is used to launder money, and the money has been linked to truly sinister deeds such as terrorism.²³⁷

The issue of transnational organized crime groups manufacturing and selling counterfeit designer goods is becoming such an issue that major

229. *Id.*

230. *Id.*

231. *Id.*

232. U.N.G.A., GAOR, *supra* note 221.

233. *Id.*

234. *Id.*

235. See Dana Thomas, *The Fight Against Fakes*, HARPERS BAZAAR, (Jan. 8, 2009), <http://www.harpersbazaar.com/culture/features/a359/the->

236. *Id.*

237. *Id.*

fashion houses have attempted to bring down these syndicates.²³⁸ Some organized crime groups used online retail giant, eBay, to sell counterfeit designer handbags.²³⁹ As a result, Louis Vuitton sued eBay and was successful because it showed that “ninety-percent of the Vuitton and Dior items offered on eBay in the first half of 2006 were counterfeits.”²⁴⁰ Although there are measures in place to protect these retailers from these large-scale operations, these organized crime groups are now shipping in “generic items” and then having people within the United States finish them domestically.²⁴¹ This will prevent border agents from detecting counterfeit goods.²⁴² Because of transnational organized crime, both local and federal governments choose to increase public spending for security and policing rather than putting that money toward helping their citizens.²⁴³

IV. COMPARISONS

While most of the United States, Japan, and Italy appear to be getting increasingly stricter with their organized crime laws, Ecuador has decriminalized possession of certain drugs like cocaine and heroin.²⁴⁴ This is significant because Ecuador’s organized crime issue is emerging while the other three countries have a history with organized crime. This would lead someone to believe that Ecuador would be able to control its emerging organized crime issue by enforcing stricter laws and not letting individuals with minor drug offenses out of prison. Italy and Japan have increased the strictness of their laws by codifying changes and enforcing them while the United States has just used the vagueness of the RICO statute to prosecute more individuals not directly involved in organized crime.²⁴⁵

V. CONCLUSION

Through education, policing and legislation, the United States, Italy, Japan, and Ecuador can continue to combat the issue of organized crime. The

238. *See id.*

239. *Id.*

240. Thomas, *supra* note 235.

241. *Id.*

242. *Id.*

243. *Id.*

244. Arron Daugherty, *Ecuador Toughens Drugs Laws, Muddles Policy*, INSIGHT CRIME (Sep. 10, 2015), <http://www.insightcrime.org/news-briefs/ecuador-president-proposes-tougher-punishment-for-microtraffickers>.

245. Lynch, *supra* note 73; Figueroa, *supra* note 121; Riley, *supra* note 155 at 813–15.

United States needs to clearly define the RICO statute to provide prosecutors with more definitive parameters. This would decrease the amount of individuals that are being prosecuted under the statute for offenses not related to organized crime. Clarifying the statute may, however, cause an increase in organized crime behavior because prosecutors are using ambiguities in the statute to indict and convict more individuals. The legislature should also remove the clause in the RICO statute that allows for mandatory forfeitures of property before someone under RICO has been found guilty. Although the mandatory forfeiture is of property obtained *during* the alleged illegal conduct, having this clause in the statute deprives a defendant an equal right to competent legal representation because their ability to find suitable counsel is thwarted due to a lack of finances.

The United States should also look to the historic and present day examples of successful cooperation between organized crime groups and the government in order to utilize the mafia to combat terrorist cells that threaten the United States. This may give organized crime participants positive avenues to protect their country. It could also provide increased information between crime organizations and the government to combat planned attacks before they are carried out. This would decrease government spending because non-governmental groups are using their resources to combat terrorist groups.

Increasing prison terms appears to be a positive step to decrease organized crime in Italy. However, the fact that people are incarcerated longer does not necessarily mean that participation will decrease. The mafia is an idea that is so ingrained in the Italian culture that it will be difficult to rewrite history. Instead of codifying more laws, Italy's government should attempt to deal with the stigma, whether positive or negative, associated with the mafia. One way to achieve this goal could be to launch a campaign to discuss the impact of the mafia and to inform citizens of the actual damage being done to Italy's economy. Italians may band together against the mafia and participation may decrease.

Japan's recent change to its law has quite possibly done more harm than good because this approach forced the Yakuza to move underground and reorganize. Having the Yakuza underground could cause them to become more dangerous because the government has less opportunity to monitor Yakuza activity. If the Yakuza have offices, the government could conduct searches of these locations and get a better handle on the activities they conduct. It is also important for the government to watch Yakuza groups due to the faction that just occurred. This faction could cause a dangerous gang war in Japan. This gang war would threaten the safety of not only the Japanese citizens, but also the economy because the Yakuza are so entrenched in Japanese business.

The rise of drug use and sale in Ecuador is being exacerbated because instead of increasing prison terms for drug use and distribution, Ecuador is decriminalizing drug possession. Instead of decriminalizing drug possession, Ecuador should become stricter in its enforcement and prosecution of drug offenders. Ecuador should also attempt to increase border security to quell the import/export of drugs in and out of the country and the countries around it. Ecuador should continue to work with the United States, rather than against it, to manage the drug trade before it spreads to other industries as well. Having a rampant drug trade tends to increase crime and poverty. Ecuador needs to get this issue under control before its citizens and economy suffer grave consequences.