

# Unpacking Pandora's Box: Defining Transnational Crime and Outlining Emerging Criminal Trends

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**Abstract:** *Transnational crime has been accepted as a working concept in most related disciplines. Yet, regardless of its wide recognition by academic and policy making communities, the term has remained amorphous. In order to provide greater precision, this article engages in a bold effort to conceptualise transnational crime by gauging its extent and diversity. It explores the conceptual richness of the term transnational crime by establishing the spatial relationship between its transnational, international, and domestic forms. It also clarifies the structural specificity of transnational crime by drawing a line between transnational organised crime and solo-crimes. Linkages between criminal actors as well as criminal-legal symbiosis are elaborated. As well as, an important distinction between illegal and illicit criminal activities is made. Conceptual issues covered in the article have overall indicated how important it is to relativise and theorise what we know about transnational crime and its spatial, organisational, and operational specificities.*

**Keywords:** Transnational crime, international crime, criminal-legal symbiosis, solo-crime, criminal actors

*The key is to commit crimes so confusing that police feel too stupid to even write a crime report about them.*

**Randy K. Milholland**

## Conceptualising Transnational Crime

The term *transnational crime* is surrounded by various conceptual and empirical hurdles. It encompasses everything from trafficking in drugs to money laundering, from terrorism to pornography. Transnational crime is different from international crime, since *illegal* is not the same as *illicit* activities. Transnational crime should not be always understood as transnational organised

crime. To study transnational crime and its impact on states becomes virtually impossible if the concept is used without careful consideration of some critical conceptual nuances.

*Transnational crime* is a catchy umbrella term that provides a superset or grouping of related sub-categories of concepts representing various criminal activities. Due to these terminological qualities, definitions of *transnational crime* tend to be general and all-inclusive. Reuter and Rubinstein (1978) articulated that the conceptually empty concept of transnational crime is the *Achilles Heel* of this transnational phenomenon. They wrote, not without some irony, that ‘most discussions [on transnational crime] end up sounding like debates about UFOs: those who have seen one are arrayed on one side, and all of those who have never seen one but dispute the validity or interpretation of the observations are on the other.’<sup>1</sup> There is no unanimity about the contours, nature, and dangerousness of transnational crime that has been increasingly perceived as a global threat in official discourses – a non-conventional threat. Transnational criminal activities are typically hybrid and rarely exist as an ideal type. Rather they represent a combination of different types and forms, and overcoming ambiguities is an impossible task.

In light of the multi-faceted nature of transnational criminal activities that can include anything among an array of criminalised activities and those left out of criminal codes, only the abstract term of *transnational crime* properly reflects the diversity. As vague as the term transnational crime is, only its conceptual richness can relate to a variety of transnational phenomena. Some might think that the term is misleading<sup>2</sup> and does no justice to the multiplicity of this type of crime and to its local and/or national dimension. This work argues that only by incorporating different forms of transnational criminal activities under a general title of *transnational crime*, can there be an integrated analysis of criminal phenomena.

Although any definition of transnational crime would be too abstract and too general, it is an absolute prerequisite from a legal perspective. The United Nations Crime Prevention and Criminal Justice Branch first coined the term itself in 1975 in an attempt to identify criminal acts that transcend national boundaries, transgress national legislations, or have an impact on another country.<sup>3</sup> Later efforts to arrive to an internationally agreed definition began in November 1994 under the auspices of the Naples Political Declaration and Global Plan of Action against Transnational Crime at the World Ministerial

<sup>1</sup> Reuter, Peter, and Jonathan B. Rubinstein. 1978. Fact, Fancy, and Organized Crime. *The Public Interest*, pp. 45–67, p. 59.

<sup>2</sup> Fijnaut, Cyrille. 2000. Transnational Crime and the Role of the United Nations. *European Journal of Crime, Criminal Law and Criminal Justice*, Volume 8, Number 2, 2000, pp. 119–127, p. 120.

<sup>3</sup> Liddick, Donald R. 2004. *The Global Underworld: Transnational Crime and the United States*. Praeger.

Conference on Organised Transnational Crime, during which 140 states committed themselves to joining forces against organised transnational crime. ‘Alarmed by the rapid growth and geographical extension of organized crime in its various forms, both nationally and internationally, undermining the development process, impairing the quality of life and threatening human rights and fundamental freedoms,’ the UN General Assembly recognised the growing threat and corrupting influence on fundamental social, economic, and political institutions exercised by transnational crime that was defined as ‘offences whose inception, prevention, and/or direct or indirect effects involved more than one country.’<sup>4</sup>

Efforts to mobilise against transnational crime continued for more than five years until the international community finally arrived at a common definition of transnational crime (2000). In September 2000, the US sponsored a meeting of the G8 Senior Law Enforcement Experts on Transnational Crime (Lyon Group) to discuss international crimes. In November the same year, the UN Convention against Transnational Organised Crime was adopted by General Assembly resolution 55/25 (15 November 2000).

The Convention is the main international instrument in the fight against transnational organised 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. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organised crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. The Ad Hoc Committee established by the United Nations General Assembly became responsible for dealing with the problem of transnational crime by taking a series of measures against transnational organised crime that they defined as an offence committed by an *organised criminal group* that shall mean ‘a structured group 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’<sup>5</sup> that are transnational if they: a) committed in more than one State; b) committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; c) committed in one State but involves an organised criminal group that engages in criminal activities in more than one State; or d) commit-

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<sup>4</sup> United Nations. 1995. Results of the supplement to the Fourth United Nations Survey of Crime Trends and operations of Criminal Justice Systems, on Transnational Crime: Interim report by the Secretariat. A/CONF/169/ 15/Add.1. Para 9.

<sup>5</sup> United Nations Convention against Transnational Organised Crime and its Protocols. Article 2. Retrieved on-line at: <<http://www.unodc.org/unodc/en/treaties/CTOC/index.html>> (accessed 13 May 2010).

ted in one State but has substantial effects in another State.<sup>6</sup> The Convention also identified that transnational crime is characterised by (a) systematic or occasional corruption and violence; (b) investment and manipulation of illicit goods and services (tangible and intangible); (c) high rates of economic or socio-political benefit.

## Creating Safe-Havens: Organisational Developments

Criminal organisations, like their civilian counterparts, are assemblages of individuals whose relationships are structured according to certain principles. These principles facilitate and maintain the coordination of criminal actors in time, space, as well as prioritise activities and establish goals. By and large, the general trend in the 1960s was to see organised crime as a *mafia crime*. At that time, the combined efforts of Senator Kefauver, the McClellan Committee, and Attorney General Robert Kennedy raised American awareness of organised Mafia-type crime and generated the perception that it was a phenomenon which threatened the American way of life.<sup>7</sup>

US domestic security concerns about organised crime resulted in enforcement making that set mafia criminal activities as a priority for the next thirty years. Mafias are a specific form of a criminal organisation that sell private protection, sometimes have close links to governmental officials or agencies and often assume quasi-governmental roles within society. Mafias are difficult to root out since they replace the state in the social contract, often requiring significant efforts on the part of civic institutions to bring down. Examples include the Sicilian Mafia, the American La Cosa Nostra,<sup>8</sup> the Russian Mafiya,<sup>9</sup> and the Japanese Yakuza.<sup>10</sup>

Mafia groups have become known increasingly for their ability to build stable *hierarchically* structured criminal organisations characterised by strong internal lines of control and discipline, a single leadership, and a strong social or ethnic identity and the use of violence as an essential means to carry out

<sup>6</sup> Ibid: Article 3.

<sup>7</sup> Brenner, Susan W. 2002. 'Organized Cybercrime? How Cyberspace May Affect the Structure of Criminal Relationships.' North Carolina Journal of Law & Technology, Vol. 4, Issue 1: Fall.

<sup>8</sup> Paoli, Letizia. 2008. *Mafia Brotherhoods: Organized Crime, Italian Style*. OUP USA.

Saviano, Roberto. 2008. *Gomorra (tie-in): Italy's Other Mafia*. Media tie-in. Pan.

<sup>9</sup> Williams, Phil. 1997. *Russian Organized Crime: The New Threat?* 1st ed. Routledge.

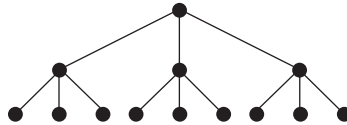
Handelman, S. 1997. *Comrade Criminal: Russia's New Mafiya*. New edition. Yale University Press.

Friedman, Robert. 2000. *Red Mafiya : How the Russian Mob Has Invaded America*. Little, Brown and Company.

<sup>10</sup> Hill, Peter B. E. 2006. *The Japanese Mafia: Yakuza, Law, and the State*. New Ed. OUP Oxford.

its activities. And if the activities of ethnic mafias in the 1960-1980s were mainly domestic, committing large-scale crimes that only rarely extended to different national contexts, the mafia activities of the 1990s onwards indicated a new tendency towards deeper involvement of mafias in criminal activities of a world-wide scope and importance. These activities were more promising, lucrative, and advisable for minimising risks.

### Hierarchical Structure



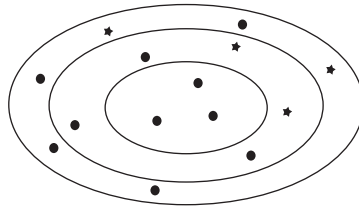
Either it was the global expansion of the activities of ethnic mafias, or just a new form of criminal activity emerged, but by the end of the 1990s, the most influential criminal groups although still resembling traditional mafias insofar as they had complex organisational structures emphasising a division of labour and coordination, they were much more flexible and sophisticated, and non-ethnic.<sup>11</sup> They also deviated from the traditional mafia in another important way, namely they tended to be overtly and self-consciously transnational in their membership and activities.

These new groups' activities were driven by the very idea of generating profit by crossing borders, such as in instances of trafficking in illegal/illicit goods, services, and people.

Trafficking crime groups, on the other hand, are more akin to international business, operating one or more cross-border criminal acts in order to acquire illicit profits. These organised crime groups rarely have strong ties to the state outside of the use of corruption to protect themselves. Rather, they tend to possess a networking organisational principle built on a limited number of individuals forming a relatively tight and structured core group surrounded by a loose network of 'associates,' with the small size of the group helping to maintain internal discipline. Their activities are strictly profit-orientated, shifting between illegal activities on the basis of where the most profits can be generated. Each member of the organised group with a networking pattern of organisation had a specific role in the transnational criminal process (for instance, recruitment, transport, marketing, etc.).

<sup>11</sup> Picarelli, John T. 2008. Transnational Organized Crime. In: Williams, Paul D. 2008. *Security Studies: An Introduction*. 1st ed. Routledge, p. 454.

## Network Structure



With respect to the organisational foundations of transnational criminal groups, Sterling suggests that what is unique about criminal structures that emerged since the 1990s is that groups' adaptive strategy includes preempting competition, exploiting complementary expertise and distribution channels when engaging in close collaboration with previously competitor criminal groups. She refers to this new development as *Pax Mafiosa*<sup>12</sup> – a peaceful co-existence among rival criminal groups and a symbiosis of criminal groups and state authorities. She notes that:

International criminal organisations have reached agreements and understandings to divide up geographical areas, develop new market strategies, and work out forms of mutual assistance and the settlement of conflict... and this on planetary level.<sup>13</sup>

Capable of both establishing safe-havens of collaboration among criminal groups around the world and enforcing its will on legitimate enterprises, governmental institutions, and mechanisms of law and order, transnational criminal actors have significantly expanded and secured their activities.

## 'Solo-Crimes' and 'Mafias-of-the-Moment': Is There Non-Organised Transnational Crime?

According to the UN Convention on transnational crime of 2000, a transnational crime group is one comprising three or more members who are organised for a set period of time before and after they act in a coordinated manner to commit a 'serious crime' for the purpose of obtaining financial or other benefit. Recent studies, however, have questioned whether transnational crime structures still follow a group-based organisational logic. Scholars, particularly those specialising in cyber-crime and money laundering, have started emphasising that it is not a prerequisite for a transnational criminal activity to take any organisational form. It can be disorganised and opportunistic.

<sup>12</sup> Sterling, Claire. 1994. *Crime Without Frontiers: The Worldwide Expansion of Organized Crime and the Pax Mafiosa*. Little Brown & Co (T).

<sup>13</sup> Ibid: 55

Dobovsek ironically notes that it ‘is hard to say what forms organised crime will take in the future, but the reality is not very far from some science fiction movies.’<sup>14</sup> Not all transnational crime is committed by organised criminal groups, nor do all organised crime groups engage in transnational crime. Examples of such crime are by and large transnational criminal activities that deal with intangible goods (money laundering) and criminal processes that do not require a physical contact (bank machination via ICTs; Internet pornographic distribution, etc.).

Of course, the current absence of organised cyber-criminality puts considerations about whether organisation will likely become an aspect of crime on the virtual frontier as purely speculative. Yet, logically, the technologies of the twenty-first century make solo criminal activities possible, and profitable. Cyber-crime is a unique example that tends to de-emphasise formal, hierarchical organisational structures. Indeed,

Online criminal organisation has no reason to be circumscribed, in its membership or in its operations, by national, territorial boundaries or by cultural differences because cyber-criminals, like all citizens of the cyber-world, share a culture that transcends national borders and context.<sup>15</sup>

If not solo, cyber-crime is more likely to take a form of diffuse, loosely-structured opportunity groups, criminal associative entities that come together to exploit specific types of a criminal activity and having accomplished those would dissolve. Non-organised models of transnational criminal activities clearly emphasise that there are no set, fixed, easily identified and easily tracked criminal organisations.

## Connections with the Upper-World: Transnational Political-Legal Symbiosis

As mentioned, transnational criminal groups have developed sophisticated organisational models. These models constitute not only cooperative arrangements among criminal organisations in different national contexts but also the entrenchment of criminal groups in the licit world. Symbiotic links to government officials protect criminal operations from legal enforcement and police control. These linkages tend to be strong in origin states but can also embrace

<sup>14</sup> Dobovsek, Bojan. 1996. ‘Organized Crime – Can We Unify the Definition?’ In: Policing in Central and Eastern Europe: Comparing Firsthand Knowledge with Experience from the West. *National Criminal Justice Reference Service*. Retrieved on-line at: <<http://www.ncjrs.org/policing/org323.htm>> (accessed 23 June 2010).

<sup>15</sup> Brenner, Susan W. 2002. ‘Organized Cybercrime? How Cyberspace May Affect the Structure of Criminal Relationships.’ *North Carolina Journal of Law & Technology*, Vol. 4, Issue 1: Fall. Retrieved on-line at: <[http://jolt.unc.edu/sites/default/files/brenner\\_.pdf](http://jolt.unc.edu/sites/default/files/brenner_.pdf)> (accessed 05 June 2010). p. 45.

destination and intermediary states. There are several stages of the development of criminal-legal symbiosis:

1. ***Predatory stage (lowest level of symbiosis)***. At the predatory stage, the criminal group is essentially constituted by physical persons. The transnational character of their activities is confirmed by the movement of people, goods, and services through the national borders of states, they hold foreign accounts and property. Violence is used as a defence, to control a territory and an activity, to eliminate enemies, and to create a monopoly over the illicit activities that they are engaged into. At this state, long-range activities and planning are usually absent.
2. ***Parasitical stage (middle level of symbiosis)***. At this stage, criminal groups are also legal/juridical persons. The degree of criminalisation is high and might include potent criminal enterprises that are camouflaged by legal businesses. At this stage, criminal gangs are subservient to legal political and economic actors that resort to criminal, and as a rule more effective and fast, services, resources, or goods. Good examples are the establishment of black markets, affiliated firms, legal and/or economic intermediaries that develop a corrupt relationship with legitimate power sectors. The under-legal-cover parasitical criminal groups feed off society by providing it with demanded illegal goods and services, ‘with under-world and upper-world society bounds together through political corruption. (...) Now organized crime has become more of an equal to the state, as opposed to a servant.’<sup>16</sup>
3. ***Symbiotic stage (highest level of symbiosis)***. At this stage, the link between criminal groups and political systems evolves into a mutually beneficial relationship. The state apparatus becomes dependent on criminal activities, its monopolies and networks.<sup>17</sup> In cases of symbiotic co-existence of mafia and state apparatuses, state attributes transform into a quasi-state authority such as in narco-states. Sovereign states are gravely challenged in taking any measures in the environment where they are ‘hampered by all the baggage of statehood – patriotism, politics, accountable governments, human rights, legal structures, international conventions, bureaucracy, diplomacy – whereas the bid syndicates have no national allegiances, no laws but their own, no frontiers.’<sup>18</sup>

<sup>16</sup> Liddick, Donald R. 2004. *The Global Underworld: Transnational Crime and the United States*. Praeger, p. 12.

<sup>17</sup> Nomokonov V. A., Aminyeva Y.A., et al. 2001. *Transnational Organized Crime: Definitions and Reality*. (Transnatsyonalnaya organizavannaya prestupnost : definytsyy i realnost). Vladivostok. Far Eastern National University, p. 7–8.

<sup>18</sup> Ibid: 211



### Transnational Crime vs. International Crime

One may expect that transnational and international crimes are synonyms and, in reality, demonstrate no divergence. Nevertheless, there is a significant difference between international crime and transnational crime. This divergence between international crimes (*mezhdunarodnyye prestupleniya*) that has also been known as crimes against international law<sup>19</sup> and transnational crime (*prestupleniya mezhdunarodnogo kharaktera*) is particularly emphasised by specialists from the Russian criminological community.<sup>20</sup> The distinction they acknowledge is based on the subject of the criminal activity. International crimes are as the crimes committed by states against international peace and against humanity. While the motivation of individual participants involved in international criminal activity may vary widely, the institutional purposes of these crimes appear to be largely political or economic, or sometimes a combination of both. This suggests that a valuable frame of reference for describing and analysing such crime systems is one that perceived their behaviour as the political or economic behaviour of organised private interest groups, or sometimes nation-states, or sometimes combinations of both, struggling on the world scene to achieve their own particular institutional goals.

Perceived in this way, international crime is similar to, but a more extensive concept of *state-organised crime* and it includes:<sup>21</sup>

- *Crimes against international law;*
- *Crimes against humanity;*
- *Crimes against the peace;*
- *War crimes.*

The source of standards about responsibility for these crimes are regulations of the international military tribunal in Nuremberg created for the purpose of have legal proceedings against the leaders of Nazi Germany guilty of World War II. The Nuremberg Trials formulated both the bases of penal responsibility for crimes against the peace and humanity and military crimes, as well as the varieties of criminal prohibitions (indicated in Article 6).

Transnational crimes are crimes of less threatening for international peace but endanger: (a) international cooperation (terrorism, plane hijacking, etc.); (b) international economic and socio-cultural development (contraband, illegal immigration, coinage offence, drug trafficking); (c) the well-being of individuals,

<sup>19</sup> Mansurov, Timur. 2003. *The Definition and the General Characteristics of Transnational Crimes*. Moscow.

<sup>20</sup> Gevorgyan, Gor M. 2002. *Transnational Organized Crime*. (Transnatsyonalnaya organizovannaya prestupnost. Moscow Penates, pp. 15-16; Karpets I.I. 1979. *International Crimes (Prestupleniya mezhdunarodnogo kharaktera)*. Moscow. Juridical Literature.

<sup>21</sup> Rome Statute of the International Criminal Court. Available at: <[http://untreaty.un.org/cod/icc/statute/99\\_corr/cstatute.htm](http://untreaty.un.org/cod/icc/statute/99_corr/cstatute.htm)> (accessed 23 May 2010).

their property and the universal system of values (human trafficking and trafficking in body parts, pirateering, pornography).

While international crime is closely associated with state-organised crime and, to a certain extent, sponsored or directed by a nation-state as a matter of covert official policy, transnational crime may be entirely the activity conducted by private organisations unrelated to any nation-state, except possibly through corruption or other illegal activity of officials acting without the support of institutionalised state policy.

Thinking of crime as transnational better illustrates the ways in which these criminal organisations seek to operate outside of the state system. In essence, transcending the sovereignty that organises the modern state system and leveraging it for their own gain. One of the first to make this distinction was Williams,<sup>22</sup> who demonstrated that organised crime was recasting itself by leveraging the changes in global political economy and society being rendered by globalisation and the technology evolution.

The four biggest areas of transnational crime are:

1. *Transnational political fraud*: terrorism, corruption, money laundering, fraud, racketeering;
2. *Transnational theft*: piracy, hijacking, counterfeiting;
3. *Transnational illicit traffic of goods*: trafficking in drugs, trafficking arms and nuclear material, transnational environmental crime (wildlife smuggling, trafficking in prohibited chemicals and hazardous toxic waste);
4. *Transnational illicit traffic of services*: trafficking in persons and body parts.

Moreover, in order to accentuate that traditional criminal activities have gained new powers, practitioners and scholars have enriched the concept of crime with transnational attributes. *Transnationalism* rather than *internationalism* is an important feature of criminal activities in the 21<sup>st</sup> century. Whereas *internationalism* reveals the relationship between the government of one state with the government of another state, *transnationalism* covers an activity that transcends national boundaries, in which state governments do not play a leading role. *Transnationalism* has the sense of transcending borders that identifies crime as a borderless idea. Transnational (or transnationalism) focuses on the heightened interconnectivity between people all around the world and the loosening of boundaries between countries. Transnationalism has social, political and economic impacts that affect people all around the globe. International, in its place, keeps the idea of clearly defined borders. Transnational crime refers to crime that takes place across national borders. The adjective ‘transnational’ describes crimes that are not only international (that is, crimes that cross borders

<sup>22</sup> Williams, Phil. 1996. ‘Transnational Criminal Organisations and International Security’, *Survival*, 36(1): 96-113.

between countries), but crimes that by their nature involve border crossings as an essential part of the criminal activity. Transnational crimes also include crimes that take place in one country, but their consequences significantly affect another country. Examples of transnational crimes include human trafficking, people smuggling, smuggling/trafficking of goods (such as trafficking in arms and drug trafficking), sex slavery, and (non-domestic) terrorism. The term is commonly used in the law enforcement and academic communities. Louise stresses that ‘thinking of crime as transnational better illustrates the ways in which these criminal organisations seek to operate outside of the state system in essence, transcending the sovereignty that organizes the modern state system and leveraging it for their own gain.’<sup>23</sup>

Transnational criminal activities as a rule encompass five intrinsic elements which ensure its transnational configurations:<sup>24</sup>

- a) *Criminal actors* cross borders (physically or virtually via ICTs) in the conduct of criminal activities.
- b) *Products* are illicit goods (manufactures and services) or licit products that are stolen and smuggled out of the country; licit products that are taken out of the country in violation of export restrictions; licit products that are imported to another country in violation of import restrictions or international embargoes.
- c) *Victims of crime* are persons who have been exploited through the engagement in a criminal activity.
- d) *Profits are* benefits retrieved from illicit activities, such as illegal money, goods, and services that are moved across national jurisdictions.
- e) *Virtual signals* are daily messages sent and received. These vary from transmitted digital signals, such as in online child pornography to cyber crime that includes breaking in database systems, identity and electronic bank theft, phishing, etc.

It should also be pointed out that a careful distinction has to be made between transnational and international crime with respect to the actors involved into the activity. International crime largely involves the relationship between and among nation-states, while transnational crime is related to relationships between and among a variety of actors – states, private organisations, individuals regardless of nation-state boundaries.

Whereas international includes the dealings between the government of one nation-state with the government of another nation-state, or of several

<sup>23</sup> Shelley, Louise. 2003. ‘Post-Soviet Organized Crime,’ *Demokratizatsiya*, 2(3), pp. 354–355. Shelley, Louise, John Picarelli, and Chris Corpora. 2003. ‘Global Crime Inc.’ In: Cusimano-Love, Maryann K. 2006. *Beyond Sovereignty: Issues for a Global Agenda*. 3rd ed. Wadsworth Publishing Co Inc., pp. pp. 143–166, p. 145.

<sup>24</sup> Williams, Phil, and Dimitri Vlassis. 2001. *Combating Transnational Crime: Concepts, Activities and Responses*. 1st ed. Routledge, p. 61–62.

nation-states, transnational covers activities which transcends national boundaries and in which nation-state governments do not play the most important or even a significant role. The label *transnational* is therefore not used to designate a new form of regional organisational criminality. Rather, the term is a recognition of how these groups have successfully leveraged recent technological and political changes. The emergence of new forms of instantaneous, global and secure forms of communication is the foundation of the global spread of criminal networks that exist simultaneously in multiple countries. High-powered computers and information networks provide crime groups with new tools for old crimes as well as new criminal opportunities.

## Illegal vs. Illicit

The distinction between *illegal* and *illicit* is worthwhile. Illegal is forbidden by law. For instance, drug trade that is to a certain extent is legally protected in most states. If something is illicit, it is disallowed by law but with a variance that makes it legal under certain circumstances as in cases of proper licensing or certification. Alcohol is a legal commodity for international trade in a certain quantity depending on national regulations and standards. So, it is legal to import, let us say, whisky but only in the amount and quality prescribed by national standards and taxation policies. In the context of transnational criminal activities, as there is a legal asymmetry between certain states, there are incentives for criminal activities produced, in which criminal enterprises offer to meet the demand for cross-border trafficking. In addition to price and law discrepancies, asymmetries in regulations should be pointed out. Where regulations are relatively slipshod or poorly implemented in critical areas such as finance, banking, or taxation, it is an invitation for criminal organisations to move into the state and exploit the loopholes.

Schendel and Abraham,<sup>25</sup> by contrast, call for a radically different way of conceptualizing *illegal* transnational linkages, especially if we are to understand the persistence of transnational criminal activities over time and space. His colleague Rivera<sup>26</sup> argues that the state should not be taken as the point of departure on the issues of illegality. It should rather be considered what people involved in transnational networks consider being legal. 'Many transnational movements of people, commodities, and ideas are illegal because they defy the norms and rules of formal political authority, but they are quite

<sup>25</sup> Schendel, Willem Van, and Itty Abraham. 2005. *Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalization*. Indiana University Press, December 9, pp. 6-9.

<sup>26</sup> Rivera Cusicanqui, Silvia. 2005. 'Here, Even Legislators Chew Them': Coca Leaves and Identity Politics in Northern Argentina,' In: Schendel, Willem Van, and Itty Abraham, *Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalization*, Indiana University Press, December 9, pp. 128-153.

acceptable, ‘licit,’ in the eyes of participants in these transactions and flows.<sup>27</sup> The argument here is that there is a qualitative difference that separates activities illegal in a formal sense and activities that are socially permitted, i.e. licit, based on the scores of micro-practices in a certain socio-cultural setting. The line between illicitness and the laws of the state should not be seen as sharp. It is essential to comprehend the nexus of practices and attitudes bridging the licit/illicit and legal-illegal binaries. States do not always uphold the law. Law also comes from traditional practices emerging from historical and ongoing rules derived from the consistent social conduct acted out of the belief that such an interpretation of law required them to act that way leading the way when powerful groups succeeded in delegitimising and criminalising certain practices. As a result, illegal (officially criminalised) activities might well go along with illicit practices that are officially prohibited but accepted by the society. A universally shared definition of illegality and illicitness is a discourse that involves the production of norms that goes far beyond state legal authority and control. Criminalisation is a long-term process of production, exchange, consumption, and representation. As such, in the absence of a legitimate criminalising authority at the global level the applicability of international treaties to domestic law and behaviour depends on the procedure of adherence to international norms in each particular setting. Interesting are issues of corruption in different cultural setting. In certain societies, corruption is a socially-accepted and sometimes even welcomed practice.

For instance, scholars of Russian politics have widely argued that corruption in Russia has a cultural origin. Anatoly Chubais, the Prime Minister of the Yeltsin’s regime, acknowledged that corruption in Russia very little depended on the authorities, but more so on the people.<sup>28</sup> Being an extremely negative social trend, Shlapentokh points out that petite corruption in Russia is the lubrication for the proper functioning of the state machine, or as an antidote against ‘the inefficient organisation of society and bad state policy’ as it has become ‘a standard payment (...) even in the most basic civil and business services.’<sup>29</sup> Louise Shelley draws attention to diverse socio-cultural attitudes towards trafficking in women from Ukraine and Moldova to brothels in the Balkans.<sup>30</sup> According to her sources, communities in several Balkan states used to approve sexual exploitation of Eastern Europe women in the Balkans because these were not ‘their’ women, while trafficking in ‘other’ women was seen as a creative business project until the moment they realised

<sup>27</sup> Schendel, Willem Van, and Itty Abraham. 2005. *Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalization*. Indiana University Press, December 9, p. 6.

<sup>28</sup> Chubais, Anatoly. 2002. Interview with *Moskovskie Novosti*, July 29, 2002.

<sup>29</sup> Shlapentokh, Vladimir. 2003. Russia’s Acquiescence to Corruption Makes the State Machine Inept. *Communist and Post-Communist Studies* 36, no. 2 (2003): 158.

<sup>30</sup> Shelley, Louise. 2010. *Human Trafficking: A Global Perspective*. 1st ed. Cambridge University Press, July 29, pp. 174–201.

that human trafficking had much wider social consequences in the region including divorces, diffusion of sexually transmitted diseases (STMs), AIDS/HIV, and the like.

Chewing coca leaves is one of the ancient habits in the Andes that is spreading to the Western world. In Argentina ‘you will meet journalists, doctors, member of parliament, mine worker, billiard players, and government officials who chew coca leaves much as other around the world consume coffee and tea.’<sup>31</sup> Having existed there for centuries and up to the second half of the twentieth century it was legal in northern Argentina to import coca leaves from Bolivia and other regions, until UN strict quotas on coca leaf imports and later total prohibition were imposed in 1977. Or even as the Dutch gradually shift from defining narcotics as illegal to licit by replacing narcotics, hallucinogens, drugs, stimulants with the *pleasure-inducing*<sup>32</sup> or *plants of pleasure and sociability*<sup>33</sup> titles that also includes tea, coffee, beer, tobacco.

## General Conceptual Collocation

In addition to the purely terminological issues referred to above, a more substantial challenge is to group together conceptual specificities of the term. Building on Madsen’s Venn diagram<sup>34</sup> I would like to illustrate a collocated conception of transnational crime with reference to organised crime and international law. He suggests using intersections of the three circles ( $\cap$  is the intersection symbol that indicates overlaps) and ‘–’ is the symbol that indicates the elements excluded from the intersection. In this way, transnational crime may be illustrated in the four following combinations:

1. **(IL  $\cap$  TC)  $\cap$  – OC:**<sup>35</sup> Crimes that are transnational and a violation of international law, yet not part of organised crime. *Example:* a parental dispute over custody of a child, where one of the parents takes the child out of one country and transfers it to another.
2. **(IL  $\cap$  OC)  $\cap$  – TC:** Crimes that are organised and a violation of international law, but which do not cross borders. *Example:* domestic labour exploitation.

<sup>31</sup> Rivera Cusicanqui, Silvia. 2005. ‘Here, Even Legislators Chew Them’: Coca Leaves and Identity Politics in Northern Argentina,’ in: Schendel, Willem Van, and Itty Abraham, *Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalization*, Indiana University Press, December 9, p. 128.

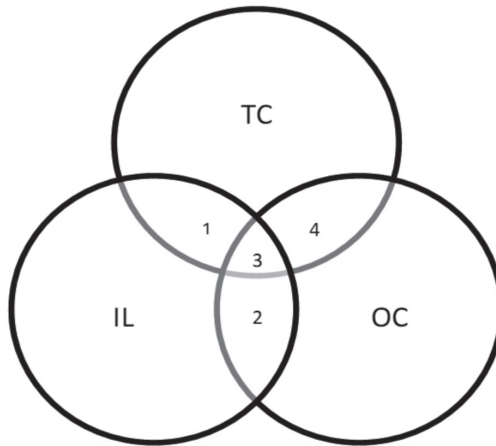
<sup>32</sup> *Genotmiddelen* (Dutch)

<sup>33</sup> Hubert, Annie and Philippe Le Failler. 2000. *Opiums: Les plantes du plaisir et de la conviviale en Asie (Recherches asiatiques)*. Harmattan.

<sup>34</sup> Madsen, Frank. 2009. *Transnational Organized Crime*. 1st ed. Routledge, pp. 8–9.

<sup>35</sup> NB: TC=Transnational Crime; OC=Organized Crime; IL= International Law.

3.  $(\mathbf{IL} \cap \mathbf{TC} \cap \mathbf{OC})$ : Crimes that are transnational, organised, and a violation of international law. *Example*: different forms of trafficking such as trafficking in narcotics, people, or arms.
4.  $(\mathbf{TC} \cap \mathbf{OC}) \cap \neg \mathbf{IL}$ : Crimes that are organised and transnational, but not violations of international law. *Example*: smuggling of cigarettes or alcohol from one country to another.



Madson's Venn Diagram (2009)

This diagram illustrates transnational crimes as crimes that in one of several ways involve two or more sovereign jurisdictions, but which are codified in the national legislations of these jurisdictions. It also points out the difference between transnational and international crime, as well as it acknowledges that transnational crime is not always criminalised in international law. Moreover, transnational crime represents an organised structure, but a strong organisational structure is not a prerequisite. The same as transnational criminal might be involved in both illegal and illicit activities, fortifying these activities with the variance that makes the legal-illegal dichotomy problematic.

Putting this all together leads to several analytic imperatives. First is the need to rescale our vision of *transnational crime*, both specially and temporally. It is necessary to scale up from the level of the nation-state and see transnational criminal actors as important players in the international financial and security architecture. It is also necessary to scale in to see the different structural arrangements of transnational crime that no longer is to be organised and coordinated in order to produce cross-jurisdictional criminal acts. As well as it is necessary to scale across to be able to track the illegal/illicit binaries in various cultural settings, where certain criminal activities although officially criminalised might be actually de-criminalised by local communities. Without these shifts in scale it is not likely to comprehend either the motivations of

those participating in transnational crime or the systemic frame within which transnational crime takes place.

This article did not mean to establish a sharp threshold between transnational and international crime, between organised crime and unorganised crime, but rather it argued that transnational crime is an *amorphous category* to refer to all the practices that forces of authority do not know how to fully identify, comprehend, define, and contain. Transnational crime is also a *residual category* in the sense of what we know about transnational crime is based on evidence coming from a limited amount of detected criminal cases, victimisation surveys, and reports. The difficulties of analysing transnational crime is driven by unrecordance challenges. the numbers of criminal cases provided by governments are regarded as indicators of the input info, and therefore the work load of the criminal justice system; they do not reflect on the crimes that have not been recorded by the police. This is notwithstanding the many contradictions of processes, scales, cultures, history and language that have a huge impact of conceptualising transnational crime. Various legal codes define crimes in different ways, so that the set of acts that constitute a given crime type in one country may not be identical to the set of acts to which the same label is applied in another. Various police forces, in particular, have different rules for when an event should be recorded as a crime. Yet, understanding the key distinctions while constructing the general picture of transnational crime is absolutely essential in rethinking some of the characteristic features of the Westphalian system, in which the emergence of powerful non-state actors have produced critical economic, political, and socio-cultural flows.