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(p. 3) 1 What is Transnational Crime?

1.1 Introduction

A state's borders represent the geographical boundaries of its enforcement jurisdiction, yet borders neither prevent criminals from exiting nor entering states. Criminals cross borders in a range of ways, walking, riding, driving, sailing, and flying across them, and tunnelling under them.¹ They cross at regulated and unregulated points of entry, or they dispatch or transmit things across them—every kind of contraband, humans, body parts, digital information, messages, money, things of value. They appear to work in a borderless world, whilst the authorities that pursue them are constrained by borders. But they rely on these geo-political boundaries for advantage. Borders create markets with different prices for illicit goods, which the criminals exploit. Borders also provide impunity from the criminal jurisdiction of states seeking to arrest and prosecute these criminals. For criminals engaging in trans-national crime in the unembellished sense of cross-border crime, borders are part of their business.

As transnational crime has increased, increasing efforts have been made to bridge the gaps between the criminal laws of different states. This book is an introduction to the law designed to suppress transnational crime—transnational criminal law. Transnational criminal law is constitutive of transnational crime—nameless activities only become transnational crimes once they have been described, identified as a threat, and criminalized. This chapter takes a look at the distinctive features of cross-border activities and the kinds of harm they cause. It then charts the policy process for the development of special international legal measures to suppress these activities as transnational crimes. This analysis is cross-disciplinary in nature, embracing criminology, international relations theory, security studies, and other disciplines.

1.2 The Nature of Transnational Crime

1.2.1 The meaning of 'transnational crime'

In 1971 the international relations theorists Keohane and Nye argued that transnational relations—the movement of money, physical objects, people, or other tangible and intangible items across state boundaries when at least one of the actors involved in the movement is non-governmental—was becoming as significant as inter-state relations in international relations.² The term 'transnational crime' was first used at (p. 4) the Fifth UN Congress on Crime Prevention and the Treatment of Offenders in 1975 by the UN Crime Prevention and Criminal Justice Branch 'in order to identify certain criminal phenomena transcending international borders, transgressing the laws of several states or having an impact on another country'.³ The Fourth UN Survey of Crime Trends and Operations of Criminal Justice Systems made in 1976 defined transnational crimes as 'offences whose inception, perpetration and/or direct or indirect effects involved more than one country'.⁴ This tendency towards broad definition is reflected in article 3(2) of the 2000 UN Convention against Transnational Organized Crime (UNTOC).⁵ An offence is 'transnational' if it satisfies one of a number of alternative conditions:

- (a) it is committed in more than one State;
- (b) it is committed in one State but a substantial part of its preparation, planning, direction, or control takes place in another State;

- (c) it is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- (d) it is committed in one State but has substantial effects in another State.

Transnational crime has been criticized as over-inclusive.⁶ One problem is that it contains different types of crime including organized, white-collar, and political crime. Indeed, cross-border activity can potentially include most forms of currently recognized criminal activity.

Transnational crime can also be criticized for being under-inclusive. In the 1970s the UN took a broader view of transnational crime, including within it both trafficking offences like narcotics trafficking and corruption, but also harmful (but not necessarily strictly criminal) cross-border economic exploitation by powerful trading partners.⁷ A further criticism is that 'transnational' implies cross-border activity when in fact not all crimes understood to fall within this category actually cross borders.⁸ Trans-boundary drug supply, for example, is dependent on national production. The counter argument is that purely local criminal activity may be a legitimate concern of other states because it supports or creates conditions conducive to transnational criminality and criminal activity in those states. These criticisms suggest that transnational crime is perhaps better understood as a precondition for a transnational normative response than as a concept for understanding the different types of crimes (p. 5) it includes. The threshold at which purely intra-national conduct is sufficiently serious to justify foreign interest may vary widely depending on the type of crime, the sensitivity of the interested state to that crime, and the acceptance of that interest by the state in which it occurs.

A more profound criticism of the concept of transnational crime considers it a construct of the law itself, rather than an empirical reality (and by extension each of the sub-categories examined in the chapters in this book, from piracy to counterfeiting of medicines).⁹ In this view transnational criminal law makes transnational crime in order to transform otherwise unregulated conduct into an object of governance. Transnational crime is thus a contested concept, or as Sheptycki puts it 'an object of study [that] has not been a disinterestedly academic matter of purely scientific inquiry'.¹⁰

1.2.2 Characteristics and causes of transnational crime

The institutionalization of responses to transnational crime at the intergovernmental level has led to the development of a bureaucratic criminology that attempts to serve the interests of states both at the national and international level while trying to maintain theoretical integrity in analysis of transnational crime.¹¹ Nonetheless, realist criminological analyses are most influential in the law-making process. They identify a loosely defined range of characteristics and causes, currently considered typical of illicit markets.

Private crime

Transnational crimes are commonly characterized as private or non-governmental crimes,¹² that is crimes, usually of a transactional nature, committed by non-state actors, either individually or in groups, for unofficial ends. These individuals may be private natural persons, or juridical persons such as companies, or they may be officials acting in their private capacity, or government organizations such as the police acting unlawfully.¹³ Importantly, however, transnational crimes are not (at least not usually) sanctioned by a state. It follows that the threat they present is usually asymmetric unless it grows to such proportions that it challenges state authority.

Economic crime

Most transnational criminal activity is considered to be driven by desire for personal economic gain. Put simply, transnational criminals take advantage of the production (p. 6) of cheap goods or services in one state and move them across borders to another state where there is strong demand and the goods or services can be sold or hired out at a profit. This illicit arbitrage may take any of a myriad forms ranging from small-scale smuggling to transnational activities of great complexity and value. It includes white-collar crime in the sense of financially motivated cross-border transactions by individuals of a relatively high social status, but it is a much broader concept. There is nothing characteristic about the kind of person nor the products involved. They could be anyone smuggling anything amenable to trafficking across a border: cigarettes, cars, drugs, radioactive waste, stolen works of art, women for prostitution, firearms, information. The differences in the nature of the 'goods' involved lead to markets that are differently organized, demanding a nuanced approach if these markets are to be properly understood, and suggesting different legal responses may be necessary.¹⁴ Transnational criminal flows are essentially cross-border chains of supply—the mechanisms for the illicit trade itself—composed of producers, wholesalers, distributors, transporters, exporters, and importers and retailers that exist for each illicit product or service. Sometimes supply chains are used only for one product or service, sometimes for multiple purposes. The main difference with licit economic activity is that these activities are prohibited in respect of the particular product or service in one or other or both states. The key to responding to chains of illicit supply is to understand the incentives and disincentives that operate at each stage of the chain.¹⁵

Economic disparities between states are among the main causes of transnational crime because they strengthen demand for illegal products and services across borders.¹⁶ Poverty or relative poverty is the main 'push' factor in source or producer states, but political conflict, culture, and opportunity also play a role. Low wages mean that illicit products and services are cheap to produce or secure. Various facilitative factors make cross-border supply possible including the availability of transport and corruption. 'Pull' factors in destination or consumer states include the demand for products and services. The absence of appropriate law and/or enforcement in a particular state may push or pull by facilitating production, supply, or consumption. Some states may seek to attract crime because of the benefit from taxation of financial activity (eg bank secrecy jurisdictions) while others may try to repel it because of the cost to victims (eg the US and drug use).¹⁷ A range of domestic policies can influence the growth of transnational crime including economic protectionism, fiscal austerity, privatization, public procurement, promotion of domestic industries, domestic prohibition of commodities like drugs, and the imposition of quotas on (p. 7) immigration. Strategies and tactics in enforcement of these laws shape illicit markets, conditioning the steps taken by traffickers to avoid apprehension including the use of corruption.¹⁸ And while one set of factors may explain the rise in incidence of a transnational crime, an unrelated set of factors may explain its spread. For example, the collapse of the Colombian drug cartels gave Mexican criminals the opportunity to switch from the transit to the production of illicit drugs, and the failure of local policing, corruption, and poverty in Mexico explain the spread of this involvement, although the instigation of a war on drugs by President Felipe Calderón in 2006 is blamed for the recent upsurge in drug-related violence.¹⁹ Criminal markets are also spread through displacement; they react to suppression by relocating their activities or switching to other less visible crimes.

Although these illegal markets often have close relationships with legal markets by, for example, using the banking system to launder profits, illegal and legal markets are not identical in form.²⁰ Government regulation of cross-border transport of licit goods usually requires permission to import/export and the payment of duty of some kind, but for illicit goods, corruption, secrecy, and intimidation are the options, and the costs involved in

avoiding apprehension have to be built into the market prices of illicit goods. Moreover, legal markets rely on contract and solve disputes through a variety of legal means. Illegal markets must rely on personal relationships, ethnic, and other group loyalties, although violence may be used to 'enforce' contracts as well as to gain market share.

Political crime

Not all transnational criminals pursue economic advantage. Some transnational criminals seek political advantage through violence or the threat of violence. Violence may be used for instrumental or ideological purposes. Transnational terrorists, for example, may hatch a plot in one state and execute it in another. Though shocking, violence is an incidental feature of their activity, as their main aim is to influence either official or public opinion to achieve their own political goals.

Organized crime

Although organization is not a necessary condition of transnational crime—cross-border smuggling by one person would suffice—transnational crime is heavily associated with organized crime. The concept of organized crime is, however, not settled and remains highly controversial.²¹ The difficulty is what is meant by 'organized': it may mean a range of things from hierarchical organizations to individuals in the loosest of (p. 8) relations, a range so broad as to render the term almost meaningless. The *organizing* of transnational crime is perhaps a more productive focus.²²

Globalized crime

An economic model of crime suggests that it is rational for criminals to go where they can to do business and to spread out into unregulated areas. In antiquity, when formal boundaries were weak, it was relatively easy for criminal activity to cross borders. The 'harder' borders (border controls, passports) characterized by the rise of the nation states of the post-Westphalian era made cross-border crime more difficult and tended to offset improvements in transport and communication mechanisms. It is believed today that the conclusion of the Cold War led to ideal conditions for transnational crime to flourish because legal controls became weaker as transport became cheap, frequent, rapid, and easy to access, communication became international and mobile, and financial transactions instantaneous and unregulated.²³ The conclusion of free trade agreements reduced or removed the legal barriers to trade. As market control of the legal economy grew and state control withered it became easier for criminals to move goods, persons, and money. In what he calls the 'dark side of globalization', Levitsky claims that transnational criminals responded more rapidly in exploiting these new market opportunities than states did in shutting the markets down.²⁴

Others recommend caution when equating the apparent boom in transnational crime on globalization.²⁵ Political events such as the breakdown of the Soviet bloc have also contributed, as have insufficiently regulated markets in the finance sector or over-regulated markets in the labour and agricultural sectors.²⁶ Moreover, some question whether transnational crime is a novel phenomenon, pointing out that cross-border trade of an illegal kind is a long-standing practice predating the current phase of globalization and many modern economies are rooted in contraband capitalism.²⁷ Technological developments have always impacted on the spread of crime, triggering calls for a legal response. In 1934 Kuhn commented:

Modern civilization and the relative shrinking in the size of the planet on which we live have given impetus to the principle that the efficient administration of criminal

justice is a matter of importance not only to a single community or state but to civilized society as a whole.²⁸

(p. 9) Whether or not there is a strong relationship between globalization and the upsurge in transnational crime, it should always be borne in mind that states are not always in an antagonistic relationship with these dark forces of globalization. Frequently they are in symbiosis: states have been compliant in sanctions busting, money laundering, transfer of nuclear technology, weapons trafficking, counterfeiting, drug trafficking, among other things.²⁹ A strict division between transnational crime and other forms of transnational harmful activity carried out by politicians, business, and even law enforcement organizations ignores the fact that in many cases the latter frequently act in partnership with the alleged transnational criminals. Moreover, global business activities can be much more harmful than transnational crime. It has been pointed out that in the 1970s transnational crime was conceived of by UN officials as the abuse of power by transnational corporations in developing states, until in the mid-1980s it was 'bleached' from the UN's agenda as a more narrowly defined crime control emerged as the principal concern.³⁰

Localized crime

Prioritizing the global aspects of transnational crime also ignores its local aspects. As Hobbs, puts it: 'The notion of ... "transnationality" needs to be reconsidered in the light of empirical research, which indicates that ever mutating interlocking networks of locally-based serious criminality typifies the current situation.'³¹ All transnational processes have domestic roots.³² Transnational criminals are both global and local, able to operate across borders but based locally.³³ Hobbs coined the neologism 'glocalization' to describe the locally embedded nature of transnational crime.

1.2.3 Categorizing transnational crimes

Transnational crimes are usually categorized by the harm they cause. Transnational crimes harm a range of different private and public interests including security, human rights, social interests, religious beliefs, and morality.³⁴ The most obvious harm is to individuals and to the fabric of societies in which they live. Drug use, for example, has negative effects on individual users and on the society in which those users live. The degree to which society respects the choices of the individuals being harmed when there is no clear harm to others presents a significant difficulty in deciding whether criminalization is the appropriate response. Moreover, one person's harm is usually to (p. 10) another's benefit. While the consumption of copyright-violating movies downloaded from the Internet harms the intellectual property of their creators and producers, for consumers they are a source of satisfaction. At a larger scale, it has been argued that the narcotics economy had significant benefits in drug-producing regions in Latin America.³⁵ This relativism is intrinsic to the identification of harm at the transnational level because different value systems prevail in different states, and frequently those who are being 'harmed' live in other states.

At a broader economic level, transnational crime causes harm by compromising financial and commercial institutions, making economic management difficult and eroding tax bases. It can slow economic development in poorer states by, for instance, forcing the diversion of scarce resources to combat crime. Yet it does not always have a negative impact and can produce significant profits in underdeveloped areas through, for example, the use of forced labour in agricultural production.

Transnational crime can also undermine the internal sovereignty of states by providing an alternative system of authority. It can provide order and security in social spaces where the state's authority is negligible or absent. It can undermine public institutions through, for example, the corruption of the police force. It can openly challenge the state's authority, particularly when that authority is re-asserted. A recent example is the 2010 violence in Kingston, Jamaica, precipitated by the attempt to capture wanted drug trafficker

Christopher ‘Dudus’ Coke in order to extradite him to the US.³⁶ Potentially more dangerous situations emerge when transnational criminals and the state enter into a symbiotic relationship. Regional or local state capture is most common. In 2014 in Iguala, Mexico, for example, forty-three college students protesting at the influence of organized crime disappeared after being arrested by local police with the cooperation of the corrupt local mayor. They had been turned over to a Mexican crime group, Guerreros Unidos.³⁷ Naím coined the term ‘mafia states’ to describe what he argues is a novel phenomenon: the situation where instead of using criminals for their purposes, governments fuse with criminal organizations, presenting a political rather than merely a law and order problem to other states.³⁸ The break-away borderland of Moldova, Transnistria, is considered an example of such a ‘criminal state’.³⁹ Others respond, however, that this fusion is nothing new and the threat exaggerated.⁴⁰ Nonetheless, it serves as additional grist for the categorization of foreign organized crime as a national security issue.⁴¹

(p. 11) Transnational crimes can also be categorized using an orthodox criminal law taxonomy based on the values protected in the sense of individual human rights or interests. Harms against personal interests might include slavery, harms against property interests piracy, harms against social interests drug trafficking, harms against the state terrorism, and so forth. The likelihood of considerable overlap in these categories suggests that a more useful division might be made between essentially violent crimes directed at humans’ bodily integrity, such as terrorism, and essentially non-violent crimes based on contraband, such as drug trafficking, in order to justify a more severe deterrent response. Nevertheless, even this demarcation has its difficulties—human trafficking being a case in point of commercial exploitation through violence. Finally categorization may also be made in terms of violations of individual or collective morality. Offences such as slave trading are the product in part of collective moral condemnation. It is difficult, however, to construct degrees of such condemnation at a transnational level in order to differentiate levels of suppression, the diverse moral positions on drug trafficking at a global level being a case in point. Perhaps even more troubling are the obvious cases of selective morality used, for example, to control the transnational mobility of certain kinds of individuals—migrants and sex workers—through offences of migrant smuggling and human trafficking—but not others.⁴² Finally, we should always be wary of the possibility that interest-based agendas such as control of the high seas will evolve into normative arguments such as condemnation of drug trafficking on the high seas with a potential for transformation into law.

Using categorization to tailor a response is made more difficult by the fact that transnational activities affect different states at different levels of intensity. Moreover, these activities only become ‘crimes’ in the legal sense through legal suppression—the use of legal authority to prohibit as criminal offences certain activities and to use executive power to enforce these prohibitions and punish these offences. In addition, the legal suppression of transnational activities creates illicit markets and as a result can itself harm consumers through unreliable product quality, incidental violence, and corruption. Finally, it is not always clear which links in chains of illicit supply are responsible for most harm (and are thus most deserving of the attention of the law)—the producers, suppliers, or consumers. Given the variable nature of these activities and their impact, how is a global consensus for criminalization generated?

1.3 Assessing and Responding to Transnational Crime

1.3.1 Global cooperation: an unavoidable response to a global threat?

It is claimed that transnational crime will be among the defining security threats of this century.⁴³ It is a threat said to arise out of the global spread of powerful criminal networks, which take advantage of weak law enforcement in many states. It is argued (p. 12) that transnational crime can only be suppressed by the cooperation of states and that the failure of states to do so provides an opportunity to transnational criminals to use the barriers of sovereignty to protect themselves and to operate with impunity. However, other commentators warn against reflexively accepting this logic.⁴⁴

What evidence supports the identification of specific threats and who is making that assessment? These are not always questions of concern to the officials and diplomats who operate the system; many consider the problems self-evident and unworthy of analysis.⁴⁵ Van Duyne and Nelemans comment caustically: 'At UN policy-making level proper substantiation appears to be a mere detail if unanimity can be attained by formulating strings of emotive words.'⁴⁶ International civil servants are, however, often asked to make policy forecasts by their political masters in areas where they have no expertise and no or very poor data exists.

Criminalization of transnational activity that is the result of unaddressed social, economic, and political pressures, is a suspect tool for its effective suppression. Moreover, both the size and novelty of different transnational threats are commonly overblown. Current efforts to analyse the global spread of crime have been criticized as justifying legal action because law enforcement have a direct interest in playing up the scale of the problem.⁴⁷ Sterner critics argue that transnational crime is being constructed as a global threat in order to increase the coercive power of states.⁴⁸ As Chapter 2 of this book illustrates, responding to transnational crime is a form of international relations that reorders global political power and is at least in part an end in itself.

1.3.2 The scale of transnational crime

Although we do not know the true scale of transnational crime, the scale of offending is the main driver of criminalization. Policy documents are replete with frighteningly large figures representing the incidence of particular transnational crimes and the amounts of money made by those engaging in them. There has, however, been little thorough research in regard to the incidence of transnational crime.⁴⁹ The figures are not always reliable, and the transnational context allows them to be amplified by policy-makers seeking to raise concern. The danger is that facts worthy of a response are created by this repetition and amplification.⁵⁰ An example of this is the way in which a self-acknowledged speculative estimate by two researchers that there were 1,420 cases of human trafficking in the UK in 1998 blew out first to an estimated 4,000 cases in a (p. 13) UK Home Office report in 2003, and then to a Labour MP's estimate that there were 25,000 sex slaves working in the UK in 2007; all of which started with actual data of seventy-one cases.⁵¹ The unavailability of crime statistics in many states and their notorious unreliability when available, justifies scepticism about many of the global figures based on these national statistics. Moreover, it is uncertain what percentage of all crime is transnational and thus how concerned we should be about it compared to purely national crime. The UN Office on Drugs and Crime (UNODC), the main administrative organ in the UN's criminal justice system, is making an effort to be more precise in this regard. For example, in 2002 it estimated that there were 185 million users of illegal drugs worldwide.⁵² In 2015 it more circumspectly estimated that 246 million people used drugs but within a range of 162 million to 329 million, which points to the underlying problem of precision.⁵³ The UNODC responded to criticisms that there was no overall threat assessment in regard to transnational crime with publication in 2010 of *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*.⁵⁴ In spite of this the critics are still unconvinced, stressing that evaluations of this kind do not

withstand careful analysis.⁵⁵ The UNODC appears to be responding by producing regional and thematic threat assessments.⁵⁶ The methodology for data gathering remains problematic. For one thing, comparative data gathering is extremely difficult: the response to the UN Crime Trends Surveys is, for example, low and mainly from developed states, making evidence-based policy-making at a global level difficult.⁵⁷ Only substantially improved national level data collection can provide an unassailable rationalization for action at the international level. Finally, quantifying the problem is only one step towards understanding it. Tonry believes that the only rational way to respond is to make a better effort to understand the activities in question, to ‘develop rich narrative and econometric models of transnational markets in which goods move, identifying both push and pull factors that facilitate their movement’.⁵⁸

1.3.3 Threat identification, the formation of a transnational interest, and pathways to the development of a policy response

There is no clear international system to identify and respond to transnational criminal threats and nor is it clear what weight of evidence of a threat is necessary to tip the scale towards suppression. The history of transnational criminalization indicates that (p. 14) while in regard to some crimes it requires exposure of considerable evidence, sometimes little more than a single headline-grabbing incident is sufficient. The hijacking of the cruise ship *Achille Lauro* in 1985, for example, led to the adoption of the Conventions for the Suppression of Unlawful Acts at Sea discussed in Chapter 3.⁵⁹

The development of a transnational interest in suppression of the activity is the key to international action. Such interests are common. Latin American states, for example, have a valid interest in the control of firearms in the US because of the flow of these weapons across their borders and consequent rise in violent crime.⁶⁰ The development of a transnational interest does not always, however, lead to a coherent position among affected states. In the 2015 migration crisis into Europe, for example, the European Union (EU) argued that central European states were unable to control their borders while they responded that the problem lay with Germany for issuing an open invitation to migrants.⁶¹

Many different actors with their own motivations may try to use this transnational interest—well-grounded in evidence or not—to trigger what ultimately becomes a legal response. Non-governmental organizations (NGOs) have been active in highlighting criminal threats and developing responses at least as far as back as the nineteenth century when the British Anti-Slavery Society agitated for the suppression of slavery. It played a significant role in the passage of the Slave Trade Act of 1807, which made slave trading illegal throughout the British Empire. It was followed by Royal Naval action to interdict the trade in the next half century. Finally, it culminated in the abolition of slavery itself, first in Great Britain and then elsewhere. Modern analogues of the Anti-Slavery Society include international NGOs such as Transparency International, which played a key role in the development of the corruption conventions discussed in Chapter 9.

States have the most significant formal role in identifying and responding to transnational crime through international cooperation. Commonly a law-enforcement agency will raise the alarm at the national level, but any agency with a relevant mandate may do so. Threats may also be identified by legislators through the proposal of new legislation. Pressure within a state will sometimes reach a sufficient threshold to transform into pressure from that state on others to cooperate in suppression. For example, the recent elaboration of a Protocol on the Illicit Trade in Tobacco Products originated in pressure from the EU’s customs fraud unit, OLAF.⁶²

Private individuals and public officials have always played a prominent role in identifying and responding to transnational criminal threats. A good example is Harry Anslinger, who joined the US Federal Bureau of Narcotics from the Bureau of (p. 15) (Alcohol) Prohibition as its first Commissioner of Narcotics in 1930 and held the office until 1962. As the US representative at a number of international drug control conferences and on the UN Commission on Narcotic Drugs (CND) from its establishment until 1970, he embarked on a personal crusade which linked domestic US drug policy to foreign drug policy and saw the threat to the US as primarily external in origin.⁶³ His efforts resulted inter alia in establishing total drug prohibition after the Second World War, and the identification of cannabis as a major threat at the national and international levels.⁶⁴ Officials such as investigators, prosecutors, and judges that link up in transnational law enforcement networks with officials from other states can be highly influential in steering the response to transnational crime when they share a global understanding of the problem.⁶⁵

The battles about if, and if so how, to respond to particular threats are fought out in various international institutions, including the UN's criminal justice organizations discussed in greater detail in Chapter 21.⁶⁶ There is no single pathway within the UN system for identifying emerging transnational threats; Redo wryly notes 'the meandering way in which such ideas surface at the global level'.⁶⁷ Various organs have a mandate to explore criminalization. The quinquennial UN Crime Congress serves as a talking shop to explore new concerns. The CND makes policy in regard to drug offences, the Commission on Crime Prevention and Criminal Justice (CCPCJ) makes policy in regard to other crimes of concern, and the conferences of the states parties (or COPs) to the various crime-suppression conventions make policy in regard to the specific crimes that fall within their mandates. The process may begin with a state calling attention to a threat by, for example, a resolution of the CCPCJ. With sufficient support that resolution could become a resolution of the UN Economic and Social Council (ECOSOC) and finally receive General Assembly endorsement calling on the Secretary-General to initiate the treaty development process. Alternatively, a COP might be asked by a state party to consider passing a resolution urging further steps against a particular form of conduct that falls within the COP's mandate. To study emerging threats the UN relies inter alia on the International Scientific and Professional Advisory Council (ISPAC), an umbrella organization bringing together NGOs and the professional and scientific community, and the United Nations Interregional Crime and Justice Research Institute (UNICRI). The UNODC also plays a key policy-making role. As the secretariat to the CCPCJ, CND, and the various COPs, its principal function is to administer the policy they develop, but it contributes to that policy development because it shapes and leads much of the work of these bodies. Other inter-governmental organizations (IGOs) with a strong role in transnational criminal policy and law making include the Organisation for Economic Co-operation (p. 16) and Development, G8, G20, EU, Council of Europe, Association of Southeast Asian Nations, International Maritime Organization, World Customs Organization, etc. The list is growing. Even the UN Security Council has begun to play a role in the identification of and response to transnational criminal activities such as terrorism that threaten international security.

1.3.4 The nature of the policy-making process

When NGOs, individuals, states, and IGOs engage in policy-making to suppress emerging transnational crimes they act as transnational norm entrepreneurs, developing rules to protect a range of economic, political, moral, and emotional interests.⁶⁸ In many instances, a general sense of social unease and anxiety creates the fertile ground for developing a response. The transnational moral entrepreneur focuses public attention on the perceived threat and links it to those societal anxieties. Their ability to point to a few examples of behaviour provides supporting evidence for the recommendation of legal action.⁶⁹ Moral proselytism, for example, underlies the development of laws such as slavery and drug prohibition. Norm entrepreneurs mobilize support for a particular norm beyond national

boundaries in jurisdictions where the particular activity may still be regarded as legitimate. They seek to redefine the activity as an evil. The proselytizers agitate actively for the suppression and criminalization of the activity by all states and the formation of an international convention. While a transnational interest motivates and aids the norm entrepreneur, it is the transnational hook—‘it affects all of us’—which serves to rally interest in other states. Their targets are the political elites that control the legal systems of potential partners in action. Their ultimate goal is law reform in those states. Slowly what Nadelmann terms a ‘global prohibition regime’ emerges—the activity becomes the subject of criminal laws and police action throughout much of the world, and international institutions and conventions emerge to play a coordinating role. The success of a prohibition regime will depend on a complex array of factors, not least of which is a proper understanding of the problem addressed. A weak understanding of the problem may lead to the adoption of inappropriate strategies, laws, and institutions that fail to achieve their goals, as well as a variety of consequential social ills including over-criminalization and law enforcement overreach.

Footnotes:

- ¹ P Williams, ‘Organizing Transnational Crime: Networks, Markets and Hierarchies’ in P Williams and D Vlassis (eds), *Combating Transnational Crime: Concepts, Activities and Responses* (London, Portland: Frank Cass, 2001), 57, 61 et seq.
- ² R Keohane and J Nye, *Transnational Relations and World Politics* (Cambridge, MA: Harvard University Press, 1971), xii.
- ³ GOW Mueller, ‘Transnational Crime: Definitions and Concepts’ in P Williams and D Vlassis (eds), *Combating Transnational Crime: Concept, Activities, Responses* (London, Portland: Frank Cass, 2001), 13.
- ⁴ United Nations, *Fourth UN Survey of Crime Trends and Operations of Criminal Justice Systems* UN Doc A/CONF.169/15/Add.1 (1995).
- ⁵ United Nations Convention against Transnational Organized Crime, New York, 15 November 2000, 2225 UNTS 209, in force 29 September 2003.
- ⁶ D Friedrichs, ‘Transnational Crime and Global Criminology: Definitional, Typological and Contextual Conundrums’ 34(2) *Social Justice* (2007) 4, 5.
- ⁷ ‘Changes in Forms and Dimensions of Criminality—Transnational and National’, Fifth UN Congress on the Prevention of Crime and the Treatment of Offenders, Toronto, Canada, 1-12 September 1975, UN Doc A/CONF.56/3, 4.
- ⁸ C Fijnaut, ‘Transnational Crime and the Role of the United Nations’ 8 *European Journal of Crime, Criminal Law and Criminal Justice* (2000) 119, 120.
- ⁹ See J Sheptycki, ‘Transnational Crime: An Interdisciplinary Perspective’ in N Boister and RJ Currie (eds), *The Routledge Handbook of Transnational Criminal Law* (Abingdon: Routledge, 2015), 41, 52.
- ¹⁰ *ibid*, 56.
- ¹¹ SM Redo, *Blue Criminology: The Power of United Nations Ideas to Counter Crime Globally* (Helsinki: HEUNI, 2012), 49, and authors cited there.
- ¹² See MC Bassiouni, ‘An Appraisal of the Growth and Developing Trends of International Criminal Law’ 45 *Revue Internationale De Droit Penal* (1974) 405, 421.

- 13** See, eg, M De Flem, 'International Police Cooperation in North America' in DJ Koenig and DK Das (eds), *International Police Cooperation: A World Perspective* (Lanham, MD: Lexington, 2001), 81.
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- 15** M Tonry, 'Transnational Organized Crime—Prospects for Success of the UN Convention' in H-J Albrecht and C Fijnaut (eds), *The Containment of Transnational Organized Crime* (Freiburg: Iuscrim, 2002), 253, 264–65.
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