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# **Jurisdiction And Transnational Crime**

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## **Abstract**

The population on our planet is growing drastically every year, and so does the volume of exchanges between different nations. The vast majority of these exchanges are legitimate and beneficial, but some part of it is not. The growth of transnational crime is a threat to the rule of law, without which there can be no sustainable world development. Transnational criminal markets are throughout the planet, dealing in drugs, arms, trafficked women, toxic waste, stolen natural resources, or protected animals' parts. A huge chunk of dirty money flows through the world every year, distorting local economies, corrupting institutions, and giving rise to conflict. Thus, in this research paper, we are going to find a solution to fight against transnational crimes by the way of coordination among nations and mechanisms like data sharing related to transnational crime, which will also involve case studies on various nations with effective policies on transnational crimes.

## **Introduction**

In recent times cooperation between nations throughout the world has increased to combat the uprising of transnational crimes throughout the world. For instance, Cooperation between the US and Kenya in confronting illicit trade in wildlife and narcotics has resulted in notable success in recent years. In the case of the well-known Akasha brothers - Baktash Akasha and Ibrahim Akasha. Baktash Akasha was banished from Kenya and became the first Kenyan to be sentenced on drug trafficking charges in New York in Year 2019.

The Term Transnational crime means a crime that takes place across national borders, between two or more nations. For instance, when criminals illegally move people across the national border then their actions are a transnational crime.<sup>1</sup> Recently, the Albanese government has mobilized diplomacy and aid in the effort to counter Sri Lankan smugglers.<sup>2</sup>

## **Laws To Govern Transnational Crime –**

Laws concerning this can be divided into 2 categories i.e., Domestic laws and international laws. Both of these laws are required to work in coordination with each other for the effective and efficient prevention of transnational crime. International law is governed by agreements like treaties and by customs. Custom refers to the things countries perform as a sense of perceived legal obligation. Treaties and customs are covered majorly under public international law, that is, the law governing how countries maintain diplomatic relations with one another. But nations and international organizations have largely failed to foresee the evolution of Transnational Organized crimes into a strategic threat to governments, societies, and global economies. At the international level, an outmoded understanding of Transnational Organized Crimes does not adequately observe the strategic impact of Transnational Organized Crimes and fails to ensure peace efforts and crime-fighting are not working at disparities. A thorough overhauling of international cooperation in dealing with Transnational organized crimes is needed to improve information sharing; develop international investigative, monitoring, and prosecutorial tools; and integrate strategic decision-making in international peace and crime-fighting.

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<sup>1</sup> (2009). Transnational Crime. *obo* in Criminology. doi: 10.1093/obo/9780195396607-0024.

<sup>2</sup> Grattan, M., 2022. *Albanese government mobilises diplomacy and aid in effort to counter Sri Lanka people smugglers*. The Conversation. [June. 27, 2022, 10:00 PM]. <https://theconversation.com/albanese-government-mobilises-diplomacy-and-aid-in-effort-to-counter-sri-lanka-people-smugglers-185403>.

## Kinds Of Transnational Crimes

- **Cybercrime:** This category consists of every crime that involves a computer network. According to the Council of Europe's treaty, cybercrime can include illegal access and interception of computers, computer communications, forgery, fraud using computers, child pornography, and copyright infringement.<sup>3</sup> For instance, illegally downloading games and movies may constitute a transnational crime.
  
- **Drug trafficking:** This involves the distribution, sale, cultivation, and manufacture of substances related to drug prohibition laws.<sup>4</sup> Moving heroin from Afghanistan into Iraq is an example of such transnational drug trafficking.
  
- **Environmental crime:** This crime involves illegal harm to the environment. It consists of illegal fishing or trade-in animals, illegal trade in substances that harm the ozone, illegal dumping of hazardous waste, and illegal logging.<sup>5</sup>
  
- **Human trafficking:** This transnational crime involves the recruitment, transportation, transfer, or harboring of people by force or deception for exploitation.<sup>6</sup> Trafficked persons are exploited for sex, labor, and occasionally for organs.
  
- **Money laundering:** This crime involves the disguise of money or property to hide the origin from where it is gained from a crime. For instance, forging, fake business receipts to disguise the source.<sup>7</sup>

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<sup>3</sup> *The Budapest Convention on Cybercrime: benefits and impact in practice*, COUNCIL OF EUROPE, (June 27, 2022, 11:00 PM), <https://www.rgnul.ac.in/PDF/f7ff0636-9075-47f2-8e17-a5ba7be7a3cf.pdf>.

<sup>4</sup> *Drug Trafficking*, UNITED NATIONS, (June 27, 2022, 11:30 PM), <https://www.unodc.org/unodc/drug-trafficking/index.html>.

<sup>5</sup> Debbie Banks et al, *Environmental Crime: A threat to our future*, UNITED NATIONS, (June 27, 2022, 12:00 AM), [https://www.unodc.org/documents/NGO/EIA\\_Ecocrime\\_report\\_0908\\_final\\_draft\\_low.pdf](https://www.unodc.org/documents/NGO/EIA_Ecocrime_report_0908_final_draft_low.pdf).

<sup>6</sup> *Human Trafficking*, UNODC, (June 28, 2022, 01:00 PM), <https://www.unodc.org/unodc/en/human-trafficking/human-trafficking.html>.

<sup>7</sup> *Money Laundering Through the Physical Transportation of Cash*, FATF REPORT, (June 28, 2022, 10:00 AM), <https://www.fatf-gafi.org/media/fatf/documents/reports/money-laundering-through-transportation-cash.pdf>.

- **Smuggling of cultural relics:** This crime consists of the theft of antique goods.<sup>8</sup>
- **Weapons trafficking:** The sale or movement of ammunition cross-border without the permission of both the nations or without the proper ammunition documentation.<sup>9</sup>

## **The Distinction Between Transnational Crime And International Crime**

There is an important discrepancy between transnational crime and international crime. International crimes concern primarily genocide, war crimes, and crimes against humanity. These crimes have a wide scope, are especially critical, and are generally perpetrated by government players. Thus, international crimes are considered part of the public international law doctrine. In distinction, transnational crimes, which are more limited in scope and are carried out by private players, are not.<sup>10</sup>

### **Applicability Of Transnational Crime**

There are two reasons why it is important to determine whether a crime is transnational or not. First, determining who has jurisdiction over a transnational crime is much more complicated than for a domestic one.

Second, countries use techniques like–international organizations and agreements, to investigate and prosecute transnational crime.<sup>11</sup>

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<sup>8</sup> *Trafficking in cultural property*, UNODC, (June 28, 2022, 01:30 PM), <https://www.unodc.org/unodc/en/organized-crime/intro/emerging-crimes/trafficking-in-cultural-property.html>.

<sup>9</sup> *Firearms Trafficking*, UNODC, (June 28, 2022 02:00 PM), <https://www.unodc.org/e4j/zh/organized-crime/module-3/key-issues/firearms-trafficking.html>.

<sup>10</sup> Christensen, M. and Boister, N, *New Perspectives on the Structure of Transnational Criminal Justice*. [June. 27, 2022 10:01 PM]. <https://brill.com/view/title/37923?language=en>.

<sup>11</sup> United Nations Convention against Transnational Organized crime and the protocol thereto, UNODC, (June 28, 2022, 02:30 PM), [https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED\\_NATIONS\\_CONVENTION\\_AGAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOLS\\_HERETO.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_HERETO.pdf).

## Transnational Crimes Jurisdiction

Determination of jurisdiction of such crimes is complicated. To get a better understanding of it let's consider prosecution of a domestic crime. Where both the victim and the offender are in the same country, which is the same country where the crime took place. The courts of that country will decide the case.<sup>12</sup> But when it comes determining where to prosecute transnational crimes is complicated. The victim and offender may be in different countries. Also, the place where the crime took place may be somewhere else. The challenge is to figure out the authority, or jurisdiction, to decide on a case involving transnational crime. Before going forward with the discussion on transnational crime, let's know what jurisdiction means. In this context, jurisdiction is the people, natural features, or issues over which a court has the power to hear cases and issue decisions. Where the court has jurisdiction over the territory in which the crime occurred, which is also known as territoriality jurisdiction. Where the court has jurisdiction over the person who purportedly committed the crime, which is known as personality jurisdiction. Or where the crime itself was of a type that the court per se has jurisdiction, which is known as universal jurisdiction. Different types of jurisdictions are applied to different cases, these different approaches to getting jurisdiction apply in matters of transnational crime.

Countries sometimes claim jurisdiction over a crime based on the people involved and their roles in the crime. This is known as **personality jurisdiction**. In some cases, countries claim jurisdiction over crimes where one of their citizens is the offender, it is known as nationality jurisdiction.<sup>13</sup> In some cases, other countries claim jurisdiction over crimes where one of their citizens is the aggrieved party, it is known as passive personality jurisdiction and some countries claim jurisdiction over offenses committed outside their borders but that looms the sovereignty, security, and integrity of the state, is known as protective jurisdiction.<sup>14</sup> When a state claims jurisdiction over criminals based on the place where the crime was committed, is known as **territoriality jurisdiction**.<sup>15</sup>

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<sup>12</sup> *Supra Note 10.*

<sup>13</sup> *Supra Note 10.*

<sup>14</sup> *International Criminal Jurisdiction*, OXFORD PUBLIC INTERNATIONAL LAW, (June 28, 2022 3:00 PM), [https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1902#:~:text=1%20The%20term%20%27protective%20principle,State%20interests%20\(Criminal%20Jurisdiction%20of.](https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1902#:~:text=1%20The%20term%20%27protective%20principle,State%20interests%20(Criminal%20Jurisdiction%20of.)

<sup>15</sup> Devika Sharma, *Law on territorial jurisdiction: "will the place mentioned in invoice decide the jurisdiction of a court on filing of a suit against it?"*, (June 28, 2022 4:30 PM), [https://www.scconline.com/blog/post/2021/09/18/territorial-jurisdiction-of-court/.](https://www.scconline.com/blog/post/2021/09/18/territorial-jurisdiction-of-court/)

Commonly, if any of the stages of a crime occur within a country's territory, that country will have jurisdiction to prosecute the crime. For example, if criminals plan a murder in one country, commit the crime in another country, and dispose of the body in a third country, all three countries may have jurisdiction to prosecute the crime. In some cases, countries also grant jurisdiction access when there is a significant detrimental impact felt in the country, even if no stage of the crime took place there. In some instances where some crimes are especially horrendous, countries use **universal jurisdiction**. Universal jurisdiction permits a country to prosecute a crime by not considering the place where the crime took place irrespective of the nationality of the victim or the offender. Individual countries determine whether or not to apply universal jurisdiction. The concept is typically limited to particularly horrific international crimes but many countries in several instances have extended such jurisdiction to the national crime of ordinary nature as well.<sup>16</sup>

### **Jurisdictional Limitations**

In multiple instances, it has happened that because of wrongdoers' special status sometimes the jurisdiction is limited. For example, most nations recognize sovereign immunity, the concept that says that one cannot prosecute a foreign official. Some states also acknowledge diplomatic immunity, which safeguards diplomats and their families from arrests and prosecutions and some states recognize immunity for people functioning on behalf of international organizations i.e., peacekeepers of the UN.<sup>17</sup> Therefore, if a diplomat commits a trivial offense during official business such an individual is typically immune from prosecution.

### **Handling Of Jurisdictional Conflicts**

Many countries can claim jurisdiction for the same people and the same crime. One country may be able to prosecute a criminal under territorial jurisdiction, another under protective jurisdiction, and another under universal jurisdiction. This creates a complex situation for states, many of which may give rise to disputes about getting the upper hand to prosecute criminals, or on the other hand may try to avoid the cost of trying to imprison them.

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<sup>16</sup> *Universal Jurisdiction: A Preliminary survey of legislation around the world*, (June. 28, 2022 04:30 PM), <http://www.amnesty.org/en/library/asset/IOR53/019/2012/en/2769ce03-16b7-4dd7-8ea3-95f4c64a522a/ior530192012en.pdf>.

<sup>17</sup> Aradhya Gupta, *Diplomatic Immunity*, (June.28,2022 05:00 PM), <https://blog.ipleaders.in/diplomatic-immunity-everything-important-you-should-know-about/>.

This is a unique problem for transnational crime. International law recognizes and accepts this conflict. One practical instrument for resolving this conflict is an extradition treaty, Extradition treaties are agreements between countries on actions and coordination to treat criminals caught in one country for crimes committed in another. One of the major issues which extradition treaties often address is ways to handle jurisdictional conflicts.<sup>18</sup>

## **Ways Of Fighting Transnational Crimes**

In function, there are 3 kinds of instruments for combating transnational crime that can be accomplished by co-ordination of parties involved: unilateral, bilateral, and multilateral. First, countries often act by themselves to capture criminals within their own countries. It is called unilateral because they concern just a single country. Second, countries make various kinds of treaties amongst themselves, some of them are called “Mutual Legal Assistance Treaties,” and others are called extradition treaties to help law enforcement agencies work in coordination. Various countries are also working with international organizations to publish and investigate transnational crimes. This is called multilateral because it involves many countries.

- **Bilateral tools**

There are two main bilateral tools for combating transnational crime: Mutual Legal Assistance Treaties and extradition treaties.

Mutual Legal Assistance Treaties are penned so that countries may help one another examine, prosecute, and punish criminal offenses. Countries enter into Mutual Legal Assistance Treaties to accomplish what they cannot achieve alone with the way of cooperation of other countries. With the help of Mutual Legal Assistance Treaties countries track and apprehend criminals outside their borders. Some of the Mutual Legal Assistance Treaties necessitate those countries to return stolen assets to one another. Other treaties require the member countries to exchange information about cases and crimes. Some treaties demand that countries help one another in training their law enforcement agents and other treaties ask others to be allowed to pursue suspects in their own countries.

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<sup>18</sup> M. Cherif Bassiouni, *Major Contemporary issues in Extradition law*, (June .28, 2022, 06:00 PM), <https://www.jstor.org/stable/25658559>.

The second bilateral tool is the extradition treaty, which is a form of legal assistance treaty, but due to its utmost importance, it is worth considering it separately. Extradition permits one nation to arrest a criminal accused of a crime in another nation. For instance, if Daniel commits a bank robbery in Denmark, then flees to Australia, Australia may arrest and return Daniel on Denmark's behalf, if the countries have an extradition treaty amongst themselves. More specifically, the state to which the criminal has fled (Australia, in our example with Daniel) will often make a temporary arrest, that is, temporary detention until the requesting state (in this example, Denmark), can accumulate the documentation for a formal extradition request. For this to take place, the arresting state must have some jurisdiction over the criminal. Most of the extradition treaties are bilateral although there are multilateral treaties on the subject as well.

There are certain limitations on extradition treaties that are crucial to recognizing. First, for extradition to apply, the offender's actions must have been a crime in both countries involved. For example, a criminal can only be extradited for blasphemy if blasphemy is a crime both where the crime was committed and where the criminal was arrested. Therefore, it is not that the crime must have occurred in both countries but that it ought to be defined as a crime in both. Let's take our earlier example, when Daniel commits a bank robbery in Denmark, then flees to Australia, Daniel can only be captured in Australia if his actions are considered a crime in both Denmark and Australia. One of the important limitations on extradition is the political offense exclusion. In many cases extradition treaties, states will not extradite individuals accused of committing violent acts for political reasons. So, if Burk breaks a government window in London in protest, then flees to France, France is unlikely to extradite him, even if such an act of vandalism is a crime in both countries. Third, most of the extradition treaties need that persons who are extradited only be prosecuted and detained for the crimes for which they were extradited. Many bilateral extradition treaties are based on the UN Model Treaty on Extradition, also known as the Rule of Specialty.<sup>19</sup> Great Britain once extradited a suspected murderer to the U.S. Once there, however, the U.S. charged the suspect, with a different crime other than murder and inflicted cruel and unusual punishment. The U.S. Supreme Court said that this change violated the Rule of Specialty and rejected the conviction.<sup>20</sup>

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<sup>19</sup> Sibylle Kapferer, *The Interface between Extradition and Asylum*, (June.28, 2022 07:30 PM), <https://www.unhcr.org/3fe84fad4.pdf>.

<sup>20</sup> Mary-Rose Papandrea, *Standing to Allege Violations of the Doctrine of Specialty: An Examination of the Relationship between the Individual and the Sovereign*, (June 29, 2022, 06:30 AM), <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1862&context=lsfp>.

- **Unilateral tools**

The most crucial work of combating transnational crime occurs at the national level. Most of the instruments for combating transnational crime are unilateral. The variety of tools that countries use on their own varies tremendously. It involves strengthening their borders, passing new criminal statutes, and improving the enforcement of remaining instruments. It is the states and not international organizations that are the primary tools for combating drug trafficking, human trafficking, and a variety of other crimes.<sup>21</sup>

- **Multilateral tools**

One of the most important multilateral instruments is INTERPOL, an organization established with the purpose to help police departments around the world to cooperate. INTERPOL does not make arrests, but it does issue red notices about fugitives who are wanted due to an arrest warrant or court order. These notices help develop an international understanding of these criminals and encourage countries to cooperate amongst themselves. These notices are capable of limiting the freedom of movement of these criminals.

The Financial Action Task Force is another important organization to help countries combat transnational crime, in this case, financial crimes. IT was established in 1989 by the G7, which consists of the countries with the most advanced economies, to combat money laundering. The organization achieves this by establishing government ideal practices, and <sup>22</sup>ideal policies, for thwarting money laundering, and encouraging countries to adopt those measures.

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<sup>21</sup> *Combating Transnational Organized crime*, (June 29, 2022 ,07:00 AM), <https://www.unodc.org/southasia/en/topics/frontpage/2009/combating-transnational-organised-crime.html>.

## **Conclusion**

In this paper on transnational crime, we looked at various aspects of transnational crime. First, we learned about the meaning of transnational crime and how it is unique. Second, we learned about various types of jurisdictions for commencing a trial to prosecute transnational crimes. i.e., territorial, personality, and universal. And at last, we learned about the various tools that are being used to combat transnational crimes i.e.: bilateral, multilateral, and unilateral. We also recognized that transnational crime is different from a both domestic and international crime.

We observed that there are situations where sometimes overlapping takes place between two countries, to get jurisdiction over transnational criminal cases. And at the end, we also went through the wide range of tools available for fighting transnational crime. Irrespective of the career you choose be it; law, business, or government, knowledge about all this will be useful to avoid and prevent transnational crime.

By adopting an effective universal Statute with regards to jurisdiction over core crimes, international society can focus on these crimes and should be able to accept the challenge of dealing with transnational crime in a more articulate manner. But identifying all forms of international penal cooperation along with the core international crimes gives a vague view of the extent and nature of this cooperation because it ignores the role of the suppression conventions. Moreover, it leaves unreciprocated the challenge of developing the consistency of the legal system that these conventions establish. Jurisdictional barriers between states will continue to be battered by the forces of transnational crimes. The system of law established by the conventions should be developed to enable this convergence. The system should be tested against the domestic laws at the place. Thus, effective, and efficient cooperation is required between the countries throughout the world which can be brought into the scene with the help of conventions and treaties with regards to combating transnational crime. Countries throughout the world should be unified against this fight against transnational crime instead of escaping the liability of jurisdiction when it comes to exercising their jurisdictional powers.