



The effectiveness of international criminal law in combating transnational organized crime

Dr. Jayendra Singh Rathore

Associate Professor, Department of Law, Shri Krishna University, Chhatarpur, Madhya Pradesh, India

DOI: <https://doi.org/10.5281/zenodo.14210695>

Corresponding Author: Dr. Jayendra Singh Rathore

Abstract

Potential tactics to combat transnational organized crime are explored in this research, which takes a look at international cooperation and the United Nations Convention against Transnational Organized Crime as examples. It then goes on to identify the key factors that make international cooperation efforts more difficult. To achieve success and ensure international security, the authors stress, international collaboration in the battle against crime is essential. By analyzing the term "organized crime" through the lens of the United Nations Convention against Transnational Organized Crime, this article hopes to strengthen international law's role in the fight against transnational crime, determine the corpus delicti, and more. In addition to historical, dialectical, and formal-legal procedures, the essay makes use of induction, deduction, analogy, and other similar tools. This page provides comprehensive details on the primary international cooperation mechanisms in accordance with the UN Convention against Transnational Organized Crime.

Keywords: Transnational, crimes, criminal, responsibility, international, international conventions

Introduction

Combating human trafficking requires concerted effort from nations all around the world. It is impossible to combat transnational trafficking in all its manifestations, including human trafficking, without concerted international action and collaboration. As a result, states need to work together to combat the many types of complicated and destructive transnational crimes. In an effort to combat transnational crime, an increasing number of agreements are being inked on a bilateral, regional, and international scale, indicating that international cooperation is essential. Judicial systems need to be more globalized to keep up with criminal organizations. States are required to establish their own legislation in response to human trafficking within the international legal framework that is established by several regional treaties and conventions of the United Nations. The instruments also provide a structure for governments to work together in the fight against human trafficking, whether it's on a specific aspect or not.

Resources for the Fight Against Human Trafficking States resolute in their fight against human trafficking would do well to ratify and execute the Organized Crime Convention, the Trafficking in Persons Protocol, and the Migrant

Convention.

Generally speaking, the Convention is concerned with crimes that help organized criminal gangs make money. Particular forms of organized crime necessitating tailored protections are addressed in its supplemental protocols. According to article 2 of the Trafficking in Persons Protocol, there are three primary goals:

- To prevent and combat trafficking
- To protect and assist victims of trafficking
- To promote cooperation between States parties in order to meet those objectives

More and more, nations are confronted with transnational crimes as a result of globalization. Therefore, in order to investigate or prosecute criminals, more and further international collaboration is necessary. The necessity for improved collaboration, especially in regards to collecting evidence situated beyond national state boundaries, has been acknowledged by the international community, since criminal activities transcend national borders.

We claim that a crime is transnational when it happens in more than one country but has consequences for other countries as well. It is not necessary for transnational crime

to have its foundation in international law; yet, it must violate the domestic laws of more than one country. But treaties and tradition on a global scale may have an impact on issues of jurisdiction, enforcement, due process, judicial cooperation, and sentencing. Some examples include dealing in illicit weapons and drugs, participating in pirate actions at sea, terrorism, money laundering, and human smuggling.

Literature Review

Obokata, Tom. (2019) ^[4]. In order to tackle transnational organized crime, this article delves into the main responsibilities that states have under international human rights legislation. Starting with the right to life, liberty, and security, continuing with the rights to health, property, and culture, and concluding with the prohibition of slavery and other cruel or humiliating treatments, it lists a variety of human rights that are impacted by different types of organized crime. The article continues by outlining the primary duties of States as determined by international human rights law, focusing on three areas: (1) victim protection; (2) investigation, prosecution, and punishment; and (3) prevention. The major takeaway is that states are encouraged to tackle transnational organized crime from every angle by embracing international human rights legislation, which goes beyond traditional criminal justice solutions.

Romashkin, Snizhana *et al.* (2020) ^[3]. This article examines the potential methods for combating transnational organized crime via international collaboration and the United Nations Convention against Transnational Organized Crime. It then goes on to identify the key factors that make international cooperation efforts more difficult. To achieve success and ensure international security, the authors stress, international collaboration in the battle against crime is essential. This article seeks to identify the corpus delicti, investigate the word "organized crime" in light of the UN Convention against Transnational Organized Crime, and enhance international law in the war against transnational crime. The essay employs a variety of reasoning techniques, including induction, deduction, analogy, formal-legal processes, historical analysis, and dialectical reasoning. In line with the United Nations Convention against Transnational Organized Crime, this website provides comprehensive details about the primary international cooperation channels.

Spapens, Toine. (2015) ^[2]. Crime, drug trade, and the provision of illegal services have always transcended national boundaries. On the other hand, chances for transnational (organized) crime have grown in recent times, thanks to factors including increasing mobility, loosened boundaries, and the rise of the Internet. However, the rise of "crime multinationals" has not been well-documented. Law enforcement cooperation is still mostly conventional, and criminals still benefit from operating across several jurisdictions, despite a complex and expanding legal and organizational structure.

Nigmatullin, R.V. & Suleimanova, R.R. (2016) ^[1]. The writers examine the past and present of criminal counteraction while reviewing the UN's main principles of the field. Important normative legal actions on an international level have been examined by the writers. Innovations in technology have led to the rise of new forms

of international crime, such as crimes involving the misuse of personal information, corruption in athletics and the establishment of illicit totalitarian organizations, environmental crimes, the illegal trade in human organs and counterfeit pharmaceuticals, and countless more. The authors research a variety of international organizations, including those in Central Asia, Europe, and the Shanghai Cooperation Organization. Their job is to figure out what makes transnational organized crime go from bad to worse.

Research Methodology

The following general philosophical and particular procedures were used to ensure the scientific objectivity of the study outcomes:

Historical method: Examines the evolution of transnational crimes in a chronological manner in accordance with the United Nations Convention against Transnational Organized Crime and its Additional Protocols, and provides the international legal basis for collaboration among nations in combating international crime.

Dialectical system: In line with state legislative actions and the UN Convention against Transnational Organized Crime and its Additional Protocols, in order to identify the main ways to strengthen the international legal framework to combat transnational fragmentation;

Formal-legal and comparative-legal: So that we may evaluate the transnational crime-fighting provisions of international treaties and state legislation, such as the Ukrainian Criminal Procedure Code and the Convention.

Statistical: Modeling, multi-functoriality, and forecasting to identify the current status of transnational crime and its projected growth rate; -recommendations for enhancing the international legal framework for nations' collaboration in combating transnational crime.

Analysis

International cooperation in criminal proceedings includes the following actions: transferring documents, performing specific procedural tasks, extraditing criminals, transferring and continuing criminal prosecution, and criminal enforcements, as stated in Art. 542 of the Criminal Procedure Code of Ukraine.

Ukraine has signed a number of international accords, and they may provide additional avenues for collaboration in criminal investigations. Interpreted as follows from paragraph 1 of Part 1 of Art. 541 of the Criminal Procedure Code of Ukraine: "international legal assistance" refers to the execution of pre-trial investigations, trials, or the execution of sentences handed down by courts in other states or international judicial institutions by the competent authorities of one state.

1. Two or more states are involved in the criminal act;
2. While the actual crime takes place on the soil of one state, the planning, organizing, and execution of the plot take place in another;
3. Although the crime takes place inside the borders of a single state, it is carried out by an organized criminal organization that has members in more than one state;

4. Although the crime is carried out inside the borders of one state, its effects are felt in another state.
5. The term "organized crime" is defined precisely in international treaties and conventions.

The term "organized crime" is defined in international treaties as "any criminal organization consisting of three or more individuals engaged in criminal activity with the goal of committing further acts of criminal activity or breaking into the legal economy through the use of force, threats, or corruption".

Despite its origins as a domestic or even regional problem, organized crime has expanded into a sophisticated global industry. Crimes perpetrated by transnational criminal organizations, taking place on the borders of several governments, or harming the interests of multiple nations have reached an alarming degree of severity.

Criminal organizations are increasingly operating on a global scale, seeing national boundaries as business opportunities rather than obstacles. We couldn't agree with Professor Zdorovko more that in this day and age, not even the most economically advanced nations can successfully fight transnational crime on their own; international collaboration is essential.

According to international law, transnational crimes carry harsh punishments since they are particularly hazardous, guilty, and damaging. International collaboration and interaction are hindered by inconsistencies in criminality, concept definition, penalty, extradition, and other structural aspects as outlined in various country laws.

The process of criminalization lays the groundwork for the prohibition, admissibility, possibility, and practicability of criminalizing and punishing socially injurious actions, which are one means by which criminal policy is put into effect. If the offender was not already thought of as a criminal, this procedure will always depend on specific deeds or lack thereof in conjunction with the crime's description and the potential penalty for doing it.

In some contexts, the word "criminalization" may mean imposing stricter regulations, fines, and punishments in order to make people more accountable. The need to seal legal gaps, the rising societal danger of certain crimes, the formation of new social connections requiring criminal law protection, and the most crucial requirements for criminalization, according to professor V.V. Popko (2019)^[6], are the causes of criminalization:

1. determining whether an individual's actions pose a threat to society;
2. acknowledgment of actions that are morally reprehensible and strongly disapproved of by the general public;
3. assertion that persuasive tactics are insufficient and that criminal punishment and other coercive measures are necessary to combat such conduct;
4. proof that the designated penalty may serve as both a general and an individual deterrent (V.V. Popko, 2019)^[6].

There is no clear legal definition or supporting theory for the term "transnational crime"; professionals analyze it from different perspectives, but the consensus-building framework is provided by the 2000 United Nations Convention against Transnational Organized Crime.

The United Nations convention against transnational organized crime

Since its implementation in September 2003, the United Nations Convention against Transnational Organized Crime has emerged as the primary global tool in the battle against organized crime. The number of states that have signed up to the Convention is 117. Aspects of organized crime are dealt with in three supplementary protocols. The Convention on the Elimination of All Forms of Human Trafficking, Particularly of Children and Women, was one such agreement; it went into effect in December 2003 with 80 signatory states and 117 additional parties. The other two have 69 parties and 112 signatories when they entered into force in January 2004 and 52 signatories and 35 states parties when it comes to the Illicit Manufacturing and Trafficking in Firearms. Once 40 states ratify it, it will enter into force. As a whole, criminal organizations both own and use guns, and they are also complicit in the illegal transfer of these weapons. During the Crime Congress, member states will have the opportunity to ratify or assent to the Convention and its Protocols. The Congress will receive further ratifications of another important international tool to combat corruption, one of the most pervasive forms of crime. There have been 118 signatory governments and 18 ratifying nations to the United Nations Convention against Corruption since its approval by the General Assembly on 30 October 2003 and its first availability for signing in December 2003. When 30 countries ratify it, it will become a legally binding agreement.

The impact of corruption on transnational organized crime:

In a speech he delivered while serving as president of the World Bank, James Wolfensohn discussed the "cancer of corruption" (Wolfensohn, 1996)^[10], in response to which the non-governmental organization Transparency International was established and anti-corruption campaigns were launched all across the globe. A convention against corruption was approved by the United Nations in 2003. Goal 16 of the United Nations' Sustainable Development Agenda for 2016 (peace, justice and strong institutions) made corruption a particular reference. Reporting on illicit money flows, weapons transfers, bribery, and corruption is mandated by the United Nations in 2016. Prime Minister David Cameron, who was in office at the time, joined President Wolfensohn in calling for a "historic global coalition to combat this cancer of corruption that destroys jobs, traps the poorest in poverty and even undermines our security" at the same year that the United Kingdom held a worldwide Anti-Corruption Summit. Defeating one of the most formidable obstacles to modern development is what it implies. Based on Cameron's 2016 report. "Making the world safer from drugs, organized crime, corruption and terrorism." That is the stated mission of the UNODC, when it was established. Three years subsequent to UNCAC, in 2006, UNTOC was finished and adopted by the United Nations. Members of the Global Initiative Against Transnational Organized Crime were former UNODC employees who founded the organization in 2013. Crimes of violence, deliberate murder, trafficking, and illegal weaponry transfers are all part of severe organized crime (SDG16), which necessitates more reporting on these subjects.

Conclusion

In conclusion, it is important to note that there is a current trend toward betterment of criminal abilities, internal organization, professionalism, technological equipment, etc. in today's criminal environment. Developing sufficient countermeasures to the manifestations, forms, and techniques of criminal activity by criminal organized transnational crime organizations is crucial to protect the rights and legitimate interests of individuals, society, and the state from this kind of crime. Convention standards are greater than those mandated by national legislation. A number of states will need to enhance their criminal justice systems and law enforcement infrastructure, pass new laws, or revise existing ones in order to meet their Convention and protocol commitments. Acts undertaken by people or organizations outside of any state with the intention of achieving their own illicit aims and that infringe on the interests of several states are mostly subject to this. Basic concepts of interstate collaboration in the fight against organized crime have emerged from years of research into the phenomenon's challenges. Some of the most important ones include: bringing international standards for the fight against transnational organized crime into domestic legislation; reducing the availability of money for such crimes; and harmonizing existing legal frameworks for such cases.

References

1. Nigmatullin RV, Suleimanova RR. The philosophy of the United Nations in the fight against transnational organized crime. *Криминологический журнал Байкальского государственного университета экономики и права*. 2016;10:358-368. 10.17150/1996-7756.2016.10(2).358-368.
2. Spapens, Toine. Transnational Organized Crime. *International Encyclopedia of the Social & Behavioral Sciences*; c2015. 10.1016/B978-0-08-097086-8.45091-9.
3. Romashkin, Snizhana, Shulzhenko, Nadiia, Kotova L. The mechanism of international cooperation accordingly to UN Convention against Transnational Organized Crime. *Revista de la Universidad del Zulia*. 2020;11:389-402. 10.46925//rdluz.31.24.
4. Obokata, Tom. Combating Transnational Organised Crime through International Human Rights Law. *International Human Rights Law Review*. 2019;8:1-37. 10.1163/22131035-00801003.
5. Obokata T. The Value of International Law in Combating Transnational Organized Crime in the Asia-Pacific. *Asian Journal of International Law*. 2017;7(1):39-60. doi:10.1017/S2044251315000193
6. Popko VV. Criminalization of transnational acts in accordance with the UN Convention against Transnational Organized Crime 2000. *Nat. University of Bioresources and Nature Management of Ukraine*. Kyiv. 2019;10(3):151-158.
7. Shepetko SA. International experience in combating transnational organized crime. *Fight against organized crime and corruption (theory and practice)*; c2013. p. 298-306. Retrieved from: http://nbuv.gov.ua/UJRN/boz_2013_1_36
8. Zdorovko SF. Application of generally accepted principles and norms of international law aimed at combating transnational crime. *Bulletin of Karazin Kharkiv National University. Series: International Relations. Economy. Local. Tourism*. 2014;1144(4):15-21. Retrieved from: http://nbuv.gov.ua/UJRN/VKhMv_2014_1144_4%2829__5
9. Zharovska GP. International legal principles of combating transnational crime: problems and prospects. *Almanac of International Law. Edition*. 2014;6:90-100. Retrieved from: http://nbuv.gov.ua/UJRN/amp_2014_6_13
10. Wolfensohn JD. *People and development*. Washington, DC: World Bank; c1996.

Creative Commons (CC) License

This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY 4.0) license. This license permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.