



ROUTLEDGE
HANDBOOKS



Routledge Handbook of Transnational Criminal Law

Edited by Neil Boister and Robert J. Currie

Certain types of crime are increasingly perpetrated across national borders and require a unified regional or global response to combat them. Transnational criminal law covers both the international treaty obligations which require states to introduce specific substantive measures into their domestic criminal law schemes, and an allied procedural dimension concerned with the articulation of inter-state cooperation in pursuit of the alleged transnational criminal.

The *Routledge Handbook of Transnational Criminal Law* provides a comprehensive overview of the system which is designed to regulate cross-border crime. The book looks at the history and development of the system, asking questions as to the principal purpose and effectiveness of transnational criminal law as it currently stands. The book brings together experts in the field, both scholars and practitioners, in order to offer original and forward-looking analyses of the key elements of the transnational criminal law.

The book is split into several parts for ease of reference:

- [Part I](#), fundamental concepts surrounding the international regulation of transnational crime.
- [Part II](#), procedures for international cooperation against alleged transnational criminals including jurisdiction, police cooperation, asset recovery and extradition.
- [Part III](#), substantive crimes covered by transnational criminal law analysing the current legal provisions for each crime.
- [Part IV](#), the implementation of transnational criminal law and the effectiveness of the system of transnational criminal law.

With chapters from over 25 authorities in the field, this handbook will be an invaluable reference work for students and academics and for policy makers with an interest in transnational criminal law.

Neil Boister is a Professor at the University of Waikato, New Zealand and is the author of *An Introduction to Transnational Criminal Law* (2012).

Robert J. Currie is Associate Professor at the Schulich School of Law, Dalhousie University, Canada and is the co-author (with Joseph Rikhof) of *International and Transnational Criminal Law* 2ed (2013).

“This handbook is a very timely and important contribution to the literature on transnational crime covering key dimensions of this emerging area of law and policy. Both jurisdictional and procedural aspects of the topic are covered as well as aspects of its implementation in global, regional and domestic state practice. Incisive analysis from leading scholars and practitioners in the field of transnational criminal law combine to make this an invaluable reference.”

*Dr Robin Warner, Australian National Centre for Ocean Resources and Security (ANCORS)
University of Wollongong, Australia*

Routledge Handbook of Transnational Criminal Law

Edited by Neil Boister and Robert J. Curran

 Routledge
Taylor & Francis Group
LONDON AND NEW YORK

First published 2015

by Routledge

2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

and by Routledge

711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

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British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

A catalog record has been requested for this book

ISBN: 978-0-415-83712-5 (hbk)

ISBN: 978-0-203-38027-7 (ebk)

Typeset in Bembo

by RefineCatch Limited, Bungay, Suffolk

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Evidently, there are certain historic roots to international crime *writ large* and international cooperation including notably the concept of extradition which can be traced to antiquity. However, if you carefully examine practice, until quite recently, crime was generally regarded and addressed as a local matter local in commission, in effect, in reaction. And it follows that priorities and policy in the criminal law sphere were driven almost exclusively by domestic and local imperatives.

But the last few decades have brought remarkable change to the criminal law landscape in our ever-shrinking 'global village' – a term coined by Canadian author Marshall McLuhan. Sadly, some of this has been driven by horrific atrocities which have brought the concepts of international crime – whether by its commission or by its nature – to the forefront, driving significant efforts towards justice and bringing an end to impunity. We have seen the advent of international criminal tribunals and the birth of the International Criminal Court. These advances represent momentous progress for humanity and have appropriately garnered much attention, including in the writings of practitioners and academics alike.

Interestingly though, while less prominent on the world stage, the most fundamental and widespread transformation – the real 'internationalization' of criminal law – has been through the rise of transnational crime and the measures developed, particularly through international efforts and initiatives to address it.

It is our reality today that a significant portion of serious criminal activity is transnational in nature in some way. Many crimes are committed transnationally, have a cross-border effect or require international measures for evidence to be gathered or suspects to be brought to justice. The proceeds of criminal activity are moved in sophisticated ways around the world. And this phenomenon is not limited in its geographic reach. Almost no part of the world is left untouched by the rise of the transnational component of crime, though its manifestations may vary widely. This reality of the changed face of the criminal threat has led to remarkable developments and advancement in how we define crime and respond to it – procedurally and substantively. It has also influenced the evolution of criminal law policy and has shaped the development of priorities at the international, regional and domestic levels.

As a criminal law practitioner who has dabbled in the field at both the national and international levels, I am often struck by the lack of clarity which exists about the concept of transnational criminal law, especially in my own mind! I like to think this is attributable to the fact that over the past 30 years there has been a literal explosion – crimes, concepts, principles, practices and measures – in this field. New crimes have been established and the definitions of existing crime expanded in response to the endless ingenuity of those who perpetrate crime. International instruments have been agreed successively improving the measures to address crime with each round of negotiation. Procedural mechanisms – extradition, mutual assistance, law enforcement cooperation, cross-border asset confiscation, joint investigations – have expanded and been redefined. And all of this has occurred at a relatively 'breakneck' speed in contrast to the pace of progress in many other contexts of international or even domestic law.

For those caught up in trying to implement it, there has been limited opportunity for reflection. And the overall 'system' which has developed can best be described kindly as a patchwork and, less kindly, as chaotic. It is a scheme the evolution which has been driven by crisis and necessity as opposed to policy and planning.

The result is that, for academics and practitioners alike, the field of transnational crime and the responses to it are increasingly difficult and challenging to navigate. Whether one categorizes it as a subset of the broader subject of international criminal law or considers it as a 'stand-alone' concept, I believe there is consensus that transnational criminal law is a subject matter crying out for compilation, reflection and considered discourse.

It is with this background that I am delighted to introduce this *Handbook of Transnational Criminal Law*, which provides a comprehensive, focused and methodical reflection on transnational criminal law. I am certain that a grateful audience of academics, criminal law practitioners, policy makers and legislators will join me in welcoming it.

An immediate and obvious advantage of the *Handbook* is that it will have broad appeal for various reasons to different readers. For those who teach and write in this area it will be an invaluable reference point. Practitioners will have a concise but substantive tool which will provide critical background information to interpret the relevant treaties and related legislation and to give context to individual cases. The same is true for policy makers and legislators called upon to implement the international instruments or to enhance domestic regimes by using best practice and accepted measures from the international sphere. And for those of us who labour at the international level, it highlights past achievements and sets important goals for future work.

In essence, to replicate the phrase used by Neil Boister in his contribution, to all these different audiences the book will bring 'transnational criminal law clearly into view'.

The book canvasses concepts and regulation, procedure and substance. The survey of underlying concepts and 'regulatory' regimes is an important and comprehensive one which considers the basic principles, as well as the contributions of the United Nations and regional bodies. It is refreshing to see proper emphasis on the latter – the part played by regional groupings and institutes – given their increasingly important role. This part of the *Handbook* also gives much-needed attention to the human rights component of transnational criminal law instruments – the progression of thinking over time and the challenges that remain.

All the key components of procedure are addressed including a clear and precise discussion of the complex world of jurisdiction. Being a self-identified 'international cooperation geek' and having spent many years in practice in that field, I am particularly pleased to see the excellent review on modern extradition, mutual assistance and the complicated world of asset confiscation. And importantly, the far-reaching and often overlooked area of police cooperation receives rare notice and consideration.

Finally, the impressive survey of the various forms of transnational crime cannot be overemphasized. I was a member of the Canadian delegation for the negotiation of the Transnational Organized Crime Convention, and one of the most striking points of the early discussions was the complete lack of agreement on the definition or 'face' of transnational organized crime. It is the reality which drove the adoption of the formula used to define the scope of application in the Convention and led to the inclusion of Protocols. From this practical experience I know that it is not possible to produce a compendium of transnational crime; and even if you did, it would be outdated before it was printed. In that context, one of the accomplishments of this *Handbook* is the excellent, in-depth survey of some of the most significant transnational crime/criminal activity, including those subjects which were ultimately identified for the Protocols and areas such as the environment and cultural property which do not receive sufficient attention. Through its content the *Handbook* brings together, in one place, detailed examinations of the prominent forms of transnational crime and the legal frameworks associated with the same.

On a personal note, I am happy to see the prominence accorded throughout the text to the work of my former office, the United Nations Office on Drugs and Crime, given its unique role in the field of

transnational criminal law. Not only has this been in the form of pioneering work in past decades, but also the contribution of the term 'transnational crime' by one of its predecessor organizations – the Crime Prevention and Criminal Justice Branch. I cannot help but give special notice to colleagues from UNODC – present and former – who have contributed their direct and practical experience to the *Handbook*.

Since the closing days of the last century, we have seen technological advances which make our world a much smaller place. This has created a global atmosphere which is highly conducive for progress but also serves as a great 'incubator' for transnational crime and criminal groups. The challenges to an effective response are multiple and complex. It appears clear that improvement in suppressing transnational crime – let alone success – will come only with a coordinated international response that includes the adoption of treaty provisions and implementation of best practice, along with efficient measures for international cooperation. We are a long way from achieving that goal. However, the *Handbook of Transnational Criminal Law* represents a positive step forward on the right path. With its accumulated wealth of information and the contributions from academics and practitioners alike, it provides a much-needed resource to guide future progress in responding to the urgent threat posed by transnational crime and criminals, in our ever shrinking world. I can enthusiastically endorse it to a waiting audience.

Kimberly Prost
Ombudsperson

United Nations Security Council Al-Qaida Sanctions Committee

The editors are very grateful to Judge Kimberly Prost for taking the time from her busy schedule to write the Foreword. We are also grateful to Erika Schollum for carrying out an initial copy-edit of the work and Mel Dyer, Ian Howe, Mark Sapwell and everyone else from Routledge, with whom it has been a pleasure to work. We remain responsible for all the errors that may be found in the book.

ACTA	Anti-Counterfeiting Trade Agreement
ACTIP	ASEAN Convention on Trafficking in Persons
AFSJ	Area of Freedom, Security and Justice
AML	anti- money laundering
AMMTC	ASEAN Ministerial Meeting on Transnational Crime
APGML	Asia/Pacific Group on Money Laundering
ARIS	Asset Recovery Intelligence System
ASEAN	Association of South East Asian Nations
ASI	Anti-Slavery International
AU	African Union
AUCPCC	African Union Convention on Preventing and Combating Corruption
BCN	biological, chemical or nuclear weapons
Benelux	Belgium Netherlands Luxembourg
BMR	(EU) Border Measures Regulation
CBD	Convention on Biological Diversity
CCAMLR	Commission for the Conservation of Antarctic Living Marine Resources
CCPCJ	(UN) Commission on Crime Prevention and Criminal Justice
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFATF	Caribbean Financial Action Task Force
CFT	countering the financing of terrorism
CICAD	Inter-American Drug Abuse Control Commission.
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CJEU	Court of Justice of the European Union
CND	(UN) Commission on Narcotic Drugs
CoE	Council of Europe
COP	Conference of the Parties
CoSP	Conference of States Parties
COSPOL	Comprehensive Operational Strategic Planning for the Police
CRC	Convention on the Rights of the Child
CS	civil society
DELC	(UNEP) Division of Environmental Law and Conventions
DOJ	(US) Department of Justice
DPA	Department of Political Affairs
DPKO	Department for Peacekeeping Operations
DSU	(WTO) Dispute Settlement Understanding
EAG	Eurasian Group (on money laundering)
EAW	European Arrest Warrant
EBN	economic benefit of noncompliance
ECHR	European Convention on Human Rights
ECOSOC	(UN) Economic and Social Council
ECOWAS	Economic Community of West African States
ECT	environmental courts and tribunals
ECtHR	European Court of Human Rights
EEW	European Evidence Warrant
EEZ	exclusive economic zone
EIO	European Investigation Order

ELOs	Europol Liaison Officers
EMMI	<u>Euregional Multimedia Information Exchange</u>
EP	European Parliament
EPICC	Euregional Police Information Coordination Centre
EPPO	European Public Prosecutors Office
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
EU	European Union
EUCFR	EU Charter of Fundamental Rights
Eurojust	EU Agency for Criminal Justice
Europol	European Police Agency
EUTR	European Union Timber Regulations
FAST	Federation Against Software Theft
FATF	Financial Action Task Force
FCPA	(US) Foreign Corrupt Practices Act
FDA	(US) Food and Drug Administration
FIU	Financial Intelligence Unit
Frontex	European Border Security Office
FSRBs	FATF Style Regional Anti- money Laundering Bodies
FTAs	free trade agreements
G8	Group of Eight Industrialised Nations
GA	(UN) General Assembly
GAFISUD	The Financial Action Task Force on Money Laundering in South America
GATT	General Agreement on Tariffs and Trade
GIABA	Inter Governmental Action Group against Money Laundering in West Africa
GMOs	genetically modified organisms
GRECO	Group of States against Corruption
HCFCs	hydrochlorofluorocarbons
HSC	High Seas Convention
HVTs	High Value Targets
IACAC	Inter-American Convention against Corruption
IAIS	International Association of Insurance Supervisors
IATG	International Ammunition Technical Guidelines
ICAR	International Centre for Asset Recovery
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICWC	International Consortium Combating Wildlife Crime
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICIR	(Rwanda) International Commission of Inquiry
ICJ	International Court of Justice
ICPC	International Criminal Police Commission
ICRC	International Committee of the Red Cross
ICRG	International Co-operation Review Group
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IGO	inter-governmental organisation
IHL	international humanitarian law
ILC	International Law Commission
ILPA	(Australia) Illegal Logging Prohibition Act
IMF	International Monetary Fund
IMO	International Maritime Organization
INCB	International Narcotics Control Board
INECE	International Network for Environmental Compliance and Enforcement

Interpol	International Criminal Police Organization
IP	intellectual property
IPOS	Intellectual Property Office of Singapore
IPR	intellectual property rights
IPT	Intellectual Property Theft
ISACS	International Small Arms Control Standards
ISPAC	International Scientific and Professional Advisory Council
ISPs	internet service providers
ITTA	International Tropical Timber Agreement
ITTO	International Tropical Timber Organization
ITU	International Telecommunications Union
IUU	illegal, unreported and unregulated (fishing)
JCE	joint criminal enterprise
JHA	justice and home affairs
JHTs	Joint hit Teams
JIT	Joint Investigation Team
LIBE	(European Parliament) Committee on Civil Liberties, Justice and Home Affairs
LN	League of Nations
MARPOL	International Convention for the Prevention of Pollution from Ships
MEA	Multilateral Environment Agreement
MENAFATF	Middle East and North Africa Financial Action Task Force
MERCOSUR	Mercado Común del Sur (Southern Common Market)
MERs	Mutual Evaluation Reports
MESICIC	Mechanism for the Implementation of the Inter-American Convention against Corruption
MLA	mutual legal assistance
MLAT	mutual legal assistance treaty
MONEYVAL	The Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
MoU	Memorandum of Understanding
MPAA	Motion Picture Association of America
MR	mutual recognition
NCBs	National Central Bureaus
NCCTs	non- cooperating countries and territories
NeBeDeAgPol	Chiefs of Police in the border regions of The Netherlands, Belgium and Germany
NESTs	National Environmental Security Task Forces
NGO	non-governmental organisation
NRA	(US) National Rifle Association
OAS	Organization of American States
ODS	ozone-depleting substances
ODSR	(Canada) Ozone-depleting Substances Regulations
OECD	Organisation for Economic Cooperation and Development
OEPA	Canadian Environmental Protection Act
OHCHR	Office of the High Commissioner for Human Rights
OIC	Organisation of Islamic Cooperation
OLAF	European Anti-Fraud Office
OSCE	Organisation for Security and Cooperation in Europe
PCIJ	Permanent Court of International Justice
PD	prisoner's dilemma
PEPs	politically exposed persons
PG	Public Goods
RICO	Racketeer Influenced and Corrupt Organizations Act

RSPCA	Royal Society for the Prevention of Cruelty to Animals
SAARC	<u>South Asian Association for Regional Cooperation</u>
SADC	Southern African Development Community
SARPCCO	Southern African Regional Police Chiefs Cooperation Organisation
SARs	Suspicious Activity Reports
SCSL	Special Court for Sierra Leone
SDOMD	SAARC Drug Offences Monitoring Desk
SEC	(US) Securities and Exchange Commission
SFO	(UK) Serious Fraud Office
SIS	Schengen Information System
SIT	Special Investigative Technique
SOFAs	Status of Forces Agreements
STOMD	SAARC Terrorist Offences Monitoring Desk
TCLC	transnational criminal law convention
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TIP	trafficking in persons
TOC	transnational organized crime
TRIPS	(WTO Agreement on) Trade-Related Aspects of Intellectual Property Rights'
UG	Ultimatum Game
UNCAC	UN Convention against Corruption
UNCLOS	UN Convention on the Law of the Sea
UNCND	UN Commission on Narcotic Drugs
UNDCP	UN Drug Control Programme
UNEP	United Nations Environment Programme
UNESCO	UN Educational, Scientific and Cultural Organisation
UNHCR	UN High Commissioner for Refugees
UNICRI	UN Interregional Crime and Justice Research Institute
UNIDROIT	International Institute for the Unification of Private Law
UNODC	UN Office on Drugs and Crime
UNOWA	UN Regional Office For West Africa
UNTOC	UN Convention against Transnational Organized Crime
UPR	Universal Periodic Review
USPTO	US Patent and Trademark Office
VCRs	video cassette recorders
WACI	West African Coast Initiative
WCO	World Customs Organisation
WGB	Working Group on Bribery
WHO	World Health Organization
WMD	weapons of mass destruction
WTO	World Trade Organization

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