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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*

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# Routledge Handbook of Transnational Criminal Law

*Edited by Neil Boister and Robert J. Curran*

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**Jay L. Batongbacal** is a lawyer from the Philippines, and holds the degrees of Master of Maritime Management and Doctor in Jurisprudential Science, both from Dalhousie University in Canada. Since 1997, he has done work in maritime affairs, including community-based fisheries management, coastal resource management, marine environment protection, maritime boundaries, high seas fishing, offshore energy, seafaring and shipping. He was legal advisor to the Philippine delegation that successfully pursued the Philippines' claim to a continental shelf beyond 200 nautical miles in the Benham Ridge Region before the Commission on the Limits of the Continental Shelf. He is presently an Assistant Professor at the University of the Philippines College of Law, and concurrently Director of the Institute for Maritime Affairs and Law of the Sea of the U.P. Law Center.

**Neil Boister** is Professor in the Te Piringa Faculty of Law, University of Waikato, New Zealand. A graduate of the universities of Natal and Nottingham, he has held academic positions in South Africa, the UK and New Zealand, where he has taught transnational criminal law, international criminal law, criminal law, evidence and criminology. His principal research interest is the suppression of transnational crime through international law. His PhD from the University of Nottingham resulted in the publication of *Penal Aspects of the UN Drug Conventions* (Kluwer, 2001). He has written numerous pieces exploring transnational criminal law more generally beginning with 'Transnational Criminal Law' (2003) 14(5) *European Journal of International Law* 953–976. In 2012 he published *An Introduction to Transnational Criminal Law* (OUP). He works as a consultant on issues in transnational criminal law. In 2014 he was awarded a Friedrich Wilhelm Bessel Research Award by the Humboldt Foundation in Germany in recognition of his work in this field.

**Lindsay Buckingham** is currently a Principal Legal Officer with the Transnational Crime and Corruption Branch, Australian Government Attorney-General's Department. Within the Australian Government she has worked across a range of transnational crime law and policy issues, including leading Australian engagement in mechanisms under the United Nations criminal justice system, and delivering technical assistance programs to support partner countries' implementation of transnational crime obligations under international legal instruments. She has also worked as a Solicitor with the Child Protection Practice Group of the New South Wales Crown Solicitor's Office. Lindsay has previously worked as a consultant on child sex tourism, trafficking in persons and migrant smuggling projects with the United Nations Office on Drugs and Crime, Regional Centre for East Asia and the Pacific, and with the International Labour Organization's Project to Combat Trafficking in Children and Women in the Greater Mekong Subregion. She holds a combined Bachelor of Arts and Laws (Hons) from Macquarie University, and a Master of Laws from the University of Sydney.

**Anthony E. Cassimatis** BA LLB (Hons) (*Qld*) LLM (Cantab) PhD (Qld) is an Associate Professor in the TC Beirne School of Law, University of Queensland. His doctoral thesis, which examined human rights related trade measures under international law, was published by Martinus Nijhoff in 2007. He teaches administrative law and public international law, is a fellow and member of the executive of the Centre for Public, International and Comparative Law at the University of Queensland and is the chairperson of the Red Cross's Queensland International Humanitarian Law Committee. He is the author or co-author

of three books and numerous articles and book chapters on public international law, administrative law and legal advocacy. He has been academic coordinator of teams representing the Law School in the Philip C. Jessup International Law Moot Court Competition over many years, including teams that have won the Jessup Moot World Championship in Washington DC (2005 and 2014). Anthony was a Visiting Fellow at the Lauterpacht Centre for International Law at Cambridge University in 2007.

**Vivienne Chin** is a criminal justice professional with more than 25 years of experience in the security and justice sectors, having worked in a range of organizations beginning with the Security Intelligence Service of the Government of Singapore; the Commonwealth Secretariat, London; the Commonwealth Magistrates' and Judges' Association, London; and currently as an Associate of a United Nations affiliated research institute in Vancouver, The International Centre for Criminal Law Reform and Criminal Justice Policy. Vivienne has focused her work on the promotion of the rule of law and good governance, human rights, peace-building, criminal justice reform and policy development, as well as institution-building in post-conflict societies. This includes programmes to assist the effective human rights-based implementation of international standards and norms and international treaties, in particular those relating to counter-terrorism, transnational organised crime, human trafficking and smuggling, women's rights and violence against women, corruption, juvenile justice, youth at risk, crime prevention, prison reform and the social reintegration of young and adult offenders.

**Roger S. Clark** is a graduate of Victoria University in New Zealand (BA, LL.D) and of Columbia Law School in New York (LL.M, J.S.D), and is Board of Governors Professor at Rutgers Law School, Camden, New Jersey. He has written widely on international law, human rights and criminal law. He was a member of the United Nations Committee on Crime Prevention and Control between 1986 and 1990. In 1995 he represented the Government of Samoa in arguing the illegality of nuclear weapons before the International Court of Justice. Since 1995, he has represented Samoa in the negotiations to create the International Criminal Court, including the Rome Conference in 1998 when the treaty setting up the Court was finalized, in subsequent meetings of the Preparatory Commission for the Court, the Court's Special Working Group on the Crime of Aggression, and at the 2010 Review Conference on the Court in Kampala, Uganda.

**Robert J. Currie** (of the Bar of Nova Scotia) is Associate Professor and Director of the Law and Technology Institute at the Schulich School of Law, Dalhousie University, where he teaches International Criminal Law, Criminal Law, Evidence, Advocacy and Civil Procedure. Prior to his academic appointment he had a litigation practice at a leading Atlantic Canadian firm. He is a member of the Executive Board of the Canadian Council on International Law and Vice-President of the Law Reform Commission of Nova Scotia. Professor Currie specializes in the area of international and transnational criminal law, and his publications on this subject have been cited by the Supreme Court of Canada and other Canadian courts. The first edition of his book, *International and Transnational Criminal Law* (second edition, Toronto: Irwin, 2013, now co-authored with Joseph Rikhof), was shortlisted for the Walter Owen Book Prize for Outstanding Canadian Legal Literature in 2011.

**Yvon Dandurand**, a criminologist, is a member at the School of Criminology and Criminal Justice at the University of the Fraser Valley (British Columbia, Canada) and a Senior Associate of the International Centre for Criminal Law Reform and Criminal Justice Policy (Vancouver), a United Nations affiliated institute. He specializes in comparative criminal law and criminal justice research and was involved in numerous criminal justice reform and capacity-building projects in Canada and abroad, including several

projects and studies in the areas of organized crime, human trafficking, witness protection, corruption, counter-terrorism, crime prevention, policing and corrections. He has been involved in several projects facilitate and monitor the implementation of international criminal law conventions. He has developed performance indicators and other monitoring mechanisms in the areas of child protection, juvenile justice, organized crime and corruption. He recently served as the senior consultant for the United Nations Rule of Law Indicators Project developed for the UN Department of Peacekeeping Operations and the UN Office of the High Commissioner on Human Rights.

**Catherine E. Drummond** LLB (Hons), BA (UQ), GDip Legal Practice (Distinction) (ANU) is admitted as a solicitor in Queensland, Australia, and is currently a trainee with the Public International Law and International Arbitration Group at an international law firm in Paris. She has worked in domestic criminal prosecution, criminal defence, as Associate to the President of the Queensland Court of Appeals and in Chambers at the United Nations International Criminal Tribunal for Rwanda. She was also a guest lecturer and tutor in Public International Law at the University of Queensland and a member of the Australian Red Cross International Humanitarian Law Advisory Committee for Queensland. In 2011 Catherine commenced her LLM as a General Sir John Monash Scholar at Cambridge University.

**Anne T. Gallagher** AO (BA, LLB, MIntL, PhD) is a lawyer, practitioner, teacher and scholar with an established reputation in international affairs, most particularly human rights and the administration of criminal justice. As a United Nations official she led the UN inter-agency delegation that participated in the drafting process for both the migrant smuggling and trafficking in persons protocols. She has continued to be closely involved in the evolution of the international legal framework around these issues while also working on the front line with governments in South East Asia to develop more effective criminal justice responses. An independent and award-winning scholar, she has been recognized by the US Government as 'the leading global authority on the international law of human trafficking'. She is the lead author of *The International Law of Migrant Smuggling*, published by Cambridge University Press in 2014.

**William Gilmore** is Emeritus Professor of International Criminal Law at the University of Edinburgh, Scotland. An international lawyer by background, he has written extensively on various aspects of transnational criminal law and cooperation in criminal matters. He has been the legal scientific expert for MONEYVAL, the FATF-style regional body for Europe, since its creation in late 1996. In that capacity he has been extensively involved in the evaluation of numerous jurisdictions, from Russia to the Vatican/Holy See, for compliance with international AML/CFT standards. He has been a Member of the Board of Directors of the Cayman Islands Monetary Authority since 2006.

**Henning Grosse Ruse-Khan** is a University Lecturer in Intellectual Property Law at the Faculty of Law at the University of Cambridge and a Fellow at King's College, Cambridge. A Fellow at the Lauterpac Centre for International Law and Centre for Intellectual Property and Information Law, he also holds positions as external researcher at the Max Planck Institute for Intellectual Property and Competition Law in Munich and at the Centre for International Sustainable Development Law. He teaches IP and WTO Law at Cambridge and at the Centre for International Intellectual Property Studies, Strasbourg, and the Munich Intellectual Property Law Centre. A member of the editorial board of the *International Review of Intellectual Property and Competition Law* and co-founder of the international IP network at the Society of International Economic Law, his research and teaching focuses on international intellectual property protection and development issues, world trade and investment law, as well as

interfaces among distinct legal orders in international law. In addition, he advises international organizations and NGOs as well as developing and developed country governments on international law, WTO and investment law issues.

**Douglas Guilfoyle** is a Reader in Law at the Faculty of Laws, University College London, where he teaches the international law of the sea and international criminal law. He is the author of *Shipping Interdiction and the Law of the Sea* (2009) and numerous articles on Somali piracy and maritime security and law enforcement. He has acted as a consultant on piracy and maritime security issues to the Contact Group on Piracy off the Coast of Somalia (Working Group 2), the Foreign Affairs Committee of the House of Commons and the UN Office on Drugs and Crime. He holds graduate degrees from the University of Cambridge, where he was a Gates Scholar, and undergraduate degrees from the Australian National University.

**Joanna Harrington** is a Professor in the Faculty of Law and an Associate Dean in the Faculty of Graduate Studies and Research at the University of Alberta in Canada. She has combined an academic career, specializing in constitutional law and international law, with experience as a legal adviser, serving from 2006 to 2008 as the Scholar-in-Residence with the Legal Affairs Bureau of Canada's the Department of Foreign Affairs and International Trade. She has represented Canada at international negotiations at the United Nations, the Organization of American States, and the Assembly of States Parties to the Rome Statute of the International Criminal Court. Her consultancy experience includes work with the Canadian Human Rights Commission and the United Nations Development Programme as well as work with defence counsel in transnational criminal matters. She received her PhD in Law from the University of Cambridge, where she was a Tapp Scholar.

**John Hatchard** is a Barrister and Professor of Law at the Buckingham Law School and Visiting Professor at the Open University. He is also a senior research fellow at the School of Oriental and African Studies. He has held senior academic positions at universities in the United Kingdom, United States, Australia, Zambia and Zimbabwe. He has also served as Chief Mutual Legal Assistance Officer at the Commonwealth Secretariat and was a Senior Fellow at the British Institute for International and Comparative Law. He has published extensively in the area of criminal law, criminal justice and evidence, constitutional law and human rights, with particular reference to the Commonwealth and Anglophone Africa. He is the author of, among other books, *Combating Corruption: Legal Approaches to Supporting Good Governance and Integrity in Africa* (Edward Elgar, 2014), *Comparative Constitutionalism and Good Governance in the Commonwealth* (with Muna Nduka and Peter Slinn, Cambridge University Press, 2005) and *Corruption and the Misuse of Public Office* (with Colin Nicholls, Tim Daniel and Alan Bacarese, Oxford University Press, 2006, second edition 2011). He is a member of the Editorial Board of the *Journal of Commonwealth Law and Legal Education* and serves on the Editorial Advisory Board of the *Denning Law Journal*. For many years he was Editor of *Commonwealth Legal Education*, Editor of the *Corruption Case Law Reporter* and Joint Editor of the *Journal of African Law*.

**Saskia Hufnagel** is a qualified German legal professional and accredited specialist in criminal law. She currently works as Lecturer in Criminal Law at Queen Mary University of London. She previously worked as a Research Fellow at the Australian Research Council Centre of Excellence in Policing and Security, Griffith University, Australia, and was a Leverhulme Fellow at the University of Leeds. Her main research areas encompass law enforcement cooperation in Asia, North America, the EU and

Australasia, comparative constitutional and human rights law with a focus on terrorism legislation and emergency management and the policing of art crime. Her monograph *Policing Cooperation Across Borders: Comparative Perspectives on Law Enforcement within the EU and Australia* was published by Ashgate in 2013. Saskia was awarded an LLM (2004) and a PhD in Law (2011) by the Australian National University.

**Bernard Leroy** is a retired High Court Judge, currently Director of the International Institute of Research Against Counterfeit Medicines (IRACM) in France. In his professional career, he was an investigating judge specializing in drug cases – Evry High Court (1979–1988); in charge of legal and international affairs – French National Drug Coordination (1988–1990); senior Legal Advisor – United Nations Office on Drugs and Crime (UNODC) (1990–2010); and Deputy General Prosecutor – Versailles Court of Appeal (2010–2013). He was a member of the French delegation in 1988 for the final negotiations of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. As manager of the UNODC Legal Assistance Programme (LAP) set up to help Member States to ratify and implement the 1988 Convention, he designed, drafted and disseminated, for the first time in the UN system, specific model laws that have been used by many States, and provided in-site assistance from 1990 to 2010, to more than 100 governments on request in Africa, North and South America, Asia and Europe. He established and implemented national and regional programmes to train judges and prosecutors, in order to optimize the application of the legislation adopted by their States. In 2014, he was elected to the International Narcotics Control Board (INCB) for a five-year term.

**Carole McCartney** is a Reader in the School of Law at Northumbria University. Previously senior lecturer in criminal law and criminal justice at the University of Leeds and Bond University, Queensland, Australia, she has written on Australian justice, innocence projects, miscarriages of justice, policing cooperation, and DNA, forensic science and criminal justice more widely. She established an Innocence Project at the University of Leeds in 2005, and was project manager for the Nuffield Council on Bioethics report ‘The Forensic Uses of Bio-information: Ethical Issues’ and the Nuffield Foundation project ‘The Future of Forensic Bioinformation’. She has also run projects on forensic science education and forensic regulation and recently completed an EU Marie Curie international research fellowship (2009–2012) on ‘Forensic Identification Frontiers’. She currently teaches and researches in the areas of criminal law, criminal evidence and forensic science.

**Valsamis Mitsilegas** is Professor of European Criminal Law, Director of the Criminal Justice Centre and Head of the Department of Law at Queen Mary University of London. From 2001 to 2005 he was legal advisor to the House of Lords European Union Committee. He is a regular consultant to EU institutions, governments, parliaments and NGOs on matters related to EU Justice and Home Affairs law, security and human rights. He is a member of two Commission Expert Groups, the Commission Expert Group on European Criminal Policy and the Commission Expert Group on Needs on Data on Crime. Professor Mitsilegas is Principal Investigator in a transnational research project on European Union responses to environmental crime funded by the Commission’s FP7 Programme. He is Co-Coordinator of the European Criminal Law Academic Network (ECLAN) and the author of three books and over seventy articles and chapters spanning the fields of EU criminal law, immigration and asylum law, legal responses to transnational crime and terrorism and the relationship between globalization, security and human rights. His monographs include *Money Laundering Counter-measures in the European Union* (Kluwer, 2006) and *EU Criminal Law* (Hart, 2009).

**Charles Monteith** is admitted both as a Solicitor and as a Higher Court Advocate in England and Wales. He is Head of Legal and Case Consultancy at the International Centre for Asset Recovery (ICAR) in the Basel Institute on Governance. Prior to this he worked as Counsel in the White Collar group of the international law firm White & Case. He is an expert on due diligence enquiries, risk assessment, corporate investigations, and on the governance and compliance implications of the UK Bribery, Fraud and Proceeds of Crime Acts. Prior to that, he was Head of Assurance at the UK Serious Fraud Office (SFO), where he was a leading policy maker and a key architect of the UK Bribery Act. He was on the Law Commission's Bill Advisory Group. He has been involved in such high-profile cases as *BAE*, *Mabey Johnson*, *Balfour Beatty* and *Oil for Food*. He is peer reviewer for the OECD Working Group on Bribery, and has assisted with country reviews under the UNCAC. He has also designed and implemented serious economic crime and anti-corruption training *inter alia* for Ghana, Nigeria and Zambia. A regular speaker at high-level anti-corruption, corporate compliance, securities fraud, money laundering and white-collar crime conferences, he has authored many articles and edited and contributed to leading publications such as *Modern Bribery* (Cambridge University Press 2012) and *Emerging Corruption Trends* (Basel Institute 2013).

**Tom Obokata** is Professor of International Law and Human Rights at Keele Law School. He has extensive experience of research into human trafficking and has published widely on the topic, including his monograph, *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach* (2006). He also actively engages in consultancy activities, providing expert advice for governmental, non-governmental and international organizations. In the past, he served as an expert for bodies such as the UK Parliamentary Joint Committee on Human Rights, Northern Ireland Assembly All-Party Group on Human Trafficking, European Union and International Organization for Migration.

**Pedro Gomes Pereira** is senior asset recovery specialist at the Basel Institute for Governance International Centre for Asset Recovery (ICAR). A lawyer and a member of the Brazilian Bar Association, while attending law school, Pedro joined the Brazilian central authority for mutual legal assistance, where he assisted authorities around the world in coordinating their international strategies and obtaining evidence in order to effectively combat organized crime, corruption and money laundering. Upon completing his studies, Pedro directed his professional activities in asset recovery supporting local and foreign authorities in sensitive cases involving high-ranking government officials and private entrepreneurs. He also developed strategies tracing and seizing the proceeds of crime in these cases. Before joining ICAR, Pedro was the Acting General Coordinator for Mutual Legal Assistance and Asset Recovery in the Brazilian Ministry of Justice. He has participated in a number of fora on asset recovery assistance at both national and international level.

**Christopher Ram** is a lawyer and criminologist who has been employed as Legal Counsel at the Canadian Department of Justice since 1989, apart from 1999 to 2003, when he was employed by the United Nations Office on Drugs and Crime as a crime prevention expert. He specializes in matters relating to transnational crime and the effects of globalization on crime, including jurisdictional law and the use of international law, domestic law and non-legal responses to the problem. He has served as a cybercrime expert for Canadian delegations to the G7/G8, the Commonwealth, the UN Commission on Crime Prevention and Criminal Justice and several UN crime congresses, and was responsible for cybercrime and related matters for the UN Office on Drugs and Crime from 1999 to 2003. He served as the Rapporteur for the UN open-ended intergovernmental expert group on economic fraud and the criminally

misuse of identity from 2004 to 2007 and is currently the Rapporteur for the UN open-ended intergovernmental expert group on cybercrime.

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**Sławomir Redo**, Dr hab. (Law/Criminology, Poland) is a retired former Senior Crime Prevention and Criminal Justice Expert at the UN Office on Drugs and Crime, and is a visiting lecturer at the University of Vienna. He has been involved in various UN capacities in technical assistance projects implementing the UN law against organized crime, in crime prevention cooperation between developing countries, in urban crime prevention, in the abolition of the death penalty, in crime prevention and civilian private policing, in the virtual forum against cybercrime, in online crime prevention and criminal justice education for the international rule of law, and in intercultural training skills in justice and security sector reform worldwide. He is the author of more than sixty publications on various crime and justice issues, mostly covering UN law and practice. In particular, he is the author of several books, including *Blended Criminology: The Power of United Nations Ideas to Counter Crime Globally* (HEUNI, Helsinki 2012) and *Organized Crime and its Control in Central Asia* (Office of International Criminal Justice, Sam Houston State University, Texas, USA, 2004). He is co-editor of *For the Rule of Law: Criminal Justice Teaching and Training across the World* (Helsinki–Seoul 2008), the *Global Crime and Justice Report* (OUP, New York 1999), and *Women and Children as Victims and Offenders: Background – Prevention – Reintegration: Suggestions for Succeeding Generations* (Springer-Verlag, 2015).

**Ben Saul** is Professor of International Law and an Australian Research Council Future Fellow at the University of Sydney. Ben has expertise on international counter-terrorism law, human rights, the law of armed conflict, and international criminal law. He has published 10 books, 75 scholarly articles, and hundreds of other publications and presentations, and his research has been used in national and international courts. He is author of *Defining Terrorism in International Law* (OUP, 2006) and co-author of *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials* (OUP, 2014). Ben has taught law at Oxford, at the Hague Academy of International Law and in China, India, Nepal and Cambodia, and has been a visiting professor at Harvard Law School. Ben practises as a barrister in international and national courts, has advised various United Nations bodies and foreign governments, has delivered foreign aid projects, and often appears in the media. He has a doctorate in law from Oxford and honours degrees in Arts and Law from Sydney.

**Andreas Schloenhardt** is Professor of Criminal Law in the School of Law at The University of Queensland in Brisbane, Australia and a Visiting Professor at the Faculty of Law, Department of Criminology and Criminology at the University of Vienna, Austria. He is also a consultant to the United Nations Office on Drugs and Crime (UNODC) and a guest professor at the University of St Gallen, Switzerland. His principal areas of research include criminal law, organized crime, migrant smuggling, trafficking in persons, narco-trafficking, terrorism, criminology, and immigration and refugee law. He is the author of many books and journal articles and his work is frequently cited by other scholars, in government reports, and judicial decisions, including the High Court of Australia. His recent work focuses on organized crime legislation and international efforts to prevent and suppress migrant smuggling and trafficking in persons.

**James Sheptycki** is a Professor of Criminology in the Department of Social Science at York University in Toronto, Canada. He has published widely on criminological topics including organized crime, money laundering, transnational policing and comparative criminology. His recent book, written with Ben

Bowling (King's College, London) and entitled *Global Policing* was published by Sage in 2012. In 2013 he published a collection of essays titled *Transnational Crime and Policing*, in the *Pioneers in Contemporary Criminology Series* (London: Ashgate). He edited a special issue of *Criminology and Criminal Justice* concerning guns, crime and social order (Vol. 9 No. 3, 2009) with Adam Edwards and together with Andrew Goldsmith, he edited a major collection of essays titled *Crafting Transnational Policing* (2007, Oxford: Hart Publishing). Broadly speaking, he is interested in the intersection of governance, crime, policing and the global system.

**John A.E. Vervaele** is full-time Professor of Economic and European Criminal Law at Utrecht Law School (the Netherlands) and Professor of European Criminal Law at the College of Europe in Brugge (Belgium). He is vice-president of the AIDP, in charge of the scientific coordination of the world organization for criminal law. The main topics in his research field are white collar crime, European Union Law, mutual legal assistance, standards of due process of law, procedural safeguards and human rights, comparative economic and financial criminal law, and terrorism and criminal procedure. He has realized a lot of research in these areas, for both Dutch departments and European institutions, and has also worked as a consultant for them. He regularly teaches as a visiting professor at foreign universities in Europe, the United States, Latin America and China.

**Arianna Visconti**, whose PhD was in Italian and Comparative Criminal Law (2008), is Assistant Professor in Criminal Law in the Università Cattolica del Sacro Cuore of Milan. She is a senior member of CSGP ('Federico Stella' Centre for Research on Criminal Justice and Policy) in the same university, and coordinates its research groups on offences against cultural heritage (she edited, with S. Manacorda, *Beni culturali e sistema penale*, Milan, 2013) and on law and literature (she is editor, with G. Forti and C. Mazzucato, of *Giustizia e letteratura I*, Milan, 2012, and *Giustizia e letteratura II*, Milan, 2014). Her other publications and studies cover defamation law, legal protection of reputation and 'reputation sanctions', theory of punishment, white-collar and organizational crimes, bribery, corruption and offences against Public Administration. She is also a lecturer in the UCSC Higher School of Specialization in Legal Professions.

**Rob White** is Professor of Criminology in the School of Social Sciences at the University of Tasmania, Australia. He has published widely in the areas of criminology and youth studies. Recent books include *Environmental Harm: An Eco-Justice Perspective*, *Transnational Environmental Crime: Towards an Eco-Global Criminology*, and *Green Criminology: An Introduction to the Study of Environmental Harm*.



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

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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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