



ISSN 2582 - 211X

LEX RESEARCH HUB JOURNAL

On Law & Multidisciplinary Issues

Email - journal@lexresearchhub.com

VOLUME II, ISSUE I
OCTOBER, 2020

<https://journal.lexresearchhub.com>

Lex Research Hub
Publications

DISCLAIMER

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Lex Research Hub Journal On Law And Multidisciplinary Issues), an irrevocable, non exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, stored, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

The Editorial Team of **Lex Research Hub Journal On Law And Multidisciplinary Issues** holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not necessarily reflect the views of the Editorial Team of Lex Research Hub Journal On Law And Multidisciplinary Issues.

[© Lex Research Hub Journal On Law And Multidisciplinary Issues. Any unauthorized use, circulation or reproduction shall attract suitable action under applicable law.]

EDITORIAL BOARD

Editor-in-Chief

Mr. Shaikh Taj Mohammed

Ex- Judicial Officer (West Bengal), Honorary Director, MABIJS

Senior Editors

Dr. JadavKumer Pal

Deputy Chief Executive, Indian Statistical Institute

Dr. ParthaPratimMitra

Associate Professor, VIPS. Delhi

Dr. Pijush Sarkar

Advocate, Calcutta High Court

Associate Editors

Dr. Amitra Sudan Chakraborty

Assistant Professor, Glocal Law School

Dr. Sadhna Gupta (WBES)

Assistant professor of Law, Hooghly Mohsin Govt. College

Mr. KoushikBagchi

Assistant Professor of law, NUSRL, Ranchi

Assistant Editors

Mr. Rupam Lal Howlader

Assistant Professor in Law, Dr. Ambedkar Government Law College

Mr. Lalit Kumar Roy

Assistant Professor, Department of Law, University of GourBanga

Md. AammarZaki

Advocate, Calcutta High Court

ABOUT US

Lex Research Hub Journal On Law And Multidisciplinary Issues (ISSN 2582 – 211X) is an Online Journal is quarterly, Peer Review, Academic Journal, published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essays in the field of Law and Multidisciplinary issues.

Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. Lex Research Hub Journal On Law And Multidisciplinary Issues (ISSN 2582 – 211X) welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

TRANSNATIONAL ORGANIZED CRIMES AND THE GLOBAL WORLD

Author –

Priyanshi Gupta

Student (LLM)

Nirma University

ABSTRACT

Transnational crimes are a product of globalization and not a good one. They are different from the traditional crimes which were only confined within a border, territory or region, the impact of international crimes can be seen in more than one state. They are also distinct from international crimes and global crimes in the way that they are more profit oriented and they are planned, organized and executed in a manner that the impact of the crime is seen in a different state from the state in which the preparations were made. In this article the author has discussed how transnational crime is recognized as an organized crime by the United Nations and also discusses the relevant and important provisions of the United Nations Convention on Transnational Organized Crimes (TOC) and its protocols. This article also discusses the networks through which such crimes are performed and that in order to combat TOC it is important to study the criminal markets and their groups. The local or national Law enforcement agencies play the role to combat TOC but they are limited due to the absence of the tools required for risk analysis. This article further goes on to discuss the direct and indirect impacts of the TOCs. Finally, the last two decades have been remarked as having recognized the threat of TOC is real and international co-operation is required in order to develop tools and institutions to generate efficient national and international responses against TOC.

INTRODUCTION:

While studying law, we often come down to a few identified areas of law operating in a state for crimes committed within a border or in other words domestic crimes like theft, robbery, burglary, murder but on broadening the horizon from an international perspective we come across crimes such as genocide, war crimes and crimes against humanity, however, there is this one not very newly identified crime i.e., Transnational crime. And the threat of Transnational Crime is real.

GLOBALIZATION AND TRANSNATIONAL CRIMES:

Globalization has done more harm than good, the world has become a ‘global village’, the ‘world is one’, with the advent of globalization there has been an exchange of trade, culture, people,

traditions, growth in markets and economies but it has also broadened the scope of crimes in a global world. Hence, it can be said that Globalization has produced global crimes and one of them is Transnational crimes. These crimes can be divided into three categories:

1. Global crimes – affecting the globe equally – cyber-crimes, terrorism
2. International crimes – crimes which disturb the world order – war crimes, genocide, crimes against humanity,
3. Transnational crimes – affecting two or more states

Transnational crimes are different from international crimes in the sense that they are crimes against the humanity but they might not involve more than one states or multiple countries. Traditionally crimes only meant offences being committed within the confines or border of a state. Transnational crimes are recognized as those crimes which have a multinational nature and character and have cross border impacts. Jay Albanese has made a classic distinction between international crimes and transnational crimes that the later are crimes which have a motive or personal gain and profit.¹

TRANSNATIONAL ORGANIZED CRIMES:

Transnational crimes can be identified as a form of organized crime rather confining it as traditional, individual or politically motivated crime. The essential element of such crimes are – a group or collective action to make and perform a planned conspiracy with an objective of making profit, hence without an organized planning transnational crimes cannot be committed. Organized crimes had first emerged in Chicago in 1919 to identify bootlegging crimes prevalent during that time.² Hence, organized crimes have been with us since a long time and as defined by various scholars organized crime is – “*a continuing criminal enterprise that rationally works to profit from illicit activities that are often in great public demand. Its continuing existence is maintained through the use of force, threats, monopoly control, and/ or the corruption of public officials*”.³

¹ Jay S. Albanese, *Deciphering The Linkages Between Organized Crime and Transnational Crime*, Journal of International Affairs, FALL/WINTER 2012, Vol. 66, No. 1 at 3.

² *The Threat of Transnational Organized Crime*, UNODC (Dec. 19, 2020, 1:30 PM), <https://www.unodc.org/documents/data-and-analysis/tocta/1.The-threat-transnational-organized-crime.pdf>.

³ Jay S. Albanese, *Organized Crime in Our Times* (Burlington, MA: Elsevier, 2011), 4.

And therefore, transnational crimes is considered to be a form of organized crime looking at its extent of multinational aims and impact and the requirement of an organization.

CLASSIFYING TRANSNATIONAL ORGANIZED CRIMES:

Beginning with the collapse of the USSR and the rise of democracy, since the last two decades Transnational Organized Crimes (TOC) have evolved over a period of time and with the growing ease of international movement in the form of products, persons or money (investment). TOC can be described by looking at the activities in which the criminal markets engage or by recognizing the groups involved in such markets. The TOC requires a constant network or group of customers and suppliers, the organized groups need to first acquire the products and then make it easily available to the customers and most importantly these organized groups require some protection in the form of networks and groups to protect them from the law enforcement agencies. There is a common agreement that both the *'highly structured'* and *'loosely structures'* networks are involved in TOC. Highly/ hierarchical structured groups refer to those groups which emerge in low governance areas around the globe, have their own institutional identities and engage in a wide range of criminal activities in the areas under their control like the *'mafias'* and the Loose structured networks refer to the mutable commercial relations between the buyers and sellers of the contraband in the illicit markets around the globe.⁴

There are certain arguments that the TOC have evolved from traditional hierarchical structures toward the loose networks. In 2001, the European Commission claimed: “... *traditional hierarchical structures are being replaced by loose networks of criminals...*” and according to the 2008 United States Department of Justice’s Strategy to Combat International Organized Crime: “*International organized criminals have evolved toward loose network structures and away from traditional hierarchical structures.*”⁵

⁴ *The Threat of Transnational Organized Crime*, UNODC (Dec. 20, 2020, 09:45 AM), <https://www.unodc.org/documents/data-and-analysis/tocta/1.The-threat-transnational-organized-crime.pdf>.

⁵ *Overview of the Law Enforcement Strategy to Combat International Organized Crimes*, U.S Department of Justice, April 2008 (Dec. 22, 2020, 11:00 AM), <https://www.justice.gov/sites/default/files/criminal-icitap/legacy/2015/04/23/04-23-08combat-intl-crime-overview.pdf>.

TRANSNATIONAL CRIMES AND UNITED NATIONS:

Transnational Organized Crimes incorporated certain crimes which were not acknowledge officially and hence an agreement was required to combat such TOC, the UN in order to promote cooperation, to prevent and combat transnational crime more effectively made a convention i.e., the *United Nations Convention against Transnational Organized Crime*. The convention contains no precise definition of TOC, a large number of crimes committed in an organized manner can be included under TOC and also since new forms of crimes keep on emerging globally and locally a precise definition was omitted and since with time the TOC have become more complex hence there is still no working definition.

The international community in December, 2000 at Palermo, Italy signed United Nations Convention against Transnational Organized Crime and demonstrated the political unity to respond to a global challenge. When crime surpasses boundaries, law enforcement must also take a leap. If the enemies of the human rights aim to take advantage of the opportunities, they are given, then the states must ensure, that they also defend human rights and defeat the forces of crime in society. The convention entered into force on 29 September 2003. India joined the convention on 15 December, 2002. United Nations Convention against Transnational Organized Crime constitutes an effective tool and the necessary legal framework for international cooperation in combating, inter alia, such criminal activities as money-laundering, corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage and the growing links between TOC and terrorist crimes. It is the only global legally binding instrument against transnational organized crime with 190 parties, up until September, 2017.

*“The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively”.*⁶

Article 2(a) defines “Organized criminal group”, as -

1. a structured group of three or more persons,
2. existing for a period of time,

⁶ The United Nations Convention Against Transnational Organized Crime, Article 1, https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERE TO.pdf.

3. acting in concert with the aim of committing one or more serious crimes,
4. in order to obtain, directly or indirectly, a financial or other material benefit”.⁷

The convention only includes transnational crimes it not only covers those crimes which are committed in more than one state, but it also includes those offences which take place in one state but are planned or controlled in another state.

Under article 3 (2) an offence is transnational in nature if:

1. It is committed in more than one State;
2. It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
3. It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
4. It is committed in one State but has substantial effects in another State.⁸

The UNODC has identified 18 categories of transnational crimes namely – Drug and human trafficking, smuggling of migrants, illicit trade of firearms, illicit trade in wildlife, trafficking in natural resources, cybercrime, money-laundering and etc.

States ratifying this instrument undertake to take a range of steps to tackle transnational organized crime, including the establishment of domestic criminal offenses (participation in an organized criminal organization, money laundering, corruption and obstruction of justice); the introduction of new and sweeping mechanisms for extradition, mutual legal aid and cooperation with law enforcement cooperation’s; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities⁹.

Article 31 of the UNTOC deals with *Prevention* of Transnational organized crimes and provides for measures like the state parties shall participate actively to reduce existing or any future possibilities for organized criminal groups to participate in any lawful markets with the proceeds

⁷ *Id.*, Article 2(a).

⁸ *Id.*, Article 3(2).

⁹ United Nations Office on Drugs and Crime, *United Nations Convention on Transnational Organised Crime and the Protocols Thereto*, (Dec. 18, 2020, 4:00 P.M.), <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

of the crimes and they can do so through appropriate legislative, administrative and legal measures. This can be done by strengthening co-operation between law enforcement agencies, prosecutors and relevant private entities.¹⁰

Since TOC issues are spread over and involve multiple countries of origin, planning, execution and impact hence international co-operation is very essential because it is beyond the capacity of any single state to take any comprehensive action to contain and combat the crime.

The Convention also encapsulates the new budding idea of *Restorative Justice* endeavoring State parties to promote the reintegration of criminals convicted under this Convention.¹¹

Article 35 provides for Settlement of Disputes i.e.; the States Parties shall endeavor to settle disputes concerning the interpretation or application of this Convention through negotiation. And in case, through negotiation the dispute is taking longer time to resolve then the parties can resort to arbitration.

UNTOC has set up standards to assist parties in adopting legislation to establish criminal offences. It also establishes frameworks for mutual legal assistance and extradition, and foster law enforcement cooperation.¹²

The Convention is further supplemented by three Protocols, for specific areas and exhibition of organized crime:

- **the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children:** It is the first global legally binding instrument with an agreed definition on trafficking in persons. The intention behind this definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting cases of trafficking in persons. An additional objective of the Protocol is to

¹⁰ *Supra*Note, Article 31.

¹¹ *Id.*

¹²UNODC, *Twentieth anniversary of the United Nations Convention against Transnational Organized Crime*, (Dec. 22, 2020, 11:37 A.M.) <https://www.unodc.org/unodc/en/untoc20/index.html>.

provide protection and assistance to the victims of trafficking with all due respect for their human rights.¹³

- **the Protocol against the Smuggling of Migrants by Land, Sea and Air:** It tackles the growing issue of organized criminal gangs smuggling migrants, often at high risk to migrants and for the perpetrators to benefit greatly. A significant achievement of the Protocol was that for the first time, a concept of migrant smuggling was established and agreed upon in the form of a global international instrument. The purpose of the Protocol is to prevent and combat smuggling of migrants, as well as to foster cooperation between States Parties and to protect the rights of smuggled migrants and preventing the worst forms of their exploitation which often characterize the smuggling process.
- **Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition:** The purpose of the Protocol, which is the first legally binding small arms instrument to be implemented internationally, is to encourage, facilitate and enhance cooperation between States Parties with a view to preventing, combating and eradicating the illegal manufacture and trafficking of weapons, their components and ammunition. By ratifying the Protocol, States undertake to introduce a series of measures to control crime and to incorporate three sets of measures in their domestic legal order.

The conventions purpose shall be fulfilled when the state parties actively participate in incorporating and implementing the international agreements they have signed into their domestic laws and ensure co-operation. One of the ways in which it can be done is seen - in the year 2018, the new Penal Code in Afghanistan introduced alternatives to imprisonment, which judges impose for imprisonment sentencing below five years, and are mandated to impose for incarcerations less than three months. The code also significantly reduces the number of crimes for which the death penalty applies. The New Penal Code reinforced Afghanistan's compliance with international human rights and criminal justice standards and incorporates all mandatory crimes under the

¹³ UNHR, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, (Dec. 22, 2020, 11:44 A.M.) <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>.

UN Convention against Corruption, the UN Convention against Transnational Organized Crimes (UNTOC) and its three protocols¹⁴.

COMBATTING TRANSNATIONAL CRIMES:

*A focus on organized crime activities and their markets, rather than on groups, is useful for purposes of assessment and analysis in order to produce an objective basis for investigative priorities and prevention initiatives. There is growing concern around the world about how best to address TOC.*¹⁵ There is a need of tools to assess the markets in order to determine their relative harm so that a risk assessment analysis can be carried out. The matter of Combatting TOC has been seen to be under the exclusive jurisdiction of the law enforcement departments and hence the limitation is that TOC are an international problem while the tools happen to be inherently national. The police officers, investigators and prosecutors are empowered to make cases against those individuals and groups involved in such crimes in a particular jurisdiction.

IMPACT OF TRANSNATIONAL ORGANIZED CRIMES:

Many of the TOC involve the threat of violence and loss of life, but the impact is not limited to the threat of violence instead there are studies which show that the more organized a crime is the less extent of violence is seen. Hence the real impact of the TOC cannot be studied by calculating the amount of violence caused in the criminal markets but it can be studied under two heads as provided by the UNODC, i.e., Direct and Indirect Impacts. The former are those reasons based on which such criminal activities are prohibited in the first place and the latter provides the ways in which the organized crimes undermine the states and the legal commercial activities.¹⁶

- Direct Impacts: the impact of organized crimes are often seen in a different country and the profits accrue in a different country, and hence crimes appear to be victimless.
- Indirect Impacts: organized criminal groups gradually undermine the authority and the health of the governments. In areas where official state governments are not functioning

¹⁴ UN News, (Dec. 20,2020, 1:45 A.M.), <https://news.un.org/en/story/2018/02/1003271>.

¹⁵ Jay S. Albanese, *Deciphering The Linkages Between Organized Crime and Transnational Crime*, Journal of International Affairs, FALL/WINTER 2012, Vol. 66, No. 1 at 6.

¹⁶ *Id.*

properly the organized crime groups is more popular. Most of the TOC involves smuggling and the most efficient way to achieve smuggling is by corruption. Hence the States power are compromised.

CONCLUSION:

Criminal groups have wasted no time in embracing today's globalized economy and the urbane technology. And as rightly addressed by the then Secretary General Mr. Kofi Annan – *“But our efforts to combat them have remained up to now very fragmented and our weapons almost obsolete.”*¹⁷ The Convention gives us a new instrument to address the plague of crime as a global problem. With heightened international cooperation, we can have a real impact on the ability of international criminals to operate successfully and can help citizens everywhere in their hard struggle for safety and dignity in their homes and communities. The signing of the Convention was a watershed event in the reinforcement of our fight against organized crime. In the last couple of decades, it is seen that there is an international recognition of the Transnational crimes in the forms of conventions and conferences. Also, it can be seen that international co-operation is the only way to combat TOC in order to develop tools and institutions to improve the national as well as global responses to contain such criminal activities.

¹⁷ https://www.unodc.org/unodc/en/about-unodc/speeches/speech_2000-12-12_1.html.