
HOW LAW ENFORCEMENT COOPERATION ABROAD IS PIVOTAL TO SUSTAINABLE DEVELOPMENT AT HOME

David A. Sadoff*

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* Dr. Sadoff is the Executive Director of the Center for Ethics and the Rule of Law (CERL) at the University of Pennsylvania Law School, a non-resident Senior Fellow with both the Centre for International Sustainable Development Law (CISDL) and the Enough Project, and the author of *BRINGING INTERNATIONAL FUGITIVES TO JUSTICE: EXTRADITION AND ITS ALTERNATIVES* (Cambridge Univ. Press 2016). The views expressed in this article are the author’s alone and do not purport to reflect those of any of the organizations with which he is affiliated.

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I. INTRODUCTION

At first glance, the nexus between international law enforcement and domestic sustainable development may not be apparent. One may discern only a tenuous or even a dubious relationship. The two concepts, however, are inextricably, albeit indirectly, linked. This article seeks to “connect the dots” by demonstrating how cross-border law enforcement cooperation, in particular, can be instrumental in thwarting the surging threat posed by transnational crime, which, in turn, is a major impediment to sustainable development (in each of its various guises), especially in more impoverished or governance-challenged countries.

To that end, this analysis begins with a discussion of the underlying problem and, as it happens, the “middle dot”—transnational crime—including its definition, forms, dynamics, and significance, as well as reasons for its recent ascendancy. This article then turns to the object of this inquiry (or “third dot”)—sustainable development—and explores its meaning and dimensions while also describing how transnational crimes can undermine its achievement. This article next looks at the full range of law enforcement methods and tools available to domestic governments to combat transnational crime and thereby remove critical barriers to their countries’ sustainable development. As a critical part of that analysis, this article examines one of those means and the subject of this treatment (or “first dot”)—cross-border law enforcement cooperation—by describing its outsized importance and capacity for addressing transnational crime, the multiplicity of ways in which it operates, and the inherent challenges it faces. The logical sequencing of this analysis, then, is based first on identifying the core problem, then understanding its adverse effects, and finally determining how to get out in front of the problem before it wreaks havoc.

II. TRANSNATIONAL CRIME: ITS ASCENDANCY, OPERATION, AND SIGNIFICANCE

The face of crime worldwide is changing.¹ Many offenses are now less

¹ See U.N. Office on Drugs and Crime, *Emerging Crimes*, <https://www.unodc.org/unodc/en/organized-crime/emerging-crimes.htm> (last visited Oct. 24, 2016) (noting that “[a]s organized crime groups join ever more complex networks spanning

commonly confined to a discrete geographical area and more frequently transcend national boundaries.² This is mainly a function of globalization and the correspondingly increased cross-border movement of people, goods, information, and finances.³ A criminological (versus juridical) term,⁴ “transnational crime,”⁵ captures this new reality but regrettably it has no uniform definition.⁶ Part I of this article provides a working definition and explicates the meaning of this term, examines the various types of transnational crimes, identifies the forces that have helped give rise to this emerging phenomenon, and assesses the operational dynamics and significance of such crimes.

a. What is a “transnational crime”?

For present purposes, a transnational crime is understood to encompass any recognized offense that is not strictly localized inasmuch as: (i) its execution crosses national boundaries; (ii) its planning, direction, or control occurs in one country but manifests elsewhere; (iii) it occurs in one country, but its direct or indirect effects are experienced in another; *or* (iv) the offense is perpetrated within a single country’s borders by an organized

the globe, the crimes become increasingly transnational and the types of crime they are able to commit become diversified. New threats to global security are emerging, meaning that people can fall victim to organized crime in an increasing number of ways, in an increasing number of places.”).

² See James O. Finckenauer, *Meeting the Challenge of Transnational Crime*, NAT’L INST. JUST. J. 3, 3 (July 2000), <https://www.ncjrs.gov/pdffiles1/jr000244b.pdf> (describing that “[c]riminal justice officials today are increasingly being asked to deal with offenses and offenders whose origins and connections lie outside the country.”).

³ See U.N. Security Council, Concerned at Threat Posed by Illicit Cross-Border Trafficking, Asks for an Assessment of UN Efforts in Helping States Counter Challenges, U.N. Press Release SC/10624 (Apr. 25, 2012).

⁴ Neil Boister, *Transnational Criminal Law?*, 14 EUR. J. INT’L L. 953, 954 (2003).

⁵ The term appears to have been “coined by the U.N. Crime Prevention and Criminal Justice Branch” as early as 1974 and was then defined as consisting of “certain criminal phenomena transcending international borders, transgressing the laws of several states or having an impact on another country.” *Id.*; *cf. id.* at 954, n.2.

⁶ Mitchel P. Roth, *Historical Overview of Transnational Crime*, in HANDBOOK OF TRANSNATIONAL CRIME AND JUSTICE 6 (Philip Reichel & Jay Albanese eds., 2d ed. 2014); see, e.g., Ninth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, *Interim Report by the Secretariat: Results of the supplement to the Fourth U.N. Survey of Crime Trends and Operations of Criminal Justice Systems, on Transnational Crime*, ¶ 9, U.N. Doc. A/CONF.169/15/Add.1 (Apr. 4, 1995) (defining transnational crimes as “offences whose inception, perpetration and/or direct or indirect effects involve more than one country”); Simon Odey Ering, *Trans-border Crime and Its Socio-economic Impact on Developing Countries*, 2 J. SOC’Y & SOC. ANTHRO. 73, 74 (2011) (defining transnational crimes as “a set of criminal acts whose perpetrators and repercussions go beyond territorial borders”).

crime group with multi-country operations.⁷

This term has several close but non-identical counterparts that are worth distinguishing. Unlike “multinational crimes,” for example, where the offense at issue necessarily takes place in two or more countries, transnational crimes might well occur in only a single country but, as noted above, have connections to, or repercussions in, another.⁸ Likewise, “cross-border crime” is not synonymous with transnational crime, as the former term alone connotes a crime’s *execution* across national boundaries. Furthermore, in contrast with transnational crimes, “international crimes” consist of only a limited set of offenses, such as war crimes, crimes against humanity, and genocide[,] that are “universally recognized as criminal . . . [and are] considered a grave matter of international concern [that] . . . cannot be left within the exclusive jurisdiction of the state that would have control over it under ordinary circumstances.”⁹

Transnational crimes may or may not include those in which “organized criminal groups”¹⁰ participate. The crimes may instead be of a corporate, professional, or political character;¹¹ may be conceived and carried out by only one or two persons (e.g., “lone wolf” terrorists); and may be violent or non-violent in nature.¹² Although transnational crimes are typically significant in scale and severity, such characteristics are not integral to this

⁷ This definition tracks the definition of “transnational” found in the U.N. Convention Against Transnational Organized Crime, G.A. Res. 55/25, at 5, art. 3.2 (Nov. 15, 2000) [hereinafter Convention Against TOC].

⁸ JOHN M. MARTIN & ANNE T. ROMANO, *MULTINATIONAL CRIME: TERRORISM, ESPIONAGE, DRUG & ARMS TRAFFICKING* 14-15 (James A. Inciardi ed., 1992).

⁹ 11 TRIALS OF WAR CRIMINALS BEFORE THE NUREMBERG TRIBUNALS UNDER CONTROL COUNCIL LAW NO. 10, 1241 (U.S. Gov’t. Prtg. Off. Wash. 1950). Consistent with this definition, the International Criminal Court (“ICC”) exercises jurisdiction over just four types of crimes: genocide, war crimes, crimes against humanity, and aggression (once defined). Rome Statute of the ICC, art. 5, July 17, 1998, 2187 U.N.T.S. 38544.

¹⁰ Convention Against TOC, *supra* note 7, at 5, art. 2(a) (defining organized criminal group to “mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit”). Such groups are often supported by a bevy of professionals, typically including lawyers, accountants, and financial advisors, to assist them in structuring their business enterprise, avoiding taxes, and laundering their illicit proceeds. U.S. NAT’L SEC. COUNCIL, *TRANSNATIONAL ORGANIZED CRIME: A GROWING THREAT TO NATIONAL AND INTERNATIONAL SECURITY*, <https://www.whitehouse.gov/administration/eop/nsc/transnational-crime/threat> (last visited Nov. 1, 2016).

¹¹ Boister, *supra* note 4, at 954.

¹² Roth, *supra* note 6, at 7.

definition.¹³ In addition, the conduct at issue must constitute a violation under at least one country's criminal code; there is no requirement, however, that more than one involved country recognize the conduct at issue as unlawful,¹⁴ such as is conventionally required as a condition of extradition and mutual legal assistance (i.e., the principle of dual criminality).¹⁵

b. What are the types of transnational crimes?

A vast array of offenses may qualify as transnational crimes; in fact, by one authoritative estimate, “[a]s many as fifty-two activities fall under the umbrella of transnational crime.”¹⁶ By way of illustration, these offenses can include non-domestic terrorism;¹⁷ cybercrime; aircraft hijacking; financial and bank fraud; tax evasion; sexual extortion; corruption; currency counterfeiting; money laundering (namely, the means of processing criminal proceeds in such a way as to disguise their illegal origins); intellectual property crimes; and a slew of illegal trafficking activities, such as in firearms, wildlife, human beings (notably including aliens, illegal laborers, or prostitutes), human organs (mainly kidneys), cultural property, narcotics, nuclear materials, counterfeit goods and medicines, natural resources, hazardous waste,¹⁸ and child pornography.¹⁹ Among the more

¹³ See *id.* (citing, for example, “the parental dispute over the custody of a child involving two countries”).

¹⁴ MARTIN & ROMANO, *supra* note 8, at 15.

¹⁵ Matti Joutsen, *International Instruments on Cooperation in Responding to Transnational Crime*, in HANDBOOK OF TRANSNATIONAL CRIME AND JUSTICE 313 (Philip Reichel & Jay Albanese eds., 2d ed. 2014).

¹⁶ COUNCIL ON FOREIGN RELATIONS, THE GLOBAL REGIME FOR TRANSNATIONAL CRIME [hereinafter CFR REPORT], <http://www.cfr.org/transnational-crime/global-regime-transnational-crime/p28656> (last updated June 25, 2013).

¹⁷ Domestic terrorism is not transnational because it is strictly localized, such as when pro-environment activists attack domestic logging operations. KHUSRAV GAIBULLOEV ET AL., CREATE HOMELAND SECURITY CENTER, ASSESSING THE EVOLVING THREAT OF TERRORISM 3 (2011). When terrorism, as such, is not defined in domestic criminal statutes, prosecutors generally rely on the specific underlying type of offense perpetrated, such as hostage-taking, murder, arson, or sabotage. See Andrew Peterson, *Addressing Tomorrow's Terrorists*, 2 J. NAT'L SEC. L. & POL'Y 297, 297 (2008).

¹⁸ The cross-border movement of toxic substances also “can occur through natural ecological processes—the movement of streams, rivers, air currents, and living organisms.” Raymond Michalowski & Ronald Kramer, *Transnational Environmental Crime*, in HANDBOOK OF TRANSNATIONAL CRIME AND JUSTICE 190 (Philip Reichel & Jay Albanese eds., 2d ed. 2014). In fact, regrettably, “[f]rom a juridical standpoint, only a small proportion of the environmental harms that occur across borders are subject to legal control either as crimes or treaty violations.” *Id.* at 189.

¹⁹ U.N. Office on Drugs and Crime, *Transnational Organized Crime: The Globalized*

profitable transnational crimes tend to be illegal trafficking in narcotics,²⁰ unlawful wildlife trade,²¹ and currency and goods counterfeiting.²²

c. What has precipitated the rise of transnational crime?

While various transnational crimes, such as slavery and piracy, long predate globalization,²³ the factors underlying globalization have substantially spurred transnational crimes in the past couple of decades.²⁴ Those factors²⁵ may be said to consist of the following: (i) the ever-broadening appeal of capitalism (including the related fall of Communism in the former Soviet Union) and rising consumer demands (including for illicit narcotics and goods); (ii) the growing interest in free trade (as manifested by various agreements such as the North America Free Trade Agreement, or NAFTA) and the concomitant economic interdependence of countries;²⁶ (iii) the widespread easing of domestic or regional restrictions governing customs, immigration, and international travel (including the Schengen Agreement in Europe); (iv) improved and faster transportation options; and (v) dramatic improvements in the speed and quality of

Illegal Economy [hereinafter UNODC TOC Site], <https://www.unodc.org/toc/en/crimes/organized-crime.html> (last visited Oct. 27, 2016).

²⁰ This traffic is worth about 320 billion USD per year. *Id.*

²¹ This trade is valued at 50-150 billion USD per annum. U.N. ENV'T PROGRAMME, EMERGING ISSUES IN OUR GLOBAL ENVIRONMENT 25 (2014) [hereinafter UNEP YEARBOOK 2014], http://www.unep.org/yearbook/2014/PDF/UNEP_YearBook_2014.pdf.

²² JEREMY HAKEN, GLOBAL FINANCIAL INTEGRITY, TRANSNATIONAL CRIME IN THE DEVELOPING WORLD i, v (2011), http://www.gfintegrity.org/storage/gfip/documents/reports/transcrime/gfi_transnational_crime_web.pdf (noting that currency and goods counterfeiting is valued at about 250 billion USD per year). By contrast, cyber identity theft is currently valued at about 1 billion USD per annum. UNODC TOC Site, *supra* note 19, at 3.

²³ See DAVID HELD ET AL., GLOBAL TRANSFORMATIONS: POLITICS ECONOMICS AND CULTURE 2 (1999), <https://www.polity.co.uk/global/whatisglobalization.asp> (“Globalization may be thought of . . . as the widening, deepening[,] and speeding up of world-wide interconnectedness.”).

²⁴ See CFR REPORT, *supra* note 16 (noting that “[g]lobalization has facilitated an explosive growth in transnational organized crime since the early 1990s.”). See generally ANTHONY J. BALZER, INTERNATIONAL POLICE COOPERATION: OPPORTUNITIES AND OBSTACLES, in POLICING IN CENTRAL AND EASTERN EUROPE: COMPARING FIRSTHAND KNOWLEDGE WITH EXPERIENCE FROM THE WEST 1-2 (Milan Pagon ed., 1996), <https://www.ncjrs.gov/policing/int63.htm> (outlining developments that have given rise to globalization).

²⁵ It is essential not to treat these as “causes” of transnational crime, but merely as enabling influences. The actual causes of crime tend to arise out of avarice for wealth, prestige, or power, as well as poverty and socio-economic inequality. Finckenauer, *supra* note 2, at 3.

²⁶ See Ering, *supra* note 6, at 73.

“communications technologies,”²⁷ including those used in financial transactions.²⁸

These changes, while according clear societal benefits, also have provided criminals with significant exploitation opportunities. Criminals now face fewer restrictions in moving goods, people, and capital across national borders,²⁹ and they can travel faster and farther. This has notably led to a skyrocketing of criminal interest in movable goods (e.g., narcotics and firearms trafficking), rather than in more traditional immovable goods (e.g., construction and public contracts).³⁰ In addition, new communications technologies have facilitated cross-border transactions, allowed criminals to evade or thwart law enforcement, and even introduced “new types of crimes [such as] . . . online phishing, banking fraud, and cyber attacks on information systems databases and personal computers.”³¹

Moreover, globalization allows criminal enterprises to recruit from a far larger pool of skilled persons, to build up extensive networks, and to adopt more sophisticated tools and methods to carry out their operations.³² Transnational criminals also capitalize on the fact that countries often apply different laws, do not always maintain the same law enforcement priorities, and have national enforcement agencies that may be loath to share information or otherwise cooperate with one other.³³ Such challenges to

²⁷ See David Felsen & Akis Kalaitzidis, *A Historical Overview of Transnational Crime*, in HANDBOOK OF TRANSNATIONAL CRIME AND JUSTICE 12 (Philip Reichel ed., 2005) (observing how advances in Internet and communications technologies have “heightened cross-border linkages and made national frontiers seem more permeable than ever”).

²⁸ See EUR. COMM. ON CRIME PROBLEMS (CDPC) SECRETARIAT, WHITE PAPER ON TRANSNATIONAL ORGANIZED CRIME 15 (Oct. 6, 2014) [hereinafter CDPC WHITE PAPER] (noting how modern technology now permits the “rapid transfer . . . of proceeds of crime”).

²⁹ For a discussion on the ways in which national borders are vulnerable and can be exploited by criminals, see Louise I. Shelley, *Border Issues: Transnational Crime and Terrorism*, in BORDERS AND SECURITY GOVERNANCE (Marina Caparini & Otwin Marenin eds., 2006).

³⁰ CDPC WHITE PAPER, *supra* note 28, at 15.

³¹ *Id.* at 18. Other new types of online crime include identity theft and Internet gambling. CORMAC CALLANAN & MARCO GRECKE, COUNCIL OF EUR., COOPERATION BETWEEN LAW ENFORCEMENT AND INTERNET SERVICE PROVIDERS AGAINST CYBERCRIME: TOWARDS COMMON GUIDELINES 10-11 (June 25, 2008), http://www.coe.int/t/dg1/legalcooperation/economiccrime/cybercrime/Documents/Reports-Presentations/567_prov-d-wgSTUDY_25June2008.pdf.

³² CDPC WHITE PAPER, *supra* note 28, at 16.

³³ See, e.g., Carlos Resa Nestares, *Transnational Organised Crime in Spain: Structural Factors Explaining its Penetration*, UNIV. AUTÓNOMA DE MADRID (2001), https://www.uam.es/personal_pdi/economicas/cresa/text9.html (discussing how Russian organized crime takes advantage of the lack of cooperation by Russian police in Spanish criminal investigations).

effective cooperation are discussed more extensively in Part IV.

d. How do transnational criminals operate?

It is imperative to understand how such transnational criminal organizations or syndicates are organized, the nature of their operations, and the extent of their reach. One of the major developments in the business of transnational crime in recent years is the way in which such entities have come to be structured. Traditionally, they were characterized by hierarchical, pyramidal, or corporate-like arrangements; today, they tend to be more loosely, informally, and horizontally organized,³⁴ relying on extensive networks, multiple partners and cells, along with non-permanent project-based personnel and outsourcing.³⁵ Their operations also tend to be evermore technologically sophisticated,³⁶ collaborative with other criminal entities, including terrorists (who require financing or logistical support in furtherance of their missions);³⁷ and diversified in terms of the nature of their illicit activities.³⁸

The extent of their reach is also new. Rather than remain limited to a particular locality,³⁹ or defined by a certain nationality or ethnicity, transnational criminal entities increasingly operate on a multinational basis.⁴⁰ They also have become adept at insinuating themselves into

³⁴ CFR REPORT, *supra* note 16; KRISTIN M. FINKLEA, CONG. RESEARCH SERV., R41927, THE INTERPLAY OF BORDERS, TURF, CYBERSPACE, AND JURISDICTION: ISSUES CONFRONTING U.S. LAW ENFORCEMENT 13 (2013).

³⁵ FINKLEA, *supra* note 34, at 13-14; CDPC WHITE PAPER, *supra* note 28, at 16.

³⁶ CFR REPORT, *supra* note 16.

³⁷ See Lyubov Mincheva & Ted R. Robert Gurr, *Unholy Alliances? How Trans-State Terrorism and International Crime Make Common Cause* 3 (Mar. 24, 2006) (unpublished manuscript) (presented at the 2006 Annual Meeting of the International Studies Association), http://www.cidcm.umd.edu/publications/papers/unholy_alliances.pdf (last visited June 1, 2016); Charlie Edwards & Calum Jeffray, *The Growing Nexus between Terrorism and Organized Crime in the Atlantic Basin*, in DARK NETWORKS IN THE ATLANTIC BASIN: EMERGING TRENDS AND IMPLICATIONS FOR HUMAN SECURITY 3 (Daniel S. Hamilton ed., 2015) (observing this new collaboration arising out of such factors as the decline in State-sponsored terrorism, advances in transportation systems, and improvements in communications technologies); U.N. Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General*, ¶ 95, U.N. Doc. A/59/2005 (Mar. 21, 2005).

³⁸ Fernando Reinares & Carlos Resa, *Transnational Organized Crime as an Increasing Threat to the National Security of Democratic Regimes: Assessing Political Impacts and Evaluating State Responses* 17 (unpublished manuscript), <http://docplayer.net/3024363-Transnational-organized-crime-as-an-increasing-threat-to-the-national-security-of-democratic-regimes-assessing.html> (last visited June 1, 2016).

³⁹ FINKLEA, *supra* note 34, at 13.

⁴⁰ CDPC WHITE PAPER, *supra* note 28, at 16.

communities, especially indigent ones, by providing them with basic services and jobs, thereby earning their allegiance; and have formed strong bonds with government officials and institutions, often accompanied by payouts, to secure preferential business deals and insulate the criminal entities from potential liability.⁴¹ All of these developments have increased the challenges faced by law enforcement agencies and have put them on their back foot in terms of detecting, investigating, and apprehending transnational criminals.⁴²

e. What is the significance of transnational crime to this inquiry?

Although transnational crime does not account for all types of criminal activity around the world—there are still, of course, many localized crimes that have no cross-border dynamics or implications—it does represent a sizable proportion of crime today.⁴³ Although accurately estimating the monetary value of global transnational crime is difficult, proxies can provide a helpful approximation.⁴⁴ Based on data gathered in 2009 and 2010, the NGO known as Global Financial Integrity found that twelve types of trafficking-related criminal activity (in narcotics, wildlife, diamonds, cultural property, etc.), “which have their primary roots in poorer nations,” amassed “global proceeds of some 650 billion [USD] annually.”⁴⁵ In 2011, the United Nations Office on Drugs and Crime (“UNODC”) estimated the value of transnational *organized* crime alone in 2009 at 870 billion USD per year, or “1.5% of global GDP” that year.⁴⁶ The Council on Foreign Relations recently estimated revenues generated by transnational organized crime worldwide at 2.4 times that level, or “3.6 percent of the global economy.”⁴⁷

Transnational crime operates on a global scale,⁴⁸ is on a steep growth

⁴¹ Cf. CFR REPORT, *supra* note 16, at 2.

⁴² See *id.* at 7.

⁴³ CDPC WHITE PAPER, *supra* note 28, at 17 (noting that the damage caused by transnational crime “is much higher than that caused by any other type of crime”).

⁴⁴ U.N. OFFICE ON DRUG AND CRIME, ESTIMATING ILLICIT FINANCIAL FLOWS RESULTING FROM DRUG TRAFFICKING AND OTHER TRANSNATIONAL ORGANIZED CRIMES: RESEARCH REPORT 7 (2011) [hereinafter UNODC ILLICIT FINANCIAL FLOWS REPORT], https://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf (last visited on June 2, 2016).

⁴⁵ HAKEN, *supra* note 22, at i, v.

⁴⁶ UNODC ILLICIT FINANCIAL FLOWS REPORT, *supra* note 44, at 42.

⁴⁷ CFR REPORT, *supra* note 16, at 1.

⁴⁸ See Ering, *supra* note 6, at 73 (observing “that no region . . . of the world is spared” the adverse effects of transnational crime); TUESDAY REITANO ET AL., THE GLOB. INITIATIVE AGAINST TRANSNAT’L ORGANIZED CRIME, ORGANIZED CRIME: A CROSS-CUTTING THREAT TO SUSTAINABLE DEVELOPMENT 3 (2015), <http://globalinitiative.net/download/global->

trajectory,⁴⁹ and is pervasive throughout many countries.⁵⁰ Although most of the crimes at issue are not ones of first impression (e.g., sea piracy and alien smuggling have been around a long time), what makes them noteworthy today is their expanding depth, scale, and “deterritorialization.”⁵¹ Moreover, “organised crime creates the very conditions that allow it to thrive, resulting in a self-perpetuating cycle of insecurity and diverted development.”⁵² Indeed, in October 2005 the U.N. General Assembly “express[ed] grave concern at the negative effects on development . . . posed by transnational crime.”⁵³

Contrary to some analyses distinguishing predatory (e.g., murder or kidnapping) from consensual (e.g., unlawful arms trade or narcotics trafficking) crime, transnational crime, by its very nature, is never truly victimless. Every such crime necessarily adversely affects at least one person, group, or subpopulation to some extent, directly or indirectly.⁵⁴

initiative/Global%20Initiative%20-%20Organized%20Crime%20as%20a%20Cross-Cutting%20Threat%20to%20Development%20-%20January%202015.pdf (detailing how the “effects of organised crime are being felt in fragile and developed nations alike, and in many parts of the world”).

⁴⁹ Boister, *supra* note 4, at 956; BALZER, *supra* note 24, at 1 (“[T]here is strong evidence that transnational crime has become more prevalent and serious today than ever before.”); see Jeremy McDermott, *Transnational Crime ‘Abiding Threat’ to National Security: US Intelligence*, INSIGHT CRIME (Feb. 1, 2012), <http://www.insightcrime.org/news-analysis/transnational-crime-abiding-threat-to-national-security-us-intelligence> (footnote omitted) (arguing that “transnational organized crime in Latin America is strengthening is beyond doubt. That its reach is extending beyond its traditional strongholds of Colombia and Mexico is also quite clear.”).

⁵⁰ See CDPC WHITE PAPER, *supra* note 28, at 17 (stating that transnational crime can “penetrate the economic and social fabric of society and poses a serious threat to individual rights and freedoms, the rule of law, the reliability of the financial system and democracy”); *id.* at iii (“[A]pproximately 3,600 . . . [transnational crime] groups are active in Europe.”).

⁵¹ Roth, *supra* note 6, at 7 (internal quotation marks and citation omitted); *accord* Ering, *supra* note 6, at 75; SONNY SHIU-HING LO, *THE POLITICS OF CROSS-BORDER CRIME IN GREATER CHINA: CASE STUDIES OF MAINLAND CHINA, HONG KONG, AND MACAO* 69 (2009) (discussing the evolution of transnational crime in Greater South China since the 1970s); REITANO ET AL., *supra* note 48, at 3 (“While organised crime is not a new phenomenon, the spread, impact[,] and forms of organised crime in the modern world are unprecedented.”).

⁵² REITANO ET AL., *supra* note 48, at 3; see also HAKEN, *supra* note 45, at v.

⁵³ G.A. Res. 60/1, 2005 World Summit Outcome, ¶ 111 (Oct. 24, 2005).

⁵⁴ See Kristiina Kangaspunta & Marco Musumeci, *Trafficking in Counterfeit Goods*, in *HANDBOOK OF TRANSNATIONAL CRIME AND JUSTICE* 110 (Philip Reichel & Jay Albanese eds., 2d ed. 2014) (noting that the counterfeiting of goods, despite having “no clear pattern of victimization,” can nevertheless victimize “[c]onsumers who can be exposed to health and safety risks from counterfeit[ed] goods; [o]wners of the goods or brands being counterfeited who feel that their business is threatened[;] and [v]ictims indirectly affected by effects of the counterfeiting industry upon the environment and taxation systems”); Douglas A. McIntyre, *The 12 Most Profitable International Crimes*, 24/7 WALL ST. (Feb. 10, 2011),

Furthermore, transnational crime has become difficult to measure with any precision because of its secretive and dangerous character, “the mobility and elusiveness of offenders and victims,”⁵⁵ its horizontal structure, reliance on loose networks, use of advanced technologies, and its cross-boundary application, as well as potential political bias inherent in data compilation.⁵⁶ This confounds government attempts to assess where it can best assign resources and makes it difficult to gauge the effectiveness of any response.⁵⁷ Finally, even with the theoretical benefit of ample and accurate law enforcement data,⁵⁸ no single government can tackle this type of cross-boundary crime on its own. Combating cross-boundary crime requires the close cooperation of law enforcement from multiple countries, which the traditional methods of “law enforcement institutions” are not designed to provide⁵⁹ considering, for example, that countries “jealously” insist on and exercise sovereign jurisdiction over criminal activity within their borders.⁶⁰

<http://247wallst.com/investing/2011/02/10/the-12-most-profitable-international-crimes/> (noting as examples if someone steals gold, there is less left for local miners, and if someone traffics firearms to an area involved in armed conflict, it becomes easier for civilians to be killed).

⁵⁵ Rosemary Barberet, *Measuring and Researching Transnational Crime*, in HANDBOOK OF TRANSNATIONAL CRIME AND JUSTICE 47 (Philip Reichel & Jay Albanese eds., 2d ed. 2014).

⁵⁶ See CFR REPORT, *supra* note 16 (“[C]riminals obviously do not report their annual earnings or scope of activities, and published estimates are often politicized or rely on shaky data.”); TRACE, GLOBAL ENFORCEMENT REPORT 1 (2011), https://www.strtrade.com/media/publication/6092_2011-August-19-fcpa_report.pdf (“Research on global anti-bribery enforcement is complicated by the secrecy surrounding international law enforcement, as well as by the desire of international companies to obscure public knowledge about their bribery allegations, investigations, convictions or penalties.”).

⁵⁷ Cf. CFR REPORT, *supra* note 16.

⁵⁸ See Barberet, *supra* note 55, at 56 (enumerating new and improved methods of data collection and analysis that are now becoming available, such as the “systematic collection of open source documents—those reports of crime in the media and from parliamentary rapporteurs, ombudsmen, NGOs, and IGOs”).

⁵⁹ “The law enforcement institutions that have developed over centuries were constructed to maintain order primarily within national boundaries.” See CFR REPORT, *supra* note 16.

⁶⁰ See *id.* at 7. Whether exercised through treaties or other cooperative agreements or arrangements, a host State may of course always choose to confer upon other States specified law enforcement authorities within its territory. Cf. *id.* (discussing methods for cooperation among countries).

III. SUSTAINABLE DEVELOPMENT AND THE THREAT POSED BY TRANSNATIONAL CRIMES

This article now pivots to an analysis of sustainable development and the substantial adverse influence and impact transnational crime has on its achievement.

a. What is sustainable development?

No single definition of sustainable development currently enjoys broad international consensus.⁶¹ Instead, the term has spawned many definitions, inhabits a variety of contexts, and has opened the door to a number of closely related but non-synonymous variants, including “sustainable industry,” “sustainable growth,” and “sustainable economy.”⁶² Significantly, sustainable development is not equivalent simply to economic or GDP growth.⁶³ The most commonly adopted definition of the term, which traces its original usage to a 1980 International Union for the Conservation of Nature (“IUCN”) strategy paper,⁶⁴ can be found in the World Commission on Environment and Development’s 1987 report, entitled “Our Common Future,” better known as the “Brundtland Report.”⁶⁵

According to the Brundtland Report, sustainable development is defined

⁶¹ See TATYANA P. SOUBBOTINA, *THE WORLD BANK, BEYOND ECONOMIC GROWTH: AN INTRODUCTION TO SUSTAINABLE DEVELOPMENT* 8-9 (2d ed. 2004), http://www.worldbank.org/depweb/english/beyond/beyondco/beg_all.pdf (observing how the definition “is constantly being revised, extended, and refined”); Mohamed Mabrouk et al., *Stakeholder Mapping in a Collaborative Project for a Sustainable Development*, 2 INT’L FED’N FOR INFO. PROCESSING 518, 518 (2014) (stating that “[m]ore than one hundred definitions of sustainable development exist.”).

⁶² See Johanna A. Olsson et al., *Indicators for Sustainable Development* 3 (Feb. 10, 2004) (draft paper) <http://www.ocs.polito.it/alpcityruo/en/dwd/indicatori/4.doc>. See also KOEN RADEMAEKERS ET AL., *SUSTAINABLE INDUSTRY: GOING FOR GROWTH & RESOURCE EFFICIENCY* 5 (2011), <http://ec.europa.eu/DocsRoom/documents/5188/attachments/1/translations/en/renditions/native> (“Sustainable growth is embedded in the concept of sustainable development.”).

⁶³ See SOUBBOTINA, *supra* note 61, at 8 (“[H]istory offers a number of examples where economic growth was not followed by similar progress in human development. Instead growth was achieved at the cost of greater inequality, higher unemployment, weakened democracy, loss of cultural identity, or overconsumption of natural resources needed by future generations.”); Toke S. Aidt, *Corruption and Sustainable Development*, in 2 INTERNATIONAL HANDBOOK ON THE ECONOMICS OF CORRUPTION 4 (Susan Rose-Ackerman & Tina Søreide eds., 2011) (“[G]rowth in GDP per capita is no guarantee for long-run sustainability.”).

⁶⁴ INT’L UNION FOR CONSERV. OF NATURE & NAT. RES., *WORLD CONSERVATION STRATEGY: LIVING RESOURCE CONSERVATION FOR SUSTAINABLE DEVELOPMENT* 1 (1980).

⁶⁵ WORLD COMM’N ON ENV’T & DEV., *OUR COMMON FUTURE* 43 (Oxford Univ. Press 1987).

as “development that meets the needs of current generations without compromising the ability of future generations to meet their own needs.”⁶⁶ Embedded within this definition are two key notions. The first is “the concept of ‘needs,’” particularly those of the poor to which priority should be accorded.⁶⁷ The second is the concept of limitations based on technology, resources, and social organization; this implies a need to make balancing decisions.⁶⁸ Some commentators point out that the failure to settle on a fixed definition has provided, in effect, a silver lining by allowing “a considerable consensus to evolve in support of the idea that it is both morally and economically wrong to treat the world as a business in liquidation.”⁶⁹ Notably, while both the Brundtland Report and the underlying 1980 IUCN strategy specifically focused on environmental concerns, the term over time has acquired broad, multi-sectoral dimensions.⁷⁰

Although the term most frequently encompasses the “economic, social, and environmental” sectors,⁷¹—while generally stressing their inter-relatedness⁷²—a strong case can be made for sustainable development to comprise an *institutional* component as well.⁷³ Institutional competence in this context refers principally to the legislative, executive, and judicial branches of domestic governments, rather than to corporate, financial, or non-governmental bodies.⁷⁴ Arguably, institutional development operates

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *See id.* The Report makes clear, however, that sustainable development is “a goal not only for the ‘developing’ nations, but for industrial ones as well.” *Id.* at ¶ 10. It has been argued that public participation, rather than an exclusively government role, is integral to the term’s meaning. Olsson, *supra* note 62, at 4.

⁶⁹ HERMAN E. DALY, *STEADY-STREAM ECONOMICS* 248 (2d ed. 1991).

⁷⁰ *See* SOUBBOTINA, *supra* note 61, at 9.

⁷¹ *Id.*; *see generally* Kirsten Halsnæs & Priyadarshi Shukla, *Framing Issues*, in INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC), *CLIMATE CHANGE 2007: MITIGATION. CONTRIBUTION OF WORKING GROUP III TO THE FOURTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (2007)* [hereinafter IPCC REPORT], https://www.ipcc.ch/pdf/assessment-report/ar4/wg3/ar4_wg3_full_report.pdf.

⁷² IPCC REPORT, *supra* note 71, at 122 (recognizing the interdependence of the pillars and the need to approach sustainable development “within a unified framework”).

⁷³ *See, e.g.*, SCOTTISH EXEC. SOC. RESEARCH, THE CTR. FOR SUSTAINABLE DEV., *SUSTAINABLE DEVELOPMENT: A REVIEW OF INTERNATIONAL LITERATURE* 2, ¶ 8 (2006) (noting that “institutional legitimacy” is now discussed in the context of sustainable development) [hereinafter SCOTTISH SUSTAINABLE DEVELOPMENT REPORT]; *see, e.g.*, Tanya Polajeva, *Does Corruption Influence the Sustainability of Economic Growth?*, 4 *BALTIC REGION* 40, 46 (2011) (recognizing “institutional” as a major type of sustainability and its link to social sustainability).

⁷⁴ *See* SCOTTISH SUSTAINABLE DEVELOPMENT REPORT, *supra* note 73, at 9, ¶ 49.

as a precursor to the other forms of development, as absent institutional competency and its logical correlates—the rule of law and good governance—it is hard to imagine a government earning the trust and allegiance of its citizenry and being able to promote, facilitate, and implement social, economic, and environmental development.⁷⁵

b. How does transnational crime undercut sustainable development?

A minority chorus holds that transnational crime in the form of corruption can actually have a net productive effect on a country's economy by allowing companies to skirt burdensome or inefficient regulations, and thereby eliminate barriers to entry, reduce transaction costs, and provide the requisite "grease" to turn the wheels of business and bring deals to fruition.⁷⁶

That said, and even assuming its truth in narrow or particularized contexts, coupled with the fact that "criminal activity can bring some money *into* developing countries,"⁷⁷ the overriding evidence demonstrates that transnational crime is detrimental to sustainable development in general and is most injurious "to the 80 percent of the global population living in the developing world."⁷⁸ Countries with less effective criminal justice systems and governance structures tend more often to be targeted because of such inherent vulnerabilities.⁷⁹ Notably, the Sustainable Development Goals for 2015-2030 expressly call not only for combating all forms of organized crime, but also for substantially reducing all forms of corruption and bribery.⁸⁰

This article examines each of the following four sectoral areas to show how transnational crime has a corrosive effect on sustainable development.

Social sustainability. The impact of transnational crime on social welfare and the standard of living can be felt at both the individual and societal

⁷⁵ It is telling that in Sustainable Development Goal ("SDG") 16, issued in 2015 for the following fifteen years, one of the express goals is to "develop effective, accountable[,] and transparent institutions at all levels." G.A. Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development, Goal 16.6 (Oct. 21, 2015). *Cf.* G.A. Res. 60/1, *supra* note 53, at ¶ 11 (recognizing that "good governance and the rule of law," including at the national level, is "essential" to "sustainable development").

⁷⁶ See discussion in MARIE CHÈNE, TRANSPARENCY INT'L, THE IMPACT OF CORRUPTION ON GROWTH AND INEQUALITY 1 (Mar. 15, 2014) and Aidt, *supra* note 63, at 1, n.1; *id.* at 3.

⁷⁷ HAKEN, *supra* note 22, at i (emphasis added). The three ways illicit money tends to "flow out of developing countries" include: "1) bribery and theft by government officials, 2) criminal activity, and 3) commercial tax evasion." *Id.* (emphasis added).

⁷⁸ *Id.*

⁷⁹ See *id.* at v ("[C]riminal networks . . . function most easily where there is a certain level of underdevelopment and state weakness.").

⁸⁰ G.A. Res. 70/1, *supra* note 75, at §§ 16.4-16.5.

levels. Violent transnational crime can destroy lives, traumatize individuals, trigger heightened insurance premiums, and generate social instability.⁸¹ Non-violent transnational crimes can also create victim populations. Consider, for example, the illicit trafficking of narcotics and counterfeit medicines, which can cause physical illness, incapacity, and accidents among users;⁸² or the illegal wildlife trade, which can “deprive [local] communities of their livelihoods.”⁸³

Corruption in a given region or locality can effectively impose a “tax” or surcharge on consumers, thereby raising purchase costs while, at the same time, potentially limiting the availability of certain goods and services where transnational criminals exert monopoly or undue control over a given industry.⁸⁴ In poor communities, such crime can render unaffordable or overpriced even basic public services.⁸⁵ When conflicts arise, such as when citizens wish to protect their acquired rights, those individuals may not be able to absorb the cost of litigation or alternative means of dispute resolution,⁸⁶ given the vast sums of money transnational criminal groups typically have at their disposal to hire top-tier legal counsel and coax the justice system to their ends.⁸⁷

In an instance when transnational criminals find ways to evade paying their taxes, government revenues will decline, leading to fewer resources available for health, education, and welfare programs.⁸⁸ The need to tackle such criminal activity also can impel a government to divert discretionary public revenues to law enforcement and security rather than social programs.⁸⁹ In addition, through their illicit activities, transnational criminal groups can have the effect of redistributing wealth within a given community or society, with the burden tending to fall most heavily on the poor.⁹⁰ Moreover, when public construction projects are subject to bribes or

⁸¹ PUB. SAFETY CAN., GOV'T OF CAN., WORKING TOGETHER TO COMBAT ORGANIZED CRIME 1 (2006), <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/embtng-rgnzd-crm/index-eng.aspx>; Reinares & Resa, *supra* note 38, at 27.

⁸² UNODC TOC Site, *supra* note 19, at 1-2.

⁸³ UNEP YEARBOOK 2014, *supra* note 21, at 28.

⁸⁴ Huguette Labelle, Chair of the Board of Dirs., Transparency Int'l, *Address to the ADB-OECD Anti-Corruption Initiative for Asia and the Pacific Regional Seminar on Political Economy of Corruption: Anti-Corruption and the Sustainable Development Platform 2* (Sept. 9, 2009), <https://www.oecd.org/site/adboecdanti-corruptioninitiative/meetingsandconferences/44442140.pdf>.

⁸⁵ *Id.*

⁸⁶ Reinares & Resa, *supra* note 38, at 39.

⁸⁷ *See id.*

⁸⁸ *Cf. id.* at 9-10.

⁸⁹ *Id.* at 48.

⁹⁰ CHÊNE, *supra* note 76, at 6.

kick-backs, the quality of a country's infrastructure—which can affect social welfare—can suffer both because of a lack of proper oversight and the higher profit margin experienced in undertaking a succession of new, rather than undertaking repairs on existing, projects.⁹¹

Economic sustainability. One important way in which transnational crime can compromise a nation's economic health is by systematically dampening interest in business investment,⁹² commercial innovation, capital infusion, and foreign development aid out of a concern that funds could be siphoned off through corruption; new buildings, roads, dams, bridges, and other public works projects destroyed by attacks; or new equipment stolen.⁹³ In addition, as described above regarding social sustainability, transnational crime tends to diminish government revenues and result in inferior infrastructure. The former leaves less money available for economic stimulation programs⁹⁴ and the latter can impede economic growth.

Transnational crimes also can lead to inefficient production, distribution, and resource allocation.⁹⁵ This occurs primarily for four reasons. First, the economic data are skewed by the incidence of corruption, which can trigger sub-optimal economic policies.⁹⁶ Second, certain illicit activities tend to redirect skills and resources from productive uses to merely high-paying ones.⁹⁷ Third, along these lines, the economic markets themselves are distorted by transnational crime, including by illicitly produced goods displacing legally produced ones.⁹⁸ Fourth, the illicit gains are then available to transnational criminals through a positive feedback loop “to penetrate, contaminate[,] and corrupt . . . legitimate commercial and financial business and society at all levels.”⁹⁹ One major consequence of

⁹¹ Hector O. Boham & Sam Rockson Asamoah, *10 Ways in Which Corruption Hampers Economic Development*, GHANAWEB.COM (Apr. 18, 2011), <http://www.ghanaweb.com/GhanaHomePage/features/10-Ways-In-Which-Corruption-Hampers-Economic-Development-207109>.

⁹² Ering, *supra* note 6, at 73 (using South Africa as an example); UNEP YEARBOOK 2014, *supra* note 21, at 25 (discussing how tourism investments are “hindered” on account of the “illegal wildlife trade”).

⁹³ *Cf.* Ering, *supra* note 6, at 74, 77.

⁹⁴ Reinales & Resa, *supra* note 38, at 37.

⁹⁵ *Id.* at 38.

⁹⁶ *Id.* at 36-37.

⁹⁷ CHÈNE, *supra* note 76, at 2.

⁹⁸ *See, e.g.*, Southern African Development Community, Protocol on Combating Illicit Drug Trafficking, pmb., Aug. 24, 1996, http://www.sadc.int/files/1213/5340/4708/Protocol_on_Combating_Illicit_Drug_Trafficking_1996_.pdf

(last visited Nov. 1, 2016) (pointing to the fact that “funds derived from any drug trafficking might distort the economies of the Region.”).

⁹⁹ *Id.*

such inefficiencies is the damage caused to a country's ability to compete internationally in an increasingly global economy.¹⁰⁰

On the financial front, which is critical to any country's capacity for economic development, transnational crime can lead to "monetary overvaluation," increase national debt, and "destabilize the banking institutions and the financial markets."¹⁰¹ Not only can these harm a country's economic health, but they also discourage the kinds of foreign investment and assistance referenced above.¹⁰²

Environmental sustainability. Transnational crimes also can detract from environmental health and progress, either directly or indirectly. Some environmental crimes such as illegal logging or fishing, illegal trade in wildlife or ozone-depleting substances, or hazardous waste dumping violate international treaties and directly contribute to species extinction, biodiversity loss, natural resource degradation, ozone depletion, or other ecological system damage.¹⁰³ Indirect costs are experienced to the extent that a host government loses potential tax revenues on its natural resources that might otherwise be spent on sustainable environmental development or when the government feels compelled to divert limited funds to combat such criminal activity, rather than invest in environmental promotion activities, such as reforestation programs or wildlife refuges.¹⁰⁴

Institutional sustainability. Perhaps the most significant objectives of institutional development are to enhance the capacity of governmental bodies to make sound policies and to manage public affairs effectively and efficiently while maintaining the perception of being legitimate and fair.¹⁰⁵ Transnational crime can jeopardize each of these objectives because it can skew public policy-making through intimidation and coercion; result in inefficient and unjust court decisions or judgments due to bribes or threats; and undermine a government's legitimacy (including of its judicial system) and, in the process, create "alternative loyalties" to criminal syndicates.¹⁰⁶ Additionally, good governance and democratic institutions are undermined when elections are bought.¹⁰⁷

¹⁰⁰ Reinares & Resa, *supra* note 38, at 42.

¹⁰¹ *Id.*

¹⁰² U.S. NAT'L SEC. COUNCIL, *supra* note 10.

¹⁰³ See UNEP YEARBOOK 2014, *supra* note 21, at 25-26 (discussing the deleterious effects of transnational crimes on environmental development and sustainability).

¹⁰⁴ U.N. ENV'T PROGRAMME & INTERPOL, THE RISE OF ENVIRONMENTAL CRIMES: A GROWING THREAT TO NATURAL RESOURCES, PEACE, DEVELOPMENT AND SECURITY 7-9, 76 (Christian Nellemann et al. eds., 2016), http://unep.org/documents/itw/environmental_crimes.pdf.

¹⁰⁵ See Reinares & Resa, *supra* note 38, at 35-36.

¹⁰⁶ *Id.* at 20, 32-33.

¹⁰⁷ *Id.* at 35-36.

IV. HOW GOVERNMENTS COMBAT TRANSNATIONAL CRIME AND THE VITAL ROLE OF CROSS-BORDER LAW ENFORCEMENT COOPERATION

In Part IV, this article turns to the “first dot” in the sequence—international law enforcement efforts to combat transnational crime—and pays particular attention to cross-border cooperation between domestic law enforcement agencies, sometimes with the added assistance of third parties, such as intergovernmental bodies, NGOs, and the private sector.¹⁰⁸ This Part begins by clarifying the scope of domestic law enforcement agencies, as they can encompass a surprisingly wide variety of institutional players, often with specialized mandates. Next, it examines the broad array of law enforcement means available to those agencies, including cross-border cooperation. Then, this Part assesses the importance of cross-border cooperation and identifies the forms it takes, including a perhaps surprisingly diverse set of international, regional, and bilateral bodies that enable, promote, or facilitate such cooperation. Finally, it considers the challenges that cross-border law enforcement cooperation must overcome.

a. What are the types of domestic law enforcement agencies?

Before examining the various functions law enforcement bodies fulfill,¹⁰⁹ it is essential to recognize that a given national government may boast a large and varied set of law enforcement agencies. Most typically, national governments include national police forces.¹¹⁰ Depending on a number of factors,¹¹¹ a national government’s law enforcement agencies may additionally comprise investigative, intelligence, or security services; customs or immigration agencies; border, port, or coastal authorities; and export, finance, or narcotics control entities.¹¹² Law enforcement agencies

¹⁰⁸ Over the past decade, the U.N. Security Council itself also has sought to address transnational organized crime, experimenting with a variety of approaches, including decentralized enforcement, collective enforcement, direct enforcement, and regulatory guidelines, depending on the specific situation. James Cockayne, *The UN Security Council and Organized Criminal Activity: Experiments in International Law Enforcement* 3 (U.N. Univ., Working Paper Series No. 3, Mar. 2014), https://collections.unu.edu/eserv/UNU:3124/wp03_oca.pdf.

¹⁰⁹ Law enforcement agencies seek to prevent and deter transnational crimes; protect innocent parties and infrastructure; and detect, investigate, and arrest the criminals themselves.

¹¹⁰ See *Member Countries*, INTERPOL, <https://www.interpol.int/Member-countries/World> (last visited Nov. 1, 2016) (providing statistics on national police structures of 190 member countries).

¹¹¹ These may include size, wealth, geography, history, policies, priorities, and the nature and incidence of crime locally encountered.

¹¹² See, e.g., *Member Countries: United States*, INTERPOL, <https://www.interpol.int/Member-countries/Americas/United-States> (last visited Nov. 1,

may also include specialized investigative or security services assigned to work full-time or on an ad hoc basis to address specific types of crimes (e.g., fraud, terrorism, computer crimes) or to support diplomatic functions and missions (e.g., U.S. Diplomatic Security), military bases, platforms, and personnel (e.g., U.S. Naval Criminal Investigative Service), or the judicial system with respect to managing the transfer of criminal defendants and the protection of witnesses (e.g., U.S. Marshal's Service).¹¹³ Reference herein to domestic law enforcement agencies should be construed to constitute any such applicable bodies.

b. In what ways do enforcement agencies combat transnational crime?

Domestic governments depend on their enforcement agencies to combat transnational crime primarily through a combination of prevention efforts, investigative work, and direct enforcement actions.¹¹⁴

Prevention typically consists of police or border patrols, critical incident planning, public-awareness campaigns, secure travel documentation requirements, up-to-date criminal databases, or other such prophylactic measures.¹¹⁵ Prevention efforts also significantly encompass setting forth legal authorities, such as those establishing good governance standards, anti-corruption commissions, or ombudspersons.¹¹⁶ Governments may authorize the use of specific investigative tools; the use of certain direct enforcement measures; budgetary allocations for personnel, equipment, and skills training; or participatory roles for members of the private sector and civil society plus international or regional bodies or foreign governments.¹¹⁷ In addition, governments may promulgate procedures and policies as well as codes of conduct; and may prescribe penalties for non-compliance and

2016).

¹¹³ *Id.*

¹¹⁴ Governments seek to combat transnational crime in other ways as well, such as by passing legislation, including with respect to criminalizing certain conduct and ensuring adequate prison capacity. *See, e.g.,* Jeremy Lo Kwok-chung, *Combating Corruption in Hong Kong*, 77 U.N. ASIA & FAR E. INST. FOR PREVENTION CRIME & TREATMENT OFFENDERS RESOURCE MATERIAL SERIES 3, 3-4 (Mar. 2009), http://www.unafei.or.jp/english/pdf/RS_No77/No77_00All.pdf (last visited on Nov. 1, 2016).

¹¹⁵ G.A. Res. 55/25, annex III, Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, arts. 10-15 (Nov. 15, 2000).

¹¹⁶ *See* Kwok-chung, *supra* note 114, at 3.

¹¹⁷ For more on such activities, see BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, OPERATION COOPERATION: GUIDELINES FOR PARTNERSHIPS BETWEEN LAW ENFORCEMENT & PRIVATE SECURITY ORGANIZATIONS 6 (2000), http://www.ilj.org/publications/docs/Operation_Cooperation.pdf.

other disciplinary measures.¹¹⁸

Law enforcement agencies attempt to detect or uncover transnational crimes through a robust set of *investigative techniques*. These may include human, photographic, or video surveillance; wiretaps, listening “bugs,” and GPS devices; and “pen registers” and “trap and trace devices.”¹¹⁹ Law enforcement may collect and analyze physical evidence, detonation debris, and forensic data (e.g., blood type, DNA, fingerprints), as well as psychologically profile.¹²⁰ Investigative techniques also may entail checking bank records, credit card transactions, drivers’ licenses, and social media accounts; reviewing tax returns, invoices, and financial disclosures; physically inspecting home or office premises, shipments, cargo, warehouses, and dumpsters; “[c]ontrolled deliver[ies] of letters” or packages; and examining suspects’ criminal records.¹²¹ Such investigations also may include interviewing eyewitnesses or whistleblowers, interrogating criminal suspects, and cultivating paid informants, as well as possibly providing for their attendant physical protection.¹²² In addition, they may encompass undercover operations, “most wanted” postings, and rely on private sector, civil society, or foreign law enforcement and intelligence counterparts.¹²³

To stop or deter transnational crime, governments depend on *direct enforcement actions*. These generally consist of disruption activities designed to thwart an ongoing crime or intercept an aircraft or vehicle carrying suspected criminals.¹²⁴ They also include operations, either unilaterally or jointly undertaken with foreign enforcement services,

¹¹⁸ See, e.g., Economic Sanctions Enforcement Guidelines, 74 Fed. Reg. 57593, 57594, 57601-02 (Nov. 9, 2009) (to be codified at 31 C.F.R. pt. 501).

¹¹⁹ “Pen registers” capture *outgoing* “dialing, routing, or signaling information” related to wire or electronic communications, while “trap and trace devices” capture *incoming* “dialing, routing . . . [or] signaling information” related to wire or electronic communications; neither records the actual content of those transmissions. 18 U.S.C. § 3127(3)-(4) (2012).

¹²⁰ U.N. Dep’t of Peacekeeping Operations, Police Operations in United Nations Peacekeeping Operations and Special Political Missions: Guidelines, ¶¶ 72-73, Ref. 2015.15 (2015),

http://www.un.org/en/peacekeeping/sites/police/documents/Guidelines_Operations.pdf (identifying various techniques of “[m]olecular, genetic and DNA analysis” and “[e]xamination of mental state”).

¹²¹ *Id.* at ¶ 62 (identifying various “[c]overt or technical measures of surveillance”).

¹²² See *id.* at ¶ 81 (describing witness protection guidelines).

¹²³ Kwok-chung, *supra* note 114, at 13 (discussing an array of investigative techniques).

¹²⁴ See, e.g., *Humala Backs Legislation to Intercept Drug Planes*, PERUVIAN TIMES (Aug. 25, 2015), <http://www.peruviantimes.com/25/humala-backs-legislation-to-intercept-drug-planes/24789/>.

sometimes in the guise of lures or raids, which can lead to the arrest or capture of criminal suspects.¹²⁵ Direct enforcement actions also can entail seizing or freezing financial resources, blacklisting companies believed to be engaged in corruption, and turning criminal suspects into cooperating assets.¹²⁶ Such direct enforcement actions must be undertaken in strict compliance with procedural due process, human rights, and civil justice standards; and therefore absent arbitrary arrest, wrongful detention, excessive use of force, or verbal or psychological abuse.¹²⁷

c. Why is cross-border law enforcement cooperation so important?

While these activities play a valuable role and even complement one another, it is noteworthy that, whether referring to prevention measures, investigatory activities, or direct action, cooperation with foreign law enforcement bodies is a required and constant feature. In fact, for two major reasons, cross-border enforcement cooperation is essential to any successful effort to rein in transnational crime.

First, as noted above, the nature of transnational crime today is simply too geographically widespread in terms of its direction or control, execution, and effects for any single government, acting on its own, to counter it with any serious level of effectiveness from a manpower standpoint.¹²⁸ Governments, acting alone, would struggle to even understand all the diffuse links, transactions, and dynamics that animate such crime as it cuts across multiple countries and “blur[s] . . . trails of illicit activities.”¹²⁹

Second, although criminals can and do freely ignore national borders in directing or carrying out their illicit activities, domestic governments cannot. Governments must respect each other’s territorial sovereignty,

¹²⁵ See *Using Sting Operations against Jihadists*, STRATFOR (Apr. 20, 2015), <https://www.stratfor.com/video/using-sting-operations-against-jihadists>.

¹²⁶ EXEC. OFFICE OF THE PRESIDENT, STRATEGY TO COMBAT TRANSNATIONAL ORGANIZED CRIME: ADDRESSING CONVERGING THREATS TO NATIONAL SECURITY 20-22 (2011) [hereinafter STRATEGY TO COMBAT TRANSNATIONAL ORGANIZED CRIME], https://www.whitehouse.gov/sites/default/files/Strategy_to_Combat_Transnational_Organized_Crime_July_2011.pdf.

¹²⁷ U.N. Dep’t of Peacekeeping Operations, *supra* note 120, at ¶¶ 11, 67-71, 87-88.

¹²⁸ See Kwok-chung, *supra* note 114, at 11 (“[N]o one single jurisdiction can act and defend alone against organized crime.”); see also PROSPER ADDO, KOFI ANNAN INT’L PEACE KEEPING TRAINING CTR., CROSS-BORDER CRIMINAL ACTIVITIES IN WEST AFRICA: OPTIONS FOR EFFECTIVE RESPONSES 2 (May 2006) (“The failure of specific national approaches to addressing the challenges of cross-border problems in West Africa eventually culminated in recommendations by ECOWAS, the [U.N.], and the [E.U.] to adopt a more coherent and coordinated regional approach to solving the problem.”).

¹²⁹ Reinares & Resa, *supra* note 38, at 18.

including the *prima facie* bar to conducting foreign police action within a country's national boundaries absent its consent.¹³⁰ Therefore, cross-border law enforcement cooperation can no longer be regarded as an option or luxury, but must instead be seen as a *bona fide* international legal requirement.

The merit of cross-border law enforcement cooperation is widely recognized today. For example, according to a July 2011 White House strategy document, “[t]he [U.S.] needs willing, reliable and capable partners to combat the corruption and instability generated by [transnational organized crime] and related threats to governance.”¹³¹ The Government of Canada has acknowledged that “[i]nter-agency cooperation and coordination has emerged as the most important development in combating [transnational organized crime] in recent years.”¹³² In 2005, the U.N. General Assembly announced, “[w]e believe that today, more than ever before, we live in a global and interdependent world. No State can stand wholly alone. We acknowledge that collective security depends on effective cooperation, in accordance with international law, against transnational threats.”¹³³ Similarly, the U.N. Environment Programme stated, “[t]he key to success in the fight against illegal wildlife trade is collaboration among countries and international agencies.”¹³⁴

Perhaps most telling of this new paradigm is the recent spate of executed crime suppression agreements, reflecting a growing recognition of the need for such cooperation. These agreements range from global conventions,¹³⁵ to regional conventions,¹³⁶ to sub-regional conventions.¹³⁷

¹³⁰ International law restricts a State from exercising its power in the territory of another State. SS “Lotus” (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10, at 18 (Sept. 7, 1927); Covey T. Oliver, *The Jurisdiction (Competence) of States*, in INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS 309 (Mohammed Bedjaoui ed., 1991) (“A fundamental principle of international relations is that the government of a state has the exclusive authority to govern within the territory of the state, as to all events and persons there, except as this authority may have been modified by consent of the territorial sovereign.”).

¹³¹ STRATEGY TO COMBAT TRANSNATIONAL ORGANIZED CRIME, *supra* note 126, at 13.

¹³² STEPHEN SCHNEIDER ET AL., SOLICITOR GENERAL CAN., GOV'T OF CAN., ALTERNATIVE APPROACHES TO COMBATING TRANSNATIONAL CRIME, § 5.1 (2000), <https://www.ncjrs.gov/nathanson/etranscrime.html> (last visited Nov. 1, 2016).

¹³³ G.A. Res. 60/1, *supra* note 53, at ¶ 7.

¹³⁴ UNEP YEARBOOK 2014, *supra* note 21, at 28.

¹³⁵ For example, the 2000 U.N. Convention against Transnational Organized Crime and its three protocols in 2000 and 2001 addressing human trafficking, migrant smuggling, and arms trafficking, as well as the 2003 U.N. Convention against Corruption. G.A. Res. 55/25, annex III, *supra* note 115; *id.* at annexes II, III; G.A. Res. 55/255, Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (May 31, 2001); G.A. Res. 58/4 (Oct. 31, 2003).

¹³⁶ This includes the 2001 Council of Europe's Convention on Cybercrime, the 2003

These agreements stand in addition to a number of new or revised bilateral extradition¹³⁸ and mutual legal assistance treaties,¹³⁹ the establishment of bilateral or multilateral bodies related to cross-border law enforcement cooperation (discussed below),¹⁴⁰ and the promulgation or issuance of enforcement declarations, model regulations, and manuals.¹⁴¹

African Union's Convention on Preventing and Combating Corruption, and the 2006 Organization of American States' Hemispheric Plan of Action against Transnational Organized Crime. Convention on Cybercrime, Nov. 23, 2001, E.T.S. No. 185, http://www.europarl.europa.eu/meetdocs/2014_2019/documents/libe/dv/7_conv_budapest_/7_conv_budapest_en.pdf; African Union Convention on Preventing and Combating Corruption, July 11, 2003, 43 I.L.M. 5, http://www.au.int/en/sites/default/files/treaties/7786-file-african_union_convention_preventing_combating_corruption.pdf; Organization of American States [OAS], *Execution of the Hemispheric Plan of Action against Transnational Organized Crime*, AG/RES. 2334 (XXXVII O/07) (June 5, 2007), <http://www.state.gov/p/wha/rls/94656.htm>.

¹³⁷ For example, the SARPCCO (Southern Africa Regional Police Chiefs Cooperation Organisation) Multilateral Cooperation Agreement on Combating Crime within the Region, adopted on Oct. 1, 1997 and discussed in MARIE MULLER & BAS DE GAAY FORTMAN, FROM WARFARE TO WELFARE: HUMAN SECURITY IN A SOUTHERN AFRICAN CONTEXT 113-17 (2004); and the Eastern Africa Police Chiefs Cooperation Organisation [EAPCCO] *Protocol on the Prevention, Combating and Eradication of Cattle Rustling in Eastern Africa* (Aug. 29, 2008).

¹³⁸ See, e.g., *China, Barbados Sign Extradition Treaty*, JAMAICAN OBSERVER (Mar. 23, 2016), <http://www.jamaicaobserver.com/news/China-Barbados-sign-extradition-treaty>; *India and Thailand Sign Extradition Treaty*, TIMES OF INDIA (May 30, 2013), <http://timesofindia.indiatimes.com/india/India-and-Thailand-sign-extradition-treaty/articleshow/20350601.cms>; *U.S., Dominican Republic Sign New Extradition Treaty*, LATINO FOX NEWS (Jan. 12, 2015), <http://latino.foxnews.com/latino/politics/2015/01/12/us-dominican-republic-sign-new-extradition-treaty/> (noting that the new treaty replaced a 1909 Accord).

¹³⁹ See, e.g., Treaty on Mutual Legal Assistance in Criminal Matters, U.S.-Kaz., Feb. 20, 2015, S. TREATY DOC. NO. 114-11, <https://www.congress.gov/114/cdoc/tdoc11/CDOC-114tdoc11.pdf>; Press Release, The Hon. Michael Keenan MP, Minister for Justice, Australia and Vietnam Sign Treaty to Enhance Mutual Legal Assistance in Criminal Matters (July 2, 2014), <https://www.ministerjustice.gov.au/MediaReleases/Pages/2014/ThirdQuarter/2July2014-AustraliaAndVietnamSignTreatyToEnhanceMutualLegalAssistanceInCriminalMatters.aspx>.

¹⁴⁰ Excluded from this analysis are agreements or arrangements between non-State actors, such as private companies, non-governmental organizations ("NGOs"), or inter-governmental organizations ("IGOs"). See, e.g., World Customs Organization [WCO], *Memorandum of Understanding on Co-operation between the World Customs Organization (WCO) and the Central Asian Regional Information and Coordination Centre for Combating Illicit Trafficking of Narcotic Drugs, Psychotropic Substances and Their Precursors* (Mar. 2010), <http://www.wcoomd.org/en/about-us/partners/~media/5EA90CF6C48F4F7996BA4A221CC7A30C.ashx>.

¹⁴¹ See, e.g., Organization of American States [OAS], *Inter-American Committee against Terrorism Declaration on Strengthening Border Controls and International*

d. What forms does cross-border law enforcement cooperation take?

The principal means by which national governments cooperate with one another on law enforcement matters include: (i) extraditions, (ii) mutual legal assistance, (iii) joint planning or operations, (iv) skills training, data exchanges, and resource sharing, and (v) harmonization of laws and policies.¹⁴² Other cross-border law enforcement coordination activities outside the scope of this treatment include efforts to promote the police profession, the safety of police officers, and higher standards of performance and conduct; advocacy, networking, and administrative activities; transfers of sentenced persons and criminal proceedings; and recognition of foreign penal judgments and execution of foreign penal sentences.¹⁴³

*International Extraditions.*¹⁴⁴ An international extradition can be defined as a cooperative law enforcement process by which the physical custody of a person (i) charged with committing a crime, or (ii) convicted of a crime whose punishment has not yet been determined or fully served, is formally transferred, directly or indirectly, by authorities of one State to those of another at the request of the latter for the purpose of prosecution or the execution of a criminal sentence, respectively.¹⁴⁵ In essence, international extradition represents the most politically and legally preferred means of fugitive recovery; generally entails a multi-step process of host State assessment replete with safeguards; and occurs pursuant either to a bilateral or multilateral extradition treaty, another form of cooperative

Cooperation in the Fight against Terrorism, OEA/Ser.L/X.2.9 (Mar. 6, 2009), <http://www.state.gov/p/wha/rls/120257.htm>; Council Doc No. 15790/1/11 rev. 1, annex (Nov. 4, 2011), annex, Joint Investigation Teams Manual (EU).

¹⁴² National governments establish foreign liaison offices to build bilateral law enforcement relations; coordinate investigations and operations; facilitate training programs, the sharing of information, and the provision of other forms of assistance; and work together to prevent attacks. The FBI, for example, maintains “64 legal attaché offices . . . and more than a dozen smaller sub-offices” housed in U.S. embassies or consulates in key cities worldwide and that were established pursuant to mutual agreements. *International Operations*, FBI, <https://www.fbi.gov/about/leadership-and-structure/international-operations> (last visited Nov. 1, 2016). Reliance on foreign liaison offices, however, constitutes more of a cross-cutting vehicle than a stand-alone form of cooperation *per se*.

¹⁴³ U.N. Dep’t of Peacekeeping Operations, *supra* note 120, at *passim*; Cockayne, *supra* note 108, at 9 (discussing international cooperation regarding the detention, trials, and sentencing of Somali pirates).

¹⁴⁴ Extraditions may also occur within a given State, as between provincial governments or, as in the U.S. context, between any two of its fifty states; such inter-state cooperative transfers are known as *domestic* extraditions. John J. Murphy, *Revising Domestic Extradition Law*, 131 U. PA. L. REV. 1063, 1063-64 (1983).

¹⁴⁵ DAVID A. SADOFF, *BRINGING INTERNATIONAL FUGITIVES TO JUSTICE: EXTRADITION AND ITS ALTERNATIVES* 43 (Cambridge Univ. Press 2016).

agreement, domestic legislation, reciprocity, or comity. The benefits of extradition to States include preventing impunity, deterring crime, and strengthening international stability.¹⁴⁶

Mutual Legal Assistance. Mutual legal assistance takes place between cooperating States for the purpose of obtaining information, statements, or records in connection with a criminal enforcement action, or in civil cases connected to a criminal matter, where the data, persons, or documents of interest reside within another State's jurisdiction.¹⁴⁷ One State might request the assistance of another in terms of collecting physical evidence, identifying possible suspects or their whereabouts, interviewing witnesses, serving documents, examining sites or objects, securing judicial records, freezing assets, or for other criminal investigative reasons.¹⁴⁸ The purpose is to gather facts, information, and materials for potential use as evidence at trial or, more immediately, to determine whether a crime occurred or the circumstances surrounding its occurrence, and to identify any perpetrators or accomplices, as well as any weapons or ammunition employed.¹⁴⁹ Such assistance is typically provided pursuant to a mutual legal assistance agreement, mutual legal assistance treaty, or Letters Rogatory.¹⁵⁰

Joint Planning or Operations. Joint planning consists of either: (i) focusing preventative attention, whether on a strategic or tactical basis, on critical incidents or targets; (ii) undertaking preparatory steps or training exercises; or (iii) organizing and allocating resources in anticipation of a law enforcement operation.¹⁵¹ Joint operations may involve the recovery of fugitives (either in preparation for extradition or in connection with informal law enforcement outside of the extradition context) or property, police or border patrols, stake-outs, seizing or freezing assets, simulating a transaction or offense to catch a criminal in a "sting" or in furtherance of a criminal investigation, possibly in reliance on technical means of surveillance.¹⁵² What distinguishes planning or operations as joint, versus unilateral, is that two or more States' law enforcement agencies each appreciably contribute personnel, material resources, and/or logistical support.¹⁵³

¹⁴⁶ *Id.* at 129-66.

¹⁴⁷ *See* BALZER, *supra* note 24, at 2.

¹⁴⁸ *Id.*

¹⁴⁹ *See id.*

¹⁵⁰ *See* Joutsen, *supra* note 15, at 311-16 (discussing mutual legal assistance, its concept and scope, grounds for its refusal, and its procedural operation).

¹⁵¹ *See* SCHNEIDER, *supra* note 132, § 3.2.

¹⁵² *See* Joint Investigation Teams Manual, *supra* note 141, at 3 (describing the advantages of joint investigation teams).

¹⁵³ This also occurs in the intra-state context among law enforcement agencies. *See, e.g.,* METROPOLITAN POLICE, D.C., Procedures for Conduct of Joint Law Enforcement

Skills Training, Data Exchanges, and Resource Sharing. Law enforcement personnel from one State can and often do provide skills training programs for their foreign law enforcement counterparts. Such training activities, commonly undertaken on a bilateral basis, may address such varied topics as investigative techniques, forensic analysis (including, e.g., of digital evidence), crime prevention measures, witness protection, cross-border communication channels, and compliance with criminal justice standards.¹⁵⁴ Such efforts tend to focus on best practices culled from actual experience in the field.¹⁵⁵

In addition, law enforcement agencies exchange data across borders regarding crime trends and threat assessments, as well as background information about individual offenders or criminal syndicates.¹⁵⁶ Law enforcement agencies also try to build the capacity of their foreign counterparts by sharing various technologies, such as computer hardware or software, telephones, and GPS devices.¹⁵⁷ They may also “shift resources,” including finances, in instances where the recipient State is better positioned to combat a particular crime, such as in the case of migrant smuggling where the source State has been found to be more cost-effective at interdiction than the destination State.¹⁵⁸

Harmonizing Laws and Policies. States also undertake to fashion uniform, or at least consonant, laws, policies, or guidelines. Such instruments, whether “hard” law or non-obligatory “soft” law, may assume a variety of forms, such as recognized offenses, available punishments, rules of evidence, forensic standards for authenticating electronic data, and the protection of confidential information and personal data privacy.¹⁵⁹ States seek such harmonization in order to ensure closer and more effective coordination, to set minimum operating standards, and to avoid problems arising out of differences, such as a blanket denial by death penalty-abolitionist States of extradition or mutual legal assistance requests made by death penalty-retentionist States.¹⁶⁰

Operations: Special Order (Dec. 14, 1987), https://go.mpdconline.com/GO/SO_87_42.pdf.

¹⁵⁴ See generally Kwok-chung, *supra* note 114, at 14-15 (discussing cross-jurisdictional training and capacity building).

¹⁵⁵ *Id.*

¹⁵⁶ Joutsen, *supra* note 15, at 313.

¹⁵⁷ Cf. BALZER, *supra* note 24.

¹⁵⁸ SCHNEIDER, *supra* note 132, § 5.1.

¹⁵⁹ CDPC WHITE PAPER, *supra* note 28, at 25-26.

¹⁶⁰ See *id.* at 24 (describing possible solutions to encouraging co-operation in extradition).

e. What bodies promote or enable cross-border law enforcement cooperation?

Beyond the forms of cooperation themselves, the international community comprises a remarkably varied set of entities or venues through which law enforcement cooperation is promoted, enhanced, or executed; these can be logically categorized principally as coordinating, resource, or operational bodies, with the caveat that some functional overlap exists across them.¹⁶¹

Coordinating Bodies. The chief global body for law enforcement coordination is the International Criminal Police Organization (“Interpol”), headquartered in Lyon, France.¹⁶² Contrary to popular perception, Interpol is neither a supranational agency nor authorized to conduct investigations or make arrests; rather, it serves as an administrative liaison for law enforcement agencies across the body’s 190 Member States, including those lacking diplomatic relations with one another.¹⁶³ Each Member State staffs a “National Central Bureau” with its own domestic law enforcement personnel.¹⁶⁴ Acting with political neutrality, Interpol facilitates transnational police cooperation by ensuring that each domestic law enforcement agency is equipped with the proper skills, analytical and investigative support, database access (including for DNA, fingerprints, and head photos), notice of wanted persons (via its so-called “Red Notice,” the closest equivalent to an international arrest warrant today), and secure communications to help them to prevent, suppress, and detect crime.¹⁶⁵ Interpol also has regional counterparts, such as the European Police Office (“Europol”); the Police Community of the Americas (“AMERIPOL”); the Gulf Cooperation Council’s Police Force (“GCCPOL”), the African Police Cooperation Organisation (“AFRIPOL”), and the ASEAN national police agencies (“ASEANAPOL”), although they are not all structured like Interpol and do not all operate alike.¹⁶⁶

¹⁶¹ The bodies referenced herein are intended to be illustrative rather than comprehensive in scope.

¹⁶² *Overview*, INTERPOL, <http://www.interpol.int/About-INTERPOL/Overview> (last visited Nov. 1, 2016)

¹⁶³ *Id.*

¹⁶⁴ *Structure and Governance*, INTERPOL, <https://www.interpol.int/About-INTERPOL/Structure-and-governance> (last visited Nov. 1, 2016).

¹⁶⁵ *Id.*

¹⁶⁶ *See, e.g., Regional Police Organizations Gather at Interpol Meeting To Enhance Cooperation*, INTERPOL (Mar. 15, 2016), <https://www.interpol.int/News-and-media/News/2016/N2016-029> (“Senior representatives from regional police organizations including the African Union’s AFRIPOL, AMERIPOL, ASEANAPOL, the Gulf Cooperation Council’s GCCPOL, the Economic Cooperation Organization’s ECOPOL and European Union’s Europol have come together for the ‘Dialogue on an Effective Multilateral

In addition, there are various regional or sub-regional coordinating bodies, such as the Central Asian Regional Information and Coordination Centre (“CARICC”) for combating transnational drug-related crime, the Southeast European Law Enforcement Center (“SELEC”), and Eurojust. CARICC, an intergovernmental organization that came into force in 2009, coordinates international operations, “including controlled deliveries” of illicit narcotics; collects, analyzes, and exchanges information regarding illicit drug trafficking; and provides training, holds conferences, and offers expert assistance to the seven Central Asian Member Parties through core staff and liaison officers posted to its Almaty, Kazakhstan headquarters.¹⁶⁷

SELEC, an intergovernmental organization composed of twelve regional Member States and headquartered in Bucharest, Romania, “[c]oordinate[s] regional [cross-border] operations and support[s] criminal investigations and crime prevention activities”; collects, maintains, analyzes, and disseminates, and facilitates the exchange of, criminal intelligence; and “produce[s] strategic analysis and threat assessments.”¹⁶⁸ Eurojust, which was formed in 2002 and is headquartered in The Hague, coordinates cross-border criminal investigations and prosecutions between its twenty-eight E.U. Member States.¹⁶⁹ While not empowered to investigate or prosecute, Eurojust, *inter alia*, facilitates extradition and mutual legal assistance requests, supplies translation and interpretation support, and helps “set up . . . [j]oint [i]nvestigation [t]eam[s].”¹⁷⁰

Resource Bodies. Among the leading international or regional resource bodies available to governments¹⁷¹ in the fight against transnational crime—whether in terms of furnishing website data, setting legal standards,

Policing Architecture against Global Threats.”).

¹⁶⁷ *About CARICC*, CARICC, <http://www.caricc.org/index.php/en/about-caricc> (last visited Nov. 1, 2016); *History*, CARICC, <http://www.caricc.org/index.php/en/about-caricc/history> (last visited Jan 10, 2017); *Project Stages*, CARICC, <http://www.caricc.org/index.php/en/about-caricc/project-stages> (last visited Jan 10, 2017).

¹⁶⁸ *About SELEC*, SELEC, <http://www.selec.org/m106/About+SELEC> (last visited Nov. 1, 2016).

¹⁶⁹ *History*, EUROJUST, <http://www.eurojust.europa.eu/about/background/Pages/History.aspx> (last visited Nov. 1, 2016).

¹⁷⁰ *Mission and Tasks*, EUROJUST, <http://www.eurojust.europa.eu/about/background/Pages/mission-tasks.aspx> (last visited Jan. 11, 2017).

¹⁷¹ By contrast, an entity designed to provide resources to *individuals* is the International Association of the Chiefs of Police (“IACP”). *About IACP*, IACP, <http://www.iacp.org/About-US> (last visited Nov. 1, 2016). Founded in 1893, and headquartered in Alexandria, Virginia, with seven regional offices worldwide, the IACP primarily produces and distributes technical and operational procedures and facilitates the exchange of information and experience on behalf of its 20,000 executive-level police officer members. *Id.*; INT’L ASS’N OF CHIEFS OF POLICE, 2015 ANNUAL REPORT 4-6, <http://www.iacp.org/Portals/0/documents/pdfs/2015AnnualReport.pdf>.

promoting idea or technique exchanges, hosting conferences, providing meeting forums, or dispensing skills training—are the Financial Action Task Force on Money Laundering (“FATF”), the Canada-United States Cross-Border Crime Forum (“CBCF”), the International Organization on Computer Evidence (“IOCE”), and the International Law Enforcement Academies (“ILEAs”).

FATF is first and foremost a “policy-making body” that seeks to set standards for national legislative and regulatory reform in the fight against money laundering and, more recently, terrorism financing.¹⁷² Since 1989, FATF has monitored progress in States’ implementation of legal measures, particularly its forty “recommendations on money laundering” and its nine special recommendations on terrorism financing.¹⁷³ FATF also issues a “blacklist” of non-cooperative countries or territories.¹⁷⁴

Since 1997, the CBCF has sought to address trans-border crimes between the United States and Canada through a series of high-level and working group meetings with the aims of removing legal or policy impediments, undertaking joint targeting and threat assessments, improving information sharing, and developing new models of law enforcement collaboration.¹⁷⁵ The IOCE, founded in 1995, helps to develop standards related to computer evidence and provides international accreditation of techniques and training in forensic computing.¹⁷⁶ The U.S. State Department-administered ILEAs have operated since 1995 as regional police academies in Bangkok, Budapest, Gaborone, and San Salvador, where U.S. law enforcement personnel train local police officers in crime prevention and detection, investigations and interdictions, and other skills and practices.¹⁷⁷

¹⁷² *Financial Task Force & FATF-Style Regional Bodies, ASIA/PAC. GROUP ON MONEY LAUNDERING (APG)*, <http://www.apgml.org/fatf-and-fsrb/page.aspx?p=a8c3a23c-df6c-41c5-b8f9-b40cd8220df0> (last visited Nov. 1, 2016).

¹⁷³ *Id.*; FIN. ACTION TASK FORCE (FATF), INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION: THE FATF RECOMMENDATIONS 7 (2016). Today, FATF comprises thirty-four Member States from all over the world. *FATF Members and Observers*, FIN. ACTION TASK FORCE (FATF), <http://www.fatf-gafi.org/trash/aboutfatf/membersobservers/fatfmembersandobservers.html> (last visited Jan. 11, 2017).

¹⁷⁴ *High-Risk and Non-Cooperative Jurisdictions*, FIN. ACTION TASK FORCE (FATF), [http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/?hf=10&b=0&s=desc(fatf_releasedate)) (last visited June 2, 2016).

¹⁷⁵ *Border Strategies*, PUB. SAFETY CAN., <http://www.publicsafety.gc.ca/cnt/brdr-strtrgs/crss-brdr-crm-fm-en.aspx> (last visited Nov. 1, 2016).

¹⁷⁶ FBI, *Digital Evidence: Standards and Principles*, 2 FORENSIC SCI. COMM. (Apr. 2000), <https://www.fbi.gov/about-us/lab/forensic-science-communications/fsc/april2000/swgde.htm/>.

¹⁷⁷ U.S. DEP’T OF STATE, INTERNATIONAL LAW ENFORCEMENT ACADEMIES (ILEA) – PROGRAM OVERVIEW, <https://www.state.gov/j/inl/c/crime/ilea/c11243.htm> (last visited on

Operational Bodies. A number of multinational law enforcement entities are authorized to go beyond cross-border coordination, standard-setting, or supplying resources, and actually carry out investigations or other types of operations. These include, by way of illustration, the European Anti-Fraud Office (perhaps better known by its French acronym, “OLAF”), the U.S.-Canada Integrated Border Enforcement Teams (“IBET”), the Lusaka Agreement Task Force (“LATF”), and the Frontex¹⁷⁸ European Border Guard Teams (“EBGT”).

OLAF, established in 1999 by the European Commission, is empowered to lead internal investigations, including within any European institution or E.U.-funded body, or external investigations (e.g., those involving E.U.-funded national-level matters), among other functions.¹⁷⁹ Originally developed in 1996, IBETs are multi-agency enforcement teams composed of U.S. and Canadian border protection services that “target cross-border criminal activity” through coordinated efforts and information sharing.¹⁸⁰ Launched in 1999 with a headquarters in Nairobi, Kenya, LATF consists of seven African states that, *inter alia*, investigate alleged violations of national law in the “illegal trade in wild fauna and flora.”¹⁸¹ Conceived in December 2011 via a Frontex regulation, the EBGTs comprise substantively and legally trained border guards from the E.U. Member States authorized to conduct “joint operations and rapid border interventions.”¹⁸²

f. What are the main challenges that cross-border law enforcement cooperation faces?

Transnational criminals recognize that their cross-border activities complicate law enforcement efforts against them. These barriers, which are abundantly exploited, arise in part because of often stark differences that exist across States with respect to the nature of their legal systems (or even the way they apply the same international convention under their domestic

Jan 11, 2017).

¹⁷⁸ Frontex stands for the European Border and Coast Guard Agency. *About Frontex*, FRONTEX, <http://frontex.europa.eu/about-frontex/origin/> (last visited Nov. 1, 2016).

¹⁷⁹ *European Anti-Fraud Office*, EUR. COMM’N, http://ec.europa.eu/anti-fraud/about-us/mission_en (last visited Nov. 1, 2016).

¹⁸⁰ *Integrated Border Enforcement Teams*, PUB. SAFETY CAN., <http://www.publicsafety.gc.ca/cnt/brdr-strtg/brdr-lw-nfrcmnt/ntgrtd-brdr-nforcmnt-tms-en.aspx> (last visited Nov. 1, 2016).

¹⁸¹ *About Us*, LUSAKA AGREEMENT TASK FORCE WEBSITE, http://lusakaagreement.org/?page_id=24 (last visited Nov. 1, 2016).

¹⁸² *European Border Guard Teams*, FRONTEX, <http://frontex.europa.eu/operations/european-border-guard-teams/> (last visited Nov. 1, 2016).

laws),¹⁸³ their designation and prioritization of a given crime¹⁸⁴ or recognition or non-recognition of certain types of punishment,¹⁸⁵ and their law enforcement capacity and practices. Language barriers, cultural norms, bureaucracies, and commercial markets add another layer of difficulty.¹⁸⁶ One important consequence of these differences is that it often takes years for key legislation to pass both at the regional and national levels.¹⁸⁷ The other major challenges can be found in States' reluctance to concede some of their sovereignty through cooperation¹⁸⁸ and their tendency to harbor distrust about sharing sensitive intelligence, operational law enforcement, criminal records,¹⁸⁹ or personal data¹⁹⁰ with other States, including those that otherwise may be regional rivals.¹⁹¹ States are often legitimately concerned about how those data might be used, disclosed, or disseminated.

V. CONCLUSION

In sum, it is clear that because cross-border law enforcement cooperation

¹⁸³ Cf. CDPC WHITE PAPER, *supra* note 28, at 24-25.

¹⁸⁴ Reinares & Resa, *supra* note 38, at 64-65; BALZER, *supra* note 24, at 2 (“[E]ach society has its own enforcement style and priorities, and even some of its own laws – factors that complicate and occasionally frustrate attempts at international police cooperation.”); CALLANAN, *supra* note 31, at 12 (observing that in the context of cybercrime “[m]aterial that can lawfully be distributed in one country can easily be illegal in another country”).

¹⁸⁵ For example, as an abolitionist country, Australia does not generally cooperate in criminal matters with a requesting State seeking legal assistance or extradition when the requesting State permits the possibility of the death penalty upon conviction. PARLIAMENT OF AUSTRALIA, THE LAW ENFORCEMENT IMPLICATIONS OF NEW TECHNOLOGY 81 (2001), http://www.aph.gov.au/~media/wopapub/senate/committee/acc_ctte/completed_inquiries/1999_02/itlaw/report/report_pdf.ashx.

¹⁸⁶ See, e.g., ENCYCLOPEDIA OF TRANSNATIONAL CRIME AND JUSTICE 13 (Margaret E. Beare ed., 2012).

¹⁸⁷ See, e.g., Vivienne Walt, *Stubborn Frictions Could Undermine Europe's Fight against Terror*, TIME (May 30, 2016) (citing the fact that it took the European Parliament five years to enact legislation “requiring airlines to share passenger data”).

¹⁸⁸ Reinares & Resa, *supra* note 38, at 64; see Andrew M. J. Huntleigh, *Transnational Crime Alternatives*, E-INT'L REL. (July 25, 2013), <http://www.e-ir.info/2013/07/25/transnational-crime-alternatives/> (describing how contracting private security firms by governments is unlikely to be a “long-term policy change given the enduring popularity of sovereign control”).

¹⁸⁹ Walt, *supra* note 187, at 10 (“[Europol director Rob] Wainwright sa[id] all six Brussels attackers, and six of the 10 Paris attackers, had rap sheets. Police files could be a source of rich data, he sa[id], ‘if only we can find the right mechanism’ to get different security services working together.”).

¹⁹⁰ Cf. CDPC WHITE PAPER, *supra* note 28, at 28.

¹⁹¹ BALZER, *supra* note 24, at 5 (identifying a major obstacle to cross-border law enforcement cooperation as “overcoming short- or long-term enmity and/or rivalry between countries”).

is essential to combating transnational crime, and because transnational crime, in turn, is detrimental to sustainable development, cross-border law enforcement cooperation can indirectly promote sustainable development, particularly in those countries most vulnerable to the scourge of transnational crime. Cross-border law enforcement cooperation also can contribute to national and international security,¹⁹² public health and safety, human rights, and cultural advancement,¹⁹³ and, therefore, is of paramount importance and warrants priority investment.

To maximize these salutary effects, however, law enforcement agencies and their national leaders must find ways to overcome the stiff cooperation challenges they face, such as mistrust, slow response times, and non-uniform standards and policies.¹⁹⁴ Among the ways forward might include the forging of greater international harmonization of criminal laws and penalties; the creation of independent bodies to monitor and report on the extent and effectiveness of cross-border law enforcement cooperation; increased reliance on regional initiatives where common historical, cultural, and language bonds provide a source of mutual trust; the development of innovative data protection arrangements to encourage greater information sharing; and the fashioning of procedures that can expedite the processing of extradition or criminal legal assistance requests.

¹⁹² Statement by the President of the Security Council, U.N. Doc. S/PRST/2012/16, at 1 (Apr. 25, 2012) (acknowledging that transnational organized crime threatens international peace and security); *see, e.g.*, UNEP YEARBOOK 2014, *supra* note 21, at 26 (“Reports that rebel armies use money obtained through the illegal ivory trade to buy guns and ammunition illustrate the impact this activity can have on both local stability within countries and international security.”).

¹⁹³ STRATEGY TO COMBAT TRANSNATIONAL ORGANIZED CRIME, *supra* note 126, at 5; ADDO, *supra* note 128, at 1-2.

¹⁹⁴ *See* CDPC WHITE PAPER, *supra* note 28, at 24-26.