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Transnational crime and the interface between legal and illegal actors : the case of the illicit art and antiquities trade

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Citation

Tijhuis, A. J. G. (2006, September 6). *Transnational crime and the interface between legal and illegal actors : the case of the illicit art and antiquities trade*. Wolf Legal Publishers. Retrieved from <https://hdl.handle.net/1887/4551>

Version: Corrected Publisher's Version

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Note: To cite this publication please use the final published version (if applicable).

CHAPTER 1

INTRODUCTION

Between 1998 and 2000 more than five hundred French castles and museums were robbed under the direction of one man, Cornelius M., a Dutch antiques dealer based in Belgium. He instructed robberies in all parts of France and organized the smuggling of objects to the Netherlands and Belgium. At least forty times a lorry filled with antique clocks, statues, furniture and jewels made its way from France to the border region between Belgium and the Netherlands. In November 2001, the driver of these transports was arrested with the booty of sixteen robberies in his lorry. Two days later, Cornelius M. was arrested and the police found more than a thousand stolen objects at his house. The robberies started around the time when Cornelius M. left prison in 1998. He went to prison in 1996 after he had been sentenced for receiving stolen antiques. In 2002 he was sentenced again to fourteen years in prison after he had been extradited to France in 2001. Through Cornelius M., the stolen antiques from France were sold to private collectors and other dealers in Belgium, the Netherlands and other countries and thus eventually filtered into the legitimate market.¹ Although exceptional for its scale, cases like this one have been occurring for at least four decades. In March 2005, another Dutch dealer, Simon V., was sentenced to five years in prison for complicity in twenty-eight burglaries and thefts in churches from the North of France.²

In 1992, a Viennese court gave a life sentence to Udo Proksch, for six-fold murder as well as six-fold murder attempt. He had been the pivotal figure of the Club 45, an elite society of high-ranking Socialist politicians, civil servants, business people, arms traffickers and others. In 1977, he chartered the freighter M.S. Lucona that allegedly carried parts of a uranium processing plant. The heavily insured ship sank in the middle of the Indian Ocean, following an unexplained explosion, killing six of its twelve crew members. Proksch' prosecution was actively blocked for more than ten years by several key Socialist politicians. Finally, the 'Lucona Scandal' was brought to light, leading to the suicide of the Secretary of Defense as well as to the chairman of parliament and the Secretary of Home Affairs stepping back. The same Secretary of Defense was also instrumental in another project set up by Proksch. Together with a several Club 45 members, Proksch planned to establish a war museum. The Secretary of Defense approved the gift of everything from tanks and jet fighters to rocket launchers. Before an actual building was found, to exhibit all these objects, Proksch had given most of it to Polisario in the Western Sahara and sold

¹ Judgment of the Montbrison Court, File no. 02/01050, March 6th 2003; C. Naber (2000) 'Recidivist uit Retie liet zigeuners zeshonderd kastelen plunderen' *De Morgen*, December 9th.

² 'Un néerlandais condamné à cinq ans de prison pour vols d'objets d'art' *Agence France Presse*, March 31st 2005; Berkhout, K. & J. Wevers (2005) 'Hoe Nederlanders Frankrijk leegroven' *NRC Handelsblad*, October 14th.

the remainder in the Middle East. If it would not be for his war museum or sunken freighter, Proksch would be known for allegedly being the kingpin of Austrian based techno-banditry, that is the smuggle of technological knowledge and high-tech materials to the Eastern Bloc (Naylor, 2001:44-45; Pretterebner, 1989).³

This study focuses on the interfaces between legal and illegal actors engaging in transnational crimes. These interfaces can be quite complex as the cases of Udo Proksch and Cornelius M. illustrate. Due to this complexity, such cases and the related interfaces cannot be caught easily with clear-cut and mutually excluding categories like ‘transnational (organized) crime’ versus ‘legitimate’ businesses and government agencies. The boundaries between transnational crime, terrorism, corporate crime and state crime fade away as one focuses on such concrete cases. As the rest of this study will show, the characteristics of these cases appear to be far more representative of transnational crimes in general than usually assumed.

The interface between legal and illegal actors, within the context of transnational crime, is a research topic that has not been studied systematically. That is not to say that this topic has been neglected in studies of transnational crime. In studies of transnational crime, the interface between legal and illegal actors is usually discussed, although mainly as a side-issue (Farer, 1995; Ryan & Rush, 1997). In some case studies, the interface between certain legal and illegal actors takes centre stage (Block & Weaver, 2004; Kochan, 2005; Paoli, 1995). However, such case studies do not provide a more systematic and comparative perspective.

For a number of reasons, a study that focuses solely on interfaces can be an important and necessary addition to the existing criminological studies. The first reason has to do with the mentioned lack of systematic studies of the interfaces between legal and illegal actors. The second reason has to do with the observation mentioned above. By studying interfaces between legal and illegal actors, the rather thin boundaries between transnational crime, corporate crime and other types of crime become clear. Only after these boundaries are crossed, or even leveled, transnational crimes can be understood from a broader perspective. From such a perspective, transnational crimes are always taking place against a specific background of economic factors, state policies and legislation, as well as other factors. Thirdly, a systematic study of interfaces can help to indicate the different types and causes of interfaces that can be found in different types of transnational crime. Finally, as the role of legal actors with all kinds of transnational crimes is clarified, more effective legislative and policy instruments can be designed to counter this role.

The first half of this study will be based on the literature on transnational crimes. The second half will describe the empirical research of the illicit art and

³ For a summary of Proksch’ endeavors see: http://en.wikipedia.org/wiki/Udo_Proksch (Visited, October 21st 2005).

antiquities trade that was done specifically for this study. The illicit art and antiquities trade was chosen for several reasons. On the one hand because it is a type of crime that is known for its interfaces between legal and illegal actors and on the other hand because empirical studies of this type of crime have been scarce, especially from a criminological perspective.

In the following sections of this chapter, the research questions and definitions that will guide this study will be explicated. The data sources of the empirical study and the definition of transnational crime used in this study will only be pointed at briefly. In chapter 2, the definition of transnational crime will be further discussed and the data sources will be discussed in detail in chapter 6. Furthermore, this introduction will outline the topics of the different chapters. Finally, some background will be provided with respect to the study of transnational crime and the interfaces between legal and illegal actors.

1.1 Research questions

Criminological studies of transnational crimes have focused on a range of research topics. Among the most important are those that try to shed light on the way transnational crimes are organized. For example, the way people involved are organizing themselves, in criminal organizations, networks or incidental partnerships. Or the methods of smuggling and the routes used between different countries. Usually, studies of transnational crimes deal with one particular type of transnational crime or with a particular ethnic group. Sometimes, studies aim specifically at a particular ethnic group engaged in a particular transnational crime (e.g. Chin, 1999; Soudijn, 2006; Zaitch, 2002).

As was pointed out above, this study will solely focus on the interfaces between legal and illegal actors in transnational crime. Four main research questions will guide this study. Apart from these questions, others will be developed along the way. As soon as these additional questions arise, they will be integrated in the study. The first main research question is:

- What kind of interfaces can be found between legal and illegal actors in transnational crimes?

The aim of this research question is the development of a typology of interfaces between legal and illegal actors. Such a typology should cover all main types of interfaces between legal and illegal actors. This means that on the one hand, not every conceivable type should necessarily be integrated in a typology, while on the other hand the typology should not be so general that it is actually meaningless. Furthermore, the different types should be independent of particular transnational crimes. In such a way, cases involving different types of crime but similar types of interfaces can be compared. The analysis of such a typology will start with an existing typology that was developed by criminologist Nikos Passas.

The second research question is:

- How can the transformation in legal status of certain transnational activities be explained?

Transnational crime is often understood simply as organized crime involving more than one country. In that case, it involves an activity that is criminal in all countries involved. However, transnational crime can also involve an activity that starts as legal but becomes illegal at some stage, or the other way around. The second research questions aims at this transformation in legal status. This transformation needs to be explained to fully understand the occurrence of certain interfaces in these transformations, and the actors involved in these interfaces. Furthermore, explanation is wanted because the possibilities of these transformations probably cause several types of transnational crime to occur significantly less than they actually do. The two cases at the beginning of this chapter can illustrate this. The many works of art and antiques that were stolen in France under the direction of Cornelius M. were subsequently filtered into the legitimate market in the Netherlands, Belgium, and other countries. Udo Proksch arranged the opposite trajectory with the state-owned arms that ended on the black market.

The first two research questions aim at the interfaces between legal and illegal actors in general. The third research question aims at one particular type of transnational crime: the illicit art and antiquities trade. This type of transnational crime will be studied empirically. The empirical study is used to gauge the typology and model developed in the first half of the book in which the first two research questions are treated. The empirical study, therefore, is not a goal by itself, but is meant to establish the usefulness of the models developed in the first half of the book. As will be explained more extensively later, this particular type of crime was chosen for two reasons. First of all because it is known for its many interfaces between legal and illegal actors. Secondly because it has hardly been studied empirically by criminologists. The third research question is:

- Does the interface typology provide an analytical tool to describe the interface between legal and illegal actors in the illicit art and antiquities trade?

To answer this research question, a number of sub-questions need to be answered. First of all, what kind of interfaces between legal and illegal actors can be found in the illicit art and antiquities trade? Secondly, which interfaces are covered by the interface typology and which are not? Thirdly, do the interfaces which are not covered by the typology suggest new additional types of interfaces that should be added to the typology?

The fourth and last research question is:

- How can the transformation in legal status in the licit and illicit art and antiquities trade be explained?

When the second research question has been answered on the basis of the literature on transnational crime, the fourth main question will focus specifically on the art and antiquities trade. Can the general explanation be used for this particular trade also or are additional explanations required?

In addition to the four research questions, the concluding chapter will deal with the questions as to what recommendations can be made for future studies as well as policy-making. Ideally, the insights gained from criminological studies can help to design policies and strategies to counter transnational crimes and the interfaces between legal and illegal actors.

1.2 Definitions and data sources

Several concepts need to be defined before they will be further explored in the chapters hereafter. First of all, a definition of transnational crime is needed. In this study the following definition will be used:

Transnational crime is conduct, which is criminalized in at least one of the jurisdictions concerned and jeopardizes the legally protected interests in more than one of the jurisdictions concerned or in one jurisdiction while it is similar to acts which jeopardize the legally protected interests in most countries

This definition is a slightly adjusted version of a definition used by Nikos Passas and will be further discussed in chapter 2. As this definition is not purely legal, it can cover the situations pointed at above, in which the same activity is legal in one place and illegal in another. Furthermore, this definition also includes types of terrorism that involve more than one country.

Besides transnational crime, *interface* is the key word in this study. This term is used for the manner in which legal and illegal actors collaborate or collide in transnational crimes. The term *interface* captures the ways in which legal and illegal actors are connected. Interface does not have one fixed meaning but can have different meanings depending on the context in which it is used. The term may be used to point at the boundary between two bodies, or the place at which independent and often unrelated systems meet and act on or communicate with each other. Furthermore, instead of a boundary, an interface may also be a third machine or person through which the other two are connected with each other.

The main theme of this book is the interface between legal and illegal actors in transnational crime. However, the analyses of these interfaces will always start from particular instances of transnational crime, and not from particular actors. The definition of transnational crime that is used here does not discriminate between legal and illegal actors. This can help to evade a certain bias that can be

found in some studies of transnational crimes. These studies restrict transnational crime to the illegal (cross-border) activities of criminals, by definition not being legal businesses or governments. In case legal businesses or governments are involved in these criminal activities, it is assumed to be a matter of incidental corruption or unintended complicity.

This study is based on a number of data sources. The first part will be primarily based on a study of the existing literature on transnational crime. Besides the literature, I will use media reports and reports from government agencies as well as from international organizations. The second part, dealing with the illicit art and antiquities trade, is based on a range of specific data sources. First of all, data was gathered from a study of official files from the Dutch Inspectorate of Cultural Heritage. Furthermore, data was gathered from several foreign official sources: the art unit of the French police and the art unit of the Italian military police. Apart from that, interviews were held with officials from other foreign government agencies. In addition to these official sources, reports from regular as well as specialized media were used to gather data. Furthermore interviews were held with art dealers, archaeologists and other actors in the art world. Finally, studies of specific parts of the illicit art and antiquities trade are used as far as they are available. Chapter 6 will discuss all mentioned data sources in more detail.

1.3 Plan of the book

Chapter 2 will start with the first research question. Starting-point is a typology of interfaces developed by criminologist Nikos Passas. This typology will be analyzed and revised with an adjusted typology as result. Thereafter, chapters 3 and 4 will focus on the second research question. These chapters will discuss certain types of individuals, organizations, and jurisdictions that can function as interface by themselves, instead of being one side of an interface between two actors. An analytical model to understand this role of individuals, organizations, and jurisdictions as interface will be developed in chapter 5.

The chapters 6 to 9 will focus on the illicit art and antiquities trade. Chapter 6 will start with an outline of the data sources that were used. Thereafter, chapter 7 will introduce the illicit art and antiquities trade, explaining the different parts of the trade. Chapter 8 will focus on the illicit art trade and chapter 9 on the illicit antiquities trade. This illicit art and antiquities trade will be studied empirically to see whether the typology and the analytical model can be used to describe and understand a particular transnational crime in practice

Following the discussion of the study of the illicit art and antiquities trade, chapter 10 will summarize the conclusions from the whole study. Furthermore, it will provide recommendations for both future academic studies as well as public policies.

1.4 The rise of (the study of) transnational crime in perspective: the 1990s and beyond

Transnational crime has always existed but the active academic interest in this phenomenon is relatively recent. It used to be seen as simply a part of the field of ‘organized crime’ as far as this involved cross-border activities. The fall of the Iron Curtain played a major role in changing the way transnational crime was perceived by criminologists as well as law enforcements agencies, intelligence agencies and other state actors. In several articles, reports and statements, transnational crime was portrayed as a new and global threat. Both the general process of globalization, as well as the demise of Communism in Eastern Europe and the Soviet Union, supposedly caused this type of crime to rise and eventually threaten both the economies as well as the democratic systems of the developed countries. In 1993, Godson and Olson published their study *International Organized Crime: Emerging Threat to US Security*. They argued among other things that organized crime undermined democratic institutions in key areas of the world and eroded US alliances and coalitions (1993:i). A year later, US Senator John Kerry summarized his views in an easy one-liner “Organized crime is the new communism: the new monolithic threat”.⁴ Kerry was not a newcomer to this topic as he wrote a US Senate report on the BCCI scandal that showed, among other things, how this bank was involved in, and connected with, several transnational crimes like illicit arms deals, money laundering and financing terrorism (Kerry Report, 1992). In the same year of Kerry’s remarks on organized crime, journalist Claire Sterling published her book *Thieves’ World* in which she outlined a global conspiracy between criminals from Italy, Colombia, Russia and other places.⁵ Sterling’s book was regularly referred to by criminologists and others in later publications on transnational crime. Furthermore, in February 1996, when President Clinton placed his updated National Security Strategy before congress, for the first time, he recognized “Fighting International Organized Crime” as a national security issue facing the United States (Lupsha, 1996:21). Around the same time, two academic journals were established that focused particularly on (transnational) organized crime. In 1995, *Transnational Organized Crime* was founded and some time later the journal *Trends in Organized Crime*. The latter journal explicitly presented its central theme as one that threatened the integrity of local institutions and national governments (Block, 1999:220–221).

⁴ L.A. Horvitz (1994) ‘FBI Enters Global Battle on Organized Crime’ *Washington Times*, 19 July, p. A9.

⁵ Sterling had written about terrorism and crime for decades when she published this book. When she died a year afterwards, a tribute was held in the US Senate (June 22nd 1995). See also: B. Barnes (1995) Claire Sterling, Investigative Writer, Dies, *The Washington Post*, June 18th.

In response to these doom-scenarios, Western governments felt the need to adjust their law enforcement techniques to fight this new threat. In the US, these concerns were raised during a conference with the striking title *Global Organized Crime: The New Empire of Evil* (Raine & Cilluffo, 1994). Inspired by their American counterparts, European law enforcement agencies increased their use of special investigative methods, for example with undercover operations and the use of criminal informants. Soon these new methods led to major scandals as it turned out that these methods were not completely compatible with the existing systems of law (Van de Bunt et al., 2001; Van Calster & Vander Beken, 2004:9).

In Belgium and the Netherlands, these scandals led to the establishment of parliamentary enquiry commissions to investigate these police methods. The Dutch parliamentary inquiry commission asked four criminologists to study and describe the mentioned police methods as well as the current status of organized crime in the Netherlands. The result was an extensive report that dealt for a significant part with different types of transnational crime that (for a minor or major part) took place in the Netherlands (Fijnaut et al., 1996).⁶ In the period following this report, a range of criminological studies looked at different topics in the field of (transnational) organized crime. A number of these studies used official sources that were relatively easy to access. The Belgian enquiry commission was a smaller version of the Dutch commission. Its influence on later studies was also less because the openness of official agencies for criminologists was far less than in the Netherlands.

Following the increased interest in transnational crime in the US and Europe, the United Nations adopted the *Convention Against Transnational Crime* in the year 2000. It came into force on September the 29th 2003 and 106 states are currently party to the convention.⁷ After the adoption of this convention, transnational crime still frequently figured in government reports in Europe and the US, as well as in other publications, until the terrorist attacks of 2001 caused a significant change of attention and priorities. One of the latest multilateral initiatives occurred in October 2003 when the United Nations Convention against Corruption was adopted. This is one of the bases of legislation against corruption and similar behavior. Since then only 34 countries became party to this convention. None of the major industrialized countries, except for France, have become party and the Convention that has entered into force on December 14, 2005.⁸

⁶ A full text version of the report is available online at:
<http://www.burojansen.nl/traa/index.htm> (Visited October 24th 2005).
It contains over 5500 pages. For an English summary see: Fijnaut et al. (1998).

⁷ See: http://www.unodc.org/unodc/en/crime_cicp_signatures.html (Visited October 24th 2005).

⁸ See: http://www.unodc.org/unodc/en/crime_signatures_corruption.html
(Visited October 24th 2005).

Since 9/11, terrorism has clearly become the primary security concern in the US, and to a lesser extent in Europe. It is understood as a specific type of transnational crime in this study, as far as it involves more than one country. However, in public discourse and policies, terrorism is understood as a particular phenomenon, independent and something different as ‘ordinary’ crimes as well as ‘ordinary’ warfare. In its consequences for public policies, new legislation and law enforcement methods, terrorism has clearly exceeded transnational crime. The first major legislative initiative was the US Patriot Act in 2001. Since then, far-reaching new legislation has been enacted in the US as well as elsewhere. According to many observers, these new laws have seriously compromised the constitutional rights of citizens in the US (Kroes & Janssens, 2004). The same can be said of many legislative initiatives in European countries. Part of these initiatives concern law enforcements methods have been invented or legalized in the ‘war against terrorism’. Several parallels can be found with the previous handling of transnational crime, as well as specific ‘wars’ that predated the current war on terrorism, for example the ‘war on drugs’ during the last decades and the ‘war on terrorism’ under President Reagan during the 1980s. One of these parallels concerns the derailed law enforcement methods. Furthermore, the invasion of Iraq was for a part made acceptable to the (American) public on the basis of the systematic insinuation that the former regime was connected with the September 11th attacks, although officially, the war was justified by the claims of ‘weapons of mass destruction’ that later turned out to be unfounded. Finally, in all wars, very similar rhetoric could be found whether the actual threat concerned terrorism, drugs or transnational crime.⁹

Although (transnational) terrorism is considered as a type of transnational crime in this study, the analyses in this book will be based primarily on the literature and study of types of transnational crime that are usually described as (transnational) organized crime, (transnational) corporate crime or (transnational) state crime. Nevertheless, several examples of terrorism in Europe and elsewhere will be used for the analyses of the interface typology and its extensions.

1.5 General assumptions about transnational crime

A number of assumptions about transnational crime can be found in many of the mentioned publications. The most important assumptions are: (1) transnational crime is primarily a new phenomenon that arose in the 1990s, (2) for a large part connected with large-scale criminal organizations that often have a specific ethnic background, (3) and regularly work together with criminal organizations in other countries, while transnational crime is (4) primarily caused by the process of

⁹ Especially, the wars on terrorism under President Reagan and Bush show a range of similarities in language. See e.g. Richard Jackson (2005).

globalization during the last three decades and (5) infiltrates legitimate businesses and governments.

Some of these assumptions were already mentioned before. Hereafter, these assumptions will be used for reflection, although very briefly, on the phenomenon of transnational crime. On closer look, these assumptions do not always seem to be rational, although actual changes have taken place with respect to transnational crime. The assumptions seem to confirm Letzia Paoli's observation that the perception of (transnational) organized crime is polluted by a moral panic, and "issues shaped by moral panic are not likely to be handled in a rational, matter-of-fact way" (2002:52). To be sure, the assumptions should not be seen as elements of a standard perspective on transnational crime. However, each of the assumptions can be found to some extent in many studies of transnational crime. For that reason it is useful to explicate these assumptions before one starts to study a particular research topic within the field of transnational crime.

1.5.1 Transnational crime as a new phenomenon

The first assumption that seems to underlie many discussions of transnational crime is the assumption that one is dealing with a relatively new phenomenon. In the old days, organized crime took care primarily of the local and national markets in illegal goods like drugs, gambling and prostitution. Nowadays, organized crime has gone global and illegal goods are traded globally, like legal merchandise, on a massive scale. This assumption fails to recognize the fact that transnational crime has existed as long as there have been different nations. Furthermore, this does not only involve crimes that no longer occur, like the slave trade from Africa to the US. It also involves some crimes that are often seen as relatively new, like human trafficking or cigarette smuggling. An interesting study on human trafficking, from this perspective, is Edward Bristow's narrative of the international traffic of Jewish women for prostitution in *Prostitution and Prejudice: The Jewish Fight against White Slavery 1870-1939* (1982). He describes the massive trade in Jewish women from regions in Poland, Russia and the Austrian-Hungarian Empire, to destinations in Africa, Asia, the US, Brazil and Argentina from the 1870s to the 1930s. A careful look at the literature on transnational crime shows that this type of crime is anything but new, although its transnational character may have increased together with legitimate activities across borders. Furthermore, studies of transnational crime in the past are available for every reader willing to look for them.¹⁰ An interesting parallel can be drawn here with the new interest in terrorism. The type of terrorism that

¹⁰ For the illicit drugs trade see e.g. Block (1979, 1989) and McCoy (1971); for the illicit trade in art and antiquities see e.g. Chamberlin (1983), Meyer (1973) and Middlemas (1975); for the illicit arms trade see e.g. Brogan & Zarca (1983) and Naylor (1987, 2001); for illegal migration or smuggling of humans see e.g. Lucassen (1998) and Soudijn (2006).

defines the contemporary concept of terrorism for most observed, has many variations in both past and present.¹¹ Furthermore, several European countries have for decades experienced serious form of terrorism.

Although transnational crime in general thus seems to be far less ‘new’ than sometimes assumed, it should not be forgotten that significant changes have taken place with regard to certain aspects of transnational crime. The global role of criminals from the former Soviet Union, as well as the countries in Eastern Europe is a real and largely new phenomenon (Kochan, 2005).¹² They have become active in for example human trafficking, drug trafficking and protection rackets. In Europe, the role of these criminals has been described by the annual reports of the German *Bundeskriminalamt* (BKA)¹³ as well as academic publications (Galeotti, 2002; Nožina, 2004). In the US, the focus has been primarily on Russian criminals active in the US and elsewhere (Finckenauer & Voronin, 2001; Williams, 1997).

1.5.2 Large-scale (ethnically defined) criminal organizations as typical manifestation of transnational crime

The second assumption holds that transnational crime is for a large part connected with large-scale criminal organizations with a definite ethnic background. This ethnic background can for example be Russian, Italian, Colombian or Turkish.¹⁴ According to Peter Lupsha “most transnational organized crime groups have a single ethnic character or national identity root, with cells inserted into nation-states, where aspects of their criminal enterprises take place” (1996:22). This observation can be found in many discussions and with that, according to Paoli and Fijnaut, the debate on organized crime has come full circle. Until the 1960s, the ‘alien conspiracy model’ was the primary model to understand organized crime.

“The ‘illegal enterprise model’ was developed in the 1970s to criticize this ‘alien conspiracy’ model but, 30 years after, some of its later followers – by the very use of economic tools – have ended up subscribing to one of the

¹¹ Furthermore, an interesting body of literature exists on this type of crime and the role that some states have played to support it. See for example: Morstein (1989), Naylor (1987, 2001), Adams (1986), James (2003), De Kock (1998).

¹² This is not to say that criminals from these countries did not play a role before 1989. Bovenkerk pointed at the criminals sent abroad by the Yugoslav secret service before 1989 (Bovenkerk, 2003). Furthermore, government agencies and companies from East-Germany and some other countries have been involved in particular transnational crimes. These will be further discussed in chapters four, five and eight.

¹³ The reports can be found at the BKA website: www.bka.de.

¹⁴ For an analysis of the relationships between ethnicity and transnational crime see e.g. Bovenkerk (1998); Bovenkerk, Siegel & Zaitch (2003).

basic tenets of such a theory: namely, the rise of large scale bureaucratic organizations...” (Fijnaut & Paoli, 2004:30).

With regard to the rise of such large scale bureaucratic organizations, kind of multinational criminal organizations, Paoli points at two important paradoxes. First of all,

“the provision of illegal commodities mainly takes place in a ‘disorganized’ way and, due to the constraints of products illegality, no immanent tendency towards the development of large-scale criminal enterprises within illegal markets exist.” Secondly, “some lasting large-scale criminal organizations do exist, however, such as the Italian Cosa Nostra and N’drangheta (...) Although these groups are usually presented as the archetype of organized crime, they are neither exclusively involved in illegal market activities, nor is their development and internal configuration the result of illegal market dynamics” (Paoli, 2002:52).

1.5.3 Collaboration between transnational criminal organizations as a way to divide the criminal underworld

In addition to the previous assumption, some authors argue that these criminal multinationals are collaborating and divide the world of illicit activities between themselves. Thomas Naylor summarizes the assumption held by these authors with his observation that “If the 1950s and 1960s were an era when the principal enemy facing the West was supposedly monolithic international communism or the infamous Com-intern, in the 1980s and 1990s the real threat has become a sort of Crime-intern” (1995a:38). Criminological studies of the last decade have not produced any substantial evidence to validate this assumption. As far as large-scale organizations do exist, and as far as they may collaborate, they are just a part of a wide range of actors involved in transnational crimes. Far more important than these organizations are all kinds of networks and loose collaborations of criminals, organizing transnational crimes like drug trafficking and cigarette smuggling.

1.5.4 Globalization as the primary cause of transnational crime

The fourth assumption holds that the general process of globalization of the last decades provides the major explanation for the rise of transnational crime. Due to market liberalizations and the declining importance of borders between countries, transnational crime has increased dramatically. This assumption to some extent simplifies the causes and developments of transnational crimes. It was already pointed out that transnational crimes have always occurred. They do not, however, only occur because people, goods and services *can* cross borders. They

only cross borders when there is a reason for it. This may be that certain goods are available in some countries and not in others (despite demand for them), or that price differences make smuggling lucrative. If such a reason exists, the increased transport opportunities and trade flows can make the traffic easier.

However, some aspects of globalization can in fact decrease the causes for transnational crime. Market liberalization, for example, led to deregulation of capital flows in many countries. This led to the automatic decrease in capital flight, as many activities that were once labeled as capital flight are now legal financial transactions across international borders. On the other hand, many transnational crimes are caused or at least stimulated by countries that maintain different legislation with respect to certain commodities. The present scale of cigarette smuggling, for example, could not be imagined when similar countries would not maintain such large differences in taxation. Furthermore, trade barriers and subsidies, set up by the European Union, cause all kinds of fraud and smuggling activities. Harmonization of legislation between countries, as part of a process of globalization, could undo at least part of the negative externalities (like transnational crime) of the process of globalization.

1.5.5 Transnational crime as cause of criminal infiltration of legitimate businesses and governments

The last assumption about transnational crime is that this type of crime infiltrates legitimate organizations as well as governments. This is one of the reasons why democratic governments and legitimate corporations are threatened. Despite this perceived threat, not much proof has been produced during the last decade large-scale infiltration by transnational criminals indeed occurs. In fact, this should not cause too much of a surprise. Many transnational crimes can be executed without any substantial infiltration or corruption (see e.g. Huisman et al., 2004; Van de Bunt & Kleemans, 2004; Zaitch, 2001). Evading law enforcement is often easier than trying to corrupt them. Furthermore, many services provided by legitimate companies and government agencies can be used by criminals without this being noticed by the companies and agencies. For most transnational crimes, one can probably draw the same conclusion as Alan Block drew about the trade in illegal drugs: “the relationship between nation-state security and narcotics-driven corruption is primarily a Third-World problem” (Block, 1999:222).

To argue that the infiltration as meant above is not a very common phenomenon is not to argue that legal and illegal actors can and will not be connected to all kinds of transnational crimes. However, many of the interfaces between legal and illegal actors are clouded by the scope of transnational crimes that is discussed in many studies and government reports. They usually focus on criminals engaged in drug trafficking, human smuggling and other well-known crimes. Other crimes, around which at least as many interfaces can be expected, are often neglected or excluded through definitions that exclude transnational

CHAPTER 1

crimes committed by legal actors or in which these actors play important roles. For those reasons, the crimes committed by large corporations (like cigarette producers or banks) or state agencies (like intelligence agencies) are not included in the discussions about infiltration or other interfaces between legal and illegal actors. Nevertheless, a number of studies can be found that focus on these crimes and provide insights in these interfaces (e.g. Block & Weaver, 2004; McCoy, 1972; Naylor, 1987, 2001; Paoli, 1995; Passas & Goodwin, 2004; Von Bülow, 2003). In the following chapters the focus will be as much on these other types of transnational crime as on the more common types like drug trafficking and human smuggling or trafficking. Chapter 2 will start with a discussion of a typology of interfaces between legal and illegal actors in transnational crime.