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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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CHAPTER 4

JURISDICTIONS AND OTHER GEOGRAPHICALLY DEFINED ENTITIES AS INTERFACE

4.1 Introduction

In this chapter, the focus will be on jurisdictions and other geographically-defined entities. In many instances, they play the same role of interface through which the legal status of transnational activities is transformed.

In the following sections, the role of jurisdictions as interface will be discussed. Besides the jurisdiction as interface, two variations will be discussed in this chapter because they (like jurisdictions) can be characterized by a specific geographical scope. On the one hand certain state policies and on the other hand networks of corruption that function as *de facto* interfaces. These variations are to some extent combinations of the individuals, organizations, and jurisdictions as interface.

The variations mentioned above will be discussed in a number of case studies that partly fit in the analytical model of a jurisdiction as interface. The choice of cases is based on the availability of sufficient and reliable sources to back up the crucial elements which are relevant for the topic at hand.⁵⁴ While discussing individual cases, the basic interfaces from the typology will no longer be identified. Chapter 3 explained how the interfaces from the typology can be distinguished in individual case studies while at the same time individual or legal organizations can act as interface by itself.

4.2 Jurisdictions and other geographical entities as interfaces I

In the previous chapter, a number of individuals and organizations were discussed that function as interfaces. This meant that through those organizations, activities were transformed as far as their legal status was concerned. This process does not involve some magic trick. It merely involves the use of a number of opportunities which are available for transnational criminals involved in some illicit activity. One of those opportunities is the difference in legislation between states. This may involve jurisdictions where legislation is lacking on topics like money laundering, capital flight, arms trafficking or smuggling of art and

⁵⁴ This does not mean that there are absolute guarantees for the accurateness of the mentioned cases. The reader is provided with references to all the sources on which the account here is based and has to judge for him/herself. Especially in this sub-field of criminology one cannot restrict oneself to sources which can always be verified personally if one would wish to do so. At least, this is the opinion of the author as was discussed in the introductory chapter.

antiquities. It can also involve jurisdictions with legislation that actively creates opportunities which might be used by criminals (besides being used for perfectly legitimate purposes). The best known jurisdictions are the so-called tax havens and secrecy jurisdictions which can be found all over the world.⁵⁵ However, despite their importance, they are just part of a much larger number of states which can be seen as havens in particular areas of the licit and illicit economy. Many countries which are usually seen as highly regulated and serious in enforcing laws against transnational crime have failed to regulate particular areas and thereby enable criminals to use their territory as an interface.

When jurisdictions function as interfaces, this means that the role as interface is in fact institutionalized for particular types of offences. Therefore, it does not depend on concrete cases where corrupt individuals or organizations enable relationships between legal and illegal. For the simple reason that specific legislation is lacking (or on the contrary, exists), some usually illicit activities can turn from illegal into legal. Besides these institutionalized interfaces, one can discern *de facto* interfaces. These interfaces are the result of networks of corruption between all kinds of actors like politicians, criminals, intelligence agents, and businessmen. Through these networks, transnational crimes are *de facto* legalized in at least the home jurisdiction or another geographically defined area. Between the jurisdiction as interface and the corrupt networks as interface, one can discern another type. This involves jurisdictions that function as *de facto* interfaces because the laws prohibiting certain transnational activities are systematically nullified, without an actual corrupt system which can be held responsible. There usually is no conspiracy to hush up or authorize illicit activities, but the consequences are actually the same.

The analyses of jurisdictions as interface has some characteristics in common with the concept of “criminogenic asymmetries” that was developed by Nikos Passas. This concept refers to “structural discrepancies, mismatches and inequalities in the realms of the economy, law, politics, and culture” (Passas, 1999b:3). According to Passas, these asymmetries can cause crime in three ways: by fuelling the demand for illegal goods and services; by generating incentives for people and organizations to engage in illegal practices, and by reducing the ability of authorities to control crime (1999b:3). The role of jurisdictions as interface can be understood as a result of asymmetries in the realm of the law and politics.

⁵⁵ The best known tax havens and secrecy jurisdictions include: Aruba and the Netherlands Antilles, the Bahamas, the Bermuda Islands, the Cayman Islands, the Channel Islands, Cyprus, Guernsey, Hong Kong, Liechtenstein, Luxembourg, the Isle of Man, Mauritius, Panama, Switzerland, and the British Virgin Islands. Long lists of countries are provided by the G7 Financial Action Task Force, the Financial Stability Forum, and the OECD, see Sofus (2003). It should be noted with these lists that, as far as for example money laundering is concerned, ‘regular’ developed countries in Europe, North America, or South-East Asia, are at least as important as the small jurisdictions that are often associated with money laundering and other financial crimes. See for example US Senate (1999, 2001).

However, the discussion of criminogenic asymmetries focuses primarily on the asymmetries as causes of transnational crimes whereas this chapter focuses on these asymmetries themselves and the way in which these asymmetries enable the change in legal status of certain activities. This is both an important theoretical as well as a practical difference. Many asymmetries can be pointed out that are a major cause of transnational crimes, without actually involving any interfaces as meant in this chapter. Examples can be found in the field of drug trafficking, the smuggling of small arms, and smuggling of humans.

Together with criminogenic asymmetries, Passas discusses the so-called “crime without law-breaking”, referring to the article by Kramer and Michalowski (1987) mentioned in chapter 2. “Transactions criminalized in various parts of the world can be concluded in countries that allow or welcome them. Transactions can be structured so that no country’s laws are broken although the final outcome is clearly unethical or ‘criminal’.” (Passas, 1999b:9). These transactions share some elements with the transactions discussed in this chapter, as well as with those in chapter 4. However, in our analyses transactions do break the laws of at least one of the countries involved. Nevertheless, they are laundered through individuals, organizations, and jurisdictions as interface. Therefore, they will in the end be ‘legal’ and no longer break any laws.

In the following paragraphs, the three variations of jurisdictions and other geographical entities will be discussed in a number of empirical examples. First of all, tax havens and related jurisdictions will be discussed, which play an important role in both purely financial crimes as well as other crimes. Secondly, the arms trade will be looked at, to illustrate the *de facto* interface without some conspiracy-like situation. Finally, an Austrian and an Italian case are used to illustrate both variations mentioned above, as well as the role of individuals and organizations as interfaces.

4.3 Tax havens, bank secrecy jurisdictions and offshore financial centers

The first category of jurisdictions consists of jurisdictions that share the most important elements of tax havens, bank secrecy jurisdictions, and offshore financial centers. In practice, these terms are often used interchangeably, but they are by no means synonymous for the same phenomenon. Before the use of these jurisdictions as interfaces is discussed, they will be briefly described without discussing them in depth. In practice, each jurisdiction will have another mix of elements of the different types, like for example an instant-corporation business, guaranteed anonymity of shareholders, etc.⁵⁶

There are numerous definitions of tax havens and these definitions define different sets of jurisdictions as tax havens. At least three factors are usually associated with tax havens. The first factor is low, or no taxes on at least one

⁵⁶ For an extensive outline of the different havens see Doggart (2002); Blum et al. (1998).

important category of income.⁵⁷ A second factor is political stability.⁵⁸ The third factor is expertise. There must be a framework of proven business expertise. Besides these factors there are additional factors, depending on the needs of a particular tax fugitive. Double-taxation agreements (or their absence), availability of labor, and cost of living are a just few examples. For criminal purposes, there are some related factors that are of great importance. Three of them will be briefly discussed here: bank secrecy, offshore banking, and the availability of flexible and anonymous legal entities.

To some extent, bank secrecy is available in almost all developed countries (Blum et al., 1998). That means that laws exist that guarantee the basic confidentiality of bank data to others. The US, for example, has the Bank Secrecy Act, although this has little in common with the type of bank secrecy that is discussed here. Bank secrecy jurisdictions involve more than common secrecy provisions. In these jurisdictions, bank secrecy laws are more extensive and often use criminal law provisions to enforce them. Furthermore, secrecy is also guaranteed towards government agencies, both foreign and domestic. This means for example, that these jurisdictions will not help foreign governments who are after their citizens, who have moved their capital to that particular jurisdiction and who evade taxes this way.

Banks or other financial institutions operating offshore are institutions that, while legally domiciled in one jurisdiction, conduct business solely with non-residents. These institutions are exempt from a wide range of regulations normally imposed on 'onshore' institutions: their transactions are often tax-exempt, they are not encumbered by reserve requirements, they are free of interest-rate restrictions and often, though not always, exempt from regulatory scrutiny with respect to liquidity or capital adequacy (Blum et al., 1998:37).

Finally, the so-called instant corporation business is an important ingredient for many jurisdictions. As the term indicates, these companies can be established instantly. Furthermore, the costs are usually rather limited, in comparison with most developed countries.⁵⁹ In addition, the shareholders of these companies can often remain anonymous. For criminal purposes, the instant corporations offer an

⁵⁷ This clearly differs from the notion that the tax burden in general is low or negligible in tax havens. This is clearly a simplification, often made by politicians for their own purposes. The average tax burden of the 24 tax havens examined by *The Economist* was 26% of GDP in 1999 (Doggart, 2002:10-11). American OECD member countries (Canada, Mexico, US) had an average of 27,5% whereas Pacific OECD (Australia, Japan, New Zealand, South Korea) had an average of 28,8%. The real outlier here is the EU, with an average of 41,3% in 1999.

⁵⁸ The importance of political stability can be illustrated with many examples. Lebanon suffered from the internal and external conflicts with neighbors and likewise confidence in Panama as financial centre suffered from its political problems.

⁵⁹ Many examples of this business can be found on the internet. Companies in a dozen jurisdictions offer everything that can be imagined as far as corporations are concerned. As extra service, some countries offer residence permits for investors for relatively low (for Western standards) amounts of money invested.

additional opportunity. One can purchase an instant-bank in one of several jurisdictions offering such facilities. With this, one partly conceals a money trail by making sure the money flows through this bank and subsequently winds up in the bank, with no record of these transactions left behind (Blum et al., 1998:19).

As was said above, the mentioned factors or ingredients are mixed differently in every jurisdiction. Some might have it all, and some only one of them. For criminal purposes, several ingredients can be combined, depending on the activity one is involved in. Many of the illicit activities by the organizations and individuals discussed in the previous chapter were indeed enabled by these ingredients.

Before the BCCI and Nugan Hand made the best of the opportunities of the available tax havens, Bernie Cornfeld already showed the potential of these jurisdictions to engage in activities which would be otherwise illegal or impossible (Blum, 1999; Herzog, 1987; Raw, 1971). Despite the unique scale at which Cornfeld operated, his use of tax havens was also nothing new at the time, that is, during the 1960s. In response to asset freezes and heavy taxes during World War I, the machinery evolved to move money covertly and hide wealth. In the 1920s and 1930s this development continued rapidly. During the post-war decades, Liechtenstein introduced its instant corporation business, and it drafted legislation that imposed heavy penalties for revealing information about companies. Switzerland passed its bank secrecy laws. its bankers began using professional couriers to ferry clients' cash and valuables past neighboring countries' customs officials and developed techniques such as anonymous mail drops (Naylor, 2001:18). One of the well-known criminals that used the opportunities offered by jurisdictions like Switzerland was Meyer Lansky. He

“exploited Swiss liberality with an innovative scheme he called ‘loan-back’. Couriers carried cash from the US to Switzerland to escape the US tax net. (...) The money returned to Lansky’s accounts in the United States, without the US authorities realising that it was taxable” (Kochan, 2005:xix).

Whereas the examples discussed in the previous chapter thus have precedents from earlier eras, the present shows that new scandals emerged afterwards. The BCCI and Banco Ambrosiano scandals both led to stricter rules in the global financial system, outlined by the supervisors of central banks convening in Basle, Switzerland (Doggart, 2002:77). However, new scandals emerged after the increased regulation was enacted. BCCI followed Ambrosiano and the European Union Bank of Antigua followed BCCI when it collapsed in July 1997. The European Union Bank was a perfect example of the way in which the offshore banking jurisdictions and bank secrecy havens facilitate criminal activity (Blum et al., 1998).

For the time being, there is no reason to assume that the combined opportunities offered by the jurisdictions mentioned will be substantially limited

or altered in the near future. That does not mean that nothing will change. On the contrary, a constant change can be observed, stimulated by different forces. Many jurisdictions change their systems to comply with the demands made by the international community.

The UN conventions on transnational organized crime, the financing of terrorism and corruption are also significantly altering this situation. Nevertheless, it remains to be seen how much this will affect daily business. By combining several jurisdictions, one usually does not have to depend on one jurisdiction to get all the services one needs. On the other hand, many jurisdictions compete with each other to be the most attractive place for investors, tax refugees, criminals, or other clients valuing privacy for several reasons. This implies a development in the opposite direction as the case of Switzerland showed.

4.4 Jurisdictions and other geographically defined entities as interface II

The description above showed the important characteristics of tax havens and related jurisdictions and mentioned some well-known cases that were discussed in the previous chapter: the BCCI, Banco Ambrosiano, Nugan Hand Bank and the European Union Bank affairs. Although these cases all involve banks that are now, with the benefit of hindsight, seen as rogue banks, it has to be stressed that many well-known (still active) global banks are also using the same structures. Recently, James Henry, a former banker turned research journalist, wrote an extensive account of the activities of these banks during the last decades (Henry, 2003). A number of case studies from the last fifteen years are provided by Kochan (2005) and Block and Weaver (2004). The banking activities involve, among other things, the financing of huge infrastructural projects in developing countries. These projects are accompanied by substantial kickbacks to politicians involved, often paid through offshore bank accounts, and sometimes these projects do not result in any actual building at all with a billion dollar debt as only lasting evidence. Other examples are the laundering of funds for Russian criminals that appeared in the US after the demise of the Soviet Union, and the stashing of billions of dollars from a range of corrupt dictators and other politicians around the world.

The cases in chapter 3 illustrated how specific jurisdictions can play a role with different types of transnational crime. At the same time, it showed how organizations, jurisdictions, and specific individuals were combined to enable transnational crimes which sometimes involved the transformation of transnational crimes into legal activities or the other way around.

The process can be illustrated with the proceeds of a wholesale importer of cocaine. This importer receives huge amounts of cash as income unaccounted for. To turn this cash into funds that are rightfully his, he starts by smuggling the cash to a bank secrecy jurisdiction in the Caribbean. There he opens a bank

account held by a corporation which he founded in another jurisdiction where shareholders are granted absolute anonymity and an instant-corporation manufacturing business exists. From the first bank account, the funds may be moved through an additional number of accounts. Finally, it will either be lent to the importer, through a so-called loan-back structure, or it will be returned to him through false invoicing. In the latter case, cross-border trade is imitated in which the importer makes substantial profits which he can account for in his own country. Depending on the amounts of money involved and the attention that a particular individual enjoys from law enforcement agencies, the number of layers in a laundering structure can be extended or restricted. If necessary, extra instruments which can be used include international business corporations (IBC's), trusts or a Liechtenstein *anstalt*.⁶⁰ It is even possible to add a personal offshore instant-bank that will be eliminated if a law enforcement agency attempts to work itself through all the layers.

Instead of laundering, funds or goods can also be made illegal. The best known examples can be found with structures to evade taxes. The principles used may be very similar, although the effect is the opposite of money laundering operations. Whereas money laundering involves the creation of a seemingly legitimate source for unaccounted income, tax evasion involves minimizing the income accounted for generated from legitimate sources.

Besides tax evasion, and sometimes together with it, capital flight functions in the same way. This used to be one of the most important transnational crimes in monetary terms. However, its scale and scope has lowered during the last twenty years due to deregulation of cross-border financial transactions in numerous countries. From a perspective of interfaces, this provides an interesting case study. Many activities and actors that were seen as transnational crime and criminals twenty years ago are now transformed into legitimate businesses and businessmen.

Cigarette-smuggling often involves the same use of tax havens and often consists primarily of tax evasion (Beare, 2002; Hudgins, 1998; Saba et al., 1995). Cigarettes are legal goods which are smuggled for the simple reason that there are significant differences in taxes levied by different states. Any combination of states can trigger smuggling and this will not necessarily be done through a 'cigarette-haven'. However, tax havens and bank secrecy jurisdictions might offer such a haven because they do not consider cigarette smuggling a crime and do not cooperate with other states who are seeking to fight the large-scale smuggling. To be more precise, these states do not consider tax evasion in other jurisdictions a crime that should be fought within their own jurisdiction and for that reason, cigarette smuggling (being a kind of tax evasion) is not considered a crime. Therefore, these jurisdictions can be used as intermediary locations in the

⁶⁰ Such an *anstalt* is a particular type of entity similar to a trust. However, whereas one officially loses control when a trust is used to park funds, an *anstalt* can run a corporation which turns over its profit to the founder of the *anstalt*.

smuggling of cigarettes from producing country to destination country. Furthermore, independent distribution networks sometimes have their base in these jurisdictions.

Switzerland provides the best case study to illustrate a cigarette haven. Since at least World War II, it has been a centre of cigarette smuggling in several directions (Auchlin & Gaberly, 1990; Koch, 1992; Trepp, 1996). Inhabitants of the border region between Italy and Switzerland used to generate additional income through small-scale smuggling operations. Later on, the mafia took over and organized large-scale smuggling networks (Trepp, 1996).⁶¹ To Spain and other European destinations, a large-scale smuggling operation worked smoothly for years. The cigarettes came primarily from Swiss wholesalers. Although the basis for the smuggling was the mentioned advantage of Switzerland as a haven, there were other factors which perfected the whole operation. A network of corrupt customs officials assisted the smugglers for years (Auchlin & Gaberly, 1990). This network of corruption will be further discussed in section 5.5. It remains to be seen whether the recent attempts by governments in the EU and America to limit the smuggling problem will be successful. As long as there remain havens that can be used in supplying important destination countries, they will be used to evade the high taxes on cigarettes in those countries.

4.5 *De facto* interfaces I: the arms trade

The arms trade is probably the trade to most ideally illustrate the principles described in this chapter and the previous chapter. Hereafter, two case studies will be discussed in which the concept of *de facto* interfaces will be explained. First to be discussed are the so-called arms supermarkets, described by Naylor. A second example is a government that nullifies the legislation it should comply with, and through that unintentionally legalizes otherwise illegal arms sales.

Most arms, or parts with which arms are produced, come from legitimate private or state companies in a limited number of countries. The US, Russia, France, the UK, Germany, Ukraine, Sweden, the Netherlands, and Italy are the most important suppliers, as far as conventional arms are concerned.⁶² The licit or illicit character of arms usually depends on its destination, not on its contents.

Many examples of arms deals date back to the days of the Cold War. The post Cold War period has seen some changes in the arms trade but has surely not made it any less serious in its scope or consequences (Crefeld, 1998; Kochan, 2005; Phytian, 2000; Wood & Pelemans, 1999). Naylor points at two control mechanisms of the arms trade that disappeared at the end of the Cold War.

⁶¹ Bonner, R. (1997) Racketeer Cases Shed Light on Cigarette Smuggling in Italy *New York Times*, September 2nd.

⁶² For data on arms suppliers and other related issues, see: SIPRI (2004) *SIPRI Yearbook – Armaments, Disarmament and International Security* (Oxford University Press, Oxford).

“On the supply-side of the arms market, there was the ability of the major powers to influence, even sometimes control, the movement of weapons, ammunition and spare parts around the world. On the demand-side, the ability of non-state actors to get even those weapons that escaped such political control was limited by their capacity to obtain means of payment” (Naylor, 1998:212).

4.5.1 Arms supermarkets as de facto interfaces

The disappearance of these two control mechanisms has exacerbated the problem of so-called arms supermarkets. According to Naylor, some zones of conflict have turned into regional arms supermarkets, due to the large amounts of second-hand weapons (Naylor, 1998:218).⁶³ He draws an interesting parallel with offshore banking centers.

“A conflict zone is for weapons what an offshore banking centre with strict secrecy laws is for money (...) Indeed so effective is the process that it has been known for intelligence agencies to deliberately ship more weapons than required for their purposes to a particular conflict area, just in order to be free to then divert them to some other, politically unauthorized or publicly unacceptable place. This appears to be how the CIA continued to equip both UNITA in Angola and the Contra rebels in Nicaragua during periods when such aid was banned by the US Congress” (Naylor, 1998:219).

The first supermarket to appear was in Bangkok, following the Vietnam war and other conflicts in the region. Next came Beirut, Singapore, the Horn of Africa, and Afghanistan.

These arms supermarkets can function as interface between licit and illicit arms transfers. As was mentioned above, one can publicly ship arms to a conflict zone and then divert the surplus to places that are not politically authorized. Every era has one or more major conflict zones that provide such supermarkets. The areas mentioned above cover the period from the 1960s through the 1990s. Since the fall of the Soviet Union, Russia and some of its former republics provided one immense arms bazaar, selling everything from tanks to fighter jets and smaller items like Kalashnikov rifles to everybody (Berryman, 2000; Kochan, 2005; Naylor, 1998).

In addition to these arms supermarkets, there are countries which are not conflict zones themselves but play the same role. Often arms are shipped to countries with the implicit or explicit aim to support other countries or rebel groups to which one cannot directly send arms because of official boycotts. At some point during the twenty-five year involvement of the US in Angola, the

⁶³ See also Kelly et al. (2004:73-75) which focuses on so-called weapons ‘supermarkets’.

US simply replenished Mobutu's arms depots, knowing that Zairian arms would subsequently be moved to the armed forces of UNITA (Wright, 1997).

4.5.2 Dutch arms export policies as *de facto* interfaces

The second example to discuss here cannot be compared in any way to the arms supermarkets mentioned above. It deals with the arms export policies of the Netherlands during the 1990s. This country is not chosen because it is a unique case that stands out in relation to other arms exporting countries. Although it can be seen as a *de facto* interface, as will be explained below, this could probably be argued for several other European countries. However, the Netherlands are relatively exceptional as far as available information on the arms trade is concerned. As compared to other states, the Netherlands are relatively transparent as far as their export policies are concerned. A number of publications by the Dutch pressure group *Campaign against Arms Trade* provide a rich source of information on a large number of arms deals (Broek & Slijper, 2003; Campaign against Arms Trade, 1998). Dutch criminologists, on the other hand, show little interest in the arms trade.⁶⁴

According to data gathered by the *Stockholm International Peace Research Institute* (SIPRI), the Netherlands are the seventh largest conventional arms exporter in the world.⁶⁵ However, this does not mean that a huge arms industry exists. Arms exports are just part of the overall picture because most large or rich countries prefer to produce their own arms.

The Netherlands are not a haven in a legalistic sense. That is, they do not have particularly favorable legislation for arms exporters and brokers. As a member of the European Union, the Netherlands use the (non-binding) *European Union Code of Conduct for Arms Exports* for their arms export policy.⁶⁶ This code sums up eight criteria that have to be met before arms exports can be allowed. Among them are the compliance with international obligations, respect of human

⁶⁴ Frank Bovenkerk, a Dutch criminologist, remarked in 1996: "About the, in my opinion extremely threatening, trade in illegal arms, far too little is known and what we write about it in our reports probably rests on an enormous underestimation of the problem" (Bovenkerk, 1996:96). Not a lot seems to have changed since 1996, as far as the Netherlands is concerned. In 2001, the Dutch criminological journal *Tijdschrift voor Criminologie*, dedicated a special issue to arms trade. It contained some interesting articles on the illicit trade in firearms and the relations with legal dealers. However, none of the articles dealt with the international illicit trade in arms with terrorists and foreign states. It seemed that for mainstream criminologists the arms trade consists of incidental sales of small arms and thefts from legitimate dealers. To be sure, the attention of politicians and the criminal justice system is at least as little as that from criminologists.

⁶⁵ SIPRI (2002) The suppliers of major conventional weapons, SIPRI Yearbook. The data concern the period from 1997 to 2001.

⁶⁶ 'European Union Code of Conduct for Arms Exports,' agreed by European Union (EU) Foreign Ministers on 25 May; formally adopted at the EU Council of Ministers, 8-9 June 1998, <http://www.acronym.org.uk/dd/dd27/27eu.htm> (visited November 5th 2005)

rights in the destination country, preservation of regional peace and stability, and the prevention of re-export to undesirable end-users. Besides the EU Code, national legislation is applicable and requires exporters to obtain export permits for certain categories of military goods. Based on the European code and national legislation, a rather strict export policy would be expected. A couple of arms exports which received some publicity or were discussed by Broek and Slijper, can illustrate the export policy in daily practice.

In August 1998, Belgian customs intercepted forty army trucks and ninety-one containers with 'car parts' destined for Eritrea and sent by a Dutch company. The car parts turned out to be eighty engines for Russian T-54 and T-55 tanks. At the time Eritrea and Ethiopia were fighting a war against each other and both used this type of tank. Together with the trucks and engines, other essential military equipment was sent. The Belgian authorities had no doubt that the shipment was not allowed to leave the country under the current arms export regulations. The Dutch assistant Secretary of Economic Affairs, however, argued that no infringement of Dutch legislation has been found. It took seven months before he concluded that the shipments indeed consisted of arms (Broek & Slijper, 2003:160-161). The lack of interest by the Dutch authorities is especially remarkable because during the same period, the same Dutch firm was suspected of involvement in shipments to Iran, via the United Kingdom and Singapore. This ultimately led to a conviction and a fine by a Dutch court in 2001 (Broek & Slijper, 2003:162).

Whereas the shipment to Eritrea lacked an export permit, a range of shipments to another shaky area sheds some light on the Dutch export policy. Between 1990 and 1997, export permits were granted for a large number of shipments of goods for military use to Algeria, a country in the middle of a period of significant political unrest and violence. Part of these shipments were made public in the yearly government reports on arms exports, and another part was only made public after demands by the Campaign against the Arms Trade. In 1997, a national newspaper wrote about a shipment to Algeria and some politicians voiced their objections. Since then, no export permits have been granted for shipments of military use goods to Algeria (Broek & Slijper, 2003:52-54, 231).

When the government itself wants to export arms, in principle the same rules apply as for private companies. Therefore, this applies to the example of superfluous materials sold by the Ministry of Defense. During the previous decade, the Ministry sold army vehicles to Botswana, Nigeria, Angola, Bosnia, and Macedonia. At least for some of these destinations, one can wonder whether the EU criteria would allow this. The vehicles that went to Bosnia were sent there just after the Dayton Peace Accords were concluded. This led to questions in parliament (among other things) because of the remaining tensions in the region. The Foreign Ministry responded by arguing that it was unlikely that the vehicles would be used militarily, and even if they were, this would fit with the

aims of the Dayton Peace Accords which included establishing a regional military balance of power (Broek & Slijper, 2003:133).

Besides high-tech goods and parts of goods, many shipments consist of chemicals with military or dual uses. Raw materials for poison gasses could be exported in substantial quantities to countries with a dubious reputation as transit points or smuggling paradises, because of failing customs services. Byelorussia, Kazakhstan, Pakistan, Jordan, and Ukraine are among the claimed destinations (Broek & Slijper, 2003:97). Some other exports (for example to Iraq and Iran) did lead to penal sanctions. However, in most cases, the verdicts were mild and concerned the fact that companies or individuals failed to obtain export permits instead of the fact that they exported to particular countries.

Other examples could be added to the summary above. Without generalizing too much, some conclusions can be drawn so far. The official legislation and intentions of the Dutch authorities indicate a very cautious approach to potential arms exports. At the same time, the export permits that are granted each year seem to show a somewhat different picture.⁶⁷ As long as exporters ask for permits according to all the bureaucratic formalities one will usually get a permit, despite the end destination or nature of the goods involved.

The above implies that one will often observe the following situation. Theoretically, one has an individual or company engaged in an illicit transnational arms deal. The illicit nature is either based on the outlawed destination, the outlawed goods, or both. In practice, there is a government that gives official permission for the export before anything leaves its territory. Therefore, in practice there is no transnational crime committed at all. The potential crime is subject to a sort of pre-emptive laundering by the authorities. This does not fit neatly with the mechanisms described in chapter 3 and in this chapter. This mechanism always involves an activity which is either laundered or made illegal, the activity meant here is legal at any stage, due to the pre-emptive laundering outlined above.

4.6 *De facto* interfaces II: corrupt networks

The last variation also involves a so-called *de facto* interface. However, this *de facto* interface is not the result of a more or less open and official policy by a particular government to (unintentionally) nullify its own legislation or formal intentions. Instead, this *de facto* interface emerges from a corrupt network of high-level figures from both government and private companies and persons. Depending on the particular network one looks at, they might involve high-level figures from

⁶⁷ Although this paragraph mainly focuses exports during the 1990's, previous studies suggest that this has not been significantly different in the past. An extensive review of the Dutch export policy from the 1960s to the 1980s is provided by Colijn and Rusman (1989) in their dissertation, *Het Nederlandse wapenexportbeleid 1963-1988 (The Dutch policy on arms exports 1963-1988)*.

intelligence agencies, customs, police, political parties, and media companies as well as top-politicians, arms dealers, and managers of large private companies. Through such networks, transnational crimes become immune to prosecution to the extent that they are *de facto* legalized or at least immunized from prosecution.

The corrupt network as interface should not be seen as another analytical model, besides individuals, organizations, and jurisdictions as interface. It is more a mixture of the models that were discussed before. The corrupt network is discussed in this chapter because of its more or less geographical similarity to jurisdictions as interface.

To illustrate this geographically concentrated network of individuals and organizations that function as an interface, two concrete case studies will be discussed. First of all, the so-called *Club 45* in Austria and secondly the *P2 Freemasons Lodge* in Italy. These cases have been chosen because of the available sources of information on them. Although not all aspects of these cases (which ultimately led to major scandals) have been clarified with absolute certainty, enough is known to use them for the purposes of this chapter. Furthermore, the difficulties of studying cases like the ones mentioned above should be stressed. The ingredients of these cases, while making them interesting from an interface perspective, also ensure their secrecy and attempts to cover up as much as possible.

4.6.1 Club 45 in Vienna

Club 45 was primarily an association of politicians from the Austrian SPÖ, the Socialist party. It was founded shortly after a curious take-over took place in Vienna's most prestigious shopping street. Naylor summarized the events around the takeover:

“In 1972, the widow of the last proprietor of Vienna's Konditorei Demel, former pastry makers to the Hapsburg court, decided to sell the firm. One person decidedly not an acceptable buyer was Udo Proksch, a hard-drinking, gun-toting, womanizing former pig farmer. However, with the joint assistance of a Swiss shell company and a pliable countess he was bedding, Proksch disguised his identity long enough to secure control of the imperial institution and the status it conveyed” (Naylor, 2001:44).

In the same year, Club 45 was founded with Demel as its meeting point.⁶⁸ The core of Club 45 was made up of Udo Proksch himself and a number of high-

⁶⁸ Different accounts exist of the Club 45 formation. Whereas Naylor speaks of a secret society created by Proksch, some former members insist that some young Socialists founded the Club, while Proksch played a minor role in the beginning. Many intimate friends of Proksch are interviewed in Helmut Schödel's (1998) *Ein Staat braucht einen*

ranking members of the Socialist party, among them subsequent prime-ministers and cabinet members. Besides this core, members also included a long list of managers from Austrian banks, insurance companies and state-industries, as well as the head of the Viennese police, the secret service, and some arms dealers (Pretterebner, 1989:84–87; Von Bülow, 2003:88). The Club was founded during the beginning of a long period of Socialist hegemony in Austrian politics. Between 1970 and 1983 they constantly ruled Austria as a one party administration. Only after 1983 did a coalition government form with the right-wing FPÖ (Seiffert, 1998).

One of the visitors of the Club 45 was Monzer Al Kassar, who was discussed in chapter 3. He is best-known for his role as arms broker but was also involved in drug trafficking and connected to terrorist groups in the Middle East (Brunwasser, 2002; Morstein, 1989; Roth, 2000). Partly because of his excellent contacts in Vienna, Al Kassar was able to organize a number of large arms deals, at least one of which led to a national scandal and the resignation of several politicians. One of the deals involved a huge shipment of ammunition for the PLO, which was intercepted in Greece in 1984 (Morstein, 1989:145). The ammunition came from a subsidiary firm of the state company VOEST. When Al Kassar made a failed attempt to obtain Austrian citizenship, this subsidiary firm allegedly wrote a letter of recommendation. Another deal by Al Kassar and his Austrian friends led to the mentioned scandal and involved an enormous shipment to Iran. As arms sales to Iran were outlawed during the war with Iraq, Al Kassar organized a range of end-user certificates. Most of the arms were supposed to go to Libya, where he was well-connected through his friend Abu Abbas, a well-known terrorist.⁶⁹ Abu Abbas was one of the Hijackers of the Achille Lauro cruise ship. The hijacking was allegedly financed by Al Kassar although his involvement could never be proven by Spain's National Court that tried to get a conviction. While awaiting trial, Al Kassar was freed on the record bail of \$7,7 million (Bohn, 2004).

A part of the above mentioned shipment of arms to Iran was intercepted in a Yugoslavian port and it turned out that the arms were accompanied by instructions for use written in an Iranian dialect. Soon, the deal got a lot of media attention and had to be cancelled while only half of the shipments had made it to Iran. Nevertheless, about ten percent of the total costs had already made it to the accounts of numerous shell companies in Panama and Liechtenstein (Morstein, 1989:146).

Al Kassar was not the only Syrian in Club 45. Nabil Kuzbari also visited the Viennese Demel-café regularly and shared Al Kassar's core business – brokering

Mörder – Udo Proksch und die 'Lucona'-Obsession (~A state needs a killer – Udo Proksch and the 'Lucona' obsession).

⁶⁹ For some time he headed the Palestinian Liberation Organization and was part of the executive committee of the PLO. He died in March 2004 in US custody, after being captured in Bagdad eleven months earlier by US special forces.

profitable arms deals. He also owned an airline, Transair, which was often used by top politicians like the Minister of the Interior who used Transair to fly to Syria and other destinations (Morstein, 1989:138). Kuzbari also brokered deals between Austrian firms and Iran. According to Von Bülow, he even held an Austrian diplomatic passport which made his work even easier (Von Bülow, 2003:88).

Before Al Kassar and Kuzbari closed their biggest deals, Udo Proksch himself was already deeply involved in military matters. Always fascinated by arms and wars, he found a rather original way to fund his own arms deals. Together with some friends inside Club 45 he founded an association aimed at establishing an army museum. Members of the association included the head of the state television channel ORF and the Austrian Minister of Defense. The latter official organized a constant flow of military goods to the association. Everything from tanks, fighter jets, jeeps, and rocket launchers were provided to the association for free. Proksch did not wait for the moment they would find a suitable building for a museum. Most of the arms went to the Polisario guerrilla movement in the Western Sahara, to Egypt, and to other destinations in the Middle East. Years later, when asked where all the arms had gone, Proksch would claim they had all been stolen (Pretterebner, 1989:190-95).

Besides his interest in arms, Proksch had been on rather good terms with numerous East Bloc institutions, among them the East-German intelligence agency. Furthermore, he actively sought Western technology in Silicon Valley and elsewhere, allegedly to export it to Eastern Europe. However, he was never arrested because of active political protection and the fact that American efforts to follow the trail of his activities could not pass the secrecy of a Swiss shell company. At some point, members of parliament started to press the Ministers of Justice and Foreign Affairs for answers on questions about Proksch's activities. The questions were triggered by a book by some American and British journalists. In this book *Techno-Bandits: How the Soviets are stealing America's high-tech future* (1984), a whole chapter was devoted to Vienna. In the end the questions led nowhere. One Minister announced an investigation, which did not reach any concrete results. Another Minister could not respond because he first needed a German translation. The third Minister acknowledged that the US government had warned Austria that its country was used for the smuggling of technology. However, he claimed that Udo Proksch was never mentioned. He had apparently missed a NATO black list on which several companies that were owned by Proksch or by the Demel-café were mentioned (Pretterebner, 1989:104).

Because of the political protection and the use of everything that corporate secrecy had to offer, Proksch continued his diverse activities for years. In the end, however, there was one crime which could not be denied forever: the planned explosion of the Lucona, a freighter with twelve persons on board, six of which died in the middle of the Pacific Ocean. Proksch had incorporated in Switzerland

a company called Zapata AG and used it to secure an abandoned coal mine. Machinery was removed, repainted and marked Zapata AG. Various parts were sent back and forth between Switzerland, Austria, and Italy to cloud their origins, aided by collaborators in Austrian Customs who altered the description of the official documents (Naylor, 2001:46). Subsequently, Proksch obtained technical information about a uranium ore processing plant and copied this on Zapata's letters. Next, he set up a Hong Kong company whose officers signed a 'contract' with Zapata to purchase uranium ore processing machinery (Naylor, 2001:46).⁷⁰ To make it look legitimate, some letters and money were sent back and forth between Switzerland and Hong Kong. Finally, he chartered the M.S. Lucona, a freighter who had to bring the processing plant to Hong Kong. In 1977, the Lucona left the Italian port of Chiaggio, waved goodbye to by a group of high-profile Austrian politicians, organized by Proksch to witness the departure. In the middle of the Pacific Ocean, a huge explosion ended the journey of the Lucona. Six crew members died due to the explosion and six survived. Convinced that they might also be killed, the Dutch and Philippine survivors chose to remain silent. In the following decade, several attempts were made to bring Proksch and his accomplices to justice. However, each time anyone dared to start investigations or even prosecutions, they were immediately stopped by their superiors. Meanwhile, some collateral damage was added to those already dead. The engineer of the Lucona fell off a highway bridge just before he was due to give evidence and one of the collaborating customs officers died of a heart attack after having admitted his complicity. The Minister of Defense who had covered Proksch for years was killed after relations with Proksch had cooled down.⁷¹ In the end, Proksch fled to the Philippines where he went through plastic surgery to change his looks. Despite his changed face and a false passport, he was arrested when he returned to Vienna (Schödel, 1998). After a trial, he was condemned to life imprisonment and died in June 2001.

Looking back at this summary of the history of the Club 45, it becomes clear how this network of corrupt relationships functioned as a sort of interface. Through this network, illegal arms transfers, transnational shipping insurance fraud, and other activities were laundered or immunized from prosecution. When the political protection by the Austrian Socialist Party diminished, Udo Proksch was getting more and more difficulties to maintain his colorful and criminal activities and was finally arrested and imprisoned.

⁷⁰ The Zapata AG should not be confused with other companies with the same name and at least as well-known owners. George H.W. Bush participated in a company with the name Zapata. Furthermore Operation Zapata was the code name for the failed Bay of Pigs invasion in 1961 (Aguilar, 1981).

⁷¹ His murder was presented as suicide but according to a detailed account of events by Pretterebner, it seems most likely to have been murder, although the murderer was never found (Pretterebner, 1989:624ff).

4.6.2 Propaganda Due (P2) in Italy and South America

Through a complicated network of shell companies in several tax havens and connections to a number of banks with similar structures, Banco Ambrosiano was able to function as an interface by itself in a chain of activities linking Colombian drug traffickers, Italian mafia groups, South American dictators, terrorist groups, political parties and the freemasons lodge Propaganda Due (P2) (Paoli, 1995; Raw, 1992; Trepp, 1996; Willan, 2001).

The discussion of Banco Ambrosiano in the previous chapter focused primarily on the illicit activities of the bank and the actors the bank was able to influence. Among these actors were several Italian political parties and politicians in South America. However, Ambrosiano itself was instrumental in a larger power structure that had the P2 and its leader Licio Gelli as its centre. A symptom of the leverage Gelli had over Calvi, the director of Banco Ambrosiano, was the flow of funds from Ambrosiano to Gelli. According to Charles Raw, Ambrosiano paid about 250 million dollars to Gelli between 1976 and 1981. To organize these funds, Gelli and Calvi robbed the Italian state with the help of corrupt politicians and leading civil servants. The primary victims were the state oil company ENI and the Banca Nazionale del Lavoro or BNL bank (Raw, 1992).

P2 had been led by Licio Gelli since the 1960s. He actively recruited powerful members of the Italian establishment. Judges, police commanders, captains of industry, intelligence agents and leading members of the military were incorporated in the secret lodge (Trepp, 1996:293; Willan, 2001). Until 1974, P2 aggressively tried to bring the Italian system to the brink of collapse, so that ultimately P2 members would be able to establish a new order, inspired by Mussolini's corporatism. Terrorist activities by right wing groups were allegedly supported, like the attack in 1974 on the 'Italicus Express' in which twelve people died and the attack in 1980 on the train station of Bologna that killed eighty-five people. For these crimes, over a dozen P2 members were convicted. Licio Gelli was given a long sentence to a house of correction. However, his lawyers appealed and in the end Gelli did not have to go to jail. In 1974, P2 changed its strategy and started to infiltrate the Italian government to achieve changes from within the political system (Trepp, 1997:295-96). Gelli was rather successful in his recruitment of new powerful members to P2 until a list of P2 members became public and caused a huge scandal that preceded the subsequent collapse of the Banco Ambrosiano. Gelli went to jail briefly but was able to escape.

Like Club 45, P2 was a meeting point of many members of both the political, economic, and criminal elite. Although the basic principle was much the same, P2 was far more complicated, threatening, and far-reaching than its Austrian counterpart. The close links between all actors involved enabled or laundered many national as well as transnational crimes. To be sure, national and

transnational and corporate, terrorist and ‘mafia’ crimes cannot be separated in any meaningful sense here. Terrorist attacks, for example, were meant to destabilize the Italian society. The fruits of these activities were to be reaped by exploiting massive capital flight after dramatic attacks. National terrorism and transnational corporate crimes went hand in hand. The same goes for the activities of both the Italian mafia and foreign drug traffickers. While Banco Ambrosiano as an organization functioned as an interface, P2 comprised a structure in which the bank was subordinate to the aims and power of the Freemasons Lodge. This structure can be understood as a wide, complicated and persisting interface with its centre in Italy.

4.7 Conclusions

In this chapter jurisdictions or other geographically defined entities as interface were discussed. It was argued that jurisdictions and other entities can also function as interface to change activities from licit to illicit or the other way around, besides the individuals and organizations that were discussed in chapter 3. Successively, the jurisdiction as interface, as well as two variations of this interface, were outlined and illustrated with case studies derived from the literature on transnational crime. The first variation involves government policies that bring about a *de facto* interface because they nullify the legislation which makes certain transnational activities illegal. The second variation involves a *de facto* interface as a result of a network of corruption.

Jurisdictions may function as interfaces when they lack legislation in areas where most other jurisdictions have enacted legislation that outlaws certain cross-border activities. Ideally, the jurisdiction without legislation does not cooperate with other jurisdictions seeking the perpetrators or persons acting against the specific laws. Depending on the type of crime, this may involve small jurisdictions with strict bank secrecy laws and corporate structures which provide the maximum privacy for their shareholders, or on the contrary large countries like the US, or the UK. Several activities, defined as illegal outside these jurisdictions, can under specific circumstances be legalized through these jurisdictions. Money laundering is such an activity, as well as tax evasion and capital flight. In fact, the range of crimes that may have jurisdictions through which they are protected or laundered is wide.

Besides the interface as a result of legislation in a particular jurisdiction, there are *de facto* interfaces as a result of government policies. In an ideal world, the combined set of laws tells everyone what is illegal and who will be prosecuted as such. However, governments and courts have wide margins within which to interpret and enforce these laws. When these margins are used to effectively nullify the laws prohibiting certain transnational crimes, there will often be no difference with the situation described above. Despite the actual legislation, the jurisdiction (or a part of it) has turned into a haven for this particular crime and

can be understood as a *de facto* interface in certain situations. The Dutch arms export policy was used as an example here. In practice, this policy has to some extent nullified the legislation and intentions of the government. In the case of arms exports from the Netherlands, this implies that these transnational transactions are *de facto* 'pre-emptively' legalized and therefore do not fall into the category of transnational crime at all.

The last interface in this chapter was also a *de facto* interface. However, it is not the result of a general policy to interpret laws in a way as to nullify them. It is the result of a corrupt network of persons that causes a situation that at some place, during some period, transnational crimes are covered in way as to *de facto* legalize them. In practice, such a situation will almost always involve other interfaces as well. Persons involved will make use of every possible foreign haven, as well as loopholes in legislation. However, when this does not suffice to make certain transnational crimes possible and legalize them, the mentioned network will take care of this. Two possible illustrations of this type of interface were discussed above: the Austrian Club 45 and the Italian P2.

In the next chapter, an analytical model will be developed that incorporates the role of individuals, legitimate organizations, and jurisdictions as interface. Thereafter, chapters 6 to 9 will discuss the illicit art and antiquities trade. This trade will be used to analyze the usefulness of the three institutionalized interfaces, as well as its variations, that were discussed in this chapter and the previous one. It remains to be seen whether the typology, extended with the three institutionalized interfaces, suffices to describe and understand the relationships between legal and illegal in this field, which will be studied both empirically and theoretically.

