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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 5

ORDER IN THE CHAOS: THE LOCK MODEL

5.1 Introduction

In the previous chapters a number of case studies were discussed in which certain individuals, organizations, and jurisdictions that have one crucial characteristic in common. They can all, under specific circumstances, act as interface by themselves. This means that such an individual, organization or jurisdiction is not only engaged in relationships with legal or illegal actors (that are called interfaces within the interface typology) but can be seen as embodiment of the legal–illegal interface themselves. That is, through these individuals, organizations or jurisdictions, the legal status of certain goods, services, or funds is transformed. This means that they are either laundered or on the contrary become illegal.

In this chapter, an analytical model will be developed that simplifies and helps to understand this process. This model integrates all variations that were discussed in the previous chapter into one simple model, the so-called *lock model*.

In the next section, this model will be explained. Thereafter, it will be explained how individuals, organizations, and jurisdictions perform a so-called lock function. Hereafter, we will no longer speak about the role as interface but instead about the lock function of individuals, organizations or jurisdictions.

5.2 The lock model

The introduction above started with the observation that the individuals, organizations, and jurisdictions discussed in previous chapters can all have a so-called lock function. Several specific factors can enable this lock function, depending on the type of actor one focuses on. These factors will be summarized for each different type of interface in the sections below.

One general factor in all case studies was the ability to deal with criminals as well as legitimate companies and government agencies ‘on the same level’. All actors discussed in the case studies were able to have ‘normal’ relationships with both legal and illegal actors, engaging in both legal and illegal activities. Therefore, when for example one of the legitimate organizations discussed collaborated with drug traffickers it did not mean that the drug traffickers were corrupting the legitimate organization. That is, the relationship should not be seen as primarily one-way. The drug traffickers and the organization did business as they would do if there were no difference in ‘legality’ between the two.

When certain actors function as lock, the ability to deal with third parties on different levels is used in at least one type of transnational crime. In that case, the

actor can be seen as located in the middle of a transnational criminal activity. On one side, the activity involves illicit transactions with goods or services, while on the other side it involves legal transactions involving the same goods or services. On both sides, the interfacing actor or entity is engaged in relationships with criminal or legitimate third parties. These relationships can be labeled with the different types from the typology. This process can best be compared with the mechanism of a lock in shipping. In the figure below, this mechanism is illustrated.

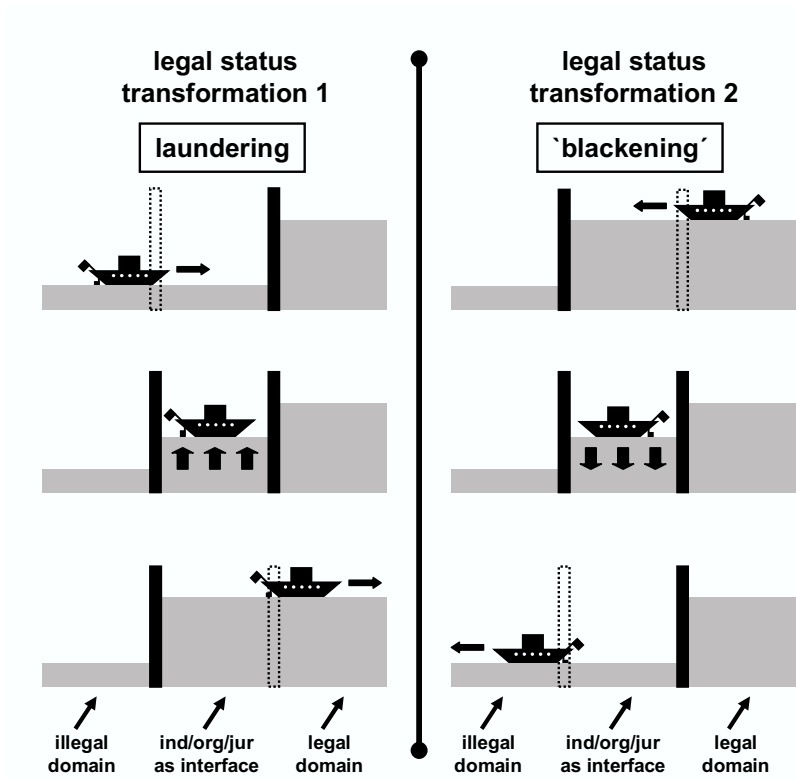


figure 7: the lock model

On the left, a ship passes the lock-gate and enters the lock-chamber from the lower side. This lower side is a metaphor for the illegal part of a transnational activity. After the ship has entered the lock, the lock closes again. After that, the ship is locked upward as water is entering the lock from the higher level. This upward move is a metaphor for the transformation of the legal status of a particular activity from illegal to legal, or, as it is commonly called the *laundrying* of this particular activity. Finally, the ship leaves the lock as soon as the level inside the lock has become the same as outside the lock at the higher level.

On the right side of the figure, the opposite process is shown. The ship now comes from the higher level and is moved to the lower level. The status of the particular activity is now transformed from legal to illegal.

The lock in the figure above can vary as to the degree of complexity. In its most simple form, the lock consists of a particular individual, organization, or jurisdiction. However, the lock may also be assembled of a complex web of individuals, organizations, and jurisdictions. The case studies in chapters 3 and 4 consisted of cases that were primarily built around one particular interface, that is, an individual, organization or jurisdiction as interface. However, most cases also used one or both of the other interfaces. In the next sections, the different variations of the lock model will be outlined based on the findings from chapters 3 and 4. These variations will outline step by step how the legal status of transnational activities is transformed in the same way as the level at which a ship sails is altered by a lock.

5.3 The lock function of individuals

Individuals can function as a lock in two different ways. First of all, they can act as (transnational) broker between actors in different countries that cannot, or do not want to, deal with each other directly. The broker is arranging a deal in which legal goods or services are delivered to outlawed customers, or illegal goods or services are delivered to legitimate customers. The model is portrayed in the figure on the next page with an illicit arms deal as example.

The arms come from a legitimate source, for example a defense ministry or intelligence agency. They are destined for an outlawed end-user. This can for example be a guerrilla movement affected by national legislation in the source country, or a UN boycott forbidding the sale of arms to them. The deal may be motivated by practical concerns (sale of redundant material) or by the intention to support this movement despite the laws forbidding such support. The broker organizes both the logistical process to get the arms from country X to country Y, as well as the process to get the arms to the outlawed destination without any visible illegalities for the legitimate source. In this theoretical case, that will at least involve obtaining an end-user certificate for the arms from a third country that can legally buy them. Through this end-user certificate, the source country is formally selling to a legitimate buyer. Furthermore, the broker should make sure the arms cannot be intercepted along the way to the destination country. Finally, he will often have to make sure that the source of the arms cannot be exposed as soon as they have arrived at their destination. This can be done for example by changing their appearance, adding a false provenance for them, or even swapping them for arms originating from the enemy. The result of this set-up is that the source country is engaged in a legitimate deal with another country. At the same time, the receivers of the arms obtain them from the broker in an unofficial and

illegal way. Therefore, it is through the broker that the arms move from legal to illegal without direct contact between the two parties.

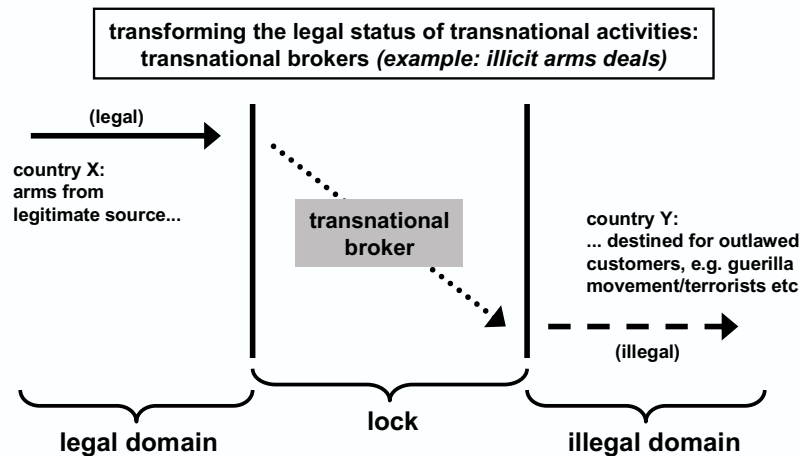


figure 8: the lock function of individuals 1

Among the factors characterizing most individuals, a base of operation in at least two countries is the most important. This base is not restrained to a mere place to stay or a local branch of their legitimate company abroad. It also involves a network of relevant individuals that can be used to broker deals. This 'multinational' base is usually combined with the ownership of passports, and sometimes diplomatic passports, of several countries. To be sure, the ownership of more than one passport is hardly a rare occurrence among transnational criminals. However, these passports are sometimes false or stolen. The kind of individuals discussed in previous chapters usually owned several authentic passports and sometimes (authentic) diplomatic passports.

Furthermore, political protection and contacts with the top of the political apparatus and administrative machinery are shared by many of these individuals. Again, there is a qualitative difference with other transnational criminals. These criminals may obtain certain favors by corrupting individual law enforcement officials or others. However, the individuals discussed before could arrange protection that went as far as to secure effective immunity from prosecution.

Finally, the knowledge and use of the global financial system and the combination of numerous legitimate companies in different jurisdictions, is a crucial factor. As with the other factors, this is not claimed to be unique for transnational criminals. However, the scale and sophistication of this factor is different from most criminals. Whereas criminals often have to rely on the knowledge of others to use the opportunities of banks, foreign registered companies, and tax havens, the persons discussed here were to some degree experts on these matters themselves.

Besides transnational brokers, another category of individuals was discussed in chapter 3. This category consists of transnational dealers that do not broker deals between actors but buy from actors in country X and thereafter sell to customers in country Y. The figure below portrays the transnational dealers functioning as lock between a source and a market country.

The trade in conflict diamonds is used as an example. The dealer buys from an outlawed source in the diamond's country of origin. Thereafter, he ships the diamonds to the market country where he sells them on the legal market. If necessary, the dealer obscures the illegal source of the diamonds. This can for example be done with false papers or shipment through third countries. The result of the whole procedure is the effective laundering of conflict diamonds into regular diamonds on the legal market.

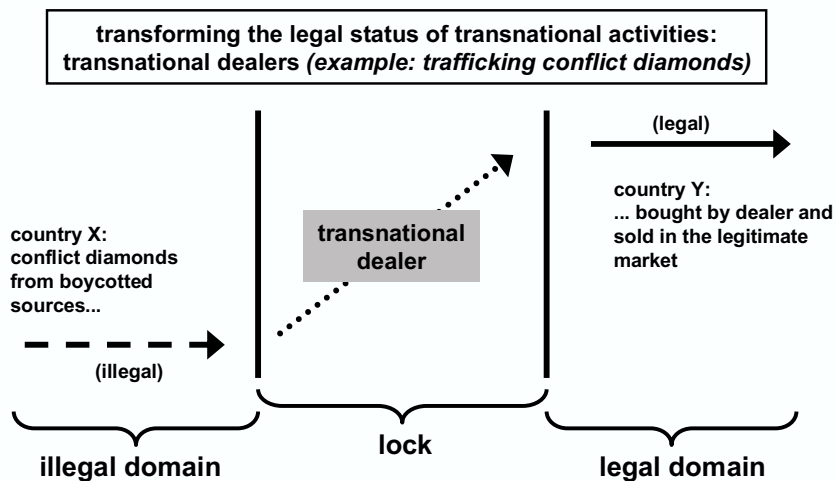


figure 9: the lock function of individuals 2

5.4 The lock function of legitimate organizations

In the second part of chapter 3 the role of legitimate organizations as interface was discussed. Similar to the individuals discussed above, organizations can combine relationships with both legal as well as illegal actors. The factors that were discussed above, are to a large extent also relevant for these organizations.

Legitimate organizations can function as a lock in two ways. First of all the organization that can be seen as an extension of a criminal organization or a network of organizations or individuals. Here it is called the *coffee shop model*, inspired by one of the case studies in chapter 3. The legal organization can be seen here as one link in the transnational criminal network. Through this link, the legal status of goods, services, or funds is transformed. In the figure below, this type is portrayed.

The funding of terrorism by certain charities is used as an example here. Such a charity on the one hand engages in numerous, perfectly legal, relationships with supporters. These supporters primarily donate funds to the charity. The charity secretly funnels part of these donations to terrorist organizations abroad. The latter transaction is unofficial and illegal. The result is that through the charity, legally donated funds are used to finance terrorist organizations. The status of these donations thus changes from legitimate funding to illegal funding of terrorism.

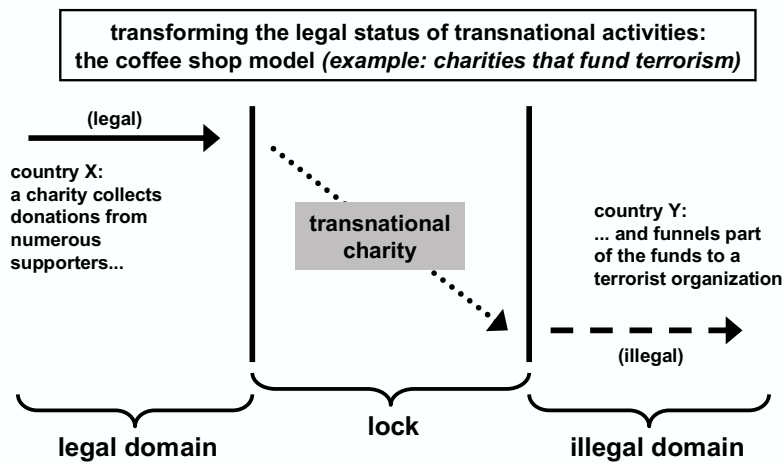


figure 10: the lock function of legitimate organizations 1

The second variation involves an organization that is fully independent but has multiple links with both legal and illegal actors. Here it is called the *Ambrosiano model*, named after one of the case studies in chapter 3. This organization is not a link in one particular transnational crime, but is connected to various transnational crimes, as well as legitimate activities.

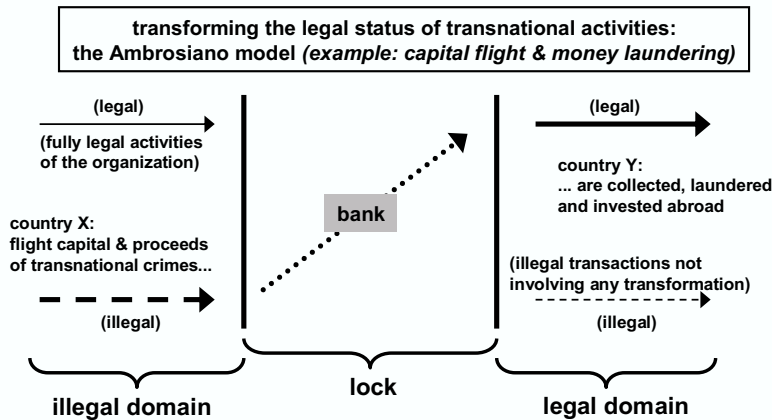


figure 11: the lock function of organizations 2

The laundering of both flight capital and the proceeds of criminal activities is used as an example here. The funds originate from country X but are laundered abroad through one or more subsidiaries of the bank involved and finally invested in country Y. Besides the illegal activities, the bank is involved in numerous perfectly legal transactions with customers in several countries. At the same time, the bank is involved in illegal transactions that do not involve any transformation of the legal status of the funds involved. It should be noted that this is only a theoretical example of an analytical model. In practice, endless variations will be found of the mechanism mentioned.

5.5 The lock function of jurisdictions

The last variation of the lock model involves jurisdictions that function as a lock. Jurisdictions can function as a lock in case they lack legislation in branches 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 jurisdictions in Europe or North America. 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.

One major difference exists between jurisdictions as a lock as opposed to individuals and organizations as a lock. In case of jurisdictions, the role as lock is not the result of some sort of set-up or conspiracy. It is a direct result of the

absence or existence of certain legislation within the jurisdiction.⁷² However, individuals and organizations will often deliberately make use of these jurisdictions while they organize all kinds of transnational crimes.

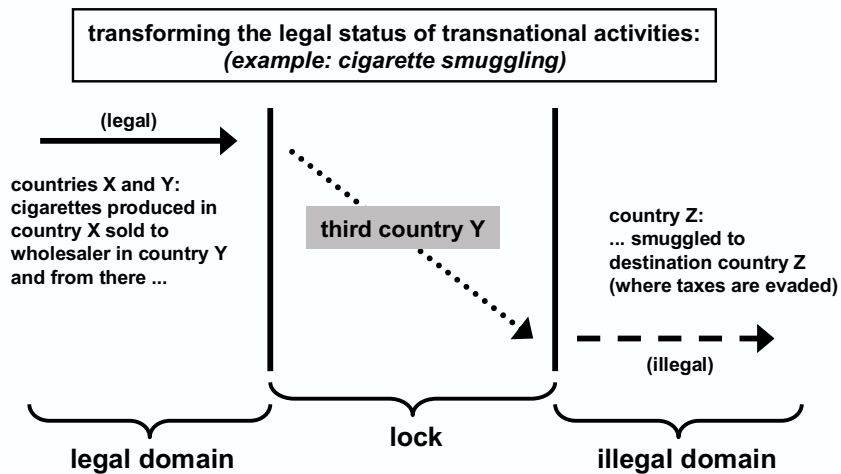
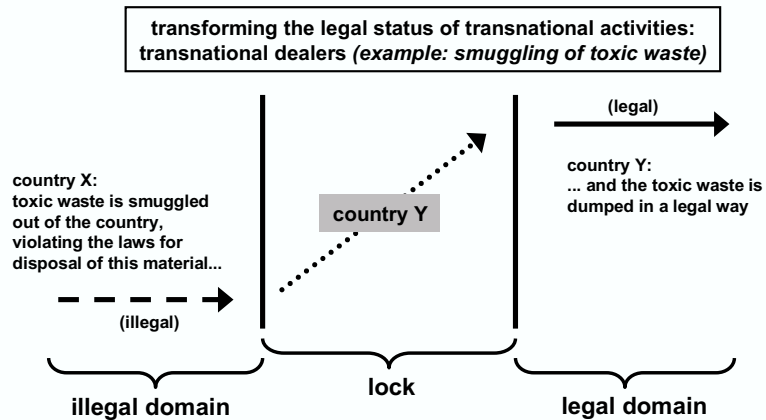


figure 12: the lock function of jurisdictions 1

In the figure above, the lock function of jurisdictions is shown as a simple model. The smuggling of cigarettes is portrayed as an example. First the cigarettes are shipped from a cigarette company in country X to a wholesaler in country Y. This transaction is fully legal and as a result the cigarettes are within a jurisdiction where they are only moderately or not taxed at all. Thereafter, the wholesaler knowingly provides smuggling organizations with large quantities of cigarettes that are moved to country Z in which cigarettes are officially subject to high duties. As these duties are evaded, the smugglers and the legitimate wholesaler are working together in this transnational variation of tax evasion through cigarette smuggling.

⁷² One can argue that legislation is a result of human decisions, potentially taken to attract the kind of illegal activities that are discussed here. However, this possibility falls outside the topics that need to be clarified in this study. Within this context it matters that certain jurisdictions simply offer certain opportunities, independent of the causes or reasons for these opportunities.



The opposite situation from the first figure is shown in the second figure. The example used is here is the disposal of toxic waste. In country X toxic waste needs to be disposed of. According to the current legislation in country X, this waste needs to be processed by specific companies in country X. The waste is not allowed to be exported out of country X. Stimulated by the significant costs of this type of disposal, the producer of the toxic waste organizes the smuggling of this waste to country Y where the material involved is not subject to specific legislation. As soon as the producer has succeeded in this illicit export to country Y, he has laundered the toxic waste. Thereafter, he finds a company that is willing to dump or process the waste for a small sum of money. As specific legislation concerning the material involved is lacking in country Y, the producer is free to close a deal with anyone willing to take on the toxic waste.

Besides the jurisdiction as (automatic) lock for certain activities, two variations were discussed in chapter 4. First of all, there are so-called *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 these laws. This applies to laws governing transnational crimes, just as it does to other types of crimes. When these margins are used to effectively nullify the laws prohibiting certain transnational crimes, there is no longer a 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* lock.

The second variation on the jurisdiction as a lock is also a *de facto* lock. However, it is not the result of a general policy to interpret laws in a way as to effectively nullify them. It is the result of a corrupt network of persons which causes a situation that within a specific geographical area, during some period, transnational crimes are covered in way as to *de facto* legalize them, or at least

make them immune from prosecution. In practice, such a situation will almost always involve individuals or organizations as locks as well. Persons involved will make use of every possible foreign haven, as well as loopholes in the legislation. However, when this does not suffice to make certain transnational crimes possible and launder them, the mentioned network will take care of this. The variation should not be interpreted as yet another model but more as a mixture of the different models that is discussed with the jurisdictions because it is related to a particular geographical area.

5.6 Conclusions

In this chapter an analytical model was developed of individuals, organizations, and jurisdictions that can function as a lock between legal and illegal. This so-called lock model is inspired on the insights that were a result of the case studies in chapters 3 and 4. The model simplifies the processes by which the legal status of certain transnational activities is transformed. This can either involve a process of laundering or on the contrary a process by which goods, services, or funds become illegal.

The model is called after a shipping lock because of the mechanism by which the individual, organization, or jurisdiction combines equal relationships with both sides despite of the different levels (that is the difference in legality). The lock model can both be restricted to individuals, organizations, or jurisdictions; or it can incorporate combinations of these interfaces in a general model. All different possibilities were discussed in the sections above. If the lock model is used to analyze a concrete case study, one can also use the interface typology to label all the different stages in the lock ‘mechanism’. Labeling these stages in a case study with the typology makes it possible to compare them with other case studies involving other types of transnational crimes.

The following chapters will discuss the illicit art and antiquities trade. The chapters are based on both an empirical research project, executed specifically for the present study, as well as on a review of the available literature. The interface typology and the lock model will be confronted with the empirical data in order to establish whether these analytical tools can help to describe and understand the interfaces between legal and illegal in the art and antiquities trade as observed in practice. Furthermore, it will be investigated whether the change in legal status can thus be understood. It should be pointed out that the empirical study of the illicit art and antiquities trade is thus not a goal in itself, but is used here first and foremost to gauge the usefulness of the models developed in the first part of this book. In chapter 6, data sources of the empirical study will be discussed. Thereafter, chapter 7 will provide an overview of the illicit art and antiquities trade on the basis of the available literature. Then, chapter 8 will discuss the illicit trade in art, and chapter 9 the illicit trade in antiquities, both on the basis of the

empirical study. The conclusions of the whole book will follow in chapter 10, together with recommendations for future studies and public policies.

