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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 10

CONCLUSIONS

10.1 Introduction

This study addressed several questions concerning the interfaces between legal and illegal actors in transnational crimes. The background of these questions are several observations in the literature on transnational crime that were outlined in the introduction. First of all, the literature on transnational crime describes numerous interfaces between legal and illegal actors in these crimes. In many studies, these interfaces are presented as more or less one-way connections between illegal actors who corrupt legal actors or invest their profits in legal companies. Furthermore, these interfaces have been presented as growing and dangerous ‘facts’, especially since the demise of the Soviet Union. However, general analytical models and explanations of the interfaces between legal and illegal actors are scarcely available. Empirical studies of this research topic in general have also been few in number, although some studies have been executed on specific cases or specific crimes. Furthermore, convincing and unambiguous empirical evidence of the nature and extent of transnational crime, as well as its interfaces with legal actors, has not been provided.

This book aimed to fill some of the gaps mentioned above. A number of research questions guided this theoretical and empirical study that was executed from 2001 to 2005. The main research questions were:

- 1. What kind of interfaces can be found between legal and illegal actors in transnational crimes?
- 2. How can the transformation in legal status of certain transnational activities be explained?
- 3. Does the interface typology provide an analytical tool to describe the interface between legal and illegal actors in the illicit art and antiquities trade
- 4. How can the transformation in legal status in the licit and illicit art and antiquities trade be explained?

In addition to these research questions, this chapter will look at two practical questions that can be answered after all the analyses in this study have been done and the conclusions have been drawn.

- 5. What can be recommended for future studies on transnational crime and the interfaces between legal and illegal actors?

- 6. What can be recommended for future public policies dealing with transnational crime and related topics?

The following sections will summarize the findings from this study and provide answers to the research questions, as far as they were produced in this study. After that, a number of recommendations will be formulated.

10.2 A typology of interfaces

Different types of interfaces can be found between legal and illegal actors in transnational crime. The starting point of my research was a typology of interfaces developed by criminologist Nikos Passas. This typology was chosen because it provides one of a very few attempts to deal with the legal-illegal interface in a systematic, instead of *ad hoc*, manner. This typology consists of four antithetical and eight symbiotic interfaces between legal and illegal actors.

The typology was analyzed to see whether it covers the most important types of interfaces between legal and illegal actors, without including any superfluous types or missing any relevant types. The analysis of the typology led to several conclusions. First of all that the typology appeared to cover all the important conceivable types of interfaces between legal and illegal actors. However, two symbiotic interfaces seemed to be superfluous or inconsistent with the typology itself and were left out. The definitions of the other interfaces were clarified if necessary. In some cases, the definitions of certain interfaces put forward by the original typology showed potential overlap that would blur the distinction between separate interfaces too much. In those cases, these definitions were restricted to prevent overlap as much as possible. This is not to say that the typology was and is meant as a meticulous model of guaranteed mutually excluding types. However, the different types should nevertheless be as precise and mutually excluding as possible. The resulting new interface typology still consisted of the two categories: antithetical interfaces and symbiotic interfaces. The different types will be briefly summarized below.

10.2.1 *Antithetical interfaces*

The first antithetical interface consists of so-called *antagonistic relationships*. These relationships occur when there is competition between legal and illegal actors. This interface turned out to be useful to understand the relationship between legal and illegal actors in a range of transnational illegal markets. Arms dealers and producers engaged in illicit deals that compete with dealers and producers that stick to the laws governing their trade and smugglers and dealers of 'conflict diamonds' that compete with importers and dealers who deal in accordance with the Kimberley Process.

CONCLUSIONS

The second antithetical interface is the *parasitical* interface. This interface occurs when the aim is to preserve the viability of the target, in such a way that illegal benefits can be extorted on a more or less regular basis. This interface can be used to understand all kinds of extortion practices.

The *predatory* interface is the third interface. This interface involves the situation when the aim is to destroy or bleed to death an organization, for example to control and fraudulently bankrupt a business. Both the parasitical as the predatory interface seem to be inspired on particular relationships that have been well-documented in the literature on (national) organized crime (Abadinsky, 1994; Block, 1981; Jacobs, 2001). Racketeering practices in the US and elsewhere, for example, can be understood with the parasitical interface. Within the literature on transnational crime, however, clear examples of these relationships are hard to find. Nevertheless, chapters 3 and 4 discussed a number of case studies that can partly be understood in terms of parasitical and predatory interfaces. Because of a lack of criminological literature dealing with these case studies, other literature was used to obtain the necessary information.

Especially the case studies of financial institutions are relevant here. However, in these cases the parasitical or predatory interfaces are usually combined with symbiotic interfaces. It is only in the long run, or at a more abstract level, that the relationships between certain actors can be understood as predatory or parasitical. This points at a rather important conclusion about these interfaces. The relationships between actors can be dramatically different at different points in time or at different levels of analysis. That is, antithetical interfaces can go hand in hand with symbiotic interfaces. The study of the illicit art and antiquities trade confirmed this finding.

Besides the examples mentioned above, many forms of terrorism can be understood with the predatory and especially the parasitical interface. Although the terrorist groups involved are often presented as aimed at the destruction of specific countries, institutions or even 'civilization', most seem to aim at specific political goals like the end of foreign occupations or influences or the change of local regimes.

The last antithetical interface is the *injurious* interface. It covers the relationship between actors that undermine, attack, or harm each other, as far as this not covered by the other interface types. An example is the illicit trade in toxic waste. Foreign territories, and their inhabitants, that are used to dump the toxic waste are seriously injured although the dumping did not take place specifically to inflict injury. The illicit art and antiquities trade almost always involved injurious interfaces.

10.2.2 *Symbiotic interfaces*

Outsourcing is the first symbiotic interface. Outsourcing refers to a division of labor between legal and illegal actors, where one party offers specialized services

to the other. These specialized services can for example involve the shipment of arms from legitimate producers to outlawed end-users, organized by arms brokers. The party offering these services can both be the legal as well as the illegal actor.

In case actors actually work together for the same offence, the interface is called *collaboration*. Cigarette producers that are actively involved in the organization of smuggling schemes or criminal networks are one example of this interface.

The third interface is called *co-optation*. This interface involves situations of mutual benefits but uneven power relations between the parties involved. High level customs officials that allow particular criminal groups to perform particular smuggling operations are just one example here.

In case legitimate organizations knowingly and willingly provide financial support for the operation of criminal groups, the interface is called *funding*. Charities that support terrorist organizations are an example of this interface. One of those charities was discussed in more detail in chapter 3. It is only after 9/11 that this topic has received full attention in Europe and the US.

Reciprocity is the fifth symbiotic interface. This interface involves a situation of consciously seeking mutual benefits for the legal and illegal actors. Relationships between individual users of illegal services or goods and their suppliers can be labeled as reciprocity.

The last interface is called *synergy*. We can speak of synergy when legal and illegal actors benefit each other while they go about their business independently promoting their interests and objectives. The practical effects of synergy are similar to those of outsourcing. Synergy may exist between actors involved in the same kind of business but also between different kinds of businesses. For example between certain banks and their customers that deposit the proceeds of drug trafficking or other crimes with them. Chapters 3 and 4 illustrated how certain relationships can turn from antagonistic to synergic or the other way around. In those cases it often depends on the intensity of illegal activities whether they are still beneficial for the legal actors. At some point, the balance turns out negative for the legal actors.

The lines between the different types of interfaces cannot be drawn meticulously in practice, although each type theoretically aims at a distinct type of relationship between legal and illegal actors. The typology provides an analytical tool to understand and describe different relationships between legal and illegal actors, independent of the kind of transnational crime or the kind of actors involved. Therefore, interfaces between legal and illegal actors involved in the illicit arms trade can for example be compared with interfaces in the trade in illegal drugs. Furthermore, the typology helps to nuance the idea of one-way connections between illegal actors who corrupt legal actors or invest their profits in legal

companies. Often, the initiative will come from legal actors, or they will at least work together voluntarily with illegal actors.

Despite the analytical usefulness of the typology, the interface between legal and illegal can sometimes be better described and understood with the so-called lock model. This is the case when interfaces are not only or primarily found *between* actors but instead *coincide with* specific individuals, organizations, or jurisdictions. Chapters 3 and 4 dealt with these actors or entities as interface. In chapter 5, the lock model was developed that helps to explain how these actors and entities can launder transnational crimes, or instead turn transnational legal activities into transnational crimes. Section 10.4 will discuss the lock model.

10.3 Individuals, legitimate organizations, and jurisdictions as interface

The interface typology describes interfaces *between* legal and illegal actors. This implies two or more actors, legal or illegal, and ‘an’ interface in between. The interface links an illegal and legal actor in a particular way, for example as partners in an ongoing collaboration. In other words, the interface describes the relationship that exists between two actors at some point in time. However, a particular actor will often have numerous relationships with legal and illegal actors around him. All these relationships can be labeled with the different types of interfaces from the typology. But in case this actor finds himself in the middle of legal and illegal actors that are connected to a particular transnational crime, such an actor can also, or instead, be seen as an interface himself. This is especially so in case the relationships with both legal and illegal actors are more or less on the same level. The same level means that an actor acts as criminal in his relationships with other illegal actors, while at the same time he acts as legal actor in his relationships with other legal actors.

10.3.1 Individuals as interface

We started with the analysis of the role of individuals as interface. On the basis of a number of case studies, it was argued that certain individuals themselves can be understood as an interface between legal and illegal actors. They often act as brokers arranging deals between different parties, for example in the illicit arms trade, or as dealer who combine the licit and illicit trade. In some cases, it is through these individuals, and the set-ups they invent, that illicit trades are laundered or that licit merchandise is funneled to the black market. It is for a number of reasons that these individuals can play such a role. These include the combination of several identities, for example as anonymous private person as well as established business men, and as citizens with diplomatic passports from different countries under different names etc. Furthermore, political protection at the highest levels sometimes plays a role. Through this protection, the discussed

individuals often generate immunity from prosecution in the countries in which they are doing business.

Analytically, two different models of individuals as interface were distinguished. On the one hand brokers in transnational crime and on the other hand transnational (criminal) dealers.

10.3.2 *Legitimate organizations as interface*

Besides individuals, some organizations can act as interface by themselves. The same laundering may take place through these organizations. The specific opportunities of legitimate organizations play an important role here. The possibility to change licit for illicit trade or to divert funds for illicit ends. We discussed a range of case studies in which all kinds of organizations could be understood as interface between legal and illegal actors. Banks, intelligence agencies, auction houses, and charities may all act as interface in specific circumstances. In practice, it will often be through such organizations together with the individuals discussed above, that transnational crimes are turned into legitimate activities or the other way around.

Legitimate organizations as interface can also be distinguished in two different analytical models. They were called the Ambrosiano model and the coffee shop model.

10.3.3 *Jurisdictions as interface*

Finally, jurisdictions can under certain circumstances act as an interface. To be sure, a jurisdiction is of course not a regular 'actor' like a human being or a legitimate organization. However, based on the laws of countries, or the absence thereof, they can have the same function as individuals or organizations. Such a jurisdiction is in the middle of a transnational chain of activities which are defined as transnational crimes at one side of its border, and as legitimate activities at the other. In practice, this mechanism will often involve certain organizations and individuals as well.

Besides the mere presence or absence of particular legislation, the activities of law enforcement agencies also play a role. In some case particular activities are criminalized in a jurisdiction although the relevant laws are never or rarely enforced. This may partly facilitate the laundering of certain criminal activities, in combination with other factors. The cause of this type of laundering was called the *de facto* interface. It is, however, not a pure interface like the individuals, organizations, and jurisdictions discussed earlier, but it consists of a mixture of these different models.

10.4 The lock model

The second research question was: how can the transformation of legal status of certain transnational activities be explained?

The findings from the case studies suggested an answer to this question. It is through certain individuals, organizations, and jurisdictions that this process can take place. In chapter 5 these findings were used to develop an analytical model besides the interface typology. This model, the so-called lock model, can be used to understand the mentioned process. This transformation can be understood as a ship going through a lock. The inner-part of the lock does not belong to either side of the lock. The same holds true for the individuals, organizations, and jurisdictions. They cannot be seen as purely legal or illegal but enable certain activities to be transformed from illegal to legal or the other way around. On the one hand these actors or entities illegally deal with (often criminal) actors while on the other hand they are engaged in fully legal transactions with (often legitimate) actors. It may also be that an organization deals with different parts of one actor on both sides, like for example with many money laundering operations. A drug trafficker can infuse funds to a bank on the one hand, while he takes it out (for example in a loan-back structure) in another capacity (for example with his legitimate corporation).

The lock model is not an alternative for the interface typology but aims to explain a particular process that can be found in many empirical cases of transnational crime involving an interface between legal and illegal actors. In all these cases, the interface typology can be used to describe all the relationships between the different actors involved.

Besides explaining this particular process, the lock model and the analyses that preceded its development, illustrate the importance of certain individuals, organizations, and jurisdictions. Individuals are often neglected in studies of transnational crime. Many authors look at transnational crime as the cross-border variation of local organized crime. Individuals do not fit in that perspective. Legitimate organizations are usually seen as passive actors used by, or infiltrated by, criminals. However, this study showed how certain legitimate organizations are the center of a range of transnational crimes and relationships with numerous illegal actors. Finally, the role of jurisdictions is often overlooked, except for the role of certain tax havens and secrecy jurisdictions. However, numerous countries that certainly do not fit the latter categories, act as havens for particular transnational crimes.

10.5 The illicit art and antiquities trade

We then discussed the empirical study of the illicit art and antiquities trade that was executed specifically for this study. There were two major reasons why the transnational illicit art and antiquities trade provided an interesting and useful

object of study within the context of a study of interfaces. The first reason is the assumption that this trade has many interfaces because in general stolen or smuggled art needs to be sold in the legal market to be profitable. This implies some form of laundering along the way from the moment of theft and/or illegal export to the sale to a customer. The second reason to study the illicit art and antiquities trade is the fact that it has hardly been studied by criminologists.

We outlined the data sources that were used for this study. These sources included official data from different countries, interviews with experts and dealers, and reports from specialized media. The literature on the illicit art and antiquities trade was used to complement these sources. After an outline of the sources, a general overview of the illicit art and antiquities trade was provided in chapter 7. The interface typology and lock model were discussed in chapters 8 and 9.

10.5.1 The interface typology and the illicit art and antiquities trade

A number of conclusions can be drawn with respect to the interface typology. First of all, the analysis of interfaces in the illicit antiquities trade did not produce clear examples of the predatory and parasitical interface. However, the injurious interface is a standard element of almost every criminal activity in the transnational illicit art and antiquities trade. Most instances of illicit trading in art and antiquities begin with either stealing or smuggling objects. Most of the time, objects are first stolen and thereafter smuggled abroad.

Furthermore, the antagonistic interface plays an important role in this field. In some cases, the antagonistic interface can be seen as one end of a continuum that has the synergy interface as its other end. This paradoxical observation is similar to the observations that were made with respect to legitimate organizations functioning as a lock. The beneficial or harmful consequences of the activities of one actor in relation to others can change over time as well as on different levels. This is rather remarkable because these two interfaces were clearly separated analytically in the interface typology. The exception to the rule that the antagonistic and synergy interface are clearly separated involves the situation where legal and illegal actors are involved in the same activity. Depending on the level of analysis or the point in time, the relationship between these actors will best be defined as antagonistic or synergic.

In addition to the typology, one new type of interface was added based on the findings in the empirical study of the illicit art and antiquities trade. The new interface was called a *facilitating* interface. It aims at situations of so-called internal thefts of works of art or antiquities that are subsequently sold abroad. Legitimate organizations are facilitating these thefts passively, by providing access to the objects involved and failure to secure the objects from insiders.

The symbiotic interfaces were also hard to separate from each other in the illicit art and antiquities trade. Relatively small details can make the difference

between one type of interface or another as the best description of a particular interface between legal and illegal actors. This decreases the added value of the typology for this particular field of crime, as opposed to some other fields of transnational crime like trafficking illegal drugs or human beings. As opposed to the latter types of transnational crime, it remains to be seen whether the illicit arms trade or other trades embedded in licit trades, can be compared to the art and antiquities trade. That is, whether the differences between the types of interfaces are also rather small within these trades.

10.5.2 The lock model and the illicit art and antiquities trade

As stated before, the typology can label all different stages of the process through which illicit art and antiquities are laundered. However, the lock model can help to explain this process. The laundering in individual cases can be explained by the combination of the different parts of the lock model: individuals, organizations, and jurisdictions as interface. One interesting conclusion from the cases in the Netherlands is the fact that laundering sometimes takes place primarily through the characteristics of this jurisdiction. These cases involve the import of art and antiquities from outside the European Union. As far as the Netherlands are concerned, these characteristics are rather simple: the complete absence of any legislation, except for the EU Directive and Regulation as well as legislation protecting a list of objects inside the Netherlands.²⁰³ Similar situations were found to be in place in jurisdictions like Hong Kong, Thailand, and South Africa.²⁰⁴ Through such jurisdictions, source countries and market countries of illicit art and antiquities are connected without the risk of detection of the illicit provenance of the objects involved.

The analysis of official and other data in the Netherlands, France and Italy illustrated the lock model 'in action'. For each country, one must distinguish between import and export and in the case of Italy between art and antiquities.

In Italy, the looting of antiquities is the beginning of the transnational illicit antiquities trade. The antiquities are primarily destined for collectors and museums in Switzerland, the United States, and other market countries. The study in Italy showed how these antiquities are usually laundered before they appear on the legal market. In many instances, the antiquities are first smuggled to Switzerland. In Switzerland they are given a false provenance, for example that the objects originate from private collection X or Y (in Switzerland) and have been in that collection for a long time. This 'long time' usually predates the

²⁰³ At the time of writing (November 2005) the Dutch government is working on legislation to implement the UNESCO 1970 Convention as well as the 1954 The Hague Convention. However, it will at the earliest be in 2006 that this legislation will be adopted and enter into force.

²⁰⁴ South Africa acceded to the 1970 UNESCO Convention in 2003. This may lead to the implementation of legislation against the illicit trade.

enactment of specific legislation in the countries involved that outlaws certain objects from being exported or transferred from one owner to another. Thereafter, the objects are sold abroad at auctions, art fairs or directly to museums and collectors. As Switzerland was no party to the UNESCO Convention until 2003, and is not a member of the EU, importers of objects from Switzerland did not run any risks because they legally bought objects that had effectively been laundered before. It is thus primarily through the differences in legislation between the countries involved, combined with the fraudulent techniques of certain individual dealers, that this laundering takes place.

As Switzerland has acceded to the 1970 UNESCO Convention and increased its efforts to counter the illicit trade, the described situation might change significantly for the better. If so, it remains to be seen how the antiquities trade will adapt to this change in opportunity structure.

With respect to works of art, the situation is, at least in theory, far more complicated due to the fact that these objects can be registered and recognized. Therefore, in case of theft, they will not be laundered for the simple reason that they cross certain borders and their owners claim a certain provenance. In case works of art are stolen from churches, museums or private collectors, their picture and relevant characteristics will ideally be included in the *Leonardo* database of the Carabinieri and the Interpol Stolen Art and Antiquities CD-Rom. However, works of art will in many cases be laundered as effectively as the antiquities discussed above. First of all, the use of registries of stolen art, like the Interpol CD-Rom, is rather limited in many countries. Therefore, even if objects are registered adequately this will not deter the trade in these objects in many countries. Furthermore, in case dealers suspect that the registration of stolen objects will potentially pose a significant problem they sometimes change the description of the objects in case they are brought in at auctions. They may slightly change the measurements as well as ascribe the object incorrectly. Through this they can frustrate the efforts of law enforcement agencies that try to recover stolen items by checking the catalogues of all major auctions of art and antiquities.

In France, the theft of works of art from chateaux, churches and museums, is in most cases the beginning of the illicit art trade. Many objects are smuggled to Belgium and the Netherlands and from there exported to yet other countries. The study of this trade showed that for decades the same modus operandi has been used successfully. The stolen objects are sold in Belgium or the Netherlands, where the new owner benefits from the civil code that directly grants full ownership to good faith purchasers from art dealers. The sale may be to an unsuspecting end-user or to another dealer who subsequently sells the objects to collectors abroad. In some cases, the objects themselves may be changed so as to frustrate any potential attempt to recover them. This is sometimes done, for example, with antique timepieces. The actual laundering of the objects involved is caused by a number of factors. In case the objects are sold

CONCLUSIONS

in Belgium and the Netherlands and subsequently shipped outside the European Union, the mentioned civil codes grant the new owner full ownership rights. The EU Directive 93/7, which nullifies this protection for the sake of restitution of smuggled items, is only applicable inside the European Union and can thus not be used against non-EU owners outside the EU. Furthermore, in practice the EU Directive has had hardly any noticeable effect on the trade in stolen works of art or antiquities. In case the objects remain in the EU, the indifference of most law enforcement agencies, as well as the failing system of registration and exchange of information between law enforcement agencies, will effectively launder the objects, or at least assure immunity from prosecution for their owners. The applicable, and limited, statutes of limitations in countries of continental Europe will further help this outcome.

The Netherlands was already mentioned above with respect to antiquities from outside the European Union. Due to the lacking legislation with respect to these antiquities, the mere import in the Netherlands often suffices for its effective laundering. Dealers in particular antiquities use this situation when they obtain items abroad and smuggle these to the Netherlands. In the country of origin (of the objects involved) these dealers act as smugglers and/or fences while in the Netherlands they act as professional art dealers. Only in case of antiquities that can be proven to be stolen, this can be otherwise. However, the difficulties of international collaboration between law enforcement agencies, combined with inadequate registration of stolen antiquities, minimizes the chance that stolen antiquities will be recovered and returned to their original owners.

In case of art and antiquities from inside the European Union, the situation is different due to the EU Directive and Regulation. In case antiquities can be proven to be exported from an EU country to the Netherlands after 1992²⁰⁵ and without export permit, they may be confiscated by the authorities and returned to the original owners after a civil procedure in which the country of origin claims the antiquities from the present owner. The fact that the present owner has purchased the antiquities in good faith cannot stop the country of origin from claiming them back although the present owner can under specific circumstances be granted damages.

When works of art are illicitly exported from the Netherlands to other EU member states, the same applies as discussed above. However, in case of illicit export from the Netherlands of legally protected works of art, to countries outside the EU, the same applies as discussed above with respect to the import of antiquities from outside the EU. As the Netherlands has not ratified the UNESCO 1970 Convention or the 1995 Unidroit Convention, it will not be able to claim back objects that have 'only' been illegally exported, that is objects that were not stolen before they were exported. These objects can thus easily be

²⁰⁵ As new member states were added to the European Union after 1992, another year defines the application of the EU Directive and Regulation.

sold on the legal market, as long as they do not enter the European Union before the statute of limitations has run out.

In case works of art in the Netherlands are not protected as such (this applies to the large majority of art) they may also be laundered easily after they have been stolen. In case stolen works are unintendedly bought and subsequently sold by a professional dealer, the good faith purchaser of the object is protected on the basis of the Dutch civil code. Furthermore, in case a work of art is stolen in the Netherlands and sold in a country where similar laws apply, these laws will effectively launder these objects.

The different situations in Italy, France, and the Netherlands illustrate how the illicit art and antiquities trade can under circumstances be transformed into a licit trade. The different variations of the lock model can help to understand this transformation. As far as the art and antiquities trade is concerned, the substantial difference in legislation between the countries involved is the most important factor enabling this process of laundering.

10.5.3 Other topics related to the illicit art and antiquities trade

The discussion of the typology and the lock model also produced several insights that increase the understanding of this field of crime and at the same time took away some myths that are often reiterated in publications about this type of crime.

First of all, the role of (civil) wars and similar disturbing phenomena was observed in many instances of illicit trade in art and antiquities. Examples are the looting of works of art during and after World War II, by the Nazis, the Soviets, and the Allied forces, and the looting of museums in many civil wars in for example Nigeria, Somalia, Iraq, Congo, Afghanistan and Kuwait. An interesting parallel can thus be drawn with the illicit arms trade, as well as the trade in conflict diamonds and some instances of drug trafficking. It was also shown that the so-called internal thefts of works of art and antiquities play a much larger role than usually assumed.

Furthermore, with respect to the illicit art trade in the Netherlands and other market countries, the empirical study pointed to the large scale of thefts from France and the subsequent role of Belgium and the Netherlands as market or transit countries for the stolen objects. This 'great ball of receivers' is largely neglected in the literature on the illicit art and antiquities trade. Especially in the Netherlands, this topic demands the full attention of both law enforcement agencies as well as researchers.

Thirdly, some common explanations for art thefts and the illicit trade in art appeared to lack much empirical proof. This involved the theft of, and trade in, works of art by organized criminals with a background in drug trafficking. Furthermore, it involved the theft of works of art ordered by rich collectors. This

common explanation for major thefts could not be backed up by any credible evidence.

Finally, the often mentioned link between the trafficking of drugs and antiquities cannot be substantiated with more than a few examples. Drugs and antiquities are rarely found together in aborted smuggling operations. Furthermore, very little evidence has been found that stolen works of art, or looted and smuggled antiquities were used to launder proceeds from drug traffickers or other criminals.

10.6 Recommendations for future studies on transnational crime and the interfaces between legal and illegal actors

10.6.1 Studies of transnational crime and interfaces

The current study can be used to reflect on research areas and questions that can benefit from an increased attention from researchers. This applies first of all to transnational crime in general and the interfaces between legal and illegal actors. It is also applicable to the study of specific types of transnational crime, in particular the illicit art and antiquities trade.

The first recommendation is to increase the number of empirical and theoretical studies focusing on transnational crime. The lack of these studies was one of the reasons to engage in the present study but the need for these studies is still apparent. Although this issue was not dealt with in this study, it seems that the field of transnational crime as a part of criminology still has to catch up with respect to the level of both theoretical and empirical studies. Finding answers to research questions, and formulating new questions, depends heavily on solid empirical studies. Especially in times of significant changes and challenges, empirical studies produce the much needed input for theoretical progress. During the 1990s these changes and challenges came for example from the imploded Soviet Union. A lack of empirical studies sometimes led to the wildest assumptions and theories about types of transnational (organized) crime connected with this part of the world. At this moment, a particular kind of terrorism provides a new challenge. Empirical studies can help to increase our understanding of these challenges and ideally help to suggest solutions to certain aspects of these challenges.

Even if the criminological studies do not help to decrease its present object of study, it can help to prevent contra-productive law enforcement policies. The ‘moral panic’ about transnational crime often initiated policies that did seriously compromise the rule of law and the integrity of law enforcement agencies without decreasing the actual occurrence of transnational crime. This may be especially so with respect to the recent policies against terrorism. Basic legal principles are easily discarded on the presumption that this is both necessary and effective. However, as during the 1990s in the fight against transnational crime, it

has not been proven yet that a significant increase in the competences of law enforcement and intelligence agencies provides the solution to the threat of terrorism. What has been proven, however, is the fact that these increases sometimes infringe civil liberties in a way that seems to be incompatible with what is generally accepted as the norm in free and democratic societies. Empirical studies of different forms of terrorism should ideally help to explain the causes and describe the modus operandi and types of perpetrators. On the basis of such studies, one could help to suggest policies that are effective against terrorism without unnecessarily discarding these liberties or causing collateral damage that may even induce more or new incidents of terrorism. The best example of the latter danger is of course the war in Iraq and the treatment of prisoners in Guantánamo Bay as well as elsewhere. However, less well-known examples are also important here. The way in which the US administration has acted against all kinds of so-called informal value transfer systems (IVTS), often misleadingly called ‘underground banking’ by law enforcement agencies around the world helps to estrange foreign populations from anti-terrorism policies that should ideally be the first to mobilize in favor of such policies. Furthermore, it directly harms millions of people that often depend on these systems for their daily survival in regions that are not yet covered by regular banking facilities.

In addition to the need for empirical studies as such, the need for an interdisciplinary approach is evident. This is not meant as an obligatory recommendation as it is coined so often. Understanding transnational crime, as well as the interfaces between legal and illegal actors, touches on so many different disciplines that it cannot be understood from just one perspective. These disciplines include at least public administration, economics, law, political science, and criminology. Furthermore, it has already been mentioned that some appreciation of the historical background of certain transnational crimes is needed to fully understand these crimes and their precedents in previous eras. Often, seemingly new crimes and threats have precedents in the past, and have been well-documented before by researchers from other disciplines. Finally, other disciplines can help to analyze the debate on transnational crime and in particular terrorism, together with the law enforcement policies and their justifications.

As far as interfaces are concerned, the need for empirical studies is also apparent. Such studies should shed more light on the causes of different types of interfaces in specific transnational crimes and in specific regions or countries. They should further elaborate on the way licit and illicit markets are connected. As far as the actors are concerned, studies should more often focus on the legitimate actors. Not only corporations, but also some governments agencies can and do play relevant roles in certain transnational crimes. The same goes for certain charities that are related to terrorist organizations. Furthermore, empirical studies can test and improve the lock model that was developed in this study. This also has to include further study of the role of individuals, legitimate organizations, and jurisdictions that was discussed in this study.

CONCLUSIONS

Finally, the role of all kinds of (civil) wars, revolutions, boycotts, and similar phenomena should be studied more often within the context of transnational crime. Many instances of transnational crime are in some way related to these phenomena but this does hardly lead to any theorizing.

10.6.2 Studies of the illicit art and antiquities trade

The empirical study of the illicit art and antiquities trade provided several insights that were summarized above. However, it also revealed some topics that could benefit from new empirical studies.

With respect to the illicit art trade, there are several research questions that should be studied empirically. To a large extent it is still unknown what the destination of most stolen works of art is. A minor part turns up at some point at auction houses or galleries. However, the trajectory of the objects involved from theft onwards usually cannot be fully reconstructed. Future studies should thus be guided by several research questions. First of all, what kind of perpetrators are responsible for art thefts? Furthermore, where do all the stolen objects go? Are they sold to unsuspecting private persons or to complicit dealers? Finally, what is the role of insiders with both the theft of, and trade in, works of art?

The illicit antiquities trade has been a little more transparent than the illicit art trade. Furthermore, in the empirical study executed for this study, new insights about this trade have been added. These included the type of antiquities that are smuggled to or through the Netherlands, the destination countries as well as the countries that are used as transit countries.

However, some topics demand further study. First of all, the scale of the illicit trade is largely unknown with respect to many objects and destinations. The official files that were studied in the Netherlands, for example, do not justify any rough estimate of the overall size of the trade. Foreign sources, like the data from the Italian Carabinieri or the Illicit Antiquities Research Centre at the Cambridge University, do only span particular geographical regions or particular objects. Furthermore, the role of (civil) wars and similar phenomena should be given a proper place in the literature about this trade. It should no longer be treated as separated from the illicit trade in general but as an integral part of it. Finally, with respect to legislative instruments, it should be asked whether more effective legislation can be formulated, or whether the existing legislation can be used and interpreted in a more productive way. Despite the great importance that is granted to well-known treaties, there is no convincing evidence that the ratification of these treaties by itself does substantially decrease the illicit trade in the countries involved.

10.7 Recommendations for public policies

In addition to the recommendations relating to criminological studies, several recommendations can be suggested with regard to public policies. These will be limited to those that can reasonably be based on the results of the discussions and findings in this study. The different recommendations should not be seen as clear-cut solutions for a number of observed problems in this particular area. They are meant as suggestions to formulate policies that may eventually reduce the problem of transnational crime and the interface between legal and illegal actors.

10.7.1 Public policies in general

The introduction of this book discussed one of the primary causes of transnational crime which is the difference in legislation between countries with respect to all kinds of licit and illicit goods and services. These differences stimulate the illegal traffic in these goods and services across borders. Sometimes countries differ to such a degree that the trade in, or ownership of certain goods is legal in one country while illegal in another. However, sometimes the differences only exist as far as the intensity of law enforcement is concerned, or in the level of taxation of certain legal goods. In the analyses of the interface typology and the development of the lock model, it turned out that these differences in legislation are as crucial for the topic of interfaces as they are for transnational crime in general. Differences in legislation can even play a role in laundering certain transnational crimes, as was discussed in chapters 3 and 4. Chapter 5 integrated this finding as part of the lock model.

The differences mentioned above are not immutable facts of life but can be changed or at least influenced by public policies. Hereafter, several general recommendations will be formulated to deal with these differences. Following these general recommendations, several recommendations with respect to the illicit art and antiquities trade will be formulated. Some of these recommendations may be criticized to hammer on an open door. However, as long as some obvious policies are not implemented it is justified to reiterate their potential in dealing with transnational crime and related problems.

The first recommendation is to strive for more harmonization of legislation on topics related to transnational crimes. This may involve dramatic changes in legislation but also minor adaptations with major (positive) consequences for particular crimes. In its most simple variation, the harmonization only involves a change in taxation of certain goods. This may lessen or even take away the motivation to smuggle these goods. Cigarette smuggling is the primary example here. This type of transnational crime is for a large part caused by the differences in taxation of this product. Within Europe, for example, differences between countries in the level of taxation are the cause for large-scale smuggling

CONCLUSIONS

operations. It should be noted of course that without these differences there will still be grounds for trafficking cigarettes or other similar goods. As long as there are ways to evade any taxes, instead of seeking the lowest level in a particular region (which still means considerable taxes), smuggling will continue. Despite the fact that it will thus be difficult or impossible to prevent most instances of cigarette smuggling, harmonizing the level of taxation within a particular region will probably limit the losses in tax revenues significantly. Furthermore, it will free the capacity of law enforcement and customs agencies for more pressing types of transnational crime. It should be stressed here that the above reasoning is not the same as an argument to abandon all taxes on cigarettes or similar goods. However, within specific regions, like the European Union, or the US and Canada, there is no convincing argument why levels of taxation cannot be harmonized so as to decrease the incentive for large-scale smuggling.

In a way the kind of differences mentioned above are probably the easiest to solve in comparison with other differences. In the situation above, specific goods are legal in both countries and are only causing illegal activities because of differences in taxation. With respect to several other goods and services, the differences are larger. Especially chapter 4, on jurisdictions as interface, illustrated, for example, the importance of tax havens and secrecy jurisdictions and the services that these jurisdictions offer. Strict bank secrecy laws, instant-corporation businesses and anonymity of shareholders are helpful instruments for transnational crimes. The difference between jurisdictions offering these services and those that do not and strongly oppose them, is hard to bridge. However, that is not to say that it is impossible or that one should not strive towards harmonization bit by bit. The attempts to do this in Europe have shown how difficult this can be but at the same time that changes can be reached, although slowly.

The secrecy jurisdictions can be understood as a hole in the international patchwork of regulation. The attempts mentioned above are filling these holes a little. In addition to this specific topic, all kinds of jurisdictions should have their holes 'filled'. As far as art and antiquities are concerned, this applies for example to the Netherlands or Thailand; as far as toxic waste is concerned this applies to many developing countries, and as far as arms are concerned this applies to countries like Singapore or some former Soviet Republics.

The role of tax havens should not obfuscate the fact that as far as money laundering is concerned, Western countries like the US and the UK have always played a rather important role. The revelations about large-scale money laundering for Russian criminals by Western banks are a recent example of this role. The same goes for the role of these banks as well as other companies in all kinds of infrastructural and other projects in development countries in which billions of euros simply disappear. Since 2001, the regulatory structure to control the banking sector has become significantly stricter. It remains to be seen however, whether the increased regulation will decrease the potential and

occurrence of money laundering. Furthermore, it remains to be seen whether all regulations will stay in place as the fear of terrorism subsides.

The role of financial institutions and other legitimate organizations was discussed in chapter 3. The different kinds of organizations call for different public policies. In the diamond trade, increased regulation and enforcement could help to prevent or cut links between legitimate dealers and auctions on the one hand and outlawed guerrillas and smugglers on the other hand. With regard to charities, regulations to promote transparency could prevent them from being used for terrorist purposes without stigmatizing dozens of organizations involved in purely humanitarian projects.

The discussion of the so-called coffee shops raises the question as to whether partial or whole legalization of certain types of drugs could decrease the most important type of transnational crime without increasing the consequences of drug abuse. As this topic has not been discussed in-depth in this study, this question will only be raised here for further thought. A parallel can be drawn between the fight against drug trafficking and the prohibition of alcohol in the USA during the 1920s, that is described in almost every textbook on organized crime. A consensus seems to be present that prohibition only caused more crime, it corrupted politicians, it made gangsters rich, and most importantly, it did not keep people from drinking.

10.7.2 Public policies with respect to the illicit art and antiquities trade

In the sections above, several recommendations were already mentioned with respect to the illicit art and antiquities trade. The Netherlands, together with several other market countries, should adopt or change legislation to be able to effectively act against the traffic in stolen and smuggled art and antiquities. New legislation should be adopted to implement the treaties against the illicit trade (after these have been ratified) and existing legislation should be adjusted to deal more effectively with the trade in stolen and smuggled art. The latter recommendation involves changes in the statute of limitations as well as the protection of good faith purchasers. In addition to the mere adoption of legislation, concrete and effective policies should be developed to enforce these laws.

In the addition to these legislative changes, there are more practical changes that can be recommended. First of all, law enforcement agencies in market countries should increase their efforts with respect to this type of crime. In some countries this means start devoting attention to this topic, as specialized police units are now lacking. Furthermore, the registration of stolen art should be started (in countries that lack any registration) or increased (in countries that have outdated or incomplete registries). In addition to that, the information in these registers should be easily exchanged between countries so that it can assist the recovery of stolen objects. Technically it is relatively easy to connect databases of

CONCLUSIONS

stolen art and let large groups of users share in a basic register of stolen objects. Besides the national registers, and the exchange between national registers, the use of the Interpol register should be stimulated and this registration itself should be made more efficient. Finally, and not the least important, ways should be found to stimulate an awareness that the illicit art and antiquities trade matters very much; not because it is illegal, not because it is the most important transnational crime in numbers or monetary terms (it clearly is not) but because it is human history and culture that is stolen and often lost forever.

