

A Study on Transnational Organised Crimes And Terrorism

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ABSTRACT

Transactional crimes are crimes that have actual or potential effects across national borders and crimes that are intrastate but offend fundamental values of the International Community. The term is commonly used in the law enforcement and academic communities. Transactional organized crime refers specifically to transactional crime carried entirely by crime organizations.

The word transactional describes crimes that are only international (that is, crimes that cross borders between countries), but crimes that by their nature involve cross – border transference as an essential part of the criminal activity. Transactional crimes also include crimes that take place in one country, but their consequences significantly affect another country and transit countries also may be involved. Transactional crimes also be crimes of customary international law or international crimes when committed in certain circumstances. They may in certain situations contribute crimes against humanity.

Keywords: *Transactional organized crimes; trafficking; protocol; Terrorism; Asylum; organized crime; prostitution; gambling; forgery; immigrants; investigation*

INTRODUCTION

Today, a criminal considers the world as his field of operation. He commits a crime in one country, deposits the money derived from criminal activities in an offshore bank in another country and takes refuge in yet another country. The widespread political, economic, social and technological changes as well as variations in legislation, procedures and policies in different countries on mutual assistance in criminal matters have allowed organized crime groups to become increasingly active in the international arena. International criminal organizations are taking full advantage of globalization of world markets, dismantling of trade barriers, the increased case of international travel, liberalized emigration policies, high-tech communications equipment and sophisticated money laundering techniques to enhance and further their criminal efforts and to forge alliances with other criminal groups. They are engaged in such felonious activities as illicit drug trafficking, money laundering, the use of violence and extortion, acts of corruption, trafficking in women and children, illicit manufacturing of and trafficking in firearms, environmental crime, credit card fraud, computer related crime, illegal trafficking of stolen vehicles, industrial espionage and sabotage, maritime piracy, etc. The problems raised by the current acceleration of the globalization process cannot be brought under control unless various governments coordinate the strategies and policies at the national level with the strategies, policies and regulations issued at the international level.

ORGANISED CRIME

The concept of organized crime was born in the United States in the nineteenth century. In just one decade, organized crime has gone from being considered a problem limited to certain countries or regions, the result of

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specific historical circumstances and scarcely affecting the political decision making, to becoming one of the basic factors when defining threats to national security in general and democratic governance in particular. Organized crime is no longer considered a delicate problem of criminality which has become spread and structured to a certain extent, but a phenomenon operating on a wide scale likely to harm the functioning of society and politics worldwide, although its effects vary depending on certain conditions.

A wide ranging inventory of organized criminal activities include the supply of illegal goods and services, such as the production and trafficking of drugs, trading in weapons, children, organs, illegal immigrants or nuclear material, gambling, usury, forgery, hired killings and prostitution; the sale of stolen property, especially luxury cars, animals and works of art; helping out legitimate companies in illegal matters such as breaking environmental or labor laws; the use of legal networks for illicit activities including the management of transport companies for drug trafficking or construction investment to money laundering; finally, systematic predatory action such as piracy, extortion and kidnapping.

- According to UN Convention against Transnational Organized Crime (CATOC) 2000, organized crime is a "structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences in order to obtain, directly or indirectly, financial or other material benefit."
- In the United States, the Federal Bureau of Investigation (FBI) defines "organized crime as any group having some manner of a formalized structure and whose primary objective is to obtain money through illegal activities. Such groups maintain their position through the use of actual or threatened violence, corrupt public officials, graft, or extortion and generally have a significant impact on the people in their locales, region, or the country as a whole."
- Interpol has since 1988 proposed its own definition of organized crime: "Any enterprise or group of persons engaged in a continuing illegal activity which has as its primary purpose the generation of profits irrespective of national borders."²

TRADITIONAL ORGANISED CRIME

Transactional organized crime that is coordinated across national borders, involving groups or marketplaces of individuals who plan and execute unlawful economic endeavors in more than one country. These criminal organizations employ systematic violence and corruption to attain their objectives. Drug trafficking, arms trafficking, sex trafficking, toxic waste disposal, materials theft, and poaching are all examples of transnational organized crime.

The United Nations Convention against Transnational Organized Crime (UNTOC, often known as the Palermo Convention) is a multinational treaty against transnational organized crime that was established by the United Nations in 2000. The United Nations Convention against Transnational Organized Crime, which was enacted by the General Assembly in Resolution 55/25 on November 15, 2000, is the most important international tool in the battle against transnational organized crime. It was signed by the Member States at a High-level Political Conference held in Palermo, Italy, on December 12-15, 2000, and came into force on September 29, 2003. Development of convention is because of the realization that the threat of organized crime is no longer domestic one but has gone global.³

The Convention is a significant step forward in the fight against transnational organized crime, as it demonstrates Member States' acknowledgement of the importance of the issues it raises, as well as the necessity to encourage and expand close international collaboration to address those issues. States who ratify this treaty agree to take a number of steps to combat transnational organized crime, including the development of domestic criminal offences and the adoption of new and broad extradition mechanisms. The States also need to ensure mutual legal assistance, legal enforcement, and the promotion of training and technical assistance for

² <http://www.unoccupied.org/undoc.org/unodc>

³ <https://blog.ipleaders.in/all-you-need-know-about-Organized>

building or upgrading the necessary capacity of national authorities. The depositary of the Convention is the Secretary-General of the United Nations.

The UNTOC has three supplementary protocols (Palermo protocols) namely:

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.
- Protocol against the Smuggling of Migrants by Land, Sea, and Air.
- Protocol against Illicit Manufacturing and Trafficking in Firearms.

The UNTOC is the main legal international instrument to fight organized crime, but its efficiency depends on each member's ability to implement the organization's framework.⁴

TRANSNATIONAL ORGANIZED CRIME AND TERRORISM

Terrorism has a long history, appearing in nearly every asymmetric conflict. One of the earliest accounts of terrorism centers on non-state actor resistance to the Roman Empire in the Judea Province in the 1st century CE. Groups of all religions, national origins, political aims, and ideological creeds have used violence or the threat of violence against civilian targets to seek political or social change. In the 21st century; there is an unfortunate tendency to associate terrorism with fundamentalist Islamist groups and to assume al-Qaeda “invented” terrorism in September 2001. In reality, in 2019, 265 distinct terrorist groups were active across six continents and carried out attacks in more than 70 countries⁵

There are two primary non-State groups, namely the Taliban and Al-Qaida, which have been designated “terrorist” organizations by the Security Council. In 1999, following the refusal of the Taliban to surrender Osama Bin Laden and his associates for their roles in the August 1988 attacks on United States Embassies in Kenya and the United Republic of Tanzania, under its resolution 267 (1999) the Security Council designated as terrorist groups the Taliban and associated individuals and entities, through targeted travel and arms embargos, and financial/ assets sanctions. In 2011, under Security Council resolution 1989 (2011), the Council divided the so-called “Consolidated List” of individuals and entities associated with the Taliban and Al-Qaida into two separate lists: the “Al-Qaida, or 1988 List”, and the Taliban List, which contains those individuals and entities associated with the Taliban who are deemed to present an ongoing threat to the peace and security of Afghanistan.

DEFINITIONS OF TERRORISM

Terrorism is a tactic, commonly understood to mean the use of violence (or threat of violence) by a non state actor against a civilian or other non legitimate target, with the intent of achieving a political, social, economic, or ideological goal. Generally, the true targets of terrorism extend beyond the immediate victims of violence to include the broader community.

The purpose of terrorist attacks is to generate fear due to indiscriminate violence. Because terrorism is a tactic and may be used as part of a suite of activities, deciding exactly who is a terrorist is a fraught political endeavor. For non specialists and the media, terrorist groups can be difficult to differentiate from rebel, insurgent, criminal, or guerrilla groups, despite variations in their technical definitions.⁶

- In 1994, the General Assembly's Declaration on Measures to Eliminate International Terrorism, set out in its resolution 49/60, stated that terrorism includes “criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes” and that such acts “are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.”

⁴ <https://www.google.co.in/url?sa=i&rct>

⁵ (National Consortium for the Study of Terrorism and Responses to Terrorism (START), 2019).

⁶ <https://oxfordre.com/internationalstudies/display/>

□ The Security Council, in its resolution 1566 (2004), referred to “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or an international organization to do or to abstain from doing any act”.

□ The Secretary-General's High-level Panel on Threats, Challenges and Change described terrorism as any action that is “intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act” and identified a number of key elements, with further reference to the definitions contained in the 1999 International Convention for the Suppression of the Financing of Terrorism and Security Council resolution 1566 (2004).

□ The General Assembly is currently working towards the adoption of a comprehensive convention against terrorism, which would complement the existing sectoral anti-terrorism conventions. Its draft article 2 contains a definition of terrorism which includes, “unlawfully and intentionally” causing, attempting or threatening to cause:

- (a) Death or serious bodily injury to any person; or
- (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or
- (c) Damage to property, places, facilities, or systems..., resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.⁶

INTERNATIONAL MECHANISM TO 'TACKLE TERRORISM

1. The Convention on Offences and Certain Other Acts Committed on Board Aircraft, adopted in Tokyo in 1963 (First international treaty against terrorism.)
2. 1970 Convention for the Suppression of Unlawful Seizure of Aircraft,
3. 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation,
4. 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents,
5. 1979 International Convention against the Taking of Hostages
6. 1979 Convention on the Physical Protection of Nuclear Material.
7. 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
8. 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection,
9. 1997 International Convention for the Suppression of Terrorist Bombings <https://oxfordre.com/internationalstudies/display/10.1093>
10. 1999 International Convention for the Suppression of Financing of Terrorism.

- **Universal Jurisdiction**

The principal obligation set forth in the international treaties against terrorism is to incorporate the crimes defined in the treaty in question into the domestic criminal law, and to make them punishable by sentences that reflect the gravity of the offense. The states parties to these treaties also agree to participate in the construction of “universal jurisdiction” over these offenses, that is, to take the necessary measures to give their courts very broad jurisdiction over the offenses in question, including jurisdiction based on territoriality, jurisdiction based on the nationality of the offender and the victims and, according to most of these treaties, jurisdiction based on the mere presence of a suspect in the territory of the state.

In addition, they accept the obligation either to extradite any suspected offenders found in their territory or to begin criminal proceedings against them. In order to facilitate extradition these treaties invariably provide that the offenses in question shall not be considered political offenses, which are not extraditable under most treaties on extradition. In addition, these treaties require various types of cooperation among the states parties, ranging from cooperation in preventing terrorist acts to co-operation in the investigation and prosecution of the relevant offenses.

□ **Right to due process**

Article 9 of the 1973 Convention on internationally protected persons, for example, provides simply that “Any person regarding whom proceedings are being carried out in connection with any of the crimes set forth in article 2 shall be guaranteed fair treatment in all stages of the proceedings.” Similar provisions are found in the 1979 Convention against hostage-taking, the 1979 Convention on nuclear material and the 1988 Convention on maritime navigation. The 1997 Convention against terrorist bombings and the 1999 Convention against the financing of terrorism contain the following, more comprehensive formula. Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law and also recognize the right of a foreign detainee to communicate with, and in some cases to receive the visit of, his or her consular representative.

The 1997 Convention against terrorist bombings and 1999 Convention against the financing of terrorism provide that a detainee has the right to be informed of his or her right to contact a consular representative.

□ **Right to asylum**

With regard to the right to asylum, the saving clause contained in the 1973 Convention on internationally protected persons and the 1979 Convention against hostage-taking provides that “The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force as of the date of the adoption of this Convention, as between the States which are parties to those Treaties”. The Convention against hostage-taking also contains an important provision that, in substance, reaffirms the principle of non-refoulement, a cornerstone of international refugee law. The 1997 Convention against terrorist bombings and 1999 Convention against the financing of terrorism not only recognize this principle, but also extend it to mutual legal assistance.

□ **Suppression of financing of terrorism**

The 1999 convention against the financing of terrorism criminalizes the donation or collection of funds to support “Any other act intended to cause death or serious bodily injury, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act”. This represents a milestone in the development of international law on terrorism, because it is the first treaty provision to refer to the purpose of terrorism as recognized by international humanitarian law, namely, to terrorize the population. Unlike some earlier treaties, it does not criminalize acts intended to coerce private persons or corporations. This limitation helps to distinguish terrorism from ordinary crime and underline the uniqueness of the threat it poses to peace and security.

□ **Fourth Geneva convention**

International humanitarian law contains several provisions that expressly prohibit acts of terrorism. Article 33 of the Fourth Geneva Convention provides in part that “Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.” A similar provision is found in the two Additional Protocols to the four 1949 Geneva Conventions: Article 51(2) of Protocol I on international armed conflict and 13(2) of Protocol II on non-international armed conflict provide in part that “Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.” Article 4(2) of Additional Protocol II provides

that “acts of terrorism” against civilians and non-combatants “are and shall remain prohibited at any time and in any place whatsoever”. International humanitarian law also contains provisions which, without using the term “terrorism”, prohibit acts that - depending on the intent, the nationality of the perpetrator and victims and other such considerations - may be prohibited by one of the treaties against terrorism. The prohibition in Article 3 common to the four Geneva Conventions of acts of violence against “persons taking no active part in hostilities”, for example, would apply to some acts of terrorism. Similarly, the prohibition of attacks against nuclear power plants in Article 56 of Additional Protocol I would apply to some acts prohibited by the 2005 Convention against nuclear terrorism.

Four of the treaties against terrorism - the 1979 Convention against hostage-taking, the 1997 Convention against terrorist bombings, the 1999 Convention against the financing of terrorism and the 2005 Convention against nuclear terrorism - contain provisions referring to international humanitarian law, or to concepts derived from it. Most of them are exclusionary clauses, designed to ensure that acts that in Principle come within the scope of both international humanitarian law and international law against terrorism are governed by one or the other.

□ SAARC convention

SAARC is geopolitical, in addition to a monetary corporation consisting of eight South Asian nations. It performs as an agent of guiding force for its member states. The SAARC Convention (Suppression of Terrorism) Act, 1993 was introduced to make the Convention on Suppression of Terrorism of the South Asian Association for Regional Cooperation (SAARC, Act no. 39 of 1993) successful. The SAARC regional on 4th November 1987, signed the Convention on Suppression of Terrorism, and on 22nd August, 1988, it came into effect. As India was the signatory and rectifying country to the agreement, the act was implemented. The member states are Afghanistan, Bangladesh, Bhutan, India, the Maldives, Sri Lanka, Nepal and Pakistan and also includes nine observers which are Australia, China, the European Union, Iran, Japan, the Republic of Korea, Mauritius, Myanmar, and the United States of America.

□ Objective and scope of the Act

Compiling the Dhaka Summit, 1985 and the Bangalore Summit Declaration, 1986 discussions, the organization came across the following objectives as necessary to achieve under this convention:

1. To eliminate terrorism as it affects the stability and security of the countries.
2. To eradicate all the acts, means, and practices of terrorism.
3. To unequivocally castigate the methods used by criminals to increase the terrorism as their abhors impact the life and property, regional and international peace, socio-economic development, political and development stability.
4. To maintain a good friendly relationship with the neighbours which gets hampered by the acts of terrorism.
5. To ensure that the territorial integrity and the sovereignty of States aren't jeopardised.
6. To take stringent steps to make sure that enforcers of the terroristic acts are prosecuted and punished by making way for their deportation, prosecution and extradition.
7. To acknowledge the norms, standards, and ethos of UN Resolution 2625, which says that each of the States shall forbear from enduring, provoking, and abetting terroristic practices in other regions or states:

This Act is applicable and extends to the entire Indian territories but Section 6 of the Act. Offenses having political character are not to be dealt with under this Act like an offense under the provisions of the Extradition Act, 1962. The Act also comprises a Schedule, which includes Convention Articles that are applicable in India as it is one of the Convention signatory countries.

Recent Developments

The nexus between transnational organized crime and terrorism is a complex and multifaceted phenomenon, posing a concrete threat to international peace, security and the development of states. Many regions see close linkages between terrorist and criminal groups, exploiting porous borders and weak governance.

Member States have expressed increasing concerns about terrorists benefiting from organized crime as a source of financing or logistical support, through the illicit trafficking in goods and many other criminal activities. Numerous Security Council resolutions have addressed this growing phenomenon and since 2016.

1. UNODC supports links between organized crime and terrorism through a variety of projects. This includes initiatives on improving border management, such as profiling high-risk passengers and cargo, facilitating international cooperation, and combating the financing of terrorism. In 2019, the Security Council adopted resolution 2482, which urged Member States to address the links between terrorism and organized crime, by adopting policy measures. Great strides have been made to better understand the linkages between terrorists and organized criminal groups owing to the adoption of Resolution 2482 with the emphasis on the following measures:

- Ratifying relevant legal instruments, including the global counter-terrorism instruments, the Convention against Transnational Organized Crime, and the international drug control conventions;
- Fighting money-laundering, terrorist financing, and corruption by firming up Financial Intelligence Units, following relevant United Nations instruments and resolutions and Financial Action Task Force (FATF) recommendations, as well as building public-private partnerships;
- Strengthening border security and international coordination, for example by collecting, and analysis APYPNR passenger data;
- Implementing comprehensive responses to drug demand and illicit drug trafficking;
- Improving prison management, to prevent radicalization to violence recidivism; and
- Developing strategies incorporating whole-of-society approaches to prevent and counter violent extremism.

2. UNICRI is supporting Member States to strengthen their capacities by sharing knowledge and promoting a comprehensive approach to the threat. UNICRI makes extensive use of the available technology to ensure the trainings in person and online (especially during the COVID 19 pandemic) are informative as well as dynamic to favour the full engagement of participants. By using video animations of real case scenario-setting exercises, we ensure that participants can interact and solve the specific challenges they face in performing, their duties.

UNICRI has also recently conducted three capacity-building workshops in Chad, Mali and Mauritania in partnership with UNODC and the governments of Germany and France. UNICRI's practical training has proven to be effective in enhancing expertise and contributing to the practitioners' portfolio, ensuring the full understanding of the linkages between transnational organized crime and terrorism and knowledge of the instruments to prevent and counter them. Investigating, prosecuting, disrupting, and dismantling the trafficking networks linked to the nexus between terrorism and transnational organized crime is a priority, especially in the achievement of Goal 16 of the UN 2030 Agenda.

Other Countries

United States

The United States has a number of anti-terrorism laws, notably the USA PATRIOT Act and the Foreign Intelligence Surveillance Act (LISA). Terrorism is defined broadly and includes both local and foreign terrorism. The government can jail suspected terrorists, intercept communications, seize assets, and employ military action. Terrorism-related offenses can result in harsh penalties, such as long jail sentences or possibly the death penalty.

□ United Kingdom

Counter-terrorism legislation in the United Kingdom has evolved significantly, with prominent examples including the Terrorism Act of 2000 and the more recent Counter-Terrorism and Border Security Act of 2019. The laws address many facets of counter-terrorism, such as terrorist organization proscription, preventive detention, and strengthened surveillance powers. Terrorism is defined broadly, including activities that endanger the security of the state or public safety. There have been discussions on how to strike a balance between security and civil liberties.

□ European Union

The EU has built a framework to tackle terrorism, which includes the EU Terrorism Directive. This framework urges member countries to harmonize their definitions of terrorism and to implement common sanctions for terrorist offenses. It also deals with topics such as terrorist financing, facilitation, and extraterritorial jurisdiction. However, implementation varies between member countries.

□ India

The Unlawful Activities (Prevention) Act (UAPA) and the National Investigation Agency (NIA) Act are two of India's terrorism laws. The UAPA defines terrorism broadly and allows organizations to be designated as terrorist entities. The government has the authority to prohibit organizations from operating, imprison people, and seize assets. Critics claim that these regulations can be used to stifle dissent and target minority groups.

Terrorism-fighting organizations in India

To combat terrorism in India, many police, intelligence, and military organizations have developed specific agencies. The Anti-Terrorism Squad (ATS), the Research and Analysis Wing (RAW), and the National Investigation Agency (NIA) are significant anti-terrorism agencies in India.

□ Pakistan

Pakistan's anti-terrorism legislation includes the Anti-Terrorism Act (ATA) and the Pakistan Protection Act. In terrorism cases, these laws establish special courts, accelerated procedures, and expanded authority for law enforcement authorities. However, there have been concerns that these rules would be abused to target political opponents and limit free speech.⁷

CONCLUSION

Organized crime is characterized by both, the nature of the Criminal conduct and also by the structure of the criminal group. Transnational organized crime has changed in complicated Ways, partly due to new technologies and new opportunities, and partly due to the selective activities of law enforcement.

Meanwhile, the emergence of global terrorism has given a further dimension to the problem. Notwithstanding the conceptual ambiguities of distinguishing between organized crime and terrorism, terrorist groups appear to be engaging in criminal activities to gain access to financing, and new working relationships are forming among crime networks, terrorists, and political insurgents. Our knowledge of these developments remains somewhat sketchy, partly due to limited and conflicting intelligence reports. The other problem is the convention is limited in scope and too slow to respond to the fast-changing nature of the problem. How we go forward from this situation remains a tremendously intricate issue to resolve. Evaluating what has been done appears a vital task, yet arguably the methodology for doing so remains unclear. It is not enough to measure the implementation of the convention; the real challenge lies in making the connection between the convention and real-world changes in the harm caused by organized crime.

⁷ <https://www.google.co.in/2Fwww.routledge.com/2FTerrorism-Law-and-Policy-A-Comparative>

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