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978-0-521-71376-4 - Crime, War, and Global Trafficking: Designing International Cooperation

Christine Jojarth

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## *Crime, War, and Global Trafficking*

Globalization creates lucrative opportunities for traffickers of drugs, dirty money, blood diamonds, weapons, and other contraband. Effective countermeasures require international collaboration, but what if some countries suffer while others profit from illicit trade? Only international institutions with strong compliance mechanisms can ensure that profiteers will not dodge their law enforcement responsibilities. However, the effectiveness of these institutions may also depend on their ability to flexibly adjust to fast-changing environments. Combining international legal theory and transaction cost economics, this book develops a novel, comprehensive framework which reveals the factors that determine the optimal balance between institutional credibility and flexibility. The author tests this rational design paradigm on four recent anti-trafficking efforts: narcotics, money laundering, conflict diamonds, and small arms. She sheds light on the reasons why policymakers sometimes adopt sub-optimal design solutions and unearths a nascent trend toward innovative forms of international cooperation which transcend the limitations of national sovereignty.

CHRISTINE JOJARTH is a Social Science Research Associate at the Center on Democracy, Development, and the Rule of Law at Stanford University.

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Contents

<i>List of figures</i>	<i>page</i> vii
<i>List of tables</i>	viii
<i>List of abbreviations</i>	x
<i>Preface and acknowledgments</i>	xiii
1 Introduction	1
1.1 Crime, war, and global trafficking	2
1.2 Explaining institutional design	9
1.3 Methodology	15
1.4 Outline	18
2 The concept of legalization	20
2.1 Credibility versus flexibility	22
2.2 The three dimensions of the concept of legalization	29
2.3 Relationship between design variables	56
3 Problem constellation	59
3.1 Competing theories of institutional design	60
3.2 Toward a problem-tailored design model	67
3.3 The three dimensions of problem constellations	72
3.4 Interaction between problem constellation variables	89
4 Narcotic drugs: UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	92
4.1 Narcotic drugs as an international policy problem	93
4.2 Problem constellation	101
4.3 Degree of legalization	119
5 Money laundering: the Financial Action Task Force and its Forty Recommendations	139
5.1 Money laundering as an international policy problem	140
5.2 Problem constellation	148
5.3 Degree of legalization	165

vi	<i>Contents</i>
6	Conflict diamonds: the Kimberley Process
	Certification Scheme 181
6.1	Conflict diamonds as an international policy problem 182
6.2	Problem constellation 191
6.3	Degree of legalization 208
7	Small arms and light weapons: the United Nations
	Program of Action 221
7.1	Small arms and light weapons as an international
	policy problem 222
7.2	Problem constellation 233
7.3	Degree of legalization 255
8	Conclusion 267
8.1	Summary of results 268
8.2	Rationality 271
8.3	Instrumentality 278
8.4	The step beyond: bounded rationality and
	multi-purpose instrumentality 285
	<i>References</i> 287
	<i>Index</i> 319

*Figures*

1.1	International agreements, institutions, and regimes	<i>page</i> 12
3.1	Potential loss as a function of futile sunk costs and forgone benefits	77
3.2	Propensity to shirk as a function of costs and benefits	79
3.3	Problem constellation with low and high asset specificity	81
4.1	Distribution of costs and benefits resulting from an international anti-drug institution	110
5.1	Distribution of costs and benefits resulting from an international anti-money laundering institution	156
6.1	Distribution of costs and benefits resulting from an international anti-conflict diamond institution	200
7.1	The world’s legal small arms producers	
	© Small Arms Survey. Reproduced with permission	236
7.2	Countries affected by armed conflicts, 1991–2000	241
7.3	Distribution of costs and benefits	243

Tables

2.1	Overview of key institutional design dimensions	<i>page 54</i>
3.1	Overview of key dimensions of policy problem constellations	87
3.2	Design hypotheses under different problem constellations	90
4.1	Output of leading opium and coca producers, 1988	105
4.2	Substance abuse-related death rates in most affected consumer states and in leading producer states in the early 1990s	108
4.3	Selected governance indicators for key drug producer states, 1996	112
4.4	Summary assessment of the problem constellation underlying the trafficking in narcotic drugs	118
4.5	Summary assessment of the level of legalization of the Vienna Convention	135
5.1	Selected anti-money laundering chronology	146
5.2	International and domestic importance of leading banking centers, 2003	151
5.3	Homicide rates in selected countries	153
5.4	Selected governance indicators for leading financial centers, 2003	158
5.5	Summary assessment of the problem constellation underlying money laundering	164
5.6	Summary assessment of the level of legalization of the Forty Recommendations of 2003	178
6.1	Diamond sanctions imposed by the United Nations Security Council	189
6.2	Economic importance of the diamond sector for leading producers in sub-Saharan Africa, 2000	193
6.3	Industry structure in leading diamond producers in sub-Saharan Africa, 2000	194

<i>List of tables</i>	ix
6.4 Occurrence of state failure in leading diamond-producing countries in sub-Saharan Africa, 1990–2000	196
6.5 Output of major diamond producers, 2000	197
6.6 Selected governance indicators for leading diamond mining, trading, and polishing states, 2002	202
6.7 Summary assessment of the problem constellation underlying conflict diamonds	207
6.8 Summary assessment of the level of legalization of the Kimberley Process Certification Scheme	218
7.1 Transfers of conventional arms to developing countries, average 1997–2001	235
7.2 Selected countries with potential surplus stockpiles, 2003–2005	238
7.3 Average political terror score of countries with worst human rights record, 1991–2000	240
7.4 Selected governance indicators for leading SALW producers, 2000	246
7.5 Summary assessment of the problem constellation underlying the trafficking in small arms and light weapons	253
7.6 Summary assessment of the level of legalization of the UN Program of Action on Small Arms and Light Weapons	264
8.1 Summary of legalization of four international institutions against global trafficking	270
8.2 Summary assessment of problem constellation underlying four cases of global trafficking	271

Abbreviations

AML	Anti-money laundering
APG	Asia/Pacific Group against Money Laundering
ARS	Alternative remittance systems
AUC	<i>Autodefensas Unidas de Colombia</i>
BIS	Bank for International Settlements
CFATF	Caribbean Financial Action Task Force
CIA	Central Intelligence Agency
CITES	Convention on International Trade in Endangered Species
CND	Commission on Narcotic Drugs
CoE	Council of Europe
CTBTO	Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization
CTF	Counter-terrorist finance
DDA	United Nations Department of Disarmament Affairs
DEA	Drug Enforcement Administration of the US Department of Justice
EAG	Eurasian Group on Combating Money Laundering and Financing of Terrorism
ECOSOC	UN Economic and Social Council
EITI	Extractive Industries Transparency Initiative
ELN	<i>Ejército de Liberación Nacional</i>
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
ESAAMLG	Eastern and Southern African Anti-Money Laundering Group
FARC	<i>Fuerzas Armadas Revolucionarias de Colombia</i>
FATF	Financial Action Task Force
FinCEN	Financial Crimes Enforcement Network
FSRB	FATF-Style Regional Bodies
GAFISUD	Financial Action Task Force on Money Laundering in South America
GDP	Gross Domestic Product
GIABA	Inter-Governmental Action Group against Money Laundering

*List of abbreviations* xi

IAEA	International Atomic Energy Agency
IFI	International Financial Institution
IMF	International Monetary Fund
INCB	International Narcotics Control Board
KP	Kimberley Process
KPCS	Kimberley Process Certification Scheme
LTTE	Liberation Tigers of Tamil Eelam
MENAFATF	Middle East and North Africa Financial Action Task Force (MENAFATF) against Money Laundering and Terrorist
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
NCCT	Non-complying countries and territories
NGO	Non-governmental organization
ONDCP	Office of National Drug Control Policy of the US White House
OPEC	Organization of Petroleum Exporting Countries
OSCE	Organization for Security and Cooperation in Europe
PoA	UN Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and light Weapons in All its Aspects
SADC	Southern African Development Community
SALW	Small arms and light weapons
UNGA	United Nations General Assembly
UNHCR	Office of the United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
VCLT	Vienna Convention on the Law of Treaties
WWF	World Wildlife Fund
WTO	World Trade Organization

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## *Preface and acknowledgments*

“But isn’t this way too dangerous?” my mother-in-law asked whenever my research topic came up in our conversations. “I don’t want you to get killed by these gangsters.” Each time I tried to reassure her: “No, it is really not going to be that sort of crime-and-murder book you imagine.” No blonde wigs, no sunglasses, no bulletproof vests. The way I set out to explore the shady world stretched between crime and war was not through undercover meetings with Viktor Bout, the legendary “Merchant of Death,” or with his client, Manuel Marulanda, the world’s oldest guerrilla leader and drug king. Instead, I spent the past five years interviewing policymakers and diplomats of all ranks and nationalities, industry representatives, and NGO leaders. I plowed through every imaginable written source on the subject. This was admittedly non-glamorous and required perseverance and analytic acuity rather than bravado and guile. The result of this endeavor may not be an adrenaline-packed thriller. But I hope to show that the big picture on how drugs, dirty money, diamonds, and arms circulate in the multi-billion dollar illicit global economy and how policymakers have tried to fight these different types of trafficking can be as fascinating as a series of anecdotes from the underworld.

On a more theoretical level, I want to explore how international cooperation on global trafficking can be facilitated through well-designed institutions. This focus on institutional design has led me to an unexpected puzzle which goes beyond the focus of this study but is too dear to me to go unmentioned.

Over the course of this research, I have become increasingly mystified as to why legally binding agreements are so popular despite the enormous investment in time and diplomatic capital required for their drafting and ratification process. The traditional international law argument suggests that states will comply with obligations created under a legally binding institution because their commitment is more formal and their credibility is to a much greater extent at stake when

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they officially endorse a legally binding rather than a non-binding institution. But this argument fails to take into account the fact that credibility is only at stake if non-compliance with that legally binding institution can indeed be detected and exposed. This is exactly where most legally binding agreements fall short. They often use formulations that are so vague that it is hard to differentiate between compliant and non-compliant behavior. Furthermore, they lack the mandate to monitor states' implementation record and to sanction non-compliance. So what is the point in crafting legally binding institutions that lack other – and probably more powerful – compliance mechanisms (e.g. precisely formulated obligations, monitoring, sanctioning)? Are there no more effective design options to facilitate international cooperation?

My interest in this question was triggered by a number of recently established international institutions that innovatively blend legal non-bindingness with tough compliance mechanisms. In this study, I will present the Financial Action Task Force, the central player in the global anti-money laundering movement, and the Kimberley Process on conflict diamonds as two prototypical examples of this move toward hybrid designs. I have explored these design innovations in more detail elsewhere (Jojarth 2007), but I want to alert the reader upfront to the embryonic new world order lurking in these case studies.

I guess that if this book is ever going to put me in danger, I have less to fear from criminal gangs than from devotees to classic international law and diplomacy who feel their traditional tools-of-trade threatened.

Over this half-decade long research journey, I have benefited from the advice and support of an incredible number of people who have continually stunned me with their intellectual rigor and generosity. These encounters in themselves have already made my efforts more than worthwhile.

From its genesis, this research has been nurtured by William Wallace and Martin Lodge, who proved superb mentors and intellectual sparring partners during my Ph.D. studies at the London School of Economics and well beyond. Stanford University and its Center on Democracy Development and the Rule of Law have offered me an unparalleled environment for taking my intellectual curiosity to the next level. Thomas Heller, Stephen Krasner, David Victor, Stephen Stedman, Kathryn Stoner-Weiss, Michael McFaul, and President Alejandro Toledo have all been instrumental in helping me synthesize my key findings and make them relevant to a wider audience.

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Frontmatter

[More information](#)

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*Preface and acknowledgments*

xv

Outside of my old and new academic home, I have also been privileged to receive encouraging feedback from a number of leading scholars in the field. I would like to mention in particular Robert Keohane, Barabara Koremenos, David Lake, Ronald Mitchell, Mats Berdal, and Phil Williams.

I am immensely grateful to my interviewees for sharing with me their insights into the practical world of international institutions and for luring me out of the ivory tower. The encouragement from two anonymous reviewers, John Haslam and Carrie Cheek of Cambridge University Press, was critical for making me go the painful last mile of endless revisions.

This book has been made possible thanks to the generous financial support I received from the Rotary Foundation, the British Chevening scholarship program, the Janggen Poehn Foundation, and from the Microsoft Corporation.

My family and friends have been indispensable for reminding me of the beauty life has to offer beyond my computer desk and for being the source of that beauty. My deepest gratitude goes to my husband Marton Jojarth to whom I dedicate this book and my life.