

1 *Introduction*

Why did states agree that the global fight against drug trafficking should be led by an international organization vested with an independent legal personality, a considerable budget, and powerful direct and indirect enforcement tools, but fail to adopt a similarly far-reaching form of institutionalized cooperation to combat illicit transfers in small arms and light weapons? This question is striking, because the trafficking of narcotic drugs and of small arms and light weapons seem – at first glance – to be very similar public policy problems: both kill and ruin the health of a comparable number of people; both provide a playground for profit-seeking criminals as well as ideologically motivated rebels and terrorists; and both require the coordinated response of a large number of producer, transshipment, and consumer countries. To rephrase the opening question in more general terms: Why do states adopt strikingly different designs for international institutions created to tackle seemingly similar problems? This puzzle is at the heart of this study's theoretical inquiry.

While the academic discussion of the reasons why independent states create institutions to facilitate international cooperation has started to reach its point of saturation, the more fine-grained inquiry into the factors explaining the pronounced variance in the design of these institutions is still in its infancy. So far, not even a common language has been developed to describe the most salient dimensions along which institutional designs vary.

This study seeks to contribute to this still largely uncharted territory of international relations by offering a detailed framework for analyzing and comparing institutional designs and by exploring one particular set of potential explanations. Specifically, I set out to examine the extent to which differences in the particular constellation of a given policy problem help explain the governance structure policymakers choose for the institution created to tackle the problem. This argument builds upon the functionalist school of international relations. However, in contrast

to many functionalist studies, I specifically set out to test whether form does indeed follow function rather than taking such a match between problem constellation and institutional design to be *a priori*. In fact, this inquiry assumes that sub-optimal designs may in fact be the norm rather than the exception in international institutions.

I am pursuing four main goals with this introductory chapter. First, I will introduce the empirical focus of this study – the policy area lying at the intersection between crime and war. I will shed light on the fascinating blurring we have witnessed over the past two decades of the differences between profit-oriented organized crime groups on the one hand and ideologically motivated rebel and terrorist groups on the other. Second, this introduction sets out to position the theoretical underpinnings of this study within the institutional design literature and clarifies central terms. Third, I will present the methodology used in this inquiry to make more transparent how and why this study reaches the assessments and conclusions it does. Fourth, the final part of this chapter charts the basic structure of this inquiry into the design of four real-world institutions created to tackle problems arising in the blurred borderland between transnational organized crime and international security.

1.1 Crime, war, and global trafficking

Traditionally, crime and war have been seen as two separate worlds. The former has been conceived of as harmful activities driven by greedy criminals' quest for profits and as a problem that is best countered by domestic law and order measures. This understanding of crime is, for instance, reflected in the definition the United States National Security Council formulated to describe organized crime: "continuing and self-perpetuating criminal conspiracy, having an organized structure, fed by fear and corruption, and motivated by greed" (e.g. National Security Council 2000).¹ War, in contrast, is typically assigned to the international sphere, where an anarchic world structure fuels the existential fear that one sovereign nation-state may seek to project its power on to

¹ This definition largely overlaps with the definition provided by Article 2(a) of the UN Transnational Organized Crime Convention of 2000, which defines organized criminal groups as 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, a financial or other material benefit."

Introduction

3

another state through large-scale organized violence (e.g. Luttwak and Koehl 1991) – a threat which can only be averted through military means. In the post-Cold War era, this neat distinction is becoming increasingly blurred. This fundamental shift in international security debates is reflected in the creation of the United Nations “High Panel on Threats, Challenges, and Change,” which examines security issues like the proliferation of nuclear, radiological, chemical and biological weapons alongside transnational organized crime. As I will discuss in the following section, the breakdown of the separation of crime and war may be as much the result of changing perceptions as of fundamental real-world changes. The conceptual distinction between crime and war has thereby come under attack from two opposite angles. While one camp emphasizes the criminal elements in a number of contemporary wars, the other depicts crime, in particular, transnational² organized crime, as a security problem which needs to be fought with military power.

1.1.1 Criminal wars

The conceptual separation of crime and war has come under attack from scholars and policymakers who identify characteristics of contemporary armed conflicts that set these conflicts apart from the political-rationalist theory underlying the classical understanding of war (von Clausewitz 1992; Keegan 1993), and, in contrast, make them rather resemble organized crime operations. A first factor eroding away the delineation between crime and war in the post-Cold War era is the proliferation of intra-state as opposed to inter-state wars (Wallenstein and Sollenberg 1995) which has given prominence to new actors. While international wars pitch organized state armies against each other,

² I prefer the term “transnational organized crime” over “international organized crime,” “multinational crime,” and “global organized crime,” which are often used synonymously. I prefer the former because it best captures the prominence of non-state actors in this type of activity. It resonates directly with Keohane and Nye’s (1971) definition of transnational relations, which they describe as “the movement of tangible or intangible items across state boundaries when at least one actor is not an agent of a government or an intergovernmental organization” (1971: xii). Furthermore, in contrast to the term “global organized crime,” “transnational organized crime” avoids creating the misleading impression that the fallout of criminal activities is felt equally around the world, while, in reality, different types of crime affect countries in different ways and to very varying extents.

Cambridge University Press

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

Christine JojARTH

Excerpt

[More information](#)

intra-national wars are characterized by the fact that at least one warring party is an irregular, non-state led combat formation. In the fourteen intra-state conflicts that ravaged Africa in the 1990s, rebel groups as diverse as the Lord's Resistance Army in Uganda, the Groupe Islamique Armée in Algeria, or the Union for the Total Independence of Angola made headlines almost daily. Rebel groups are, however, not the only type of non-state actors that have been established as a major source of large-scale organized violence. Terrorist networks have also repeatedly and brutally manifested their determination and capacity to cause death and destruction in pursuit of their ideological goals.

Other factors leading to the increasing resemblance between armed conflicts and crime derive from the evolving nature of internal conflicts in the post-Cold War era. Most importantly, "new" civil wars differ from "old" civil wars (Kaldor 1999) with respect to the strategies employed by combatants and their driving motives. Although often violated in practice, the classical concept of war makes a clear distinction between combatants and civilians, and establishes the duty of the former to spare the latter. In recent civil wars this distinction has often been ignored on a massive scale or even turned on its head. Civilians are not only being unintentionally injured and killed in the course of military operations – as referred to by the problematic term "collateral damage" – but in many cases are specifically targeted by rebel groups and militias. The 1994 genocide in Rwanda and the massacres committed in the violent breakup of Yugoslavia in the early 1990s are just two of the most infamous examples of this trend. These new types of civil wars are also seen as differing from old civil wars in their driving motives: the latter are associated with the desire to bring about political change for the benefit of a larger collective, while the former are equated with a predatory enterprise involved in activities such as looting of natural resources and extortion undertaken for personal gain. Although armed conflicts may not initially have been triggered by economic greed, one can find many examples in Colombia, parts of Africa, and the Balkans where political motives became subordinate to the pursuit of financial and other material benefit during the course of conflict (Apter 1997). The continuation of widespread violence starts to serve a rational economic purpose as it confers pseudo-legitimacy on profit-driven actions that in peacetime would be punishable as crime (Keen 1998). Rebellion becomes a "quasi-criminal activity" (Collier 2000). In policy circles, this view has been adopted most prominently by the then-secretary general of the United

Cambridge University Press

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

Christine Jojarth

Excerpt

[More information](#)*Introduction*

5

Nations (UN), Kofi Annan, who stated that “the pursuit of diamonds, drugs, timber, concessions, and other valuable commodities drives a number of today’s internal conflicts. In some countries the capacity of the state to extract resources from society and to allocate patronage is the prize to be fought over” (Annan 1999). All these elements – the non-state nature of many fighting groups, the erosion of the distinction between combatants and civilians, and the prominence of economic motivations in many armed conflicts – all make many contemporary wars more resemble organized crime operations than classical wars.

1.1.2 The war against crime

Along with this move toward a stronger emphasis on the criminal aspects of contemporary wars, there has simultaneously been the inverse push toward the securitization of crime. Academics and policy-makers alike have tried to outdo each other in presenting transnational crime as an “existential threat” (Buzan, Wæver, and de Wilde 1998: 21). In 1994, an American think tank, the Center for Strategic and International Studies, published a report that declared organized crime the “new evil empire” (Raine and Cilluffo 1994) in a direct allusion to Ronald Reagan’s vilification of the then-USSR. This view was echoed in a working paper of the Strategic and Defence Studies Centre of the Australian National University which argued that “[t]ransnational crime is now emerging as a serious threat in its own right to national and international security and stability” (McFarlane and McLennan 1996: 2). In politics, this view found supporters in the highest echelons of power. US Senator John Kerry warned of transnational organized crime as “the new communism, the new monolithic threat” (quoted in Horvitz 1994), and James Woolsey, then director of the Central Intelligence Agency (CIA), maintained that “when international organized crime can threaten the stability of regions and the very viability of nations, the issues are far from being exclusively in the realm of law enforcement; they also become a matter of national security” (quoted in Galeotti 2001: 215f.). This framing of crime as a national security issue was echoed in the Presidential Decision Directive 42 in which then-President Bill Clinton emphasized the “direct and immediate threat international crime present[ed] for national security” (White House 1997). This push toward a securitization of crime can only partially be attributed to real changes in the nature and dimension

Cambridge University Press

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

Christine JojARTH

Excerpt

[More information](#)

of transnational organized crime (Edwards and Gill 2003). At least equally important in this respect are the successful communications strategies deployed by Cold War security agencies, which sought to defend their organizational interests through the creation of a new mandate (Friman and Andreas 1999: 2; Lee 1999: 3; Naylor 1995a).

The war analogy is particularly pertinent in cases where criminal groups have virtually merged with the highest echelons of the political establishment. When the state itself becomes “criminalized” (Bayart, Ellis, and Hibou 1999) the goals and needs of criminal enterprises become indistinguishable from a country’s national interest (Naím 2005: 27). Any attempt by a country suffering from transnational crime to address the foreign root causes of its problems results necessarily in a head-on inter-state confrontation – and not just one between a state and non-state actors. It is one thing to dispatch members of the National Guard to the national border with a mandate to help stem the inflow of illegal immigrants (e.g. Pessin 2006). It is a very different matter conceptually and practically to order almost 30,000 soldiers to invade a foreign country and capture that country’s president on drug trafficking and money laundering charges, as occurred during the US invasion of Panama in 1989 (Bogges 1992). When a country is ruled by a president whose election campaign was sponsored by a drug cartel,³ by a government that clears the country’s external debts with drug money,⁴ or that sells the nation’s sovereignty to telephone sex operators and money launderers (Drezner 2001), international law enforcement matters unavoidably get twisted up in complicated security and foreign policy issues, even if outright military interventions remain rare.

1.1.3 *Globalization and the transnationalization of crime*

It has become commonplace to contend that in the twentieth century, transnational organized crime experienced a “phenomenal increase in

³ The alleged US\$3.75 million contribution of the Cali cartel to the presidential campaign of the later winner Ernesto Samper in 1994 probably provides the most notorious example (New York Times 1995).

⁴ Bolivia’s most senior drug lord, Roberto Suarez Gomez, reportedly offered the government to pay off two-thirds of the country’s foreign debts of approximately US\$3 billion at the time in exchange for legal impunity (Malamud-Goti 1992). Eventually, under heavy pressure from the United States, the Bolivian government rejected this generous offer.

Cambridge University Press

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

Christine Jojarth

Excerpt

[More information](#)*Introduction*

7

scope, power and effectiveness” (Galeotti 2001: 203). This claim is rarely substantiated by empirical figures, which is understandable given the clandestine nature of the business, but more commonly deduced from a number of factors assumed to have fostered such a development (e.g. Naím 2005).

Most importantly, organized crime has been able to expand its operational activities and geographical scope by embracing economic globalization very much in the same way the licit business sector has. The increasing speed and significant drop in costs of communication and transportation, combined with a drastic reduction of barriers to trade and financial flows, allows legitimate businesses – but also organized crime groups – to shift to production networks that are organized globally rather than nationally (Evans 1997). This, in turn, allows both businesses and transnational criminal organizations to differentiate between their home base and countries of operation in a way that maximizes profits and minimizes operating costs. Criminal organizations thereby set up their “headquarters” in safe havens offering a low risk of detection and prosecution, while directing their operations toward countries “where the money is,” to paraphrase Willie Sutton’s famous explanation for why he robbed banks. For instance, criminal networks specializing in fraudulent advance fee schemes love the “ease of business” offered in Nigeria, while they find their “customer base” mainly in richer Western nations.

Economic globalization has not only contributed to the transnationalization of the production and distribution networks of illicit products and services, but also to the interlinking of formerly separate black markets for recreational drugs, counterfeit credit cards, fake designer watches, stolen diamonds, and terrorism – leading to the emergence of what Friman and Andreas called the “illicit global economy” (1999). According to Naylor, this illicit economy is supported by its own systems of information, sources of supply, distribution networks, and even its own modes of financing (1995b: 48). In the late 1990s, the “gross criminal product” generated from these activities (Friman and Andreas 1999) amounted to an estimated US\$1 trillion annually⁵ according to a former adviser to the British secret services (Green 1997).

The transnationalization of criminal activities is closely linked to the notion of trafficking, which refers to the international movement of goods and services that is deemed illicit for any of three different reasons.

⁵ An equivalent of 3 percent of global legal gross domestic product.

Cambridge University Press

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

Christine JojARTH

Excerpt

[More information](#)

First, most obviously, trafficking covers goods that are by themselves illicit, such as narcotics. Second, flows of licit goods may still be illicit if such goods have been obtained or processed in illicit ways (e.g. conflict diamonds, money laundering). Finally, illicit flows also include the movement of licit goods obtained in licit ways but intended for illicit purposes (e.g. terrorist financing, precursors for narcotics). Trafficking typically involves the states of origin for goods and services, one or more states serving as transshipment centers, and states where the illicit good or service is consumed. Illicit flows do not necessarily create public policy problems at all points along this chain. For example, in the case of conflict diamonds, the states that suffer most from diamond-related violence are primarily the states in which the diamonds are mined, rather than the ones in which these precious stones are processed or consumed. In contrast, small arms and light weapons (SALW) cause the greatest harm in countries amassing such weapons rather than the producing states. Consequently, countries that produce a certain illicit good or service cannot always be equated with “upstream states,” to use a term that has gained popularity in international environmental politics to describe states that generate negative externalities.

The transnational dimension of these flows requires an internationally coordinated response. However, the necessity of international cooperation on trafficking-related issues does not mean that such cooperation is easy to achieve – far from it. Illicit flows affect countries in different ways and in varying degrees of intensity, so that international cooperation cannot rely on a natural harmony of interest. Cooperation in law enforcement and national security matters is further impeded by the fact that the control of the police and judiciary, as well as of intelligence services and military forces, are generally seen as defining features of national independence and sovereignty (Farer 2000; Smith 1992). However, history shows that these obstacles are not insurmountable. Pioneering international anti-trafficking agreements date back to the early twentieth century, but it was only after the end of the Cold War that international cooperation in this area gained real momentum.

The cases presented in this study are all situated in the blurred borderland between crime and war linked by trafficking. The first case study is dedicated to the trafficking in illicit drugs, a multi-billion dollar business often associated not with criminal organizations alone but also with insurgent groups and terrorist networks who seek to finance arms procurements through profits generated in drug-related activities.

Cambridge University Press

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

Christine JojARTH

Excerpt

[More information](#)*Introduction*

9

Money laundering – the second of the case studies presented here – is directly linked to drug trafficking, as international control efforts to curb money laundering were first embraced as a tool to support the global war on drugs by opening a new – i.e. financial – front. Diamonds, even more so than illicit drugs, have attracted international concern because of their exploitation not just by criminals but also by rebel groups and terrorist networks. Small arms and light weapons, the subject of the fourth and final case study, are the obvious and indispensable tools of trade for every criminal as well as insurgent operation.

1.2 Explaining institutional design

Growing concerns about transnational security threats posed by global trafficking have led to the formation of a number of international counterinitiatives in the past decades. These initiatives resulted in the establishment of a great number of international institutions which differ considerably from one another in design. Whereas some of these international institutions are based on legally binding treaties and backed by international organizations vested with far-reaching competencies, other institutions amount to little more than lofty declarations of noble intent. The theoretical puzzle addressed by this study is to explain this variance – to explain why states endow international institutions dealing with policy problems in the same issue area with such different designs. Before embarking on this task, a few definitional clarifications are required.

This study adopts Koremenos, Lipson, and Snidal's definition of international institutions, which describes them as "explicit arrangements, negotiated among international actors,⁶ that prescribe, proscribe, and/or

⁶ By referring to "international actors" rather than "states," Koremenos, Lipson, and Snidal acknowledge in their definition the fact that international "nonstate actors participate with increasing frequency in international design" (2001: 763). I agree that it is important to acknowledge non-state actors' role in the creation, design, and ongoing development of international institutions (see also Koh 1996; Shelton 2000). However, I think it is also important to recognize that at least in today's world order, states retain a unique ability to adopt authoritative agreements, as recognized by Keohane (1988: 384) for whom international institutions are *per definitionem* agreed upon by states. This is not to say that agreements by non-state actors cannot have important effects around the globe (e.g. voluntary industry standards; codes of conduct adopted by a multinational corporation, etc.), but rather that arrangements in which states are not directly included differ in their design from arrangements adopted by states.

Cambridge University Press

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

Christine JojARTH

Excerpt

[More information](#)

authorize behavior” (2001: 762).⁷ As the following paragraphs will show, this definition is closely related to – but not congruent with – the concept of international governmental organizations, international agreements, and international regimes.

The definition of international institutions as used in this study is broader than that of international organizations.⁸ International organizations share three defining features: they are characterized, first, by a membership base typically constituted of states, but in some cases also other intergovernmental organizations, second, by a separate international legal personality, and, third, by the existence of permanent organs with a will autonomous of that of its constituting members (Schermers and Blokker 1995: §§32ff.). All international organizations are part of an international institution according to the definition employed here, as they are established to shape states’ behavior. However, not all international institutions rely on international organizations to facilitate cooperative objectives. For instance, the global anti-money laundering efforts spearheaded by the intergovernmental Financial Action Task Force (FATF) represent an international institution according to the definition employed here, despite the fact that the FATF lacks two central attributes of an international organization – namely, international legal personality and autonomous will. Rather than equating international institutions with international organizations, this study seeks to describe how and to explain why a particular international institution does or does not rely on a pre-existing or newly created international organization as part of its overall design.

International institutions as defined here are also broader than international agreements. Although international institutions are based upon international agreements – understood as written authoritative documents (Iklé 1964), they also encompass the normative and implemental practices that evolve around such agreements. In this sense, this study’s understanding of international institutions also covers

⁷ In contrast to Mearsheimer (1994–1995), Koremenos, Lipson, and Snidal do not explicitly limit the function of international institutions to the shaping of states’ behavior. I welcome this broader understanding. Even though most international institutions only target state behavior and dualism remains the dominant view, we can witness a growing direct effect – in practical, not necessarily legal terms of international law.

⁸ See also Simmons and Martin (2002) on the difference between international organizations and international institutions.