



**Introduction to the Laws of Kurdistan, Iraq
Working Paper Series**

Transnational Criminal Law

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Preface to the Series: *Introduction to the Laws of Iraq and Iraqi Kurdistan*

Iraq and Iraq's Kurdistan Region is at a compelling juncture in their histories. In the wake of the transition to a democratic state, the country and region economy has prospered and its institutions have grown more complex. As institutional capacity has grown, so too has the need for a robust rule of law. An established rule of law can provide assurances to investors and businesses, while keeping checks on government and private powers and protecting citizens' fundamental rights. Institutions of higher learning, such as universities and professional training centers, can and should play a key role in stimulating and sustaining this dynamic. Indeed, education is foundational.

This paper is part of the *Introduction to the Laws of Iraq and Iraqi Kurdistan*, a series of working papers produced by the Iraqi Legal Education Initiative (ILEI) of Stanford Law School. This series seeks to engage Iraqi students and practitioners in thinking critically about the laws and legal institutions of Iraq and Iraqi Kurdistan. Founded in 2012, ILEI is a partnership between the American University of Iraq in Sulaimani (AUIS) and Stanford Law School (SLS). The project' seeks to positively contribute to the development of legal education and training in Iraq.

The working paper series devotes significant attention to pedagogy. By writing in clear and concise prose and consulting with local experts at each step of the writing process, the authors strive to make the texts accessible to diverse and important constituencies: undergraduate law students, lawyers and judges, government officials, members of civil society, and the international community. By discussing the Iraqi and Kurdish legal regimes and applying specific laws to factual situations, the authors model how to "think like a lawyer" for the reader. They also use hypothetical legal situations, discussion questions, and current events to stimulate critical thinking and encourage active engagement with the material.

These working papers represent the dedicated efforts of many individuals. Stanford Law School students authored the texts and subjected each working paper to an extensive editing process. The primary authors for the initial series including papers on Commercial Law, Constitutional Law, and Oil and Gas Law, were John Butler, Mark Feldman, David Lazarus, Ryan Harper, and Neil Sawhney under the guidance of the Rule of Law Program Executive Director, Megan Karsh. Jessica Dragonetti, Emily Zhang, and Jen Binger authored the remaining papers on domestic law. Kara McBride, Cary McClelland, Neel Lalchandani, Charles Buker, Liz Miller, Brendan Ballou, and Enrique Molina authored papers primarily concerned with Iraq's engagement with international law. I also thank the former and current deans of Stanford Law School, Deans Larry Kramer and Liz Magill, for their financial support, and the Stanford Law School alum, Eli Sugarman (J.D., 2009), who acts as an advisor to the project.

The faculty and administration of American University of Iraq in Sulaimani provided invaluable guidance and support throughout the writing process. Asos Askari and Paul Craft in particular played a leadership role in getting the program off the ground and instituting an introductory law class at AUIS. Ms. Askari taught the first law class in the 2014 spring semester. Former presidents of AUIS, Dr. Athanasios Moulakis and Dr. Dawn Dekle, provided unwavering support to the project. And finally, a special thanks to Dr. Barham Salih, founder and Chair of AUIS, without whose foresight and vision this project would not have been possible.

Finally, the authors of this series of papers owe an extraordinary debt of gratitude to many thoughtful Kurdish judges, educators, lawyers, and others who work within Iraqi institutions for their critical insights. In particular, the textbooks received vital input from Rebaz Khursheed Mohammed, Karwan Eskerie, and Amanj Amjad throughout the drafting and review process, though any mistakes are solely the authors' responsibility.

ILEI plans to continue publishing working papers. All texts will be published without copyright and available for free download on the internet.

To the students, educators, legal, and government professionals that use this set of working papers, we sincerely hope that it sparks study and debate about the future of Iraqi Kurdistan and the vital role magistrates, prosecutors, public defenders, private lawyers, and government officials will play in shaping the country's future.

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TRANSNATIONAL CRIME¹

CHAPTER OBJECTIVES

- Define transnational crime and explain how it is different from other kinds of crime.
- Explain how courts get the authority to hear transnational criminal cases.
- Explore the legal and policy tools that countries use to fight transnational crime.

1. INTRODUCTION

Even if you are new to the study of law, you are familiar with domestic crimes such as theft and burglary. You have also heard of international crimes such as genocide and crimes against humanity. But you may not be familiar with transnational crime. To understand the term, consider the first word, transnational. Trans means across, beyond, or through.² Combined with the word national, which means relating to a nation, **transnational crime** means crime that occurs across, beyond, or through multiple nations. For instance, when criminals illegally move drugs across countries' borders, their actions are transnational crimes. Similarly, when a company illegally pollutes in a river in one country, which flows into and has substantial negative effects in another, that too is transnational crime. Conversely, when someone sells drugs illegally in their own neighborhood, or when a company pollutes only the ground of its own country, such crimes are domestic, not transnational.

In this chapter you will learn what transnational crime is. You will learn how transnational crime is different from other violations of the law. You will also learn how and where crimes that occur across national borders are prosecuted. And finally, you will learn what Iraq and the rest of the world are doing to fight them.

This information will be useful for you, whether you plan to work in law, business, or politics. This is because transnational crime can affect both governments and corporations, and can upend the lives of both CEO's and citizens. By studying transnational crime you can better protect against it in the future, either as an individual, as a business executive, or as a government official.

¹ This section incorporates work from the ILEI Working Paper, *An Introduction to International Criminal Law* (pub. 2015)

² Dictionary.com, *trans-* (2015), <http://dictionary.reference.com/browse/trans->.

2. DEFINING TRANSNATIONAL CRIME

You are already familiar with **domestic** crimes like burglary, theft, and assault. These crimes are planned, committed, and concealed in a single country. For this reason, a single nation will have **jurisdiction**, that is, the right to decide the case (a topic we will discuss in more detail shortly). Transnational crimes are different because they span multiple nations and many jurisdictions.

Like most legal concepts, there is no definition of transnational crime. In fact, the United Nations (UN) deliberately chooses not to provide a singular definition in its relevant treaty, the United Nations Convention against Transnational Organized Crime. Instead, the organization says it purposefully keeps the definition open, so as “to allow for a broader applicability of the [treaty] to new types of crime that emerge constantly as global, regional and local conditions change over time.”³ The treaty does, however, tell us that transnational crimes include:

1. Crimes committed in more than one country,
2. Crimes committed in one country but planned in another,
3. Crimes committed in one country by groups operating in many,
4. Crimes committed in one country that have substantial effects on another.⁴

So, unlike a purely domestic crime, a transnational crime spans many countries: either because it occurs in, is planned in, or substantially affects many countries.

This distinction between domestic and transnational crime has several practical effects. For instance, when it comes to prosecuting transnational crimes, often several countries will claim the ability—again, the jurisdiction—to decide cases. Furthermore, the organizations that investigate transnational, as opposed to domestic, crimes are unique. We will return to both of these differences shortly.

Let’s briefly return to that UN treaty’s description of transnational crime. You may have noticed that the description provides specific examples of transnational crimes but, as noted above, the treaty does not offer a specific definition of the term.

Application Exercise 1

Think critically about the reason the UN gave for not defining transnational crime explicitly. Why would the UN have been concerned about new kinds of crime? Think about how

³ United Nations Office on Drugs and Crime, *Organized Crime* (2014), <https://www.unodc.org/unodc/en/organized-crime/index.html>.

⁴ United Nations Convention against Transnational Organized Crime art. 3(2), *entered into force* Sep. 29, 2003, U.N.T.S. 39574, *available at* https://www.unodc.org/documents/middleeastandnorthafrica//organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf.

developments in technology and communications in particular might create new opportunities for transnational criminal activity.

Finally, it is worth noting that Iraq acceded to the United Nations Convention against Transnational Organized Crime, but was not an original signatory. That means that Iraq agreed to be bound by the treaty, but it did not help to negotiate the original agreement. For more information about treaty accession, see the ILEI Working Paper on Treaties, International Organizations, Customs, and Other Elements of International Law.

2.1 Laws governing transnational crime

Both domestic and international laws regulate transnational crime. Recall, briefly, the difference between the two. **Domestic law** is the law of a single country. Iraq's domestic law is **codified**, or organized and publicized, in the Iraqi Constitution and in various statutes. In contrast, **international law** is the law of many, and sometimes all, countries. International law is governed by international agreements like treaties and by **custom**. Here, custom refers to the things countries do out of a sense of perceived legal obligation. Respecting the borders of other countries, and providing immunity for visiting heads of state are examples of international custom. Treaties and customs are covered more thoroughly in your unit on **public international law**, that is, the law governing how countries relate to one another. For more information on public international law, see the ILEI Working Paper on Treaties, International Organizations, Customs, and Other Elements of International Law.

In practice, transnational crimes are regulated by domestic law, international law, or both. For instance, consider the case of **human trafficking**. Human trafficking, that is, illegally transporting and exploiting people, has been a problem in Iraq for years. There, children⁵ and immigrants⁶ are essentially sold into slavery, either for work, sex, or both. To help fight such crimes, Iraq signed and ratified the UN "Protocol to Protect, Suppress and Punish Trafficking in Persons Especially Women and Children." (A **protocol** is an international agreement that typically supplements, and receives less formal recognition and force than, a treaty). The Protocol requires that countries criminalize trafficking of women and children. The Protocol also requires that countries share information and work with one another to fight trafficking across borders. Consistent with this international treaty, Iraq made it a crime to kidnap women or children, and made such offenses punishable by death.⁷

So in this case, both international law (in the form of a protocol) and domestic law (in the form of a statute) help to control human trafficking. But importantly, a crime need not fall under any international treaty to be considered transnational. For example, consider **cybercrime**, that is,

⁵ Rebecca Murray, *Female Trafficking Soars in Iraq*, INTER PRESS SERVICE (Aug. 27, 2011), <http://www.ipsnews.net/2011/08/female-trafficking-soars-in-iraq/>.

⁶ Atika Shubert, *Women trafficked to Iraq*, CNN (May 6, 2013), <http://thecnnfreedomproject.blogs.cnn.com/2013/05/06/women-trafficked-to-iraq/>.

⁷ Penal Code 111 art. 422-423 (Iraq), available at http://www.iraq-ig-law.org/en/webfm_send/1350.

crime committed via a network, such as the Internet. We will discuss cybercrime in more detail shortly, but you can already probably imagine why such crime can be transnational: someone working in one country can hack into computers from around the world. Many countries have domestic regulations on cybercrime. Iraq for instance considered, but ultimately rejected a law on the subject.⁸ Although there is no international treaty on the subject (just a regional agreement in Europe),⁹ cybercrime can be—and is often—transnational.

2.2 Limitations of transnational crime

As you now understand, transnational crime is different from domestic crime. Unlike a domestic crime, a transnational crime is planned or committed in multiple countries, or committed by a group operating in multiple countries, or has a substantial effect on multiple countries.¹⁰ For this reason, crimes like drug smuggling may be transnational crimes, but they may also be purely domestic. It all depends on where the crime is planned and committed, who organizes it, and what effect it has.

There is an important distinction between transnational crime and a related concept, international crime. As you learn when studying public international law, international crimes concern primarily genocide, war crimes, and crimes against humanity.¹¹ These crimes have particularly wide scope, are especially serious, and are generally perpetrated by government actors. Because of this, international crimes are considered part of the public international law doctrine. In contrast, transnational crimes, which are more limited in scope and are carried out by private actors, are not. The distinction between these two types of crimes will be important when we discuss who prosecutes transnational crime below.

It is worth noting that the distinction between international and transnational crime is blurring somewhat. For instance, crimes against humanity are international crimes. Yet non-state actors, such as the militant group Boko Haram in Nigeria, are being investigated for them.¹² Perhaps someday the same institutions that are used to investigate and prosecute international crime will someday also be turned towards transnational crime, as they, more than some national governments, may be capable and willing to tackle these problems.

⁸ Ali Abel Sadah, *Iraqi Parliament Rejects Draft Cybercrime Bill*, AL MONITOR (Feb. 5, 2013), <http://www.hrw.org/news/2012/07/11/iraq-cybercrimes-law-violates-free-speech>. Note, however, that even though Iraq does not have a cybercrime law, certain cybercrimes are still criminal offenses, such as theft, under other sections of the penal code. This may have been a reason why the Iraqi government chose not to pass a cybercrime law, and why many cybercrimes may still be prosecuted, even without one.

⁹ Convention on Cybercrime, *entered into force* Jul. 1, 2004, C.E.T.S. No. 185, *available at* <http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm>.

¹⁰ United Nations Convention against Transnational Organized Crime, *supra* note 4.

¹¹ NEIL BOISTER, AN INTRODUCTION TO TRANSNATIONAL CRIMINAL LAW 18 (2012).

¹² International Criminal Court, *Nigeria* (2015), http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/peongoing/nigeria/Pages/nigeria.aspx.

By now you have a sense of the criteria for calling a crime transnational. You understand that both international treaties and domestic laws govern transnational crime. You understand the difference between transnational and purely domestic crime. And you understand the difference between transnational and international crime.

To apply these concepts, below are examples of crimes drawn from real life. As you read through them, consider whether or not the crimes were transnational according to the criteria listed above.

Application Exercise 2

After the invasion of Iraq, the US military relied heavily on private security companies to provide armed protection, especially to civilians working in the country. The US placed strict regulations on what weapons these companies could and could not bring into Iraq. One company, Blackwater, smuggled weapons into the country in violation of US law. Blackwater employees may have then sold these weapons illegally.¹³ For its crime, Blackwater was forced to pay the US government \$7.5 million. Was Blackwater's action a transnational crime? Note that Blackwater in this instance did not violate any Iraqi laws, but did violate US law.

Application Exercise 3

Saddam Hussein's son, Uday, tortured members of the Iraqi football team. Some players were beaten with electric cables. Others were forced to practice in 54-degree heat for twelve hours at a time. Still others were beaten for every poor pass in a game.¹⁴ These particular crimes occurred while team members were in Iraq. After the US invasion of the country, Uday's actions became well known internationally. Were they transnational crimes?

2.3 Kinds of transnational crime

So far we have been talking about transnational crimes in general. Let's briefly describe some specific crimes that are often transnational. As we review them, consider why they, more than other crimes, are likely to occur across national borders.

¹³ Associated Press, *Feds Probe Blackwater Weapons Smuggling* (Sep. 22, 2007), <http://www.military.com/NewsContent/0,13319,150197,00.html>.

¹⁴ John F. Burns, *Soccer Player Describes Torture by Hussein's Son*, NEW YORK TIMES (May 6, 2003), <http://www.nytimes.com/2003/05/06/international/worldspecial/06TORT.html>. See also Suzanne Goldenberg, *Footballers who paid the penalty for failure*, THE GUARDIAN (Apr. 18, 2003), <http://www.theguardian.com/world/2003/apr/19/iraq.football>.

- *Cybercrime*: This broad category includes almost any crime that involves a computer network.¹⁵ According to the Council of Europe's treaty on the subject, cybercrime can include illegal access and intercept of computers and computer communications, forgery and fraud using computers, child pornography, and copyright infringement.¹⁶ For instance, illegally downloading music or movies may constitute a transnational crime.
- *Drug trafficking*: This is the distribution and sale, as well as cultivation and manufacture of substances subject to drug prohibition laws.¹⁷ Transporting heroin from Afghanistan, through Iran and into Iraq is an example of such transnational drug trafficking.
- *Environmental crime*: This is the illegal harm of the environment. It may include illegal fishing or trade in animals, illegal trade in substances that harm the ozone, illegal dumping of hazardous waste, and illegal logging and trade in timber.¹⁸ Saddam Hussein's destruction of Kuwaiti oil wells may have been an example of transnational environmental crime.¹⁹
- *Human trafficking*: This is the recruitment, transportation, transfer, or harboring of people by force or deception for the purposes of exploitation.²⁰ Trafficked persons are exploited for sex, for labor, or occasionally for organs. The Islamic State of Iraq and Syria's kidnapping of Yazidi women into Syria is an instance of transnational human trafficking.²¹
- *Money laundering*: This is the disguise of money or property to hide the fact that it is gained from crime (for example, by forging, or making fake, business receipts to disguise where stolen money came from).²² Iraqi banks' handling of money into and out of Syria is an example of transnational money laundering.²³

¹⁵ To illustrate, according to the Iraqi Criminal Investigation Bureau, 13,003 cybercrimes were committed in 2011, the most recent year for which we have data. Attar J. Aboud, An Overview of Cybercrime in Iraq, 2 The Research Bulletin of Jordan ACT, 31, 32.

¹⁶ Convention on Cybercrime Title 1-3, *entered into force* Jul. 1, 2004, C.E.T.S. No. 185, *available at* <http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm>.

¹⁷ United Nations Office on Drugs and Crime, *Drug Trafficking*, <https://www.unodc.org/unodc/en/drug-trafficking/>.

¹⁸ DEBBIE BANKS ET. AL., ENVIRONMENTAL CRIME: A THREAT TO OUR FUTURE 2 (Oct. 2008), *available at* http://www.unodc.org/documents/NGO/EIA_Ecocrime_report_0908_final_draft_low.pdf.

¹⁹ *See generally*, Gilbert Cruz, *Kuwaiti Oil Fires*, TIME (May 3, 2010), http://content.time.com/time/specials/packages/article/0,28804,1986457_1986501_1986442,00.html.

²⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime art. 3(e), *entered into force* Dec. 25, 2003, U.N.T.S. 39574, *available at*

<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

²¹ *See generally*, Richard Engel and James Novogrod, *ISIS Terror: Yazidi Woman Recalls Horrors of Slave Auction*, NBC (Feb. 13, 2015), <http://www.nbcnews.com/storyline/isis-terror/isis-terror-yazidi-woman-recalls-horrors-slave-auction-n305856>.

²² United Nations Convention against Transnational Organized Crime, *supra* note 4 at art. 6.

²³ *See generally*, Omar al-Shaher, *Money Laundering in Billions, Iraqi Official Estimates*, AL MONITOR (Aug. 21, 2013), <http://www.al-monitor.com/pulse/originals/2013/08/money-laundering-corruption-iraq.html>.

- *Smuggling of cultural artifacts*: This is the theft of antique or ancient goods.²⁴ The theft of cultural artifacts from Iraqi museums may be an instance of such transnational smuggling.²⁵
- *Weapons trafficking*: Also known as arms trafficking or gunrunning, this is the sale or movement of firearms or ammunition from one country to another without the permission of both, or without the proper ammunition markings.²⁶ The transport of weapons from Iraq into Syria is a case of transnational weapons trafficking.²⁷

As you can see, there is a wide range of crimes that can be transnational. And this list does not include every possible transnational crime, only the most prominent. Next we will consider further why it matters whether a given crime is transnational.

2.4 Relevance of transnational crime

As we saw above, the UN's criteria for international crime are quite broad. Under them, all of the following *could* be transnational crimes: drug trafficking, weapons trafficking, terrorism, corruption, money laundering, human trafficking, cybercrime, environmental crime, and smuggling of cultural artifacts, among others. But they also *could* be national crimes. The distinction lies in where the crimes take place and whether they cross national borders.

At least in Iraq, whether a crime is transnational or not does not make much of a difference in the punishment. The Iraqi Penal Code does not require special punishments for crimes when committed across countries as opposed to within the country.

Whether a crime is transnational does matter, however, for two reasons. First, establishing who has jurisdiction (that is, the right to decide a case) over a transnational crime is much harder than for a domestic one. Second, countries use different tools—international organizations, agreements, and offices—to investigate and prosecute transnational crime. These two topics—jurisdiction and enforcement tools—will be the focus the remainder of this chapter.

2.5 Summary

In this section you learned what transnational crime is and what it is not. You learned about specific kinds of transnational crime, and you learned about the different kinds of laws, domestic

²⁴ Smuggling is regulated by the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property art. 11, May 9, 1972, U.N.T.S. 11806, *available at* http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html.

²⁵ *See generally*, Fox News, *Interpol steps up search for ancient artifacts stolen in Syria, Iraq* (Apr. 25, 2015), <http://www.foxnews.com/world/2015/04/28/interpol-steps-up-search-for-ancient-artifacts-stolen-in-syria-iraq/>.

²⁶ Protocol against the Illicit Manufacturing of and Trafficking in Firearms, *entered into force* Jul. 3, 2005, U.N.T.S. 39574, *available at* https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12-c&chapter=18&lang=en.

²⁷ *See generally*, Khalid al-Taie, *Iraq Arms, Soldiers Smuggled Into Syria, Say Officials*, HUFFINGTON POST (Feb. 14, 2012), http://www.huffingtonpost.com/2012/02/14/iraq-weapons-soldiers-syria_n_1275705.html.

and international, that govern it. Finally, you learned about why it matters whether a crime is domestic or transnational: because of how we determine jurisdiction, and because of the tools used to investigate and prosecute transnational crime. We turn to the subject of jurisdiction in the next section.

3. WHERE TRANSNATIONAL CRIMES ARE PROSECUTED

This section explains where transnational criminal cases are considered. Determining where to prosecute such crimes is hard. To understand why, consider the opposite: where to prosecute a domestic crime. In a domestic crime, both the victim and the perpetrator are in a single country, which is the same country where the crime occurred. It makes sense then that the courts of that country decide the case (the country will need to determine which of its courts can decide it, but that is a domestic legal matter). But determining where to prosecute transnational crimes is harder. The victim and perpetrator may be in different countries. Additionally the place where the crime occurred may be somewhere else. The challenge for governments then is to figure out when they have the authority, or jurisdiction, to decide a transnational criminal case.

Before identifying the different ways in which a court may have jurisdiction over a defendant, however, it is worth recalling what jurisdiction actually is. In this context, jurisdiction is the geography, people, or issues over which a court has authority to consider cases and issue decisions. As you may recall from your unit on public domestic law, there are many ways in which a court may have jurisdiction over a matter. Perhaps the court has jurisdiction over the territory in which the crime occurred. We call this **territoriality jurisdiction**. Perhaps the court has jurisdiction over the kind of person who allegedly committed the crime. We call this **personality jurisdiction**. Or perhaps the crime itself was of a type that the court automatically has jurisdiction. We call this **universal jurisdiction**. As you will see, all these different ways to get jurisdiction apply in matters of transnational crime. We will review each.

3.1 Territoriality jurisdiction

Sometimes countries claim jurisdiction over criminals based on where the crime was committed. This is known as territoriality jurisdiction.

Generally, if any of the elements of a crime occur within a country's territory, the country will have jurisdiction to prosecute the crime.²⁸ For example, if criminals plan a bank robbery in one country, rob the bank in another country, and deposit their money in a third country, all three countries may have jurisdiction to prosecute the crime. Further, some countries also grant jurisdiction when there is a significant harmful effect felt in the country, even if no element of the crime occurred there.²⁹

²⁸ BOISTER, *supra* note 11 at 140.

²⁹ *Id.* at 141.

Iraq's territorial jurisdiction statute roughly matches this general international standard. According to the Penal Code, Iraq has jurisdiction if "a criminal act is committed" in the country.³⁰ The country also has jurisdiction if the consequences of the crime are realized or intended to be realized in Iraq (perhaps because the perpetrators intended to bring stolen goods into the country). For instance, Iraq would certainly have jurisdiction over a bank robbery that occurred within its borders. It may also have jurisdiction over a bank robbery that occurred outside its borders, if the stolen money were brought to Iraq or if the criminals intended to do so. Iraq's territorial jurisdiction statute further applies to both criminal **principals** (the people who directly commit crimes) and to **accessories** (the people who assist in committing crimes, for instance by giving advice or direction), whether or not they were abroad at the time the crime occurred. In short, if a crime occurs within Iraq or has consequences to Iraq, then the government claims jurisdiction over those involved in the crime, whether in the country or abroad.

3.2 Personality jurisdiction

As discussed above, countries often claim jurisdiction in a case based on where the crime was committed. Alternatively countries will sometimes claim jurisdiction over a crime based on the people involved and their roles in the crime. This is known as personality jurisdiction.

Some countries claim jurisdiction over crimes where one of their citizens is the perpetrator. This is known as **nationality jurisdiction**.³¹ Other countries claim jurisdiction over crimes where one of their citizens is the victim. This is known as **passive personality jurisdiction**.³² And some countries claim jurisdiction over offenses committed outside their borders but that threaten the state's sovereignty, security, integrity, or other important governmental function. This is known as **protective jurisdiction**.³³

Iraq subscribes to nationality jurisdiction. That is, it claims jurisdiction for all crimes committed by Iraqi citizens abroad.³⁴ It does not, however, subscribe to passive personality jurisdiction. That is, it does not claim jurisdiction over crimes committed against Iraqi citizens. Finally, Iraq does subscribe to a form of protective jurisdiction: it claims authority over crimes that affect the internal or external security of the state.³⁵

Let's illustrate these concepts with a few examples. If Ahmed, an Iraqi citizen, runs a drug trafficking ring abroad, an Iraqi court may claim jurisdiction over him, even if no drugs entered the country (this is nationality jurisdiction). Similarly, even if Ahmed is not an Iraqi citizen, an Iraqi court may still claim jurisdiction over him if his actions threaten the country's security (this is protective jurisdiction). But if Ahmed is simply a law-abiding Iraqi citizen living abroad, and

³⁰ Penal Code *supra* note 7 at art. 6.

³¹ BOISTER, *supra* note 11 at 143.

³² *Id.* at 144.

³³ *Id.* at 145.

³⁴ Penal Code *supra* note 7 at art. 10.

³⁵ *Id.* at art. 9.

he is the victim of a serious crime, not the **perpetrator** (the person who commits the crime), an Iraqi court will not claim jurisdiction over the individual who harmed him, for Iraq does not use passive personality jurisdiction. These concepts will become clearer through some of the application exercises below.

3.3 Universal jurisdiction

For some crimes that are especially terrible, countries use what is known as universal jurisdiction. Universal jurisdiction allows a country to prosecute a crime no matter where it was committed, and no matter the nationality of the victim or the perpetrator. Individual countries decide whether or not to apply universal jurisdiction. The concept is typically limited to particularly egregious international crimes, such as genocide,³⁶ but many countries can and do extend such jurisdiction to ordinary national crime as well.³⁷

Iraq recognizes universal jurisdiction for certain crimes, such as the illegal trade in women, slaves, or drugs. Iraq also claims universal jurisdiction over individuals who caused “damage to international means of communication.”³⁸ So, for instance, if Guilhem illegally trafficked drugs from Paris to London, then subsequently fled to Iraq, he may be prosecuted under a theory of universal jurisdiction.

Such actions are highly sensitive, however, because applying universal jurisdiction almost certainly means depriving another country of the right to prosecute and imprison the perpetrator (an important subject we will address shortly). For many people, doing so would violate a country’s sovereignty, that is, its independence, equality, and authority over its own citizens. Leaders in all countries—including in Iraq³⁹—value sovereignty highly. And it is for this reason that no case can be brought under a theory of universal jurisdiction without the permission of the Iraqi Minister of Justice.⁴⁰

3.4 Limitations to jurisdiction

We have now reviewed three kinds of jurisdiction: territorial, personality, and universal. This section will introduce the limits to these forms of jurisdiction. In particular, perpetrators’ special status may sometimes limit jurisdiction. For instance, most states recognize **sovereign**

³⁶ Kenneth Roth, *The Case for Universal Jurisdiction*, FOREIGN AFFAIRS (Sep./Oct. 2001), available at <http://www.foreignaffairs.com/articles/57245/kenneth-roth/the-case-for-universal-jurisdiction>

³⁷ AMNESTY INTERNATIONAL, UNIVERSAL JURISDICTION: A PRELIMINARY SURVEY OF LEGISLATION AROUND THE WORLD – 2012 UPDATE 12 (2012), available at <http://www.amnesty.org/en/library/asset/IOR53/019/2012/en/2769ce03-16b7-4dd7-8ea3-95f4c64a522a/ior530192012en.pdf>.

³⁸ Penal Code *supra* note 7 at art. 13.

³⁹ See Greg Myre, *Iraq's Leader Finds Friends In Washington, But Faces Battles At Home*, NPR (Apr. 15, 2015), <http://www.npr.org/sections/parallels/2015/04/16/400169416/iraqs-leader-finds-friends-in-washington-but-faces-battles-at-home> (“To be honest with you, it’s a very sensitive issue. Iraqi sovereignty is very important to us.” (Quoting Haider Al Abadi)).

⁴⁰ *Id.*

immunity, the concept that one cannot prosecute a foreign official.⁴¹ Most states also recognize **diplomatic immunity**, which shields diplomats and their families from most arrests and prosecutions.⁴² And some states recognize immunity for people working on behalf of international organizations, such as peacekeepers working for the UN.⁴³ So if a head of state or a diplomat commits a minor offense while on official business (for instance, by failing to obey parking regulations), such an individual is typically immune from prosecution.

Iraq recognizes in principle all three forms of immunity. Its Penal Code states that, “[t]his Code is not applicable to offences that are committed in Iraq by persons who benefit from statutory protection under the terms of international agreements or international or domestic law.”⁴⁴ Through international agreements, therefore, the Iraqi government can establish various forms of immunity. And in fact it has, for example by signing the UN Convention on Privileges and Immunities, which establishes immunity both for the UN itself and for its employees in Iraq.⁴⁵

Application Exercise 4

Hafeez, an Iraqi citizen, transports heroin from Syria into Iraq. He is caught in Baghdad. Does the Iraqi government have jurisdiction to prosecute him? If so, under what type of jurisdiction?

Application Exercise 5

Idrees, a Syrian citizen, kills Hassan, an Iraqi citizen, while both are in Syria. The Iraqi government later apprehends Idrees while he is in Baghdad. Does the Iraqi government have jurisdiction to prosecute him? If so, under what type of jurisdiction?

Application Exercise 6

Qadir, a US citizen, hijacks a truck in Beirut, Lebanon, driven and owned by Minhal, an Iraqi citizen. The truck, loaded with vital medical supplies bound for Iraq to support the Peshmerga, crashes while still in Beirut (miraculously, no one is hurt). Who has jurisdiction to prosecute this crime: the US, Lebanon, or Iraq? Do all of them? And under what theories of jurisdiction?

⁴¹ BOISTER, *supra* note 11 at 154.

⁴² *Id.* at 155.

⁴³ *Id.* at 156.

⁴⁴ Penal Code *supra* note 7 at art. 11.

⁴⁵ Convention on the Privileges and Immunities of the Specialized Agencies, Aug. 16, 1949, U.N.T.S. 521, *available at* https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-2&chapter=3&lang=en.

3.5 How to handle conflicts of jurisdiction

From your reading so far, you may have realized that many countries are able to claim jurisdiction for the same people and for the same crime. One country may be able to prosecute a criminal under a theory of territorial jurisdiction, another under a theory of protective jurisdiction, and still another under a theory of universal jurisdiction. This creates challenges for states, many of which may compete for the privilege to prosecute criminals, or alternatively may fight to avoid the cost of trying to imprison them.

This is a unique problem for transnational crime; it is why we study it separately from other kinds of crime. International law recognizes, and to a certain degree, accepts this conflict. As the author of a leading book on subject put it, when genuine jurisdictional conflicts occur, “it is for parties simply to take their turn.”⁴⁶ In other words...

One practical tool for resolving this conflict is an extradition treaty, discussed in more detail below. **Extradition** treaties are agreements between states on whether and how to treat criminals caught in one country for crimes committed in another. One of the issues extradition treaties often address is how to handle jurisdictional conflicts. The 1934 Iraq-US agreement, for example, says that extraditions must wait until the country in custody of a criminal tries him or her.⁴⁷ Similarly, the UN model treaty on extradition says that a country can refuse a request if it has already sentenced the requested criminal for the alleged crime.⁴⁸ If more than one country requests extradition, the criminal is delivered to the country that requested extradition first.⁴⁹

In short, conflicts over who gets to (or has to) prosecute an individual are real, but can be resolved, in particular through extradition treaties.

Application Exercise 7

Ahmed, an Iraqi citizen, steals millions of dollars from a Lebanese bank, which he hides in London. Ahmed is captured in London. If convicted, he could face up to twenty years in prison. All three countries, Iraq, Lebanon, and the U.K., claim jurisdiction over Ahmed. What problems would occur if all three countries were to prosecute Ahmed?

3.6 Summary

You now better understand the concept of jurisdiction and how jurisdictional questions make transnational crime unique. You also understand three different ways in which countries claim

⁴⁶ BOISTER, *supra* note 11 at 152.

⁴⁷ Extradition Treaty Between the Kingdom of Iraq and the Republic of the United States of America art. VI, Iraq-U.S., Jun. 7, 1934, *available at* <http://internationalextraditionblog.files.wordpress.com/2011/03/iraq.pdf>.

⁴⁸ G.A. Res. 45/116, art. 3(d) U.N. Doc. A/RES/45/116 (Dec. 14, 1990), *available at* <http://www.un.org/documents/ga/res/45/a45r116.htm>.

⁴⁹ Extradition Treaty Between the Kingdom of Iraq and the Republic of the United States of America, *supra* note **Error! Bookmark not defined.** at art. VIII.

jurisdiction in a case: territoriality, personality, and universality. Finally, you understand why countries may have conflicts on jurisdiction over a crime, and how one tool—extradition treaties—can help address these conflicts.

4. HOW TRANSNATIONAL CRIMES ARE FOUGHT

You now have a good sense of what transnational crimes are and how jurisdiction over them is determined. You also have a sense of how conflicts between countries over jurisdiction are resolved. As you read about these crimes, however, you may have wondered how transnational crimes are investigated, and how transnational criminals are caught. After all, if crimes and criminals cross national borders, you may wonder how individual countries are expected to capture these people.

In practice, there are three kinds of tools for fighting transnational crime that can be organized by the number of parties involved: unilateral, bilateral, and multilateral. First, countries often take actions on their own to capture criminals within their own countries. We will call these **unilateral** tools because they concern just a single country. Second, countries make various kinds of agreements with each other, some called “Mutual Legal Assistance Treaties,” others called extradition treaties (just discussed above), to help law enforcement agencies work together. We will call these **bilateral** tools, because they are often agreements between two countries. Finally, countries will often work with international organizations to help publicize and investigate transnational crimes. We call these **multilateral** because they involve many countries. We will consider each kind of tool—unilateral, bilateral, and multilateral—in order.

4.1 Unilateral tools

Most of the work of fighting transnational crime occurs at the national level. That is to say, most of the tools for combating transnational crime are unilateral. The sorts of tools that countries will employ on their own vary tremendously. They range from strengthening their borders to passing new criminal statutes to improving the enforcement of existing tools.

Iraq has taken several unilateral steps towards fighting transnational crime. On terrorist financing for instance, it established a Financial Intelligence Unit to investigate such crimes. On corruption, it signed and ratified the UN Convention Against Corruption and passed the Money Laundering Act of 2004.⁵⁰ And on drug trafficking, it assigned the Ministry of Interior to seize illicit substances, and assigned the Ministry of Health to help reduce drug addiction.⁵¹

All this should suggest that much of the hard work of fighting transnational crime occurs at the national level. As we will see, states, not international organizations, remain the primary tools for

⁵⁰ Business Anti-Corruption Portal, *Iraqi Public Anti-Corruption Initiatives*, <http://www.business-anti-corruption.com/country-profiles/middle-east-north-africa/iraq/initiatives/public-anti-corruption-initiatives.aspx>.

⁵¹ U.S. Department of State, *2013 INCSR: Country Reports - Honduras through Mexico* (2013), <http://www.state.gov/j/inl/rls/nrcrpt/2013/vol1/204050.htm>.

fighting drug trafficking, human trafficking, and a range of other crimes. The other tools we will discuss, both bilateral and multilateral, are aimed at strengthening the capacity of governments to do exactly that.

4.2 Bilateral tools

There are two main bilateral tools for fighting transnational crime: Mutual Legal Assistance Treaties and extradition treaties. We will look at each.

Mutual Legal Assistance Treaties are written so that countries may help one another investigate, prosecute, and punish criminal offenses.⁵² Countries enter into Mutual Legal Assistance Treaties, or any treaties for that matter, in order to accomplish together what they cannot achieve alone. In this case, Mutual Legal Assistance Treaties help countries track and capture criminals beyond their own borders. Some Mutual Legal Assistance Treaties require that countries return stolen assets to one another.⁵³ Others treaties require that countries exchange information about cases and crimes.⁵⁴ Some treaties require that countries help one another train their law enforcement agents. And other treaties (though very few) require that others be allowed to pursue suspects into their own territories (in the language of law enforcement, this is known as a **hot pursuit**).⁵⁵

Iraq has had at various times legal assistance treaties with Turkey,⁵⁶ Hungary,⁵⁷ and the Soviet Union.⁵⁸ These treaties contain many of the provisions described above. The assistance treaty with Hungary, for instance, requires the countries to help one another enforce criminal judgments (that is, take assets), and exchange information on criminal cases.⁵⁹ None appear to help with law enforcement training, though all contain provisions on extradition, described below. In this way Iraq, like many other countries, uses mutual legal assistance treaties—at least in theory, if not in practice—to assist in the prosecution of transnational crime. Yet, it should be noted, Iraq and its allies rarely use these treaties. Turkey, for instance, has repeatedly requested that Iraq extradite people it believes to be criminals and terrorists, with no success.⁶⁰ Similarly, Iraq has requested that Turkey extradite its former Vice President, again without result.⁶¹

⁵² 2 MODEL CODES FOR POST-CONFLICT CRIMINAL JUSTICE 427 (Vivienne O'Connor and Colette Rausch, eds.) (2008).

⁵³ BOISTER, *supra* note 11 at 236.

⁵⁴ *Id.* at 162.

⁵⁵ *Id.* at 168.

⁵⁶ Convention between the Kingdom of Iraq and the Turkish Republic in respect of legal assistance, in civil, penal and commercial matters (Iraq-Turk.), May 25, 1948, U.N.T.S. 581, *available at* <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280161cc9>.

⁵⁷ Treaty on legal assistance (Hung.-Iraq), Nov. 23, 1977, U.N.T.S. 22523, *available at* <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800d897f>.

⁵⁸ Treaty on legal assistance (Iraq-U.S.S.R.), Apr. 22, 1974, U.N.T.S. 13407, <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028010d8ca>.

⁵⁹ Convention between the Kingdom of Iraq and the Turkish Republic *supra* note 56 art. 39.

⁶⁰ See e.g., Sebnem Arsu, *Turkey Seeks Iraq Extradition of 2 Islamists in '03 Bombing*, NEW YORK TIMES (Jul. 14, 2005), <http://www.nytimes.com/2005/07/14/world/europe/turkey-seeks-iraq-extradition-of-2-islamists-in-03->

The second bilateral tool is the extradition treaty, which may be considered a form of legal assistance treaty, but is so important it is worth considering separately.⁶² Extradition allows one state to arrest a criminal accused of a crime in another state. So, for instance, if Nouri commits a bank robbery in Tunisia, then flees to France, France may arrest and return Nouri on Tunisia's behalf, if the countries have an extradition treaty between one another. More specifically, the state to which the criminal has fled (France, in our example with Nouri) will often make a **provisional arrest**, that is, a temporary detention until the requesting state (in this example, Tunisia), can assemble the documentation for a formal extradition request.⁶³ In order for this to occur, however, the arresting state must have some jurisdiction over the criminal, a topic discussed above.⁶⁴ As in this example, most extradition treaties are bilateral (recall, between two countries), though there are multilateral treaties on the subject as well.⁶⁵

There are four common limitations on extradition treaties that are important to understand. First, for extradition to apply, the perpetrator's actions must have been a crime in both countries.⁶⁶ So for example, a criminal can only be extradited for bribery if bribery is a crime both where the crime was committed and where the criminal was caught. To be clear what this means, it is not that the crime must have *occurred* in both countries, only that it be defined as a crime in both. To return to our earlier example, when Nouri commits a bank robbery in Tunisia, then flees to France, Nouri can only be captured in France if his actions are considered a crime in both Tunisia and France.

A second important limitation on extradition is the **political offense exception**. In many extradition treaties, countries will not extradite individuals accused of committing violent acts for political reasons.⁶⁷ So if Haider breaks a government window in Morocco in protest, then flees to Spain, Spain is unlikely to extradite him, even if such vandalism is a crime in both countries.

Third, many extradition treaties require that individuals who are extradited only be prosecuted and detained for the crimes for which they were extradited. So a country cannot have an individual extradited for one crime, only to charge him with another, perhaps far more serious crime. In the UN Model Treaty on Extradition, on which many bilateral extradition treaties are based, this is known as the **Rule of Specialty**.⁶⁸ To understand the rule in practice, consider the

bombing.html; David Batty, *Turkey demands Iraq hand over Kurdish fighters*, THE GUARDIAN, <http://www.theguardian.com/world/2007/oct/26/usa.kurds>.

⁶¹ Al Arabiya, *Turkey refuses to extradite Iraqi VP Hashemi* (May 9, 2012), <http://www.alarabiya.net/articles/2012/05/09/213108.html>.

⁶² BOISTER, *supra* note 11 at xviii.

⁶³ Joan Presky, *The Provisional Arrest Clauses of Extradition Treaties: Are They Constitutional*, 11 LOY. L.A. INT'L & COMP. L. REV. 657, 658 (1989).

⁶⁴ BOISTER, *supra* note 11 at 214.

⁶⁵ For example, the Inter-American Convention on Extradition. BOISTER, *supra* note 11 at 215.

⁶⁶ BOISTER, *supra* note 11 at 218.

⁶⁷ *Id.* at 223.

⁶⁸ G.A. Res. 45/116, *supra* note **Error! Bookmark not defined.** at art. 14.

following example. Great Britain once extradited a suspected murderer to the U.S. Once there, however, the U.S. charged the suspect, not with murder, but with a different crime: inflicting cruel and unusual punishment. The U.S. Supreme Court in essence said that this change violated the Rule of Specialty, and dismissed the conviction.⁶⁹

Finally, some countries, such as China and Australia, have bans on extraditing their own citizens, meaning that they will not extradite their citizens under any condition. Instead they have laws allowing their governments to prosecute citizens for crimes committed abroad.

Application Exercise 8

Consider the four common limitations on extradition: the offense must be a common crime in both countries, it must not be a political offense, the criminal must be prosecuted only for the crime for which he was extradited, and (for a few countries), the criminal must not be a citizen of the country in which he is captured. Not all countries and not all treaties have these limitations. But why might countries want to have some of these sorts of limitations?

Iraq has a number of extradition treaties with, for example Iran (signed in 2011⁷⁰), Turkey (1932), the United Kingdom (1934), and the United States (1934). The Iraq-US extradition treaty, for instance, requires that each country turn over people who have been charged by the other country of rape, murder, arson, or other serious crimes. It also has several of the limitations listed above. Criminals, for instance, can only be extradited for crimes recognized in both countries, and cannot be extradited for political offenses.⁷¹

To better understand how extradition treaties work in practice, it is worth considering recent examples of attempts (some successful, others not) to extradite criminals from Iraq.

One example of success comes from Kurdistan. In 2007, two Iraqi men strangled a woman in an honor killing in England.⁷² After strangling the woman, the two men fled to Iraq and ultimately to Sulaimaniyah. The location of the two men did not stay secret for long, however. One went to prison for a fatal car accident, the other was found in a hospital after surviving a gunshot wound.⁷³ Once the locations of the two men were discovered, women's rights groups, working with British investigators, were able to convince the Iraqi courts to extradite the two men to the

⁶⁹ See Roberto Iraola, *The Doctrine of Specialty and Federal Criminal Prosecutions*, 43 VALPARAISO UNIVERSITY LAW REVIEW 89, 89 (2008).

⁷⁰ Sara Ghasemile, *Former foes Iraq and Iran sign extradition accord*, AL ARABIYA NEWS (Apr. 26, 2011), <http://english.alarabiya.net/articles/2011/04/26/146815.html>.

⁷¹ Extradition Treaty Between the Kingdom of Iraq and the Republic of the United States of America, *supra* note **Error! Bookmark not defined.** at art. II-III.

⁷² Karen McVeigh, *'Honour' killing: pressure grows on UK to extradite suspect from Iraq*, THE GUARDIAN (Nov. 22, 2007), <http://www.theguardian.com/uk/2007/nov/22/iraq.ukcrime>.

⁷³ Charles McDermid, Hemin H Lihony, *Iraqi Kurdistan's Activists Hailed in Wake of Honour Killing Case*, KURD NET (Nov. 19, 2010), <http://www.ekurd.net/mismas/articles/misc2010/11/state4374.htm>.

U.K. (the two countries already had an extradition treaty between one another⁷⁴). Both men were extradited, convicted, and sentenced to jail terms of over twenty years.⁷⁵

Less successful was the United States' effort to have Iraq extradite Ali Musa Daqduq, an alleged Hezbollah operative. Mr. Daqduq was captured in 2007 and accused of terrorism, espionage, and the killing of American troops.⁷⁶ When the American military withdrew from Iraq, Mr. Daqduq was transferred to an Iraqi prison. The United States' requested his extradition to America. Despite the existence of a treaty, however, the Iraqi government chose not to extradite Mr. Daqduq and eventually released him, citing a lack of evidence.⁷⁷

Application Exercise 9

Why do you think the extradition attempt of the men accused of an honor killing succeeded, while the extradition attempt for the Hezbollah operative failed?

4.3 Multilateral tools

So far we have looked at the unilateral and bilateral tools used to investigate and punish transnational crimes. There are also a number of multilateral tools to help spread information about crimes and criminals, as well as best practices for fighting both. While it would be helpful to survey every multilateral tool for combating transnational crime, two examples will suffice to illustrate the concept.

The first multilateral tool is INTERPOL, an organization established to help police organizations around the world cooperate with one another. INTERPOL does not make arrests, but it does issue alerts (called **red notices**) about fugitives who are wanted due to an arrest warrant or court decision.⁷⁸ These notices can help build international awareness of these criminals and encourage countries to cooperate. These notices can also severely limit the freedom of movement of these criminals.

⁷⁴ Extradition Treaty Between His Majesty, In Respect Of The United Kingdom, And His Majesty The King Of Iraq (May 3, 1933), available at https://www.unodc.org/tldb/pdf/Extradition_Treaty_between_His_Majesty_in_Respect_of_the_United_Kingdom_and_Him_Majesty_the_King_of_Iraq_Full_text.pdf.

⁷⁵ Kurd Daily, *UK: Banaz Mahmud's cousins get life jail for "honour killing"* (Nov. 11, 2010), <http://www.ekurd.net/mismas/articles/misc2010/11/kurdsworld502.htm>, Institute of War and Peace Reporting, *Iraqi Activists Hailed in Wake of Honour Killing Case* (Nov. 2010), <http://www.refworld.org/docid/4ceb92311e.html>.

⁷⁶ Michael R. Gordon, *Against U.S. Wishes, Iraq Releases Man Accused of Killing American Soldiers*, NEW YORK TIMES (Nov. 16, 2012), <http://www.nytimes.com/2012/11/17/world/middleeast/iraq-said-to-release-hezbollah-operative.html>.

⁷⁷ *Id.*

⁷⁸ INTERPOL, *Notices*, <http://www.INTERPOL.int/INTERPOL-expertise/Notices>.

In 2012, for instance, INTERPOL issued a red notice for Iraq's former Vice President, Tariq Al Heshemi.⁷⁹ Mr. Al Heshemi was accused of organizing political assassinations during the height of the insurgency.⁸⁰ While Mr. Al Heshemi has not yet been arrested, the notice does seem to have severely restricted his movements.⁸¹

In this way, INTERPOL facilitates information sharing and helps pressure governments not to protect those who commit transnational crime, even though INTERPOL itself does not have the power to make arrests or prosecute cases.

The Financial Action Task Force, or FATF, is another organization to help countries fight transnational crime, in this case financial crimes. FATF was established in 1989 by the G7, the countries with the world's seven most advanced economies, in order to help fight money laundering. The organization does this by establishing government **best practices**, or the most ideal policies, for countering money laundering, and encouraging countries to adopt those measures.⁸² Example recommendations for countries include:

- That governments criminalize the financing of terrorism.⁸³
- That governments prohibit banks from keeping anonymous accounts.⁸⁴
- That governments require banks to report accounts that they reasonably suspect are being used to finance criminal activity or terrorism.⁸⁵

Iraq is a member of FATF's Middle East affiliate.⁸⁶ It has committed to implementing several FATF recommendations, such as criminalizing money laundering and establishing customer due diligence requirements.⁸⁷

As should be clear from the discussion above, organizations like INTERPOL and FATF do not have the power themselves to prosecute criminals or to make arrests. They are instead tools to help national police and courts do their work. Further, INTERPOL and FATF are not the only multilateral organizations fighting transnational crime. The United Nations Office on Drugs and

⁷⁹ INTERPOL, *INTERPOL issues Red Notice for Iraq Vice-President* (May 8, 2012), <http://www.INTERPOL.int/News-and-media/News/2012/PR039>.

⁸⁰ BBC, *Turkey refuses to extradite Iraqi Vice-President Tariq al-Hashemi* (May 9, 2012), <http://www.bbc.com/news/world-middle-east-18009408>.

⁸¹ INTERPOL Secretary General Ron Noble said, "The INTERPOL Red Notice against Tariq Al-Hashemi will significantly restrict his ability to travel and cross international borders. It is a powerful tool that will help authorities around the world locate and arrest him." INTERPOL, *supra* note 79.

⁸² BOISTER, *supra* note 11 at 188.

⁸³ FINANCIAL ACTION TASK FORCE, INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION: THE FATF RECOMMENDATIONS 13 (Feb. 2012), *available at* http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.

⁸⁴ *Id.* at 14.

⁸⁵ *Id.* at 19.

⁸⁶ MENAFATF, *About MENAFATF* (2014), <http://www.menafatf.org/topiclist.asp?ctype=about&id=546>.

⁸⁷ Financial Action Task Force, *Improving Global AML/CFT Compliance: on-going process* (Oct. 24, 2014), <http://www.fatf-gafi.org/countries/d-i/iraq/documents/fatf-compliance-oct-2014.html>.

Crime (UNODC), for instance, trains member states on best practices for fighting illicit drugs, crime, and terrorism.⁸⁸ It also conducts research and pushes countries to ratify relevant treaties.⁸⁹ The United Nations Global Initiative to Fight Human Trafficking, as part of UNODC, performs similar work on trafficking issues.⁹⁰ And countless NGO's work on these issues by publishing reports, supporting government programs, and providing services for victims of transnational crime.

Before moving on, it is worth noting that one organization you may have heard of, the International Criminal Court, does not prosecute transnational crime. Its authority is instead over international crimes (discussed above) such as genocide, war crimes, and crimes against humanity.⁹¹ Yet as should be clear from the discussion above, there are several other important organizations whose focus is on fighting, if not prosecuting, transnational crime. For further information on the International Criminal Court, see the ILEI Working Paper on International Criminal Law.

Application Exercise 10

As we have seen, countries appear to be more willing to use unilateral and bilateral tools to fight transnational crime, rather than multilateral tools. Why do you think that is?

4.4 Summary

In this section, you have learned another way in which transnational crimes are unique, that is, the way in which they are investigated and enforced. You saw that there is a range of tools—unilateral, bilateral, and multilateral—to assist in this effort. And you saw how despite this range of tools, it remains national governments that are ultimately responsible for investigating and prosecuting most transnational crimes.

5. CONCLUSION

In this chapter on transnational crime, you learned about three things. First, you learned about what transnational crimes are, and what makes them unique. Second, you learned about three broad ways in which countries get jurisdiction to prosecute transnational crime: territorial, personality, and universal. And third, you learned about the tools available for fighting such crimes: bilateral, multilateral, and unilateral. You probably recognized that transnational crime is

⁸⁸ United Nations Office on Drugs and Crime, *About UNODC* (2014), <https://www.unodc.org/unodc/about-unodc/index.html?ref=menutop>.

⁸⁹ *Id.*

⁹⁰ United Nations Global Initiative to Fight Human Trafficking, *UN.GIFT.HUB* (2014), <http://www.ungift.org/>.

⁹¹ International Criminal Court, *Jurisdiction and Admissibility*, http://www.icc-cpi.int/en_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/jurisdiction%20and%20admissibility.aspx.

distinct from both domestic and international crime. You saw that there are many, sometimes overlapping, means for countries to get jurisdiction of transnational criminal matters. And you saw that while there is a wide range of tools available for fighting transnational crime, it is the responsibility primarily of national governments to do so. Whether you choose a career in law, business, or government, all this will be useful as you think about how to avoid and prevent transnational crime.

Throughout this chapter you have used your legal reasoning skills to apply the law to specific situations, and have probably thought about the positives and negatives of the system Iraq currently has. These skills, and this knowledge, should reinforce what you have already learned in your courses on domestic and international criminal law. All of this will be relevant in your own careers as you think about how laws from many different countries interact with one another and affect you.

6. GLOSSARY

Accede: Agree to join to join a treaty, often after it has been signed and ratified by other states.

Accessory to a crime: Someone who assists in committing a crime, for instance by giving advice or direction.

Bilateral: something relating to two countries.

Codify: Arrangement of laws into a systematic code

Custom: Actions countries take out of a sense of perceived legal obligation. For instance, it is customary international law that nations respect one another's borders. Countries do this in part out of a perceived legal obligation to do so.

Domestic: Equivalent to national, and to be distinguished from international (for example, domestic and international law).

Extradition treaties: A kind of Mutual Legal Assistance treaty to help countries capture and return suspected criminals wanted by other countries.

Human trafficking: The recruitment, transportation, transfer, or harboring of people by force or deception for the purposes of exploitation. Trafficked persons are exploited for sex, for labor, or occasionally for organs.

Hot pursuit: When law enforcement follows a suspect across national borders.

Jurisdiction: The right of a court to decide a case. Courts may have jurisdiction over certain geographies, over certain people, or over certain issues in cases.

Multilateral: something relating to many countries.

Mutual Legal Assistance Treaties: Treaties to help countries track and capture criminals beyond their own borders, or to enable countries' law enforcement forces to better work with one another.

Perpetrator: The person who commits a crime.

Personality jurisdiction: Jurisdiction obtained based on a person's citizenship or residency.

Principal to a crime: Someone who directly commits a crime.

Protocol: An international agreement often used to supplement an existing treaty.

Provisional arrest: A temporary detention until a requesting state can assemble the documentation for a formal extradition request.

Public international law: The law concerning the conduct of nations.

Red notices: INTERPOL alerts of fugitives who are wanted due to an arrest warrant or court decision.

Territoriality jurisdiction: Jurisdiction obtained based on a person's presence in a country.

Transnational crime: Crime that occurs across, beyond, or through multiple nations.

Unilateral: something relating to a single country.

Universal jurisdiction: Jurisdiction obtained regardless of the suspect's citizenship, residency, or presence. Generally reserved for prosecuting especially bad crimes.

7. SUGGESTED APPLICATION EXERCISE ANSWERS

Suggested Answer for Application Exercise 1

There is no right answer to this question. International forces are creating new kinds of crime. From globalization to new wars to the rise of the Internet and new technology generally, all of these developments create opportunities for new kinds of crime. And because these developments are unpredictable, it is difficult to know precisely what those crimes will be. For this reason, it may make sense to keep the definition of transnational crime open.

Suggested Answer for Application Exercise 2

Yes. By smuggling weapons from the United States to Iraq, Blackwater committed a crime that occurred in more than one country. Some students may notice that Blackwater violated a US, not an Iraqi or international law. This is a good opportunity to note that the transnational crimes in this case are domestic crimes, not international ones. It is also a good opportunity to note that

even if something is not a crime in every country or jurisdiction, it may still be a transnational crime.

Suggested Answer for Application Exercise 3

Probably not. While Uday's crimes were known around the world, they were committed in a single country by a single person, with effects that were largely contained to that country. Students might notice that Uday's actions may have violated international law, but this is a good time to note that crimes under international law and transnational crime are not identical.

Suggested Answer for Application Exercise 4

The Iraqi government does have the jurisdiction to prosecute Hafeez, under a theory of territorial jurisdiction.

Suggested Answer for Application Exercise 5

If the Iraqi government had a form of passive personality jurisdiction, it would have the authority to prosecute Idrees. It does not, however, and so lacks the authority to prosecute him.

Suggested Answer for Application Exercise 6

Lebanon has territorial jurisdiction, because the crime (the hijacking) occurred within its territory.

The United States has nationality jurisdiction, because the criminal, Qadir, was a United States citizen.

Iraq would have passive personality jurisdiction, because the victim of the crime, Minhal, was an Iraqi citizen. As discussed above, however, Iraq does not have a passive personality jurisdiction statute, and so Iraq cannot get jurisdiction this way. It may, however, be able to claim protective jurisdiction if the action interfered with the security of Iraq.

Suggested Answer for Application Exercise 7

There are many possible answers to this question. There is a duplication of work and cost to try Ahmed in several countries. There are expenses both for the governments and for any witnesses who may have to testify. And there is a problem of determining how to divvy up Ahmed's assets if restitution is deserved, and the problem of where Ahmed will serve his sentence if he is sentenced to prison.

Suggested Answer for Application Exercise 8

Common crime: Prevents countries from having to enforce laws that they would not themselves find deserving of punishment.⁹²

Political offense: Prevents countries from being dragged into the political fights of other countries.

Rule of specialty: Countries do not want to be "tricked" into helping other countries impose harsh or unexpected sentences.

Citizen exception: Some countries believe they are willing and more capable than others of prosecuting their own citizens while respecting those citizens' rights.

Suggested Answer for Application Exercise 9

There is no right answer, though considerations may include that the Hezbollah operative may have fallen under the political offense exception, that some of the crimes for which the operative was accused may not have been recognized in Iraq, that the Iraqi government may have feared that the operative would be unable to receive a fair trial (drawing on the Rule of Specialty, perhaps he would be accused of new crimes), or most likely, that there would be significant domestic political consequences for moving forward with the prosecution. In contrast, the men accused of the honor killing committed a non-political crime recognized in both countries. The Rule of Specialty would be unlikely to be an issue.

Application Exercise 10

⁹² Jonathan O. Hafen, *International Extradition: Issues Arising Under the Dual Criminality Requirement*, *BYU L. REV.* 191, 194-195 (1992) (Quoting IVAN A. SHEARER, *EXTRADITION IN INTERNATIONAL LAW* 137-138 (1971)), available at <http://www.law2.byu.edu/lawreview/archives/1992/1/haf.pdf>.

There is no right answer, though students may consider whether unilateral and bilateral tools are more likely to be effective than multilateral ones. They may also see how both unilateral and bilateral tools rely on states to enforce laws; multilateral tools do not necessarily. Finally, some students may also see a connection between this issue and with sovereignty, which was covered in the discussion of universal jurisdiction. Perhaps countries believe that unilateral and bilateral tools intrude on sovereignty less than multilateral tools.