

# THE ROLE OF INTERNATIONAL PROTECTIVE MECHANISMS INCURBING TRANSNATIONAL CRIMES

BY  
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## ABSTRACT

As criminalities span the globe, there is no doubt that the activities of transnational crime actors often generate a clash of civilizations, unsettling controlling values between states, necessitating international law interventions in balancing conflicting interests emanating from transnational crimes cases. Global interdependence of nations guarantees concerted legal, economic and social policies as well as safety nets that largely eliminate the incentives for transnational crimes. The international community have been actively engaged in combating transnational crimes. This activeness is evidenced by the evolution of various protective mechanisms against transnational crimes. To guarantee the effectiveness of these protective mechanisms, there is a need for the standardization of information and definitions relating to transnational crimes, addressing of deep criminalization of states, organizing of peace operations with adequately trained personnel amongst other recommendations as given in the work.

Key words: Transnational, Crime, International, Law, Mechanisms

## 1.1 Introduction

Globalization has been followed by a dramatic increase in transnational crimes, posing a huge global threat to the socioeconomic basis of societies and the confidence reposed in the rule of law.<sup>1</sup> Transnational crimes are violations of law that involve more than one country in their planning and execution.<sup>2</sup> In other words, transnational crimes involve the use of international links to continuously carry out global illegal transactions involving movement of information, money, physical objects, people, other tangible and intangible assets across state borders in order to use favourable market conditions in one or more foreign countries to obtain significant economic benefits, as well as evade social

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<sup>1</sup> L Shelley, *The Globalization of Crime-Factors that Facilitate Transnational Crimes* (Cambridge University Press 2019).

<sup>2</sup> J S Albanese, *Transnational Crimes* (De Sitter Publications 2017) 1.

control through corruption, violence and the use of contradictions and gaps in the systems of criminal law and justice of different countries<sup>3</sup>.

The actual or potential effects of transnational crimes transcend national boundaries and are hardly ever of entirely local interest.<sup>4</sup> This explains the very pivotal involvement of the international community in combating the upsurge and multiplicity of transnational crimes. It is feared that for every transnational offence committed, there is a ripple effect in other states. Despite the brick walls posed by states' sovereignty related issues, international protective mechanisms have been actively engaged in combating transnational crime over time.

## **2.0 Nature of Transnational Crime**

Transnational crimes are not stagnant in nature. They are constantly adapting to new markets and creating new forms of crime.<sup>5</sup> They involve illicit businesses that transcend cultural, social, linguistics and geographical boundaries.<sup>6</sup> Transnational crimes encompass virtually all serious profit-motivated criminal actions of an international nature, where more than one country is involved.<sup>7</sup> In 1995, the United Nations (UN) defined transnational crime as offences whose inception, perpetration and direct or indirect effects involve more than one country.<sup>8</sup> In 2000 the United Nations Convention On Transnational Organized Crime defined an offence as transnational if it is committed in more than one state, if it is committed in one state but a substantial part of its preparation, planning and direction or control takes place in another state, if it is

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<sup>3</sup> K Anotoli, K Svitlana et al, 'Characteristics of Transnational, Organized Criminal Groups and Features of the Investigation of their Criminal Activities' (2021) 4(4) *Journal of Legal, Ethical and Regulating Issues* <<http://abacademies.org>> accessed on 1 April, 2023.

<sup>4</sup> In *Somchai Liangsiriprasert v United States Government* Lord Griffiths speaking for a unanimous board stated: Unfortunately, in this century, crime has ceased to be largely of local origin and effect. Crime is now established on an international scale and common law must face this new reality.

<sup>5</sup> Mark H. Moore and Michael Tonry, *Youth Violence in America* (1998) 24 *Crime and Justice* <[http://scholarship.law.umn.edu/faculty\\_articles](http://scholarship.law.umn.edu/faculty_articles)>.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> Article 3, Protocol to Prevent Suppress and Punish Trafficking in Persons especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime 2000.

committed in one state but involves an organized criminal group that engages in criminal activities in more than one state and finally if it is committed in one state but has substantial effects in another state.<sup>9</sup>

Transnational crimes encompass series of crimes such as money laundering, theft of art and cultural objects, theft of intellectual property, illicit traffic in arms, sea piracy, aircraft hijacking, money laundering, cybercrime, illicit trade in wild life, trafficking in person, trade in human organs, illicit drug trafficking, illegal mining, and other offences committed by organized criminal groups.<sup>10</sup> These crimes threaten human peace and security, leading to human rights violations and the undermining of socioeconomic, cultural, political and civil development of societies around the world. The human security threats posed by transnational crime involve victimization, violence and health issues. Women and children are particularly vulnerable to the many kinds of human rights abuses associated with transnational crimes.<sup>11</sup> Thus the United Nations found them worthy of special protection through the instrumentality of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. The said Protocol supplements the United Nations Convention against Transitional Organized Crime. The vast sums of money involved in perpetrating transnational crimes compromise legitimate economies and have a direct impact on governance.<sup>12</sup> The effects of transnational crimes are felt both locally and globally. When transnational crime takes root, it is capable of destabilizing countries and entire regions, thereby hampering developmental assistance in those areas.

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<sup>9</sup> UNODC 'Transnational Organized Crime – The Globalized Illegal Economy' <<http://www.unodc.org/toc>> accessed on 27 August, 2021.

<sup>10</sup> *Ibid.*

<sup>11</sup> J Wilson 'Transnational Crime in Human Security in World Affairs: Problems and Opportunities' (2<sup>nd</sup> edition) <<http://opentext.com>> accessed on 27 August 2021.

<sup>12</sup> A H Pidana 'An Overview: Transnational Crime Issues in International Criminal Law Associated with MLA Regime' <<http://ditjenpp.kemenkamham.go.id>> accessed on 27 August 2021.

The dramatic changes in the dynamics of transnational crimes, both in numbers, degree, dimensions, geography and sophistication have occasioned a lot of difficulties in the understanding of the nature of transnational crimes.<sup>13</sup> Also, reliable and high-quality data are difficult to get as most transnational crimes incidents are not detected, reported, prosecuted and properly documented.<sup>14</sup> The fictionalized images of transnational crimes are far from the truth. The reality is far more about fluid organized criminal networks profiting from the sale of illicit goods on demand, provision of illicit services and infiltration of businesses and government operations. The international illegal market is anonymous and more complex than ever and generates billions of dollars<sup>15</sup> Yearly. Countless lives are lost as a result of organized crimes.<sup>16</sup> Drug related health problems and violence, firearm deaths and the unscrupulous methods and motives of human traffickers, and migrant smugglers result in such losses.<sup>17</sup> Each year millions of victims are affected as a result of the activities of organized crime groups transnationally.<sup>18</sup> These are only a collection of estimates of the prevalence and magnitude of activities related to transnational crimes based on remote monitoring, qualitative surveys and a host of other proxy indicators.<sup>19</sup> The lack of good data makes it difficult for law enforcement agencies to detect and give coherent statistic, making robust empirical analysis difficult.<sup>20</sup>

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<sup>13</sup> P M Ndubueze and Others, *Transnational Crime and the Rehabilitation of Offenders* (University of Lagos Press 2022) 3-24.

<sup>14</sup> F Allum and S Gilmour, *Routledge Handbook of Transnational Organized Crime* (Routledge Press 2021).

<sup>15</sup> UNODC facts ‘Transnational Organized Crime – The Global Illegal Economy’ <<http://www.unodc.org/loc>> accessed on 30 August, 2021.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> World Bank Group ‘Violence without Borders. The Internationalization of Crime and Conflict’ (2020) *Policy Research Report International Bank for Reconstruction and Development*. The World Bank 1818 A Street NW, Washington DC 204 33, 22.

<sup>20</sup> J S Albanese ‘Deciphering the Linkage between Organized Crime and Transnational Crime’ (2012) Vol 66 (1) *Journal of International Affairs*. The Trustees of Columbia University in the City of New York.

Transnational crimes can be categorized as having three broad objectives which are provision of illicit goods, provision of illicit services and the infiltration of businesses and government operations. In 2022, a Nigerian woman named Omoruyi Charity also known as Joy Jeff who played a key role in trafficking women to Italy, Spain and the Netherlands for prostitution was arrested. She was convicted and sentenced to 13 years imprisonment. The said woman lured young girls from remote Nigerian villages to Europe with the false promise of easy employment. The girls were taken through Libya to the Europe and coerced into prostitution upon their arrival. They are reportedly forced to pay between 30,000 to 35,000 Euros for being crossed over to Europe.<sup>21</sup>

Jeffrey Epstein, a powerfully connected American financier also faced charges of sex trafficking, bringing under aged girls as young as 14 years old into homes in various locations across the United States. He was reported to have had a network of more than 50 victims and the evidence against him included hundreds of lewd photographs of girls and women from different locations who were sexually enslaved by him.<sup>22</sup> Kingsley Essien a 36-year-old man was nabbed by the police in Nigeria for selling off his wife and son in October 2021 to a human trafficking cartel in Mali for the sum of two million naira. The suspect was arrested following a report lodged by the wife Bright Essien who reported that her husband informed her that he had secured a job. She discovered she had been sold off to a human trafficking cartel for prostitution. She was able to find her way to the Nigeria Embassy in Bamako Mali where she was assisted back to Nigeria. Upon getting to Nigeria, she realized that her son who she left in the suspects' custody had also been sold off to unknown people.<sup>23</sup>

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<sup>21</sup> D Glez 'Prostitution Ring: Nigerian Madam in sex trafficking case extradited to Italy' (16 March 2013)<<http://www.theafricareport.com>> accessed on 2 April 2023.

<sup>22</sup> L L Christensen and others 'Jeffrey Epstein's Arrest is the Tip of the Iceberg: Human Trafficking is the World's Fastest Growing Crime' <<https://theconversation.com>> accessed on 31 August, 2021.

<sup>23</sup> <<http://www.vanguardngr.com>> accessed on 14 November, 2022

Daily, sensationalist report on the travails of modern slaves, be it the saga of teenage girls and even boys trafficked into sex work or workers trafficked into nail bars, carwash shops, jobs and other vigorous endeavours. There are cases of bonded labour in Pakistan, which begins usually with a sort of loan being given to labourers or migrants by an employer or landlord in advance for any amount of works. The agreement come with the mutual understanding that this advance payment known as Peshgi in most regions of Pakistan will be paid by the labourers through laboring for the employer or landlord. In theory this loan is payable over limited period of time by the labourers. However, in practice they find it difficult to pay and are thereby trapped in gruesome cycle of forced labour and ever-increasing debt, even death is not a relief as the families of the labourers are pushed to continue to work as the debt remains generational. According to the International Labour Organization, more than 50 percent of works on the Thai fishing boats are migrants from Cambodia and Burma who spend long weeks at sea for extremely low wages, in working and living conditions that sometimes amount to modern slavery.<sup>24</sup> There are also cases of households employing overseas migrant domestic workers,<sup>25</sup> at least 146,000 female migrant domestic workers and possibly more are employed in the United Arab Emirate (UAE) mostly from Asia and Africa. These workers who are mostly woman are enticed with promises of high wages and good working conditions. However, they are being abused, denied of their wages, forced to work for excessively long hours with breaks or days off with their passports confiscated.<sup>26</sup> More examples of modern transnational slavery are visible in Qatari construction sites, the brick kiln industry in India, Brazilian garment factories where

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<sup>24</sup>More Examples of Canadian Cases of Human Trafficking' <<http://www.gov.bc.ca>> accessed on 31 August 2021.

<sup>25</sup> S Quirk 'The Rhetoric and Reality of Ending Slavery in Our Lifetime' in Popular and Political Representations, Beyond Trafficking and Slavery short course (2015) Volume 1. *Joel Quirk and Julia O'Donnell Davidson* eds 20, 25.

<sup>26</sup>The United States Department of Justice <<http://www.justice.gov>> access on 17 November 2022.

Bolivian workers work under harsh conditions,<sup>27</sup> Unilever's supply chain in Vietnam, Kenyan flower and green bean cultivation farms<sup>28</sup> etc.

Wikileaks founder, Julian Assange is currently battling extradition attempts from Britain to the United States where he is wanted for criminal charges relating to Wikileaks publishing of thousands of classified United States of America's military and diplomatic documents.<sup>29</sup> Assange was complicit with Chelsea Manning, a former intelligence analyst in the National Defense from 2009 to 2011. In April 2022, a British judge formally approved the extradition of the 51-year-old to the U.S to face the spying charges against him under the Espionage Act.<sup>30</sup> Lawyers for the Wikileaks publisher have filed an appeal against his extradition, Assange's lawyers argue that he is being prosecuted for his political opinions and that if extradited and convicted, he faces a possible penalty of up to 175 years in jail.<sup>31</sup> In February 2021, a Nigerian business mogul, Obinwanne Okeke better known as Invictus, who was once listed on the Forbes Africa 30 under 30 was convicted and sentenced to 10 years imprisonment over internet fraud charges. He was involved in computer-based intrusion fraud scheme which caused approximately \$11 million in known losses to his victims. Through subterfuge and impersonation, Obinwanne Okeke engaged in multiyear global business email and cyber hacking schemes. According to court documents, Mr. Okeke 33, operated a group of companies known as Invictus group based in Nigeria, from approximately 2015 to 2019, Okeke and others engaged in a conspiracy and conducted various cyber frauds, email

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<sup>27</sup> A Sloan, 'UK Fied Visa System Turning Domestic Workers into Modern Day Slavery: The Guardian (Mar 17, 2015) <<https://www.theguardian.com/world/2015/Mar/17>> accessed on 2 April, 2023.

<sup>28</sup> J Lerche, *ILO Campaigns: Missing the Word for the Trees in Forced Labourst in the Global Economy, Beyond Trafficking and Slavery Short Course Volume 2* (Genevieve LeBawn and Meil Howard edns 2015) 74, 77.

<sup>29</sup> T John and others 'Julian Assange's Extradition to US approved by UK Government' <<http://cnn.com>> accessed on 2 April, 2023.

<sup>30</sup> The Associate Press 'Julian Assange is One Major Step Closer to Extradition to the US' (April 20, 2022) <<http://npr.org>> accessed on 2 April 2023.

<sup>31</sup> B Morton 'Julian Assange can be Extradited to the US, Court Rules' (10 December 2021) <<http://bbc.com>> accessed on 2 April 2023.

compromise schemes targeting companies one of which was Unatrac Holding Limited.<sup>32</sup> He was arrested in 2019 and is currently serving a 10-year jail term in the US.

In August 2022, three Nigeria citizens were extradited from the United Kingdom for business email compromise (BEC) fraud schemes in the Western District of North Carolina, Southern District of Texas and Eastern District of Virginia. The scams allegedly perpetrated by the defendants and their co-conspirators targeted unsuspecting victims including universities in North Carolina, Texas and Virginia, causing more than 5 million dollars in losses. A Nigerian social media influencer called Ramon Abbas popularly known as Hushpuppi was arrested in Dubai in June 2020 for multimillion dollar fraud charges filed against him by the United States government. Abbas laundered money through various online crimes including bank cyber-heists and business email compromise, hacked into email accounts to deceive victims into wiring money to him. In 2019, he helped launder \$14.2m stolen by North Korean hackers from a bank in Malta, funneling the money through banks in Romania and Bulgaria. He also helped launder millions of pounds stolen from a British company and a professional football club in the UK, got a New York based law firm to transfer nearly \$923,000 to a criminal account and acknowledged in a plea agreement that he helped defraud someone in Qatari who sought a \$15m loan to build a school. He was subsequently convicted and sentenced to 135 months in prison. He was also ordered to pay \$922,857 in restitution to the law firm and \$809,983 in restitution to the Qatari victim. He was subsequently convicted for money laundering, business email compromise scams and other online frauds.<sup>33</sup> The foregoing are a few of the reflections of transnational crimes amongst many others.

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<sup>32</sup> A Olufemi, 'Obinwanne Okeke Sentenced to Prison for \$11 Million Global Scheme' (February 17 2021) available at [premiumtimesng.com](http://premiumtimesng.com) accessed on 2 April, 2023.

<sup>33</sup> The United States Department of Justice available of <<http://www.justice.gov>> access on 17 November, 2022.

### **3.0 The Correlation between International Law and Transnational Crimes**

Dealing with transnational crimes is a practical and theoretical challenge involving highly complex and dynamic phenomena.<sup>34</sup> While national legislators have reacted to transnational crimes in different ways according to peculiarities of their territory, transnational crimes prove to surpass the dictates of territorial borders especially in this globalized era. The multinational nature of transnational crimes poses unique problems in understanding their causes, developing prevention strategies and in mounting effective investigative and adjudicative procedures.<sup>35</sup> Transnational crimes are not merely national offenses which are committed in and have effects solely on one jurisdiction but rather, they are offences with extraterritorial link due to the foreign nationality of the victim or offender or a vessel involved in crime. This definition embraces all situations in which problems arise exactly because the conduct of such case will not only affect one jurisdiction. Combating transnational crime therefore requires a multidimensional strategy that balances all interest, breaks the financial strength of transnational crime syndicates, disrupts criminal organizations, fights government corruption, bolsters judicial systems and improves transparency.

Generally, international law establishes normative guidelines and common conceptual frameworks for states across a broad range of domains which serves as a unifying cord to build, balance and integrate tools and strategies for strong legal interventions. International intervention helps to ensure that transnational crimes actors do not evade the long arms of the law by systematically exploiting jurisdictional gaps and differences in the law enforcement approaches and capacities in different countries, thereby strengthening multilateral cooperation.

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<sup>34</sup>P Hauck and S Peterke 'Organized Crime and Gand Violence in National and International Law' (2010) 96 (878) *International Review of the Red Cross*.

<sup>35</sup> J S Albanese, *Transnational Crime* (De Sirter Publications 2005).

The United Nations Organization responded to the globalization of transnational crime by developing suppression conventions since the 19<sup>th</sup> century which has engendered the spirit of cooperation in fighting the menace of transnational crimes amongst states. This approach has become steadily more significant.<sup>36</sup> The Suppression Conventions are crime control treaties concluded with the purpose of suppressing transnational harmful behaviours. They can be said to have established a system of transnational criminal law.<sup>37</sup> These Conventions provide a range of complex provisions for the criminalization of certain offences by state parties in their domestic law for severe penalties and for extra-jurisdictional procedural measures.<sup>38</sup> Although the origins of these treaties are international, penal proscriptions within them are national. The offences established by these treaties are crimes of international concern or common crimes against internationally protected interests.<sup>39</sup>

#### **4.0 International Protective Mechanisms against Transnational Crimes**

##### **4.1 Legislative Mechanisms**

International law provides states with the basic parameters and the flexibility to address the widest possible range of transnational crimes. The United Nations Convention against Transnational crimes is the key piece of international legislation on transnational crimes. It created a legally binding instrument governing international cooperation between law enforcement and judicial authorities to share evidence, pursue international criminal actors and provide a framework for countries to update their legislation, to be able to investigate and problem to transnational crime perpetrators. The convention brought anticrime efforts at the United Nations close together in spite of their different histories.

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<sup>36</sup> N Boister 'Transnational Criminal Law' (2003) Vol 14 (5) *European Journal of International Law* 955.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> M C Bassiouni, *International Criminal Law: Crime* (2nd ed NY:Transnational Publishers 1999).

The explicit goal of the convention is spelt out in its article 1. The purpose for which the Convention evolved include the following<sup>40</sup>:

- (a) To define and standardize certain terms that are used with different meanings in various countries and circles.
- (b) To establish specific offences as transnational crimes.
- (c) To introduce specific control measures such as protection of victims and witnesses.
- (d) To provide for the forfeiture of the proceeds of crime.
- (e) To promote international cooperation through mutual legal assistance and joint investigations.
- (f) To provide for trainings research and information sharing measures.
- (g) To encourage preventive policies and measures

The widespread ratification of the Palermo Convention paints a picture of universality and success. Over 190 states are parties to the convention with its supplementary protocols also achieving high levels of participation. The Convention obliges state parties to criminalize participation in perpetrating transnational organized crime<sup>41</sup>, money laundering<sup>42</sup>, corruption<sup>43</sup> and obstructing justice.<sup>44</sup> Cooperation is necessary as states parties to the convention agree that sovereignty forbids the unilateral use of one state's law enforcement authority in another<sup>45</sup> The Palermo Convention contains minimum procedural framework to be used to enable cooperation in regard to the Convention and Protocol offences. Some of these measures are to be implemented at

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<sup>40</sup>I Tennant 'Fulfilling the Promise of Palermo? A Political History of the UN Convention Against Transnational Organized Crime' (2021) *Journal of Illicit Economics and Development* 53 – 56.

<sup>41</sup> Article 5.

<sup>42</sup> Article 6.

<sup>43</sup> Article 8.

<sup>44</sup> Article 23.

<sup>45</sup> Article 4(2) *United States v Machain* (1992 504 US 655).

the national level and some are to enable international cooperation. The Convention establishes means of international cooperation such as extradition and mutual legal assistance and introduced informal direct law enforcement cooperation and special investigative techniques.

States are required under the Palermo Convention to take necessary measures both legislatively and administratively, in accordance with the fundamental principles of their domestic law to ensure implementation.<sup>46</sup> The Convention requires states to enhance their financial and material support for implementation by developed states.<sup>47</sup> The Convention also makes room for technical assistance by states.<sup>48</sup>

#### **4.2 Protocols Supplementing the United Nations Convention Against Transnational Organized Crime**

The United Nations Convention against Transnational Crimes is supplemented by three protocols namely The Protocol to Prevent, Suppress and Punish trafficking in persons, especially Women and Children<sup>49</sup>. The Protocol against the Smuggling of Migrants by Land, Sea and Air<sup>50</sup> and the protocol against illicit Manufacturing of and Trafficking in Firearms, their Components and Ammunition.<sup>51</sup>

The Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children is a comprehensive approach towards the protection of persons from being trafficked. This implies a multi-agency approach that includes measures to prevent trafficking, punish offenders, protect victims and internationally recognize human rights. States parties agreed to harmonize legal standards in this regard. The Protocol provides for specific measures to provide for the physical, psychological and

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<sup>46</sup>Article 34(1).

<sup>47</sup>Section 30 (2) (b).

<sup>48</sup>Section 30(2) (c).

<sup>49</sup>It was signed on the 12th of December, 2000 and became effective on the 25<sup>th</sup> day of December, 2003

<sup>50</sup>The Protocol was adopted by Resolution A/FES/55/25 of 15 November, 2000. It was registered on the 28<sup>th</sup> day of January, 2004.

<sup>51</sup>It was drafted in May, 2001, signed on the 11<sup>th</sup> of July, 2001 and became effective from the 3<sup>rd</sup> day of July, 2005.

social recovery of victims. Suggestions as are also made as regards the status of victims, repatriation and the possibility of return to the state of origin.

The Protocol against the Smuggling of Migrants by Land, Sea and Air has its basic objective as combating the smuggling of migrants and the improvement of cooperation amongst the signatory states, with the protection of the rights of smuggled migrants at the heart of the protocol. By virtue of The Protocol, Parties undertake to combat all forms of obtaining illegal financial or other material benefits on facilitating smuggling, production, supply, provision of identity documents for illegal migrants. States also committed by reason of the protocol to assist and protect the rights of migrants, assist migrants whose lives and security are threatened, while respecting the specific needs of women and children.

The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their parts and components and Ammunition was adopted with a view to improving the fight against smuggling of arms and ammunition. The protocol envisages preventive measures such as keeping records, marking firearms, temporary disabling of firearms, licensing or export licenses, import and transit systems, security, sharing of information, cooperation, training, technical assistance and traffic mediation. The protocol also sets out several important recommendations which includes the recommendation for the harmonization of national legislations and the adoption of regulations for the seizure of firearms, and ammunition that have been illegally manufactured or illegally traded and recommendations in cases of illicitly manufactured or acquired weapons that can get into the hands of unauthorized persons.

### **4.3 Legislative Guides**

The United Nations office on drugs and crime produced legislative guides for the implementation of the Convention and each of the three protocols. The primary purpose

of the guides is to assist states in the ratification and implementation process by identifying legislative requirements, issue arising from those requirements and options available to states in developing and drafting the necessary legislations to curb transnational crimes. The guides were developed through a fully participatory process with the active involvement of three groups experts from all regions. The legislation guides were finalized at a meeting hosted by the Government of Monaco on the 8<sup>th</sup> and 6<sup>th</sup> of September, 2023 and widely disseminated.<sup>52</sup>

#### **4.4 Legislative Mechanisms for International Cooperation**

The model treaties developed through the United Nations congresses have offered guidance towards convergence of related treaty provisions. The Model Treaty on Extradition<sup>53</sup> and the Model Treaty on Mutual Legal Assistance in criminal matters<sup>54</sup> have proven to be very valuable tools for the development of bilateral and multilateral arrangements in the area of judicial cooperation in transnational crimes matters. Both Model Treaties are Supplemented by a Revised Manual which offers practical step to step suggests on how to initiate and follow through on the processes of Extradition and Mutual Legal Assistance.

#### **4.5 Other Important International Legislations on Transnational Crimes**

The United Nations Convention against Corruption is a vital international legislation in the fight against transnational crimes. It is the only legally binding universal anti-corruption instrument. The Treaty recognizes the importance of both preventive and punitive measures, address the cross-border nature of corruption with provisions on international cooperation as well.<sup>55</sup>

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<sup>52</sup>Report in response to General Assembly Resolution 58/135 of December 2003. A/59/204 of 30 July, 2004.

<sup>53</sup>Un General Assembly, Model Treaty on Extradition: As adopted on 14 December, 1990 A/RES/45/116

<sup>54</sup>Adopted by General Assembly Resolution 45/117 subsequently amended by Resolution 53/112, 14 December, 1990.

<sup>55</sup>It was adopted by the UN General Assembly on October 2003 and entered in to force in December

There are several other important international legislations that are highly relevant in the fight against transnational crimes. These legislations cover various types and reflections of transnational crimes. The United Nations Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime<sup>56</sup> is an international legislation which regulates money laundering, seizure and proceeds of crime. It also represents a legal basis for adopting national rules of states as regards money laundering. The Convention against illicit traffic in Narcotic Drugs and Psychotropic Substances<sup>57</sup> is an international legislation that aims at identifying effective measures against illegal drug trafficking. The Convention provides for the rights and obligations of the police and promotes the need for international cooperation of states in fighting drug trafficking.

The Convention on International Trade in Endangered Species (CITES)<sup>58</sup> is the foremost legal framework establishing rules and prohibitions for the trade in endangered Fauna and Flora. The substantive standards for the protection of copyrights is internationally governed by the Berne Convention<sup>59</sup> for the Protection of Literary and Artistic Works (Berne Convention) and the Agreement on Trade Related Aspects of Intellectual Property Rights (Trips Agreement).<sup>60</sup> The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property<sup>61</sup> provides a common framework for states parties on the measures to be taken to prohibit illegal trafficking in cultural property. The return and restitution of cultural property is central to the Convention. The Convention of

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2005.

<sup>56</sup>It is also known as the Strasbourg Convention. It was published in 1990.

<sup>57</sup>It was signed on the 20<sup>th</sup> day of December, 1988 and became effective on the 11<sup>th</sup> of November, 1990.

<sup>58</sup>It was signed on the 1<sup>st</sup> of July, 1973 in Switzerland and became effective from the 1<sup>st</sup> day of July, 1975.

<sup>59</sup>The Berne Convention for the protection of literary and Artistic work signed on the 9<sup>th</sup> of December, 1886 and became effective on the 5<sup>th</sup> of December, 1887.

<sup>60</sup>The Trips agreement was signed on the 1<sup>st</sup> of April, 1994 and became effective on the 1<sup>st</sup> of January, 1995.

<sup>61</sup>Also known as World Heritage Convention of 1972.

Cybercrime (2001) known as the Budapest Convention is the first International Agreement aimed at reducing computer related crimes by harmonizing national laws, improving investigative techniques and increasing international cooperation. The 1982 United Nations Convention on the Law of the Sea also known as the UNCLOS<sup>62</sup> provides the framework for the repression of piracy under international law. The Biological Weapons Convention (BWC)<sup>63</sup> effectively prohibits the development, production, acquisition, transfer, stock shipping and use of biological and toxic weapons. The legislation was the first multilateral disarmament treaty banning an entire category of weapons of mass destruction.

The Convention on Offences and Certain other Acts on Board Aircrafts<sup>64</sup> also known as The Tokyo Convention, The Convention for the Suppression the Unlawful Seizure of Aircraft<sup>65</sup> also known as the Hague Convention are both very crucial to the protection of Aircrafts from been hijacked internationally. These legislations exist in addition to several other United National General Assembly Resolutions on the various types of transnational crimes. They are some of the legislative efforts that have been made so far in the fight against transnational crimes.

#### **4.6 Institutional Mechanisms**

The United Nations Office on Drugs and Crime is an institution charged with the responsibility of implementing the United Nations Convention against Transnational Crime (UNTOC). It provides technical assistance and training in constructing legal frameworks and enhancing national enforcement capacity. It also serves as a hub for disseminating best practices and data collection on criminal activities most of which are

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<sup>62</sup>Entered into force on the 16<sup>th</sup> of November, 1994.

<sup>63</sup>The Convention became offensive on the 26 of March, 1975.

<sup>64</sup>The Convention was concluded at Tokyo on the 14<sup>th</sup> of September, 1963 and became effective on the 4<sup>th</sup> of December, 1969.

<sup>65</sup>Signed on the 16<sup>th</sup> of December, 1970 and became effective on the 14<sup>th</sup> of October, 1971.

necessarily approximations because criminals obviously do not report their annual earnings. The UNODC is mostly funded by voluntary contributions.

The broader United Nations System has also tackled the issue of transnational crime through specialized crime agencies, programs, commissions, working groups, campaigns and even a research institute the United Nations Commission on Crime Prevention and Criminal Justice (CCPCJ) for instance reviews UN standards and norms to combat transnational crimes as well as their implementation by member states. The UN's economic and social council (ECOSOC).<sup>66</sup> Funds the CCPCJ and guides its duties. The ECOSDOC has also issued series of important resolutions on transnational crimes to guide the UNODC's work on crime prevention.

National policing and border control has also been embraced by the UN as a critical approach to fighting transnational crimes. In the era of globalization, the Interpol<sup>67</sup> is the world's intermediary for police cooperation. It was founded in 1923 and has over 190 members, each with a national central bureau staffed by local officials. The agency's primary is to secure communication among law enforcement agencies to manage international criminal data bases, to provide operational support during crises and to train police forces. It holds no authority to conduct investigations independently or to arrest suspects as such, the agency is only as strong as the host country's police force.

The World Bank<sup>68</sup> and the International Monetary Fund<sup>69</sup> are also engaged in the fight against transnational crimes. They are involved in conducting assessments of anti-

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<sup>66</sup>ECOSOC serves as the central forum for discussing international economic and social issues and formulating policy recommendations addressed to member states and the United Nations system. In addition to a relative membership of 54 Un member states, over 1,600 non-governmental organizations have consultative status with the council to participate in the work of the United Nations.

<sup>67</sup>The International Criminal Police Organization Community known as Interpol is an international organization that facilitates, worldwide police cooperation and crime control with its headquarters in Lyon, France.

<sup>68</sup>The World Bank is an international financial institution that provides loans and grants to governments of low and middle-income counties for purposes of pursuing capital projects. It has its headquarters in

money laundering provisions in countries. The World Bank also carries out anti-corruption efforts and contributes funds to be applied to combating transnational crimes. The World Bank are recognizing that anti-transnational crimes funding and programs are imperative for economic growth, democracy and governance. The World Bank further spearheaded its effort to wards combating corruption through a partnership with the UN office on drugs (UNODC) called the Stolen Asset Recovery Initiative (Star) established in 2007. The initiative provides assistance and training to developing countries to prevent money laundering and recover stolen assets. The World Bank cooperates with numerous global bodies such as the Interpol and the international Center for Asset Recovery to help seize and return stolen funds.

Money laundering is noted to be the life blood of transnational crimes. Anti-money laundering mechanisms have been designed over the years by the international community to combat this organized crime. The Financial Action Task Force (FATF) founded in 1989 by the organization for economic cooperation and development is celebrated as one of the greatest anti-money laundering successes.<sup>70</sup> FATF's forty recommended measures published in 1990 and nine counter terrorist financing measures lay out steps for national governments to improve anti money laundering capabilities. In 2000 FATF also published an associated list of non-cooperative countries and territories.<sup>71</sup> The United Nations Security Council by virtue of their twelve resolutions between 2001 and 2010 mandated UN members' states to improve financial monitoring systems using the FATF recommendations as a yardstick for compliance. OTHER

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Washington DC US with 189 countries as members.

<sup>69</sup>Established in 1944 with 190 countries as members, the IMF monitors the international monetary system and global, economic developments to identify risks and recommend policies for growth and financial stability.

<sup>70</sup>Council on Foreign Relations. 'The Global Regime for Transnational Crime' (2013) *International Institutions and Global Governance Program* <<http://cfr.org/report/global-reg>> accessed on 20 October 2021.

<sup>71</sup>*Ibid.*

regional groups modeled on FATF have emerged across the world, that is the FATF Style Regional Bodies (FSRBs). The FSRBS evaluate state systems in the region using a deeper understanding of the local context. The FSRBS also provide trainings for law enforcement officials and help countries develop Financial Intelligence Units (FIU) in collaboration with UNODC. FSRBS add flesh to various other regional efforts ranging from the organization of American States Anti-Money Laundering Standards to an action group against money laundering of the economic community of West African States.<sup>72</sup>

More broadly, countries have incrementally forged Important Anti-Money Laundering (AML) norms. Originally, one of the first Convention relating to transnational crimes which is the United Nations Convention against Illicit Traffic on Narcotic Drugs and Psychotropic Substances of 1988 first criminalized laundering profits of drug trafficking. This was later expanded to apply to all money laundering in 1998 by a UN General Assembly Political Declaration.<sup>73</sup> Then, the UN Convention against Transnational Organized Crime (UNTOC or Palermo Convention) and the UN Convention against Corruption (UNCAC) which entered into force in 2003 and 2005 respectively further entrenched necessary AML standards. The Interpol supports these efforts by processing investigative requests between nations but because the Interpol lacks its own jurisdiction, it primarily urges nations to implement these norms rather than enforce them itself.<sup>74</sup> To help states meet these standards, the UN Global Program against Money Laundering, Proceeds of Crime and the Financing of Terrorism (GPMC) provides technical assistance in various forms such as legislative advice or training justice officials to investigate and prosecute financial crimes. The International Monetary Fund (IMF) is not left out of the fight, it conducts assessments, provides technical

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<sup>72</sup>*Ibid.*

<sup>73</sup>*Ibid.*

<sup>74</sup>*Ibid.*

assistance and drafts policy recommendations for the global anti-money laundering (AML) efforts.<sup>75</sup>

The World Trade Organization (WTO)<sup>76</sup> which is the main international institution dealing with trade issues has made international efforts to combat illicit markets specially trade in counterfeit goods. The land mark agreement which is the trade related aspects of Intellectual Property Rights (TRIPS) which was passed in 1995 applies to all 153 WTO members and establishes minimum standards for intellectual property rights including trademarks, copyrights, patents to be enforced by states. The UN World Intellectual Property Organization helps the WTO implement Trips by managing an international registry of patents, providing translations and notifications of national regulating as well as supporting international technical cooperation.<sup>77</sup>

The WTO ministerial conference adopted the Doha declaration affirming that TRIPS does not and should not prevent members from taking measures to protect public health by promoting access to affordable drugs. In 2006, the World Health Organization (WHO) launched the international medical products Anti-Counterfeiting Taskforce, the goal of which is to develop international and regional networks to facilitate information sharing on the counterfeiting of drug markets. The Interpol has also implemented several regional initiatives such as operation storm in South East Asia, operation mamba in Eastern Africa and Operation cobra in western Africa to combat counterfeit drugs and arrest traffickers.<sup>78</sup> The UN Environment Program (UNEP)<sup>79</sup> is the primary UN body for global environmental issues. It supports CITES and related programmatic initiatives.

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<sup>75</sup>*Ibid.*

<sup>76</sup>It officially commenced operations on 1 January 1995 with 104 member states representing over 90% of global trade and global GDP.

<sup>77</sup>*Ibid.*

<sup>78</sup>*Ibid.*

<sup>79</sup>Established after the United Nations Conference on the Human Environment in Stockholm in June 1972 with headquarters in Nairobi Kenya.

International efforts to combat pollution and toxic waste dumping are rooted in the Basal Convention of the Control of Transboundary Movements of Hazardous Wastes and their Disposal, The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants. Maritime Pollution is regulated by the International Convention for the Prevention of Pollution from Ships (MARPOL). In response to the proliferation of environmental crimes and limited enforcement, five international groups: (CITES, Interpol, UNODC, the World Customs Organization and the World Bank) formed the International Consortium on Combating Wildlife Crime (ICCW) which became operational in March 2011.<sup>80</sup>

Both the UN General Assembly and the Economic and Social Council (ECOSOC) responsible for development issues have introduced several resolutions in cybercrime, the UN Commission on Crime Prevention and Criminal Justice created in 1992 at the request of the ECOSOC has increasingly dealt with cybercrime related matters. In 2011 it spearheaded a draft resolution urging countries to provide capacity building assistance to fight cybercrime.<sup>81</sup> The International Telecommunication Union (ITU)<sup>82</sup> has also addressed the gamut of cybercrime problems focusing basically on data collection, research, and recommendations on building and harmonizing effective national legislation, one of the ITU flagship projects is the Child Online Protection<sup>83</sup> which aims at protecting children from malicious cyber space attacks. The Interpol has also been very instrumental in the fight against cybercrimes. Regional organizations and ad hoc groups such as Organization of American States (OAS) and the Asia Pacific Economic Cooperation Groups have also not been left out in the fight.

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<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> A specialized agency of the United Nations established in May 1865 as the International Telegraph Union, making it among the oldest international organization still in operation.

<sup>83</sup> An initiative by ITU in November 2008 within the framework of the Global Cyber Security Agenda.

The world customs organization (WCO)<sup>84</sup> is another institution that has been very involved in combating transnational crimes. The WCO plays an important role in promoting customs cooperation and addressing new challenges for customs and trade. It is deeply involved in designing and implementing policies worldwide that integrate measures which help ensure supply chain security, combat counterfeiting, promote trade and development as well as guarantee efficient collection of customs revenues.

## **5.0 Conclusion**

The internationalization of crime control remains a powerful factor in the face of emerging crime challenges. This is highly beneficial as curbing the menace of transnational crimes has remained a challenge that have overwhelmed the problem-solving capacity of even the most powerful sovereign states, making the existence of an effective international legal order indispensable.

The rapid progress of technological and economic globalization cannot be stopped. What can be changed is the provincialism of countries that still hold to the tenets of sovereignty which makes international cooperation cumbersome and ineffective. The challenges occasioned by transnational crimes cannot be dealt with effectively where states retreat into national isolation. Transnational crimes require a coordinated transnational response. As criminal networks span the globe, efforts to fight them should likewise extend beyond borders.

There is a great need for the sustenance of global strategies to combat existing and emerging transnational crimes with an international thrust, above jurisdictional borders. Global interdependence of nations, concerted legal, economic and social

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<sup>84</sup>The World Custom Organization (WCO) was established in 1952 as the customs co-operation council with its headquarters in Brussels, Belgium.

policies, coupled with re-distributive policies and social safety nets will largely eliminate the incentives for transnational criminality.

## **6.0 Recommendations**

Transnational crime is part of a web of causes and effects as well and must not be dealt with in isolation. As far as possible, various connected issues on both macro and a micro level must be induced in policies to mitigate the threat of transnational crimes. The basic approaches to improving international protective mechanisms against transnational crimes include;

### **(i) Standardization of Definitions and Information**

Defining transnational crime has been a huge source of debate through the years. The term has never attained a satisfactory definition or description. Academic and official literatures contain contradictory definitions. For some, it is a chain of activities, for others it is a set of relationships. Others place focus or attention on the organizational aspect of the activities by placing emphasis on hierarchical structure of criminal groups as opposed to the crime perpetrated. Most widely accepted definitions however present two important elements while defining transnational crimes, the sale of illicit goods and services and a certain organized structure with some form of hierarchy that has its goal as profiting from the above-mentioned provision of goods and services as well as the perpetuation of their existence through violence and corrupt relations with public officials. This definitional uncertainty stands to this day and have occasioned serious ambiguities in effectively combating transnational crimes. There are also different interpretations and understandings of what constitute transnational crimes across various jurisdictions.<sup>85</sup>

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<sup>85</sup> P Reuter, *Disorganized Crime: The Economics of the Visible Hand* (Cambridge, MIT Press 1983) 175.

Much is also required to be done as regards evidence-based policymaking as far as transnational crime is concerned. One of the major challenges facing policy making in this regard is the lack of data and other measurable factors related to transnational crimes. Transnational crime Data are sporadic and very localized at the best of times. While qualitative studies are of very high value, especially at the local level, there is a pressing need for more and better information gathering from especially fragile states where the infrastructure for data collection and analysis is often more existent. States and international organization must therefore do more to produce and help each other produce reliable information through funding initiatives and local partnerships. Credible and reliable information will bring about legal consolidation of both the definition of transnational crimes and crimes that constitute transnational crime.

**(ii) Addressing of Deep Corruption and Criminalized States**

Criminalized states are hubs of transnational criminal activities. Deep multilayered corruption vitiates efforts to engage nations constructively in combating transnational crimes. The international organizations set up to fight transnational crimes have tried to work around the problem of corruption especially amongst security agencies of countries, however, there are several limitations to what can be achieved because even if the agencies are purged of corruption, they operate in an environment of deeply entrenched corruption.<sup>86</sup> Experience from countries considered criminalized states such as Equatorial Guinea prove that removal of leadership compromised in transnational criminality has a salutary effect. This suggests that the most promising avenue to reduce corruption to a level that might permit the international community to work effectively with national governments and law enforcement agencies is to sanction and isolate the high level political and law enforcement elites who are found involved in

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<sup>86</sup> A Rabasa and Others, *Counter Network: Countering to Expansion of Transnational Criminal Networks* (Santamonica, Rand Corporations 2017) xix.

transnational crimes.<sup>87</sup> Such persons should not be subjected to the dictates of the jurisdiction they are familiar with but a higher realm of prosecution. This therefore necessitates the need for transnational crimes to be accorded a place amongst the nature of crimes that can be prosecuted at the international criminal court of justice (ICC) especially as regards trials of political and highly placed state elites or officials.

**(iii) Embracing a Comprehensive and Integrated Approach to State Building by Development Agencies**

Policy responses should not only strive to improve economic wellbeing of a state but should also be accompanied by investment in social inclusion as well as in fostering resilience at all levels. Heavy investment must be made in governance in a way that recognizes the endogeneity and the inherent complexity of the state-building process.<sup>88</sup> The said move should be a policy priority for agencies both nationally and internationally. There must be a consensus of agenda both locally, regional and internationally as well as a consolidation of strategies. Building of democratic and law-abiding institutions as well as establishing a strong rule of law are also very crucial aspects of state-building.<sup>89</sup> The challenge is usually the need to balance the urgency of security and safety which may involve compromise with transnational crime with the long term needs of a functional state. The role of the international community becomes very much needed in this regard with targeted technical aid.

Macro level institution building must simultaneously occur with macro level development. This includes developmental strides in education, community safety, work and health as basic building blocks of resilience. Fragile states are rarely able to fully

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<sup>87</sup> *Ibid.*

<sup>88</sup> P Miraglia, R Ochoa and I Briscoe 'Transnational Organized Crime and Fragile States' (2012) A Thematic paper supporting the OECD DAC INCAF Project  
<<http://www.oecd.org/dac/conflictandfragility/globalfactors.htm>> accessed on 24 March 2022.

<sup>89</sup> The OECD's Development Assistance Committee (DAC) has recognized the need to address development and state-building in fragile states as a function of local contexts and international dynamics which would have direct impact on the dynamics of transnational crimes.

provide these basic public goods which becomes a leverage for transnational crime lords to establish their authority by stepping in to fill those gaps.<sup>90</sup> Ensuring the availability of basic public amenities as well as tackling the social embeddedness of violence, discrimination and other social disadvantages through the help of international organizations will enable feedbacks that will help in effectively fighting transnational crimes.<sup>91</sup>

**(iv) Simultaneous Top-Down and Bottom-up Development**

A simultaneous bottom up/top-down approach would ideally encourage international organizations and national governments to engage with local actors directly at all points during the policymaking processes. While the international organizations may not be able to engage directly with grassroots governments because of their international mandate, national level actors should be very instrumental in this regard. This inter-government cooperation is necessary because local political dynamics which are beyond the realm of international organizations play an important role in determining the success or failure of policies.<sup>92</sup>

**(v) Co-operation and Shared Responsibility along the Supply Chain**

This is another very important dimension to addressing transnational crime. As is already known, transnational crime is partly a response to demand for illegal goods and services. There is therefore need to address the problem both from the angle of developed countries that receive and consume illegal goods as well as from the angle of the producers and intermediary countries. As long as there are demands of illicit goods, transnational crime will continue to thrive. Coordination is therefore needed around the type of trades that need special tackling e.g drugs and piracy. Cooperation between the

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<sup>90</sup> L. I Anten and M. Mezarra 'The Political Economy of State Building in Situations of Fragility and Conflict: from Analysis to Strategy' (2012) Conflict Research.

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

international and national agencies should be heighten in this regard during structural reforms aimed at state building. This should involve sharing of intelligence, design and implementation packages as well as complementary legislation across countries. A multipronged approach that tackles all stages of the supply chain concurrently from producer to end – user will be highly beneficial.

**(vii) Peace Operations with Adequately Trained Forces and Extensive Researches**

Peace missions are very crucial to combating transnational crimes. A shift from confrontational strategy to a managerial one is a more proactive approach to initiate a peace process in transnational crime related issues. This dimension of combating transnational crime require careful and in-depth research into the forms and strategies used in different areas.<sup>93</sup> It also requires designing and producing guidelines as well as tools to assist the forces on ground. Facilitation of the use of regional aligned forces who can rotate in and out of a country and conduct trainings for partner nations is key. Increased signals intelligence, intelligence collection and coordination, and cyber support will also be very beneficial.<sup>94</sup>

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<sup>93</sup> J Cockayne and A Lupel, *Peace Operations and Organized Crime: Enemies or Allies?*(RoutledgeLondon 2011).

<sup>94</sup> J Cockayne and C. Kavanagh ‘Flying Blind? Political Mission Responses to Transnational Threats’ (2011) *Annual Review of Political Missions*.