Globalizing Knowledge Series, UIUC

Global Knowledge and Transnational Crime

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Main Library, Room 106, 12-1pm
Transnational Crime & Dilemmas of Legal Immunity

- How does a legal immunity provide an opportunity for serious misconduct to its holders?
- “serious misconduct” = TOC
Part 1: TOC
# TOC: differences

## Organized crime
- continuous associations of individuals
- make a profit
- cater to the public demand for illicit goods and services *(victimless?)*
- monopoly control
- ethnicity/secretive
- communication/restrictive membership
- use a pattern of corruption and/or violence
- e.g.: extortion, loan sharking, gambling, bootlegging, prostitution, etc.

## International crime
- conduct commonly viewed as serious atrocities
- “the gravest of crimes that threaten peace, security and well-being of the international community” *(Rome Statute 1998)*
- context of armed violence
- e.g.: genocide, war crimes, crimes against humanity, crime of aggression
The UN Convention against Transnational Organized Crime (UNCTOC) 2000
“Palermo Convention” (Giovanni Falcone)

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Serious Crime “conduct constituting an offence punishable by a (...) deprivation of liberty of at least four years or a more serious penalty” (Art. 2b)

Organized Criminal Group “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit” (Art. 2a)

“Transnational”
UNCTOC: “Transnational” (Art. 3)

- committed in more than one state
- committed in one -- prepared in another
- involves a criminal group active in different states
- has substantial effects in another state
TOC

**Conventional forms of TOC**
- Drug trafficking
- Human trafficking
- Migrant smuggling
- Firearms trafficking
  + Money laundering
  + Bribery

**“New and Emerging” forms of TOC**
- Natural resource trafficking
- Counterfeit goods trafficking (e.g., foods)
- Cultural property trafficking
- Cybercrime

→ Diverse players
→ “New” victims
## TOC evolution

<table>
<thead>
<tr>
<th>Diverse players</th>
<th>New opportunities</th>
<th>“New” victims</th>
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</thead>
<tbody>
<tr>
<td>• terrorists</td>
<td>• exploitation of transnational commerce and modern ICTs</td>
<td>• environment</td>
</tr>
<tr>
<td>• rebels</td>
<td>• (partial) legalization of illegal enterprises</td>
<td>• wildlife</td>
</tr>
<tr>
<td>• insurgents</td>
<td></td>
<td>• “public interest”</td>
</tr>
<tr>
<td>• corporations</td>
<td></td>
<td>• “humankind”</td>
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<tr>
<td>• state</td>
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<td>representatives</td>
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Looking beyond causes of crime: Opportunities

- Not why people commit crime but what makes them capable of committing it
- Ronald Clarke and Marcus Felson (1980-1990s)

Explains elite deviance
Part 2: Elite deviance
Literature on elite deviance

- Fragmented
- Corporate crime
- Corruption
- State crime (war crimes; genocide; etc.)
- Judicial ethics

- *International gov. organizations*
- *NGOs*
- *Investigative journalism*
Criminaloids

• Cesare Lombroso
  – *L’Uomo delinquente* (1876)

• project a respectable, upright facade, in an attempt to conceal a criminal personality

• enjoy the respect of society

• because they often establish connections with the government and the law, they are less likely to meet with opposition
Edwin Sutherland

• Given credit for introducing the term white-collar crime (1939)
• Alluded to “crime in the upper or white-collar class, composed of respectable … business and professional men”
• Have special influence on the formation of criminal laws and various means of minimizing the chances of criminal convictions

Image source: http://derechoareplica.org/index.php/mas/criminologia/807-edwin-sutherland-y-el-delito-de-cuello
Elite = “powerful” and “superior” in terms of ability and/or qualities
Elite deviance

Office
Occupation

Trust
Ethics
Respectability

Legal immunity

Expertise
Connections

Unchecked power?
Legal immunity

• *De jure* <- granted by constitution, domestic law, international law (treaty or custom)

• Exemption from:
  – Search
  – Arrest
  – Civil/criminal prosecution

• Often includes privileges:
  – Exception from fiscal obligations
“Immunized” categories

• Heads of State (part of sovereign immunity)
• Diplomatic corps (various ranks)
• International civil servants
• Peacekeepers
• MPs
• Judges
<table>
<thead>
<tr>
<th>Group</th>
<th>Immunity Type</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diplomatic corps</td>
<td><em>Diplomatic immunity</em></td>
<td>Vienna Convention 1961</td>
</tr>
<tr>
<td>International civil servants</td>
<td><em>Diplomatic immunity</em></td>
<td>Convention on the Privileges and Immunities of the Specialized Agencies 1947</td>
</tr>
<tr>
<td>Peacekeepers; relief &amp; medical personnel</td>
<td><em>Diplomatic immunity</em></td>
<td>By law (IHL) and treaty; status of forces agreement; soft law</td>
</tr>
<tr>
<td>MPs</td>
<td><em>Parliamentary immunity</em></td>
<td>Domestic laws; Constitution</td>
</tr>
<tr>
<td>Judges</td>
<td><em>Judicial immunity</em></td>
<td>Domestic laws</td>
</tr>
</tbody>
</table>
Commonalities

• Immunities are not absolute
• “Functional necessity”:  
  – immunities on performing acts in the official capacity (not for personal benefit)
• Immunity can be revoked -> alleged offender prosecuted
Part 3: Deviance in the diplomatic corps
Diplomatic agents

- a public official who acts as an intermediary between a foreign nation (the receiving State) and the nation which employed and accredited the diplomatic agent (the sending State)

Diplomatic corps

- ambassadors
- envoys
- ministers plenipotentiary
- chargé d’affaires
- consuls and vice-consuls
- administrative and technical staff
Immunities

- a diplomatic agent is inviolable (may not be detained or arrested; enjoy absolute immunity from criminal prosecution in the receiving State)  
**Art. 29**

- the premises of the mission and its grounds are inviolable  
**Art. 22 & 30** (agents of the receiving State cannot enter/search … without the consent of the head of the mission)

- the receiving State is required to permit and protect free communication between the diplomats of the mission and their home country  
**Art. 27** (banks, pouch, etc.)

Privileges

- exemption from taxation  
(exempt from dues and taxes)  
**Art. 34 & 36**

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The Vienna Convention on Diplomatic Relations (VCDR)  
signed: 13 April 1961  
effective: 24 April 1964  
Signatories: 60; Parties: 191  
cornerstone of modern diplomatic relations
Punishment

- Diplomatic immunity is not absolute

- A diplomatic agent who committed any kind of criminal misconduct cannot be sued in courts unless his/her immunity is revoked by the sending state.

- Governments have demonstrated reluctance to acknowledge misbehavior by diplomats.

- The only sanction permissible under the VCDR in the absence of revocation of immunity is expulsion.
Typology of offenses

Abuse of diplomatic immunity

- Diplomats as victims: crime is committed without a diplomatic agent’s conscious involvement or knowledge
- Diplomats as co-conspirators: a diplomatic agent abuses immunity for a profit, acting as a co-conspirator
- Diplomats as principal offenders: a diplomatic agent abuses immunity for a profit, acting as the principal perpetrator
- State-authority crime: crime committed by a diplomatic agent on behalf of the government he/she represents
Conclusion

- Diplomatic immunities may be abused by diplomatic agents to aid the organization or for a personal gain
- Legal ambiguity -> legal nihilism
- No comprehensive global criminal justice system
  - Sovereignty
  - Political will (reciprocal toleration of misconduct)
References


