CHAPTER 7

TRANSNATIONAL CRIMES

I. INTRODUCTION

This chapter addresses crimes that have been identified by the international community as violations of international law but that, unlike the "core crimes" within the jurisdiction of international tribunals, are left to individual States to prosecute under their domestic law. Most international crimes fall into this "transnational" category. Most are also the subject of international treaties.

Serious transnational crime continues to increase. Not only does criminal activity cross national borders more frequently, but so do criminal organizations. Trafficking in people, drugs, arms, endangered animals, cultural artifacts and other commodities is big business today, and money laundering is a major support base for terrorist organizations. Organized Russian criminal networks have been associated with the proliferation of stolen Soviet nuclear materials and weapons, and drug cartels in Latin America have been associated with insurgent movements and terrorist organizations. Cybercrime in all its manifestations has now affected every country.

At the same time, it has become harder for individual States to deal with the challenges presented by these criminal activities. By definition, combatting transnational crime requires coordinated action by all States affected. Yet some States still serve as sanctuaries for criminal organizations because of corruption, resource constraints or ineffective laws, or political orientation. Sharing information between national law enforcement agencies is critical to controlling cross-border crime. Interpol (the International Criminal Police Organization) was created in 1914 for this purpose, to "enable police around the world to work together to make the world a safer place" and relying on "high-tech infrastructure of technical and operational support" to "meet the growing challenges of fighting crime in the 21st century."

It is obviously not possible for international courts to exercise jurisdiction over all types of cases of transnational criminal activity. Instead, the international community has chosen to address the most significant types of transnational crime through a series of international agreements aimed at harmonizing the law and facilitating the response of law enforcement.

§ 7–1 COMMON CHARACTERISTICS

Most of the multilateral instruments addressing transnational crimes share a few broad characteristics. First, they describe the conduct in question as an "international crime" or a crime "of international concern." Second, they define the crime, usually through a description of the specific conduct which constitutes that crime. Third, they require States Parties to prosecute that crime whenever it occurs in their own territory or in other specified jurisdictional circumstances. Fourth, they impose an "extradite or prosecute" obligation with respect to alleged offenders discovered in the territory of other States Parties in certain circumstances. Fifth, they require States Parties to cooperate with each other with respect to the investigation, prosecution or prevention of the specified crimes. The more recent treaties contain novel provisions related to transfer of prisoners or criminal proceeding, assets forfeiture and other forms of mutual legal assistance. Finally, many of the treaties impose specific duties of cooperation on States Parties such as sharing information and providing training and technical assistance.

Not all treaties contain all these provisions, and there is considerable variation among them. As a general matter, the more recent treaties have stronger provisions. Still, the effectiveness of

these agreements depends entirely on domestic implementation. It is not uncommon for a given transnational crime to be prosecuted more vigorously in some countries than in others. In fact, there is no real agreement on what constitutes the body of "transnational crimes" or which crimes should be covered. The following discussion describes a number of the most significant crimes that have been addressed internationally.

II. TRADITIONAL CRIMES

§ 7–2 PIRACY

Piracy is the classic international or transnational crime. It has existed as long as maritime routes have been used for commerce and navigation. The vast expanses of the high seas have made shipping an easy target for pirates. Those who commit piracy threaten the interests of all trading States and have been considered enemies of all mankind (*hostis humani generis*). For that reason, States have long been empowered to capture and prosecute pirates on a "universal" basis, without regard to territoriality or nationality.

In recent years, piracy has become endemic in certain areas, including the Strait of Malacca between the Malay Peninsula and Sumatra, off the west coast of Africa (Gulf of Guinea), in **the Caribbean,** and especially in the Gulf of Aden and the Indian Ocean off the coast of Somalia. In the latter case, the UN Security Council has adopted several Chapter VII resolutions authorizing States to use "all necessary means" to counter the threat posed by piracy. An international task force called the Combined Maritime Forces has been created to protect shipping in the area.

1. *Definition*

The current definition of piracy is contained in the 1982 UN Convention on the Law of the Sea, 1833 U.N.T.S. 3. As of June 2013, the Convention had been ratified by 165 States. Article 101 defines "piracy" to include the following offenses:

> (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
> (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
> (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
> (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
> (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Under this definition, the crime of piracy includes (i) acts of violence or depredation, (ii) committed for private ends, (iii) by crew or passengers of one private ship against another, (iv) on the high seas or other place "outside the jurisdiction of any State." Private aircraft are also covered but Governmental ships or aircraft are generally excluded.

2. *U.S. Statute*

The principal U.S. statute criminalizing piracy (18 U.S.C. § 1651) was recently interpreted to include "attempted piracy" and to apply to violent conduct on the high seas. *United States v. Dire*, 680 F.3d 446 (4th Cir. 2012), *cert. denied*, 133 S.Ct. 982 (2013). In *United States v. Ali*, 718 F.3d 929 (D.C. Cir. 2013), the statute was interpreted to cover a charge of "aiding and abetting" even though the relevant conduct did not occur on the high seas. In *Institute of Crustacean Research v. Sea Shepherd Conservation Society*, 708 F.3d 1099 (9th Cir. 2013), the court interpreted the term "private ends" broadly, to include personal or political goals as well as monetary benefit.

The 1985 hijacking of an Italian cruise ship, *MS Achille Lauro*, by members of the Palestine Liberation Army, illustrated the narrowness of the traditional definition. The PLA's goal was to pressure the Israeli government to release "political" prisoners. Because that situation would not qualify as "piracy," the international community undertook to negotiate a new instrument covering acts of maritime terrorism. The result was the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1678 U.N.T.S. 221. *See* § 8–11.

§ 7–3 SLAVERY

Slavery and slave trading have long been proscribed by the international community. For example, international agreements for the suppression of the African slave trade date from the early 19th century. The first major multilateral instrument on the subject was the Slavery Convention of 1926, which mandated the imposition of sanctions on slavery and slave trading.

The first international criminal provisions against slavery were included in the 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3. That treaty remains the primary applicable international treaty proscribing slavery and at the end of 2018 had been ratified or acceded to by 124 States. It requires States Parties to criminalize the "conveying of slaves," "enslavement," and "inducing" individuals to place themselves or their dependents into "servile status" (including attempts, aiding and abetting, and conspiring). A separate provision prohibits mutilation, branding or otherwise marking slaves or persons of servile status as indication of status, punishment or for any other reason (including attempts, aiding and abetting thereof, and conspiring thereto).

However, the Convention did not create extraterritorial jurisdiction, nor did it impose an extradite-or-prosecute (*aut dedere aut judicare*) obligation common in more modern international treaties on transnational crimes. Its ambit was limited to obligations requiring States Parties to make internal, individual efforts to restrict and abolish slavery within their jurisdictions.

Today, the proscription of slavery and the slave trade is more clearly addressed in the non-criminal context of contemporary international human rights law. *See, e.g.*, art. 4 of the Universal Declaration of Human Rights, and art. 8 of the International Covenant on Civil and Political Rights. Officially, slavery and the slave trade are prohibited everywhere.

§ 7–4 APARTHEID

The crime of apartheid can be characterized as an exaggerated, more deeply entrenched version of racial discrimination. The term originally referred to the institutionalized, State-sanctioned and widely-condemned system of racial discrimination prevalent in South Africa until 1990. International law today prohibits such conduct in any State by any government.

The UN Convention on the Suppression and Punishment of the Crime of Apartheid, 1015 U.N.T.S. 243, entered into force in 1973 and as of the end of 2018 had been ratified or acceded to by 109 States. It declares apartheid to be a crime against humanity and, more generally, that

"inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination . . . are crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security."

The Convention defines the crime of apartheid broadly, to include a number of "inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them." It also prohibits legislative measures and other measures calculated to prevent racial group from participating in the political, social, economic and cultural life of the country, as well as measures "designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof."

Article III applies international criminal responsibility to "individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State," irrespective of motive, for the committing, participating in or inciting apartheid, and for inchoate offenses (aiding, abetting, conspiring) relating to the commission of apartheid. States Parties must prosecute and punish individuals charged with covered crimes whether or not they reside in the State where the acts are committed or are nationals of that State.

It does not appear that anyone has ever been prosecuted for the international crime of apartheid under this convention. However, article 7(1)(j) of the 1998 Rome Statute of the International Criminal Court (ICC) includes apartheid within the definition of a crime against humanity when committed as part of a widespread systematic attack directed against any civilian population.

III. HUMAN RIGHTS CRIMES

§ 7–5 TORTURE

The prohibition against torture is well established today in international law. It has been criminalized by international agreement, and many people contend that it is prohibited as a peremptory norm (*jus cogens)*.

The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85, was adopted by the UN General Assembly in 1984 and (as of December 2018) had 165 States Parties. Article 1(1) defines torture to include:

> any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Article 4 requires each State Party to ensure that "all acts of torture are offences under its criminal law" (including attempts, complicity, and "participation in torture") and that they are "punishable by appropriate penalties which take into account their grave nature."

Each State Party must establish domestic jurisdiction to prosecute such offenses when committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State, when the alleged offender is a national of that State, and when the victim was a national of that State if that State considers it appropriate. Each State Party must have jurisdiction to prosecute "where the alleged offender is present in any territory under its jurisdiction and it does not extradite him" to another State with one of the jurisdiction grounds mentioned above. Art. 5.

Torture crimes must be included as extraditable offenses in any extradition treaty existing between States Parties. Art. 8. States Parties must afford each other "the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings." Art. 9. The Convention also specifies various undertakings with respect to arrest, interrogation and detention, civil redress for victims of torture, the use of evidence obtained through torture, applications for asylum and refugee status, and the prevention of "acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture."

The United States ratified the Convention in 1984. Acts meeting the Convention's definition of torture are criminal everywhere in the United States under state or federal law. In accordance with the Convention, acts committed outside the United States have been criminalized in 28 U.S.C. § 2340A. Additionally, Article 3(1) of the Convention prohibits States Parties from expelling, returning (*refouler*) or extraditing a person to another State "where there are substantial grounds for believing that he would be in danger of being subjected to torture."

Like the ICTY and the ICTR, the ICC is empowered to consider charges of torture both as "grave breaches" of the Geneva Conventions and as "crimes against humanity." It can also be prosecuted as a component of other recognized international crime, for example as an act "causing serious bodily or mental harm" within the definition of genocide.

For the text of the Convention Against Torture, *see http://www.hrweb.org/legal/cat.html*.

§ 7–6 ENFORCED DISAPPEARANCES

Enforced disappearances are a tool all too often used by military dictatorships and other authoritarian regimes to silence their opponents. Persons deemed undesirable by the governing regime are spirited away in the dead of night, possibly never to be heard of again. They are detained secretly, often indefinitely, tortured, killed, their bodies rarely returned to their families. Because the governing authorities ordinarily relied on to protect people are the ones responsible for the abductions, disappeared individuals are effectively outside the protective framework of the law and at the mercy of the State.

Enforced disappearances are included in the definition of "crimes against humanity" in article 7 of the 1998 Rome Statute. The term is defined to include: "the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time."

A more comprehensive approach is contained in the International Convention for the Protection of All Persons from Enforced Disappearance, 2716 UNTS 3, adopted by the General Assembly in 2006) and entered into force on December 23, 2010. As of the end of 2018 it had been ratified or acceded to by 59 States (including most of Central and South America).

Art. 2 defines enforced disappearances to mean:

> the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

The Convention describes enforced disappearances as a crime against humanity and requires States Parties to make such acts an offense punishable by appropriate penalties. States Parties must hold criminally responsible anyone who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to, or participates in an enforced disappearance. They must also be in a position to prosecute any superior who (i) knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance, or who (ii) exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and who (iii) failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution. No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offense of enforced disappearance.

States Parties must establish jurisdiction over the offense when it is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State, when the alleged offender is one of its nationals, and when the disappeared person is one of its nationals (if the State Party considers it appropriate). They must also establish "extradite or prosecute" jurisdiction. For purposes of extradition, the offense of enforced disappearance may not be regarded as a political offense or as an offense connected with a political offense or as an offense inspired by political motives. The Convention also sets out obligations of mutual legal assistance and other duties of inter-State cooperation.

A regional criminal law convention on the topic also exists. In 1994, the Organization of American States adopted the Inter-American Convention on Forced Disappearance of Persons (OAS A–60), sometimes referred to as the "Convention of Belem do Para." It defines forced disappearance as "the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees." States Parties must criminalize that act when committed in their territory or by their nationals, and may do so when committed against their nationals. To date, fourteen OAS Member States have ratified this treaty.

See https://www.humanrights.ch/en/standards/un-treaties/disappearance for the text of the UN Convention, and *http://www.oas.org/juridico/english/treaties/a-60.html* for the text of the OAS Convention.

IV. WHITE COLLAR AND FINANCIAL CRIMES

§ 7–7 ORGANIZED CRIME

In an increasingly "globalized" world with fewer trade restrictions or border controls, people, money and goods flow quickly across international boundaries. Transnational organized criminal networks have learned to take advantage of these developments and today engage in a broad range of trans-border activities from human and drug trafficking to corruption and money laundering. Their defining features are a well-developed organizational structure, the ability to create and operate in multiple jurisdictions, and skill in exploiting weaknesses in governmental supervision through deceit or corruption.

The 2000 UN Convention Against Transnational Organised Crime, 2237 U.N.T.S. 319, was specifically aimed to combat this phenomenon. Sometimes referred to as the "Palermo Convention" or "UNTOC," it entered into force in 2003 and has been widely ratified; as of the end of 2018, it had 189 States Parties. It is also one of the most detailed and complicated criminal law treaties and contains several unique provisions. One reason is that it was intended to provide a textual basis for helping States to modernize their domestic laws, especially where no prior legislation had addressed the issues related to organized criminal activities.

Core Offenses. The Convention addresses four main categories of offenses: (1) participation in organized criminal groups, (2) money laundering, (3) corruption, and (4) obstruction of justice. Its provisions also apply to certain other "serious crimes" when they are "transnational" and involve an "organized criminal group."

Offenses are "transnational" under article 3(2) if (i) the acts of commission, preparation, planning, direction or control of the offense are spread across more than one State, or (ii) if they involve an organized criminal group engaged criminal activities in more than one State, or (iii) if they have substantial effects in a State different from the State(s) of commission. The term "organized criminal group" is defined in article 2(a) to mean "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 offenses established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

1. *Participation in Organized Crime*

The heart of the Convention is its specification of the "modes" by which individuals can participate in organized criminal groups. Under article 5(1)(a), States Parties must criminalize one or both of two forms of intentional participation—conspiracy or direct participation. The first is by agreement with others persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement. The second involves conduct by a person who takes an active part the criminal activities of the organized criminal group or other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim. Article 5(1)(b) covers secondary forms of participation such as organizing, directing, aiding, abetting, facilitating or counseling the commission of serious crime involving an organized criminal group.

2. *Money Laundering*

This term includes several intentional acts: (i) the conversion or transfer of property "knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the

predicate offence to evade the legal consequences of his or her action," and (ii) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime. It can also include (subject to the basic concepts of the legal system in question) (i) the acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime, and (ii) participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offenses established in accordance with this article.

3. *Corruption*

Under article 8, each State Party is required to criminalize (a) promising, offering or giving to a public official "an undue advantage" (i.e., a bribe) to cause that official to act or refrain from acting in the exercise of his or her official duties, as well as (b) the solicitation or acceptance of any such "undue advantage" by a public official. Additionally, States Parties must "consider" criminalizing such conduct when it involves a foreign public official or international civil servant as well as "other forms of corruption." The term "public official" means a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

4. *Obstruction*

Under article 23, States Parties must also criminalize the intentional use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to a covered offenses or to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of a covered offense.

***Jurisdiction*.** States Parties to the UNTOC are required to exercise jurisdiction over covered crimes only when they occur within their territory or on board their vessels. Subject to the need to respect the sovereignty of other countries, States Parties may establish jurisdiction to prosecute those offenses when committed against their nationals or by their nationals or stateless persons with habitual residence in their territory. Extraterritorial jurisdiction is permitted only with respect to certain instances of "participation" or "money laundering." But each State Party must be able to prosecute "when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals." Article 15(3).

***Extradition*.** Under article 16, covered offenses shall be deemed "extraditable offenses" in any existing extradition treaty between States Parties, States Parties may not refuse a request for extradition "on the sole ground that the offence is also considered to involve fiscal matters," and before refusing extradition, States Parties must "where appropriate" consult with the requesting State Party to allow it to provide additional information.

***Mutual Legal Assistance*.** The treaty obligates States Parties to afford each other "the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings." Mutual legal assistance must be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to covered offenses. States Parties

may not refuse a request for mutual legal assistance on the sole ground that the offense involve "fiscal" matters.

***Seizure, Confiscation and Forfeiture*.** The treaty contains important provisions regarding domestic confiscation of the proceeds of crime derived from covered offenses (or property the value of which corresponds to such proceeds) as well as the property, equipment or other instrumentalities used in or destined for use in covered offenses. States Parties must, upon request of another State Party, take measures to identify, trace and freeze or seize the proceeds of crime, property, equipment or other instrumentalities for the purpose of eventual confiscation.

***Transfer of Convicted Persons*.** States Parties may consider entering into bilateral or multilateral agreements on "the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there."

Joint Investigations. States Parties must consider concluding bilateral or multilateral agreements or arrangements for the creation of "joint investigative bodies" for matters subject to investigation, prosecution or judicial proceeding in one or more States. Joint investigations can also be undertaken on a case-by-case basis.

Special Investigative Techniques. States Parties are encouraged to conclude appropriate bilateral or multilateral agreements or arrangements regarding the use of "controlled deliveries" and other techniques such as electronic surveillance and undercover operations.

***Transfer of Criminal Proceedings*.** The treaty contemplated the possibility of transferring criminal proceedings ("prosecutions") from one State Party to another "where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution."

The Convention has three optional protocols dealing with human trafficking, human smuggling and the trafficking of firearms. These are dealt with in greater detail in the sections on trafficking offenses.

See *https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html* for the text of the UNTOC. *See generally* McClean, *Transnational Organised Crime: a Commentary on the UN Convention and its Protocols* (2007). See also *https://www.unodc.org/documents/organized-crime/Digest_Organized_Crime.pdf*.

§ 7–8 CORRUPTION

Corruption refers to the payment of illicit bribes or the "greasing of palms" to secure preferential treatment, for instance, by making private payments to public officials to win contracts. In some places, the practice is so deeply ingrained in everyday practice that even essential services are conditioned on the payment of bribes.

International or transnational corruption has only recently attracted the attention of the international community. A significant development was the 1977 enactment of the Foreign Corrupt Practices Act in the United States. Since then many other States, including the United Kingdom and South Africa, have adopted similar statutes providing for extraterritorial jurisdiction

over the foreign corrupt practices of locally domiciled entities.

The first major international attempt at regulation was the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, reprinted at 37 I.L.M. 1 (1998). Around the same time, the Organization of American States adopted an Inter-American Convention against Corruption (1996) and the EU adopted a Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union (1997).

The major global instrument in this area is the UN Convention Against Corruption, 2349 U.N.T.S. 1. It is sometimes referred to as "UNCAC." Adopted in 2003, it had been ratified by 186 States as of December 2018. The Convention adopts an interesting approach in that it prioritizes both the prevention of corruption and the criminalization of corruption.

Offenses. The UNCAC does not attempt a single definition of the term "corruption" but instead articulates a range of conduct which States Parties must criminalize under their domestic laws. The two main types are: "(1) the bribery of national public officials (article 15), and (2) the bribery of foreign public officials and officials of public international organizations" (article 16).

In both instances, active and passive bribery is covered. Thus, bribery *of national officials* is prohibited, including the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. The convention also prohibits the direct or indirect solicitation or acceptance *by a public official* of an undue advantage to get that official to act or to refrain from acting in the exercise of official duties.

Other covered forms of public sector corruption include embezzlement, misappropriation or other diversion of property by a public official, trading in influence, intentional abuse of functions, and illicit enrichment, defined as a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income (arts. 17–20).

Articles 21–27 address bribery in the private sector, embezzlement of property in the private sector, laundering of proceeds of crime, concealment, and obstruction of justice.

Freezing, Seizing, Confiscating. Each State Party must take, "to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation" of the proceeds of crime derived from covered offenses as well as property, equipment or other instrumentalities used in or destined for use in covered offenses.

Bank Secrecy. Each State Party must also ensure that, in the case of domestic criminal investigations of covered offenses, appropriate mechanisms are available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

Jurisdiction. States must establish criminal jurisdiction over covered offenses committed in their territory or on board a vessel flying their flag or an aircraft registered under their laws. Subject to sovereignty considerations, they may also establish jurisdiction over offenses committed against their nationals or by their nationals or a Stateless person habitually resident in their territory. Extraterritorial jurisdiction over money laundering offenses is permitted in some circumstances. Each State Party must establish "extradite or prosecute jurisdiction" for those instances "when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals."

Extradition. Covered offenses are deemed extraditable under existing extradition treaties

between States Parties and must be included in any future extradition treaty between them. Extradition requests cannot be refused on the sole ground that the offense is considered to involve fiscal matters. In effect, the article is a self-contained extradition treaty since it can be relied upon in cases where States Parties need (but do not have) a bilateral arrangement.

Mutual Legal Assistance. In the same way, the Convention can serve as a stand-alone mutual legal assistance treaty between States Parties, since they must afford each other "the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention." Mutual legal assistance must be afforded "to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings" relating to covered offenses. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offense is also considered to involve fiscal matters.

Transfer of Sentenced Persons. States Parties are encouraged to consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offenses established in accordance with this Convention in order that they may complete their sentences there.

Transfer of Criminal Proceedings. States Parties must also consider the possibility of transferring proceedings for the prosecution of covered offenses cases where such transfer is in the interests of the proper administration of justice, in particular where several jurisdictions are involved, with a view to concentrating the prosecution.

Law Enforcement Cooperation. States Parties are encouraged to enhance the effectiveness of their respective law enforcement actions to combat covered offenses, in particular by taking measures to establish and enhance channels of communication between their competent authorities, agencies and services in respect of covered offenses. This could include bilateral or multilateral agreements for the establishment of joint investigative bodies for matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States Parties. The Convention also promotes the use of "controlled deliveries" and other special investigative techniques such as electronic or other forms of surveillance and undercover operations, and encourages States Parties to allow for the admissibility in court of evidence derived there from.

Assets Recovery. Uniquely, the Convention declares that "the return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard." Accordingly, States Parties have specific obligations to detect and prevent transfers of the proceeds of crime. They must also allow other States Parties to bring civil actions in their courts to establish title to or ownership of property acquired through the commission of covered offenses and permit their courts to enforce orders of confiscation issued by a court of another State Party and to order payment of pay compensation or damages to another State Party that has been harmed by such offenses.

The Convention provides for the disposal and return of confiscated property to "its prior legitimate owners." States Parties must also consider establishing "a financial intelligence unit to be responsible for receiving, analyzing and disseminating to the competent authorities reports of suspicious financial transactions."

See https://www.unodc.org/unodc/en/corruption/uncac.html for the text of the UN

Corruption Convention.

§ 7–9 MONEY LAUNDERING

Because the financial proceeds of illegal activity often cannot be used without arousing law enforcement suspicions, criminals put a lot of energy into the task of disguising the fruits of their endeavors. Broadly speaking, the term "money laundering" refers to the act of converting illicitly obtained funds into legitimate resources. Efforts to regulate these efforts on an international scale are a relatively recent phenomenon.

To date, the focus has been on money laundering as an ancillary offense. In other words, money laundering in and of itself has not been denominated as an international crime but has been addressed as part of the regimes for dealing with other crimes, such as drug trafficking, corruption, organized crime and terrorism. Note that U.S. law takes a different approach; the 1986 Money Laundering Control Act, codified at 18 U.S.C. § 1956, includes a number of substantive money laundering offenses.

***Drug Trafficking Convention*.** The link between money laundering and drug trafficking was specifically addressed in the 1988, discussed below. The preamble of that Convention notes that "illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels." One of express goals of the Convention was to "deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing."

As addressed in this Convention, the offense of money laundering has three basic components: conversion, concealment and use of laundered assets.

Article 3(b)(i) addresses "the conversion or transfer of property, knowing that such property is derived from [any covered offence] . . . or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions."

Art. 3(b)(ii) refers to "the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph a) of this paragraph or from an act of participation in such an offence or offences."

Art. 3(c)(i) focuses on "the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with subparagraph a) of this paragraph or from an act of participation in such offence or offences."

Each State Party must criminalize the intentional commission of these acts when committed in its territory, or on board a vessel flying its flag or an aircraft which is registered under its laws at the time the offense is committed, and may extend jurisdiction over them when committed by one of its nationals or by a person who has his habitual residence in its territory, or "on board a vessel concerning which that Party has been authorized to take appropriate action" by the flag State, or (in some circumstances) committed outside its territory with a view to the commission of an offense within its territory. Art. 4.

***Corruption Convention*.** The 2003 United Nations Convention Against Corruption also deals with money laundering. States Parties must take a number of steps to prevent money-laundering, "including *inter alia* instituting a comprehensive domestic regulatory and supervisory

regime" for banks and non-bank financial institutions to deter and detect all forms of money-laundering, ensuring that law enforcement and other authorities are able to cooperate and exchange information at the national and international levels, and considering "feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders." States Parties to the UNCAC are encouraged to "develop and promote global, regional, sub-regional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering."

UNCAC requires States Parties to criminalize the conversion or transfer of the proceeds of crime for the purpose of concealing or disguising its illicit origin or helping anyone involved in the commission of the predicate offense to evade the legal consequences of his or her action, as well as concealing or disguising the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime. They must also criminalize "the acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime," and "participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission" of covered offenses.

***Organized Crime Convention*.** The UN Convention on Transnational Organized Crime requires criminalization of "laundering the proceeds of crime" in terms almost identical to those in the Corruption Convention.

Terrorism. The 1999 International Convention for the Suppression of the Financing of Terrorism (text available at *http://www.un.org/law/cod/finterr.htm*) targets the knowing use of laundered funds for the financing of terrorist activities. More particularly, article 2(1) criminalizes the "direct or indirect" provision and collection of "funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part" to carry out an act of terrorism.

***COE Convention*.** In 1990 the Council of Europe adopted a Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141)(text available at *https://rm.coe.int/168007bd23)*. It requires, among other things, that each State Party must adopt legislative and other measures to permit it to confiscate instrumentalities and proceeds (or property equal in value to such proceeds) and co-operate with other States Parties in investigations and proceedings aiming at the confiscation of instrumentalities and proceeds. As of the end of 2018, it had been ratified by 49 Member States of the Council of Europe.

For an overview of money laundering in its transnational dimension, see *https://www.unodc.org/unodc/en/money-laundering/introduction.html?ref=menuside.*

V. TRAFFICKING

§ 7–10 DRUGS

The global effort to control drug trafficking extends back to the mid-19th century, when European countries tried to regulate the opium trade with China. Today three multilateral instruments address the issues.

***Single Convention*.** The 1961 Single Convention on Narcotic Drugs focuses on manufacture, trade and distribution and possession. Called the "single convention" because it

unified provisions of several earlier agreements dealing with different drugs, it creates categories of "controlled substances" which States must regulate. It established an international oversight mechanism (including the UN Commission on Narcotic Drugs and the International Narcotics Control Board). Article 36(1) requires States Parties to criminalize the intentional "cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs . . . and any other action which in the opinion of such Party may be contrary to the provisions of this Convention." The Convention specifies the jurisdictional basis for these offenses, mandates that convention offenses be included in existing extradition treaties, and requires States Parties to establish "extradite or prosecute" provisions.

Psychotropic Substances Convention. The 1971 UN Convention on Psychotropic Substances, 1019 U.N.T.S. 175, adopts a tiered classification of psychotropic substances. It vests responsibility for administering this regime in the World Health Organization. It also addresses the use of various drugs for medical and scientific purposes and makes provision for licenses, prescriptions, packaging warnings, records, international and national trade and transfer, measures against abuse, and illicit traffic. Article 22 requires States to criminalize violations of the Convention and mirrors the 1961 Convention with regard to jurisdiction and extradition.

***Illicit Trafficking Convention*.** The 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 U.N.T.S. 95, entered into force in 1990 and as of June 2013 had 188 ratifications. As the title suggests, it focuses on trafficking rather than on cultivation, manufacture, regulation or transportation of licit (lawful) drugs. Article 3 contains an extensive list of offenses and sanctions, including contravention of the 1961 and 1971 conventions, as well as inchoate and related offenses.

Article 4 sets out territorial, nationality and protective bases of jurisdiction. Article 6 requires States Parties to include Convention offenses in existing extradition treaties and allow the Convention to serve as the basis for extradition in the absence of a treaty. Article 7 provides for mutual legal assistance.

The Convention imposes a number of other substantive provisions including confiscation of controlled substances and proceeds therefrom (art. 5) as well as regulation of substances, materials and equipment used in the illicit manufacture of controlled substances, eradication of cultivation, and regulation of trade to prevent trafficking (arts. 12–19). Articles 21–13 invoke the international control organs created under the 1961 convention to supervise the implementation of this instrument.

Finally, the 1988 Convention creates cooperative obligations including transfer of proceedings, information sharing and training, and special assistance for developing nations (arts. 8–10). Article 11 specifically refers to the use of "controlled deliveries" to facilitate incrimination, capture and successful prosecution of broader parts of supply chains.

For the 1961 Single Convention, *see https://www.unodc.org/pdf/convention_1971_en.pdf*. The 1971 Psychotropic Substances Convention is available at *http://www.unodc.org/unodc/en/treaties/psychotropics.html*. For information on the 1988 Illicit Trafficking Convention, *see http://www.unodc.org/pdf/convention_1988_en.p.*

The UN office on Drugs and Crimes (UNODC) maintains an online database regarding drugs supply, use and mortality rates. This database was created with the object of supporting the fight against illegal transnational smuggling and trafficking of drugs. Recently, the 2018 World Drug Report was published by the UNODC. *See https://dataunodc.un.org/drugs.*

The contemporary practice of human trafficking is motivated by the desire to profit from the subjugation of human beings. It differs from slavery in that it does not necessarily involve the reduction of human beings to the status of chattel. In today's parlance, two related crimes are subsumed under this heading: trafficking and smuggling. Each is the subject of a separate protocol to the UN Organized Crime Convention.

Trafficking in Persons Protocol. The 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2225 U.N.T.S. 209, 40 I.L.M. 377 (2001), entered into force in 2003 and at the end of December 2018 had been ratified by 173 States. See *https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx* for the text.

Article 3(a) defines trafficking broadly to mean "the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."

For this purpose, "exploitation" includes "the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs." The term "exploitation" includes the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation, and consent of a trafficking victim to the intended exploitation is irrelevant where any of the specified means have been used.

States Parties are required to criminalize trafficking, as defined above, as well as attempts, participation as an accomplice and "organizing or directing other persons to commit" trafficking.

Other provisions impose obligations with respect to prevention (including border measures and travel documents), assistance to and protection of trafficking victims, return and repatriation, prevention policies and programs, cooperation and other measures." Because this is a protocol, issues concerning jurisdiction, extradition, mutual legal assistance, etc., are addressed by reference to the Organized Crime Convention itself.

See generally, Congressional Research Service Report on Transnational Crime Issues: Human Trafficking (July 19, 2018), available at *https://fas.org/sgp/crs/row/IF10587.pdf*.

Smuggling of Migrants Protocol. Unlike trafficking, smuggling often involves the complicity of the person being trafficked, who willingly seeks illegal entry to gain better standards of living and greater economic opportunities. The 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, 2225 U.N.T.S. 209, 40 I.L.M. 384 (2001), entered into force in 2003 and by the end of 2018 had been ratified by 147 States.

The Protocol requires States Parties to criminalize smuggling (defined as the procurement of the illegal entry of an individual into a State of which he or she is not a national or permanent resident) as well producing or procuring a fraudulent travel or identity document for that purpose. Enabling a person who is not a national or a permanent resident to remain in the concerned State without complying with the necessary requirements can also be a crime under the Protocol, as can attempts, participation as an accomplice or "organizing or directing other persons to commit" such an offense.

Interestingly, article 5 exempts the migrants themselves from criminal liability under the

protocol, although the provision must be read in light of article 6(4), which allows for the application of municipal criminal laws.

Other parts of the Protocol address issues of smuggling of migrants by sea and measures of international cooperation to stem that practice, including stopping and searching foreign-flagged vessels. Later articles discuss information sharing, border measures, security and control of travel documents, training and technical cooperation, education and awareness, return of smuggled migrants, etc. There was no need to include specific provisions relating to jurisdiction, extradition, mutual legal assistance, etc., because these are covered by the UNTOC convention.

The Smuggling Protocol to the Organized Crime Convention is available at *https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html*.

See also https://www.unodc.org/documents/human-trafficking/2018/17-08776_ebook-countering_Trafficking_in_Persons_in_Conflict_Situations.pdf.

§ 7–12 FIREARMS

Firearms Protocol. The main international agreement regulating trafficking in firearms is the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, 2326 U.N.T.S. 208. The protocol was adopted in 2001 and entered into force in 2005; as of December 2018, it had been ratified by 116 States.

The protocol addresses the illegal trade in small arms. It defines the term "firearm" as "any portable barreled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas."

Article 5 establishes the criminal offenses. It requires States Parties to criminalize the illicit manufacture of firearms, their parts and components and ammunition, the illicit trafficking in firearms, their parts and components and ammunition, and falsely or illicitly obliterating, removing or altering certain required markings on firearms. They must also criminalize attempts, participation as an accomplice, and organizing, directing, aiding, abetting, facilitating or counseling the commission of covered offenses.

The protocol does not explicitly address questions of jurisdiction, extradition and mutual legal assistance, because (like the trafficking in persons and smuggling of migrants protocols) it incorporates by reference the provisions of the main convention on those fronts.

Beyond establishing criminal offenses, the Protocol sets out a comprehensive regulatory regime, including measures regarding confiscation, seizure and disposal of illicitly manufactured or trafficked firearms, prevention of trafficking, marking and tracing firearms, import-export-transit licensing, deactivation of firearms, regulation of arms brokers, and transnational information sharing, cooperation, training and technical assistance.

For information on the Firearms Protocol to the Organized Crime Convention, *see http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf*.

Regional Efforts. At the regional level various instruments have been concluded in the same area. These include the 1997 Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Materials, as well as the 2006 ECOWAS Convention on Small Arms and Light Weapons and other Related Materials. The ECOWAS Convention carries the unique distinction of prohibiting trade in firearms, requiring states to seek case-specific exemptions for importing such weapons. The 1997 Inter-American Firearms Convention is available at *http://www.oas.org/juridico/ english/treaties/a-63.html*.

***Arms Trade Treaty*.** The 2013 UN Arms Trade Treaty establishes internationally agreed standards for regulating the international trade in conventional arms (including such items as battle tanks, heavy artillery, combat aircraft and attack but also covering "small arms and light weapons"). It does not, however, include criminal provisions. As of December 2018, 100 States had become parties. Information on the new UN Arms Trade Treaty can be found at *http://www.un.org/disarmament/ATT.*

§ 7–13 ART AND CULTURAL PROPERTY

Several international instruments regulate trafficking in stolen art works. They may be divided into two categories depending on whether they address looting (i) during armed conflict or (ii) in times of peace.

***1954 Hague Convention*.** The widespread looting of art works during the Nazi occupation of Europe led to the adoption of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 249 U.N.T.S. 216. It entered into force in 1956 and as of the end of 2018 currently had 133 ratifications. The Convention sets out obligations for the protection of cultural property during armed conflict including obligations of occupying armies, distinctive marking of cultural property, special protection during armed conflict, transportation.

Article 1 defines cultural property as "movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above" and also "buildings whose main and effective purpose is to preserve or exhibit the movable cultural property."

The Convention has two protocols. The first imposes obligations relating to the prevention of expropriation of cultural property from occupied territories and the return of cultural property placed in the hands of occupying powers for safe keeping. The second protocol emphasizes the need for occupying powers to apply the principle of necessity in armed conflict with regard to cultural property.

The rules set out in the Convention and its two protocols are part of the laws of war, and violations are therefore to criminal prosecution under that body of law. Importantly, certain cultural property can be placed under "enhanced protection" and it is an offense to attack such property, to cause its "extensive destruction or appropriation of cultural property, to engage in "theft, pillage or misappropriation of, or acts of vandalism directed against" such property. A State Party must criminalize such offenses under its domestic law. Jurisdiction must be established when such an offense is committed in the territory of that State, by a national of that State, or (in certain instances) when the offender is actually present in that State's territory.

***UNESCO Convention*.** With regard to the trafficking of cultural property in peacetime, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 823 U.N.T.S. 231. It entered into force in 1972 and as of the end of 2018 date had been ratified by 137 States. Article 1 defines cultural property to mean property "which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science" and which belongs to one of 11 specified categories. Under article 3, "the import, export or transfer of

ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit."

The Convention imposes a range of requirements on States Parties with respect to the import and export of stolen property, maintaining a register of transactions, enforcing the return of stolen property, etc. Article 13(c) requires States Parties to "admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners." However, it makes no reference to questions of extradition, exercise of jurisdiction or mutual assistance.

UNIDROIT Convention. The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 34 I.L.M. 1322, came into force in 1998 and at the end of 2018 had 45 ratifications. This instrument concentrates on obligations regarding the return of stolen or illegally exported cultural objects and does not provide for criminal sanction or deal with the appropriation or theft of cultural property.

The International Committee of the Red Cross is a good source of information on the 1954 Cultural Property Convention. *See http://www.icrc.org/eng/war-and-law/conduct-hostilities/ cultural-property/index.jsp*. For the 1970 UNESCO Illicit Traffic Convention, see *http://www. unesco.org/new/en/ culture/themes/illicit-traffic-of-cultural-property*.

The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects is available at *http://www.unidroit.org/english/conventions/ 1995culturalproperty/main.htm*.

See generally Chamberlain, *War and Cultural Heritage: An Analysis of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict* (Institute of Art and Law 2013); O'Keefe, *Protection of Cultural Property in the Event of Armed Conflict* (Cambridge, 2007).

§ 7–14 NATURAL RESOURCES

The illicit trafficking of natural resources including wild flora and fauna is an emergent focus of international criminal law. The criminalization of trade in such objects is based on the need to preserve and conserve these natural resources. Animal parts, plants, tree bark, etc., find various uses in traditional medicines, objects of aesthetics appeal, charms and amulets, etc. However, reckless exploitation of these resources had led to their endangerment. To stave off extinction of valuable plant and animal species, efforts have been undertaken to control the exploitation of endangered resources and restrict trade in them (*inter alia* from fear of invasive species).

Where the trafficking activities are conducted by organized crime, the UNTOC Convention offers one basis for combating the activity criminally. Another possibility is the 1992 Convention on Biological Diversity, 1760 U.N.T.S. 79. While it does not explicitly criminalize the trade in or exploitation of endangered natural resources, it does direct States to develop or maintain legislation and other regulatory provisions for the protection of threatened species and populations. It also provides extensive prescriptions for policies and legislations to conserve and sustainably use biodiversity and for international cooperation in this regard.

The 1973 Convention on International Trade in Endangered Species ("CITES"), 993 U.N.T.S. 243, aims at ensuring that the international trade in specimens of wild animals and plants does not threaten their survival. As of 2018, 183 States had ratified or acceded. It covers species currently threatened, those which may become threatened unless trade is regulated, and those in which trade is regulated to prevent exploitation. While much of the Convention deals with trade issues, article VIII requires States Parties to take appropriate measures *inter alia* to penalize trade in, or possession of, "specimens" in violation of the Convention and to provide for the confiscation

or return of such specimens to the State of export. It does not provide much detail with regard to other aspects of the international criminal law process, such as jurisdiction, extradition, mutual legal assistance, etc.

For addition information, see the website of the UN Office on Drugs and Crime, *http://www.unodc.org/ unodc/en/wildlife-and-forest-crime/index.html*.

VI. CYBERCRIME

Despite the increasing use of the internet for criminal purposes, the international community has yet to formulate a unified approach to the problem. Several reasons for this lack of response are plausible. On the one hand, the issues (like the internet itself) are comparatively new and the technology continues to evolve rapidly. Many States still lack adequate domestic legal frameworks for regulating and controlling the use of the internet for criminal purposes. On the other hand, sharp differences divide States on such issues as access to information, free speech and censorship. As a result, current prospects for early international agreement on how to regulate the internet from a criminal perspective seem dim.

The only existing international instrument on this subject is the Council of Europe's 2001 Convention on Cybercrime (CETS No. 185). Sometimes called the "Budapest Convention," it entered into force in 2004 and as of 2018 had 62 States Parties, including the United States. That Convention aims at harmonizing the domestic law of States Parties with respect to cyber-crime, ensuring that sufficient authority exists for the investigation and prosecution of covered offenses, and establishing an effective regime for international co-operation.

The substantive provisions in articles 2–10 define nine separate cybercrime offenses: illegal access, illegal interception, data interference, system interference, misuse of devices, computer-related forgery, computer-related fraud, offenses related to child pornography and offenses related to copyright and related rights. Separate provisions address attempts, aiding and abetting, and corporate liability. Other articles deal with procedural matters including, for instance, conditions and safeguards for human rights, preservation of stored computer data, production orders, searches and seizures of stored data, etc.

Under article 22, States must provide jurisdiction over the substantive offenses when committed in their territory, on board their flagged vessels or registered aircraft, or by their national ("if the offence is punishable under the criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State"). So-called "extradite or prosecute" jurisdiction is also addressed in that article, and extradition requirements are set forth in article 24. Obligations of mutual legal assistance are addressed extensively in articles 25–34.

See https://www.coe.int/en/web/conventions for the text of the COE Cybercrime Convention. For additional information, *see https://www.coe.int/en/web/cybercrime.*

Regarding cybercrime more generally, a useful reference is the Tallinn Manual 2.0 on the International Law applicable to Cyber Operations, available at *https://ccdcoe.org/tallinn-manual.html*. It provides a comprehensive analysis of how existing international law applies to cyberspace. The manual proposes that cybercrime need not operate in a legal vacuum and that pre-cyber international laws can be applicable to contemporary cybercrime. *See generally* Michael Schmidt, TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS (2 ed. Cambridge 2017).

§ 7–15 FURTHER READING

Neil Boister, AN INTRODUCTION TO TRANSNATIONAL CRIMINAL LAW (2nd ed. Oxford 2018); Tom Obokata and Brian Payne, TRANSNATIONAL ORGANISED CRIME (Routledge Research in Transnational Crime and Criminal Law 2018); Nikolas Sellheim, INTERNATIONAL CRIMINAL LAW, TRANSNATIONAL CRIMINAL ORGANIZATIONS AND TRANSITIONAL JUSTICE (Nihoff 2018); Jessica Roher, Nicola Guarda, Maryam Khalid (eds.), TRANSNATIONAL CRIME: LAW, THEORY AND PRACTICE AT THE CROSSROADS (Routledge 2018); Kriangsak Kittichaisaree, PUBLIC INTERNATIONAL LAW OF CYBERSPACE (Law, Governance and Technology Series) (Springer 2017); Felia Allum and Stan Gilmour, eds., ROUTLEDGE HANDBOOK OF TRANSNATIONAL ORGANIZED CRIME (2015); Bruce Zagaris, INTERNATIONAL WHITE COLLAR CRIME: CASES AND MATERIALS (2nd Ed. 2015); Anne Gallagher and Fiona David, THE INTERNATIONAL LAW OF MIGRANT SMUGGLING (Cambridge 2014); Nowak and McArthur, THE UNITED NATIONS CONVENTION AGAINST TORTURE: A COMMENTARY (2008).