

# IPE and Transnational Criminal Law: An Imperfect Yet Fruitful Relationship

Written by Alen Hristov

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ALEN HRISTOV, JAN 15 2018

Despite the many benefits that it has provided thus far, the process of globalization has also posed a number of challenges to contemporary economic and financial systems. International financial crime, in particular, is one negative aspect that has significantly risen in parallel with the increasing globalization of the modern world. The 2007-2008 financial crisis best illustrates the devastating impact of financial system abuses. From early-2006 to mid-2007, for instance, American banks issued over 900,000 mortgages, only 54% of which met the minimal standards of the issuer.[1] Moreover, the United States Financial Crisis Inquiry Commission indicates that “an estimated \$1 trillion, or more than half, of loans originated at the peak of the 2005–2007 bubble had been fraudulently underwritten.”[2] This so-called “white-collar” fraud, however, constitutes only one type of financial system abuse: money laundering, tax evasion, and frauds as a whole represent the majority of the international financial crimes.

As international financial crime has increased in the last few decades, International Political Economy remains ill-equipped today to understand issues regarding the emergence and the suppression of international financial crimes. In order to fully get a handle on the complexity of financial crimes and the large influence that they enjoy in today’s globalized world, IPE needs to incorporate elements of transnational criminal law into its framework. Generally, transnational criminal law includes “all law which regulates actions or events that transcend national frontiers”[3] and which deals with financial “cross-border crimes.”[4]

This paper argues that transnational criminal law has the potential to contribute to the field of IPE by *integrating ideas* related to the prevention and the suppression of international financial crimes. By incorporating elements of transnational criminal law into its own framework, IPE will be able to better understand the complexity of the international financial crime problem and how to cope with its negative consequences.

As this paper will demonstrate, a few IPE scholars have studied the issue of illicit international financial activities in the past. Nonetheless, their contributions tend to be limited, as their analyses either lack appropriate solutions to the financial crime problem or oversimplify and thus underestimate the importance of investigating international financial crimes in IPE. For this reason, this paper provides an insight into the field of transnational criminal law and further outlines a number of aspects related to the prevention and the suppression of international financial crimes, all of which have the potential to provide IPE with a better understanding of the international financial crime problem.

The paper is divided into five parts: the first one explains the increasing significance of financial crime in the past three decades, and the need for international penal mechanisms and institutions to cope with the consequences for the global economy caused by this type of crime. The second section examines the concept of *transnational criminal law*, how it differs from *international criminal law*, and why is it important to outline the distinction between the two. The third section explores the limited amount of IPE literature that deals with the investigation of international financial crimes. The fourth part highlights the necessity for a stronger relationship between international political economy and transnational criminal law and further proposes solutions for attaining this relationship. The fifth section is a conclusion that summarises the main points and offers suggestions for further research. Although the relationship between IPE and TCL has been *imperfect* in the past, this paper demonstrates that if IPE engages with TCL more

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often in the future, the relationship between the two fields can become *potentially fruitful* in understanding the processes of international financial crime prevention and suppression.

## The Rise of International Financial Crimes, and their Impact on the Global Economy

The *International Criminal Police Organisation* (INTERPOL) defines international financial crimes as crimes that “affect individuals, companies, organizations and even nations, and have a negative impact on the entire economic and social system through the considerable loss of money incurred.”[5] A narrower and more concrete definition is offered by the *International Monetary Fund*: “Financial crime, which is a subset of financial abuse, can refer to any non-violent crime that generally results in a financial loss, including financial fraud. It also includes a range of illegal activities such as money laundering and tax evasion.”[6] In general terms, therefore, international financial crimes comprise *three* main areas: financial fraud, money laundering, and tax evasion.

Although financial fraud, money laundering, and tax evasion *per se* are not recent phenomena, the methods that financial crime perpetrators apply today have evolved immensely in the past few decades. Perpetrators can operate both from inside and outside the financial system, undertaking illicit financial activities that vary from simple online banking to comprehensive trade-related operations.[7] Many scholars and institutions have worked on producing accurate and comprehensive estimates about the scope and the impact of international financial crime on the international economic system, yet their contributions tend to be limited in scope due to financial crimes’ shadowy nature.

As Richard Friman points out, the impact of “[financial] crime has gone global.”[8] The IMF confirms this statement, indicating that “[g]lobalization and financial market integration in particular facilitates financial abuse.”[9] The IMF, too, states that an “abuse of the global financial system makes national tax collection and law enforcement more difficult. Financial system abuse [and] financial crime... may also distort the allocation of resources and the distribution of wealth and can be costly to detect and eradicate.”[10] It is also worth mentioning that, on a broader scale, financial crime impacts the stability of the financial system, as it possesses the potential to contribute to a financial crisis. The 2007-2008 financial crisis is a clear example of the power of this negative phenomenon, where *primarily* as a result of securities frauds and fraudulent lending, the global economy incurred losses estimated to vary between \$60 trillion and \$200 trillion.[11]

Given the adverse conditions that financial crimes create today, an urgent need for identifying methods for a more effective crime prevention occurs. Although it has been largely overlooked by IPE scholars in the past, transnational criminal law has the potential to incorporate such methods into the interdisciplinary field of IPE.

## Transnational Criminal Law – Definition, Characteristics, Jurisdiction, Importance for IPE

Neil Boister argues that “[i]nternational criminal law is currently subdivided into international criminal law *stricto sensu* — the so-called core crimes — and crimes of international concern — the so-called treaty crimes.”[12] “The latter category can be appropriately relabelled transnational criminal law,”[13] he continues, “because of the need to focus attention on this relatively neglected system”[14] Before fully engaging with transnational criminal law, therefore, IPE needs to analyze the difference between *transnational criminal law* and *international criminal law*.

International crime, in general, refers to “conduct which is prohibited under international law itself.”[15] The stream of international law that traditionally deals with the notion of serious international crimes and grave breaches of international law norms is *international criminal law* (ICL). ICL “includes all international law, both substantive and procedural, that has some penal characteristics.”[16] The *four core crimes* that ICL is mainly concerned with are genocide, piracy, crimes against humanity, and war crimes. *Transnational criminal law* (TCL), on the other hand, “refers to domestic or ‘common’ crimes that affect or engage the interests of more than one state when they are committed.”[17]

The two streams of international law, ICL and TCL, also differ in terms of their jurisdictions. ICL possesses universal jurisdiction over the four core crimes, while TCL has jurisdiction over *transnational crimes* of *domestic* as well as

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of *international* concerns. Transnational crimes of *international concern*, the ones that this paper is predominantly concerned with, constitute crimes that are not appropriately considered *international crimes*. They comprise “types of crime that affect the interests of several, and sometimes a large number, of states, whether those interests are criminal, economic, social, or cultural.”[18] In addition, these crimes always pose a transboundary effect as the perpetrators, the acts of the crime, and the resulting harm, all affect the jurisdiction of *multiple* states.[19] *International financial crimes*, therefore, should be associated with the *transnational crimes of international concern* category, which falls under the jurisdiction of TCL.

The distinction between ICL and TCL is crucial to the analysis of international financial crimes and IPE. TCL provides a *more suitable* framework for analyzing, preventing, and further punishing illicit *financial* activities such as fraud, money laundering, and tax evasion. In spite of its potential to offer ideas related to the punishment of international financial crimes, TCL represents a stream of international law that has been generally overlooked by IPE scholars in the past.

## IPE and its Limited Engagement with International Financial Crimes

As Richard Friman and Peter Andreas state, “economic activity that takes place outside of the parameters of licit trade, *finance*, production, and development also lies outside the parameters of mainstream international relations scholarship.”[20] In spite of this observation, IPE scholars have continued to overlook the issue of international crime—and in its financial component in particular. In order to fill the gap in scholarly understanding of illicit financial activities, one needs to explore the existing IPE literature in regards to the topic in question. In addition, IPE should further consider an incorporation of other interdisciplinary studies, such as TCL for instance, into its analytical frameworks, as such a process would provide IPE with the ideas necessary to understand the significance of illicit international financial activities.

Friman and Andreas also indicate that “crime remains understudied by IPE scholars.”[21] Many IPE theorists have made attempts to explore the challenges posed by the process of globalization on state power, the impact of financial crime on the global economy, and the connection between crime and the economy. Friman and Andreas conclude, nevertheless, that scholars need “to better demonstrate through theoretically informed inquiry how the intersection of politics and economics matters in the analysis of crime in the global political economy.”[22] In spite of the tendency of IPE to overlook financial crime in the past, there are few scholars whose attempts to highlight the role of international financial crime must be examined.

In addition to Friman and Andreas, David Whyte is one of the few other IPE scholars that have studied the implications of financial crime for the global economy. Whyte indicates that financial crime has been encouraged by a so-called *moral culture* — a set of ideas and norms that possesses societal prominence in the modern neoliberal society of the Global North.[23] Whyte further argues that a number of scholars today agree that international financial crime is “likely to diminish in the current, neoliberal, period as global markets ‘liberalize’ and become more ‘open’, ‘competitive’ and ‘efficient’, and polities adopt liberal forms of democracy, transparency and accountability.”[24] This assumption further presupposes that the liberal market dynamics and policies would eventually perpetuate fraudsters and create “incentives for honesty and accountability.”[25] Such assumptions, however, oversimplify and thus underestimate the importance of financial crime and its consequences. Assuming that international crime rates will diminish due to the automatic adjustment of the neoliberal model is a very naïve presumption.

While such assumptions demonstrate the limits of IPE to analyze crime from its own perspective, international crime rates have in fact continued to increase. For instance, in the United States only, the dollar losses reported on mortgage related fraud increased from \$813 in 2007 to \$3,029 in 2011.[26][27] Likewise, the securities and commodities fraud pending cases in the U.S. increased from 1,201 in 2008 to 1,846 in 2011,[28] while the corporate fraud pending cases augmented from 529 in 2007 to 726 in 2011.[29]

Finally, Louis Shelley has explored the difficulties that regulation institutions face in capturing financial crime perpetrators. Shelley says that “[l]aw enforcement cannot apprehend many transnational criminals because they and

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their money are highly mobile. Criminals exploit the inconsistencies in the international legal system by wiring money through many countries, impeding investigations of their financial activities.”[30] Capturing crime perpetrators, therefore, turns out to be one of the serious obstacles to the successful suppression of international financial crimes today.

Punishing perpetrators, however, proves to be even more perplexed. Shelley argues that in a number of former Communist countries, governments have occasionally managed to convict members of financial crime groups. Their efforts, however, have in most cases been in vain because criminals have used their large resources to bribe top judiciary officials.[31] The impunity of those crime groups, therefore, represents a visible indicator of state impotence. As weak governments and their judiciary systems remain unable to solve the transnational crime problem, a more coordinated *international* response is necessary. Transnational criminal law, therefore, has the potential to provide answers to many of the questions surrounding the prevention, the suppression, and the punishment of international financial crime perpetrators. As this section proves, however, the relationship between IPE and TCL remains *imperfect*, as IPE scholars have either underestimated the influence of international financial crimes or failed to provide an appropriate explanation of how these crimes will decrease in the future. The first step toward a better relationship between IPE and TCL can be made by the former: by engaging deeply with TCL in the future, IPE will not only expand its analytical base but will also be able to illuminate important issues related to the prevention and the suppression of international financial crime.

## Transnational Criminal Law, IPE, and the Potential Relationship between the Two

The potential contributions of TCL related to the prevention and the suppression of international financial crimes outlined in this paper can strengthen the foundations for further research in IPE. Scholars like David Whyte, Richard Friman, and Peter Andreas had already established these foundations. Undoubtedly, however, further research is necessary in this regard. For this reason, the conclusions reached by this paper can provide a base for further scholarly investigations on the part of IPE, and *especially* on the part of the British school, which is traditionally more open to other disciplines.[32]

The British school should be the one taking the lead because, as Benjamin Cohen states, it is concerned with the *Really Big Questions*, one of which asks: “where is the world going and how can we influence its direction?”[33] Cohen further indicates that the “future of IPE on the global scale will require a fuller understanding of ... different perspectives on history and on the future.”[34] In order to understand financial crime suppression, therefore, IPE will need to open its framework to other fields, such as TCL, which could offer ideas and aspects related to the processes of crime prevention and suppression. As Robert Cox indicates, IPE “now requires openness to and understanding of the perspectives of all the civilisations that encounter each other in every world crisis.”[35] The British school is not the only school of thought that should engage itself more deeply with TCL in the future, however; the American school and IPE as a whole, too, should consider incorporating ideas of TCL into their frameworks. Yet, the more diverse and open to other disciplines British school should be the one taking the lead in incorporating aspects of TCL. Such a process will benefit IPE as a whole because when illegal international financial activities continue to hurt the economy, a need for a better understanding of the processes of crime prevention and suppression occurs.

## Conclusion

This paper demonstrated that transnational criminal law has the potential to contribute to the field of IPE by integrating ideas related to the prevention and the suppression of illicit international financial activities—aspects that can provide IPE with a better understanding of how to cope with the negative consequences of international financial crimes in the future. As indicated above, several IPE scholars have studied the issue of international financial crime in the past. Their contributions, nevertheless, remained very limited due to the shadowy nature of international financial crimes and the lack of IPE engagement with transnational criminal law concepts. Given the seriousness of the international crime problem in today’s increasingly globalising world, and in spite of the general neglect of TCL by IPE scholars, one might expect that a better relationship between TCL and IPE will be established in the future — a relationship that has been *imperfect* in the past but *potentially fruitful* in the future. In addition to further research on

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transnational criminal law, future IPE scholarly investigations should focus on how domestic criminal law can contribute to IPE by outlining ideas pertaining to the prevention and the suppression of financial crimes *within the state*. While transnational criminal law has the potential to offer a “macro” analysis on the role of international financial crimes, domestic criminal laws can provide IPE with a “micro” picture of how domestic financial crimes impact the global economy.

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- Whyte, David, and Jörg Wiegatz. *Neoliberalism and the moral economy of fraud*. London: Routledge, Taylor & Francis Group, 2016.

## Notes

[1] Gretchen Morgenson, “Raters Ignored Proof of Unsafe Loans, Panel Is Told,” *The New York Times*, (2010), Retrieved from: [http://www.nytimes.com/2010/09/27/business/27ratings.html?\\_r=1&pagewanted=all](http://www.nytimes.com/2010/09/27/business/27ratings.html?_r=1&pagewanted=all)

[2] Malcolm Campbell-Verduyn, “Capturing the Moment? Crisis, Market Accountability, and the

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Limits of Legitimation,” *New Political Science*, Vol. 39, No. 3, (2017), 350

[3] Neil Boister, “An introduction to transnational criminal law,” (Oxford: Oxford University Press, 2012), 13

[4] Ibid.

[5] “Financial Crime,” *International Criminal Police Organisation*, Retrieved from: <https://www.interpol.int/Crime-areas/Financial-crime/Financial-crime>

[6] “Financial System Abuse, Financial Crime and Money Laundering — Background Paper,” *International Monetary Fund*, Prepared by the Monetary and Exchange Affairs and Policy Development and Review Departments, (2001), 3

[7] Ibid., 8

[8] Richard Friman, “Crime and Globalization,” *Crime and the Global Political Economy*, ed. Richard Friman, International Political Economy Yearbook, Vol 16, (London: Lynne Rienner Publishers, 2009), 1

[9] “ Background Paper,” *IMF*, 8

[10] Ibid., 9

[11] Campbell-Verduyn, *Capturing the moment, Crisis, Market Accountability, and the Limits of Legitimation*, 350-1

[12] Neil Boister, “Transnational Criminal Law?,” *EJIL*, Vol. 14, No 5, (2003), 953

[13] Ibid., 953

[14] Ibid.

[15] Robert J. Currie, *International & transnational criminal law*, (Toronto: Irwin Law, 2010), 325

[16] Ibid., 15

[17] Ibid., 326

[18] Currie, *International & transnational criminal law*, 19

[19] Ibid., 20

[20] Richard Friman and Peter Andreas, “Introduction: International Relations and the Illicit Global Economy,” *The Illicit Global Economy and State Power*, edited by Richard Friman and Peter Andreas, 1-25, (Lanham: Rowman & Littlefield Publishers, Inc.: 1991), 3

[21] Ibid.

[22] Ibid., 9

[23] David Whyte and Jörg Wiegratz, *Neoliberalism and the moral economy of fraud*, (London: Routledge, Taylor & Francis Group, 2016), 1

[24] Ibid.

[25] Ibid.

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[26] "U. S. Department of Justice: Federal Bureau of Investigation," *Financial Crimes Section, Criminal Investigative Division, Financial Crimes: Report to the Public*, (2011),

[27] \*Dollar loss in millions

[28] *Ibid.*, 14

[29] *Ibid.*, 8

[30] Louise Shelley, "Transnational Organized Crime: The New Authoritarianism," *The Illicit Global Economy and State Power*, edited by Richard Friman & Peter Andreas, (Lanham: Rowman & Littlefield Publishers, Inc.: 1999), 45

[31] *Ibid.*, 45

[32] IPE is divided into two major schools of thought: the American School and the British School. The American school is based on "variants of realist and liberal theoretical approaches that conceptualize and explore the intersection of politics and economics as a tension between states and markets." The school also contemplates globalization by combining analyses on the aspects of liberal and realist theories into the interaction between markets and states. The British school, on the other hand, comprises of "variants of social constructivism, Marxist and non-Marxist interpretations of historical structuralism, and elements of these and other arguments." In addition, the British school considers aspects such as women, development, inequality, working classes, and several others. In contrast to the American school, the British school analyzes IPE issues by "looking beyond the realist-liberal focus on the primacy of states versus markets." Source: Friman, "Crime and Globalization"

[33] Robert Cox, 'The "British School" in Global Context', *New Political Economy*, 14, (3), (2009), 119

[34] *Ibid.*, 131

[35] *Ibid.*

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