

International Crime and Justice

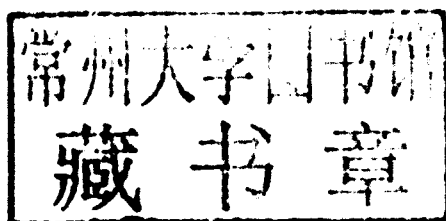
Edited by
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John Jay College of Criminal Justice,
The City University of New York



CAMBRIDGE
UNIVERSITY PRESS

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Cambridge, New York, Melbourne, Madrid, Cape Town,
Singapore, São Paulo, Delhi, Tokyo, Mexico City

Cambridge University Press

32 Avenue of the Americas, New York NY 10013-2473, USA

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org

Information on this title: www.cambridge.org/9781107144490

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First published 2011

First paperback edition 2011

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging in Publication data

International crime and justice / [edited by] Mangai Natarajan.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-521-19619-2

1. Transnational crime. 2. Criminology – Cross cultural studies. 3. Criminal justice,
Administration of – International cooperation. 4. Criminal justice, Administration of –
Cross-cultural studies. I. Natarajan, Mangai.

HV6252.I56 2011

364–dc22 2010033856

ISBN 978-0-521-19619-2 Hardback

ISBN 978-1-107-14449-0 Paperback

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Foreword

It is a truism that the world is getting smaller. The advent of the Internet, the ease of international travel, the emergence of multinational institutions, the global awareness of genocide and other crimes against humanity, and the creation of economies that span national boundaries have all brought the people of the world into closer connection. Not surprisingly, the nature of criminal activity has also changed. New and sophisticated forms of transnational crime have emerged, challenging the capabilities of investigative and law enforcement agencies in the private and public sectors. Cybercrimes that are launched in one country with consequences in dozens of other countries raise questions about the proper locus of criminal prosecutions. Genocides and mass killings that generate a global sense of outrage underscore the need for international forums that can adjudicate these horrific criminal events. At the same time, the need for an appropriate response to these crimes has resulted in new arrangements of international cooperation among police agencies, new multilateral agreements regarding prosecution of offenders, and new efforts to prevent these crimes before they occur.

This new global reality has had important consequences for scholars, policymakers, and advocates who think about the challenges of crime and care about the pursuit of justice. As the essays in this path-breaking book highlight, the global community of criminal justice experts is engaged in a fundamental rethinking of long-standing premises that form the core theoretical and practical pillars of the disciplines of criminal justice and criminology. Indeed, this book argues for the creation of a new discipline – one that embraces the challenges of international crime and justice; one that not only bridges national and cultural boundaries that too often limit intellectual inquiry but also bridges a wide variety of academic disciplines.

The range of topics considered by the authors of these chapters is breathtaking. In terms of the international dimensions of crime, the

chapters discuss migration and crime, small arms trafficking, maritime crime, terrorism, drug cartels, tourist crime, organized crime, and genocide. In terms of the global response to these crimes, the chapters cover topics such as the International Criminal Court, the role of international treaties, truth and reconciliation commissions, crossborder policing, and the role of the United Nations. In terms of criminological theories and research strategies, the chapters explore the applicability of routine activities theory, international victimology, a criminological analysis of political violence, and the need for standardized victimization surveys and other data collection programs.

The ramifications of this intellectual inquiry in the new global realities of crime and justice are considerable. On a practical level, an improved capacity to deter, detect, and respond appropriately to the crimes described here will redound to the benefit of millions of members of the global village. On a more ephemeral level, the effectiveness of the international structures created to bring offenders to justice will provide assurance to the world that fundamental norms of a civilized society are more than words found in international treaties and national constitutions. Within the academic community, these discussions will test established theories, open doors for important empirical inquiry, and promote an international dimension to the work of the next generation of scholars. And finally, of personal interest to me and my colleagues engaged in the educational enterprise, this new focus on the international dimensions of crime and justice in the curricula of our universities will ensure that the graduates of our institutions are better prepared for the challenges of global citizenships.

It is with particular pride that I note the substantial contributions to this volume by the faculty at John Jay College of Criminal Justice. They, and their colleagues from institutions around the world who have also written chapters in this book, are exploring an exciting new frontier of our field. We share a hope that this global conversation will provide a solid foundation for a new understanding of these emerging challenges – and, even better, new responses that will promote a world that is more safe and more just.

Jeremy Travis,
President

John Jay College of Criminal Justice,
The City University of New York

Preface

“The structure of world peace cannot be the work of one man, or one party, or one nation [...] It cannot be a peace of large nations – or of small nations. It must be a peace which rests on the cooperative effort of the whole world.” Franklin Roosevelt, quoted by Barack Obama, the 44th President of the United States in his Address to U.N. General Assembly, September 23, 2009

In furtherance of world peace, many educational institutions are now broadening their curricula to improve understanding of the global realities of the present-day world. Crime undeniably poses a serious threat to the social order and tranquility and it is certain that the rule of law, coupled with an efficient criminal justice system, is fundamental to social and economic progress. This is true of every sovereign state. The disciplines of Criminology and Criminal Justice have a vital role to play in improving the understanding of crimes that threaten the peace and security of nations and in finding the best way to deal with these crimes.

The rapid increase in globalization at the end of the twentieth century led criminologists to study “transnational crimes,” or criminal acts that span national borders and that violate the laws of more than one country. This resulted in the creation of a new field of study, “comparative criminology and criminal justice,” though it is also known by many other names, including international criminology and criminal justice, global criminology and criminal justice, supranational criminology, and crosscultural criminology. Meanwhile, growing international awareness of the millions of victims of genocide, crimes against humanity, and war crimes in the late twentieth century compelled the international community to pay attention to these “gravest crimes” that threaten the peace, security, and well-being of the world. These crimes were given formal recognition in the Rome Statute of 1998 (now signed by more than half the member states of the United Nations), which established the International Criminal Court to deal with them.

The disaster of September 11, 2001, accelerated the need to study international crime and criminal justice, not just in the United States but all around the world. A new undergraduate major – International Criminal Justice (ICJ) – was established at John Jay College of Criminal Justice in 2001 and subsequently, in 2010, a companion master's ICJ program was also started. Other universities and colleges are now beginning to offer similar programs at the undergraduate and graduate levels. The programs will help to expand the boundaries of criminology and criminal justice and will open up many new career opportunities for students of these fields.

As the founding director of John Jay's undergraduate ICJ program, I realized that there was an urgent need for a student text that would provide concise, up-to-date information on the broad array of topics covered by international crime and justice. This book is based on a book custom-published by McGraw-hill in 2005. It includes revised and updated chapters originally included in the McGraw-hill book and twenty additional chapters covering new topics. The book is by no means a traditional textbook – indeed, I hope it is more than a textbook. The short chapters, specially written by many of the world experts in this new field, are intended to give students an understanding of the main concepts covered by each topic and to sensitize students to the complex nature of the problems. Given the enormous interest in this field, I confidently expect a new edition of the book will be needed within the space of the next few years.

My sincere thanks go to each and every one of the seventy authors for accepting my invitations to write the chapters. Because of their broad expertise, I had to twist the arms of some of them to do more than one chapter. Many of them not only wrote chapters but also helped by reviewing the chapters of other authors. I also thank some other reviewers who are not authors, including Patricia Brantingham, Ko-Lin Chin, Richard Culp, Dinni Gorden, Dennis Kenney, Edward Kleemans, Mahesh Nalla, Phil Reichel, Kim Rossmo, Aiden Sidebottom, Janet Smith, and Nick Tilley. Without the help of all these friends and colleagues, this project would not have been possible. I am fortunate to have such a wonderful group of international experts as friends. It was a pleasure as well as a great learning experience to work with them. I also thank the anonymous reviewers of the book proposal, selected by Cambridge University Press, whose comments helped me to improve the book and gave me confidence that I was on the right track.

I have been blessed by having many hard-working, talented, eager-to-learn students in the ICJ program. Some of them have read the chapters,

have given feedback, and have helped to check and proofread the references. Particular thanks to Christian Aulbach, Pavlina Fidlerova, Viola Sze Yuen Har, Devin Jaipersaud, Mary Kwang, Weijian Li, Jvania Robertson-Ward, Isabella Salgado, and Matthew Thomeczek for their assistance.

There is nothing like having the help of mentors in facing the challenges of an academic career. I thank Professor Ronald V. Clarke, my mentor, or rather my guru (!), for teaching me to be rigorous and self-critical ever since my time at Rutgers. I am also grateful for many brainstorming sessions with him that helped shape this book.

I must acknowledge my special thanks to Professor Roger S. Clark, an optimistic human being and inspirational teacher, who has directed me for the past five years or so on the right path toward understanding international criminal law.

Encouragement can work wonders for one's confidence and I thank Professor Graeme Newman, a founding scholar of global crime and justice, for his encouraging comments when I started thinking about a book on international crime and justice. I pinned up his e-mail by my desk: "Mangai, a very ambitious and impressive book outline. If you can pull it off, there will be nothing else like it anywhere."

Two other people of great importance in my career are Professors Gerhard Mueller and Freda Adler. In 2005, before his death, Professor Mueller paid me the honor of writing the foreword for the earlier, custom edition of this book published by McGraw-Hill.

There are many other people who contributed to the development of the book. First, I would like to thank ex-Provost Basil Wilson, who conceived the idea of an ICJ major at John Jay and who asked me to run the program. Thanks also to Provost Jane Bowers and Dean Jim Levine for their constant and continued support and thanks to the colleagues in my department for their patience with this preoccupied colleague. In particular, my sincere thanks to Dr. Rosemary Barberet for her help with the ICJ major – I wish her success in directing the ICJ master's at John Jay.

I would also like to thank Ed Parsons, Jason Przybylski, Robert Dreesen, J. Neil Otte (copy editor), and Vijayalakshmi Natarajan (Vijee – Production Manager) of Newgen Publishing and Data Services of Cambridge University Press for their enthusiasm about the book and for helping me with production issues.

I am truly grateful to Jeremy Travis, President of John Jay, for his unequivocal support for the ICJ major, for me personally, and for agreeing to write the foreword to this book.

Finally, thanks to all my friends – they know who they are – for constantly cheering me up whenever I have begun to droop under the burden of producing the book. Above all, thanks to Jithendranath Vaidyanathan, my best friend, for his unwavering commitment to my professional success.

Ever since I entered the world of criminology, my passion and ambition have been to understand victimization and to help prevent it. I, therefore, dedicate this book to the victims of international and transnational crimes, in the hope it might help in the future to reduce the terrible harms that they suffer.

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Introduction

Mangai Natarajan

Criminology seeks to explain the nature, extent, causes, and consequences of crime, while the discipline of criminal justice deals with society's response to crime – how this response is conceived, organized, administered, delivered, and evaluated. For most of their histories, these disciplines have focused on lower-class offenders committing street crimes that impact local neighborhoods and cities. They have paid relatively little attention to corporate or white-collar crimes and they have paid even less attention to studying the cross-cultural context of crime and the different national responses to crime.

In the past two decades, scholars have broken out of this mold and have begun to extend the boundaries of criminology and criminal justice. Specifically, they began to study crime patterns and evolving criminal justice practices in other parts of the world, using their own countries as benchmark comparisons. Their pioneering work resulted in “comparative criminology” and “comparative criminal justice” becoming established subfields of the broader disciplines (Mannheim, 1965; Mueller & Wise, 1965, 1975; Clinard & Abbott, 1973; Chang, 1976; Newman, 1976; Shelley, 1981a, 1981b; Terrill, 1982; Adler, 1983; Johnson, 1983; Bayley, 1985). One of the facts exposed by this body of work, increasingly recognized by the United Nations and the World Bank, is that the rule of law is not simply the result of economic and social progress; rather, it is a necessary condition for this progress to be achieved.

The acceleration in globalization that began in the 1990s has made clear that criminologists must take one further step than that made in comparative criminology (Fairchild, 1993; Adler, 1996; Yacoubain, 1998; Reichel, 1999). They must study, not just the crimes and criminal justice systems of other countries, but they must also study “transnational” crimes that span

two or more countries. These crimes include cybercrimes, international money laundering, and various forms of trafficking (e.g., in drugs, humans, stolen antiquities, and endangered wildlife), which result from the huge expansion of world trade, the vast increase in migration, the internationalization of currency markets, and the explosions of international travel and electronic communications. While these consequences of globalization have been lauded by economists and others, criminologists, lawyers, and crime policy officials must now grapple with one of globalization's downsides – the opportunities globalization has created, together with the explosion of new technologies, for transnational crimes to emerge or be transformed into more serious forms (Newman, 1999).

No sooner had criminologists and criminal justice scholars awakened to this reality than developments in international relations and international law drew their attention to yet another large and important class of crimes that they had neglected, so-called international crimes (Yacoubain, 2000). These are crimes such as genocide and mass killings that occur within the boundaries of a sovereign State, but which are so horrific in their scale and consequences that they demand an international response. Some criminologists and criminal justice scholars (notably Hagan & Raymond-Richmond, 2009) have recently begun to conduct research on these crimes and it is becoming evident that a whole new field of study – international crime and justice – is being created. This field includes comparative criminology and criminal justice, and its subject matter is transnational crimes, international crimes, and the international responses to these crimes.

As will become apparent from this book, this new field departs in many important respects from traditional criminology and criminal justice. As discussed below, the international dimension of the field requires input from an even wider range of disciplines than those involved in criminology and criminal justice. Another important change is that moving the focus, first, from local crimes to transnational crimes and then to international crimes, results in victims becoming increasingly more important. At the local level, the focus is mostly on offenders – explaining their crimes, apprehending them, and treating them. Relatively little attention is paid to the needs of victims for restitution, compensation, and protection. At the international level this relationship is reversed. There is considerably more concern with the harm to victims, and with restitution and compensation. This is because transnational and international crimes often involve multiple victims who suffer egregious harms and who have little recourse to justice. The victims are very visible, whereas the offenders are often difficult to identify, and even more difficult to apprehend. Thus, the implication

for scholars is that victimology, the Cinderella of traditional criminology (Fattah, 1991), becomes much more important in international crime and justice.

Recognition of the increasing importance of transnational and international crimes led to the establishment of a new undergraduate major in international criminal justice at John Jay College of Criminal Justice in 2001 (Natarajan, 2002; 2008) and subsequently, in 2010, to the establishment of a master's program. Other universities and colleges are beginning to establish similar programs at the undergraduate and graduate levels. This book is intended to serve the needs of the students in these programs for concise, up-to-date information on the broad array of topics covered by international crime and justice. Later sections of this introductory chapter detail the reasons for studying international criminal justice, lay out the elements of the interdisciplinary approach to the subject, and provide a brief description of the nine parts of the book. The next two sections, however, provide more information about transnational and international crime.

TRANSNATIONAL CRIMES

As mentioned, transnational crimes are criminal acts or transactions that span national borders, thus, violating the laws of more than one country. According to McDonald (1997), an offense is transnational nature if:

1. It is committed in more than one State;
2. It is committed in one State but a substantial part of its preparation, planning, direction, or control takes place in another State;
3. It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State;
4. It is committed in one State but has substantial effects in another State.

Examples of such crimes include illegal immigration, sea piracy, airliner bombings, and various forms of international trafficking, which include trafficking in drugs, stolen cars, firearms, antiquities and cultural objects, endangered species, human body parts, and women for the sex trade.

Because transnational crimes span the borders of two or more countries, they require action by the specific countries where the laws have been violated. It is the need for cooperation between States, equally interested in protecting their legal values, which makes them willing to assist one another to prevent or prosecute such crimes. Reciprocity is, therefore, a

guiding principle (Triffterer, 2006), but some cases where such reciprocity is absent require the attention of an international body, in particular the United Nations. An important example is the bombing of Pan Am Flight 103 over Lockerbie, Scotland in 1988, which killed all 259 people onboard and eleven people in the village of Lockerbie. Though the aircraft was American-owned and many of the victims were U.S. citizens, the airliner was brought down over Scotland. This meant that the case fell squarely under the jurisdiction of Scottish law. Because of the lack of extradition treaties, the Libyan leader Moammar El-Gadhafi refused to hand over the Libyan citizens suspected of the crime. This conflict was resolved by the United Nations' request to the government of Libya to comply by ensuring the appearance in the Netherlands of the two accused for the trial, as well as making available in the Netherlands any witnesses or evidence that might be requested by the court (for details, see Security Council Resolution 1192 (1998) on Lockerbie case). The Libyan leader eventually agreed to the trial being held in a neutral country (i.e., the Netherlands), though under Scottish Law.

INTERNATIONAL CRIMES

The Rome Statute defines international crimes as the gravest crimes that threaten the peace, security, and well-being of the world and are of concern to the international community. This covers the “core crimes” of genocide, war crimes, crimes against humanity, and the crime of aggression (for details, see UN document PCNICC/2000/INF/3/Add.2, on Elements of Crime). At the time of writing, the crime of aggression has not yet been defined, but will be discussed at an upcoming ICC review conference (Clark, 2010). The preamble of the Rome Statute states in paragraph 6 that “it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.” While there may be general agreement that the core crimes specified in the Statute are indeed international crimes, there are many other crimes that in some circumstances might also qualify for this designation. Murphy (1999) has argued that international crimes are defined in a two stage process. They are initially defined as crimes in a particular convention or agreement between two or more States. The primary focus of such agreements is the prosecution and punishment of individuals who perpetrate the crimes in question. Subsequently, after the agreement has been ratified by a large number of States and generally accepted even by States that do not become parties to the agreements, the crimes the agreement cover may be regarded as crimes under customary international law.