Chapter 7
Corporations and Transnational Crime

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Introduction

This chapter will discuss two topics that are related, but seen as different and represent distinct research traditions in criminology: corporate transnational crime and corporate complicity to transnational crime. The first topic concerns crimes committed by corporations (or the people acting on their behalf) that have some transnational element. Corporate crime can be defined as "Any act committed by corporations that is punished by the state, regardless of whether it is punished under administrative, civil, or criminal law" (Clinard and Yeager 1980, p. 16). The second topic concerns corporations aiding and abetting the crimes that are committed by criminal groups and which criminologists would qualify as organized crime. Following Fijnaut (Fijnaut et al. 1998), groups are considered as organized crime groups when they are focused primarily on obtaining illegal profits; systematically commit crimes with serious damage for society; and are reasonably capable of shielding their criminal activities from the authorities. Shielding illegal activities from the authorities is made possible by using various strategies such as: corruption, violence, intimidation, storefronts, communication in codes, counter surveillance, media manipulation, the use of experts such as Notaries Public, lawyers, and accountants.

While both concepts refer to illegal actions, the organizational context is different. Corporate crime is committed by employees representing a legitimate company. Organized crime is committed in informal groups of which members collaborate with the sole purpose of committing crimes. However, the distinction between the two concepts is fluid. Especially in a transnational context without a regulatory framework creating clear legal boundaries, the distinction between corporate crime and organized crime is arbitrary. Also, from a historical perspective the distinction between corporate and organized crime is ambiguous. Looking back in history, the

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boundaries between nation states and the legal and illegal are blurred, as well the applicability of modern concepts such as "corporations" and "states." Using contemporary criminological concepts such as corporate crime and organized crime to frame historical cases could be anachronistic.

Nevertheless, this chapter will study historical origins of business related crime, to get a better understanding of the historical context of modern "corporate crime" and "transnational organized crime," which are often presented as recent products of globalization. While historians debate about the origins of globalization, it is often situated in the modern era. Especially post World War II, as international trade agreements have promoted the free flow of goods, commercial aviation has dramatically increased freedom of movement and communication technology have fostered cultural globalization, and especially the marketing of Western cultures, as well as its counter movements (Conversi 2010).

The transnational elements of corporate crime could be various. First, the corporation itself could be transnational. Multi-national corporations (in business literature often abbreviated to MNC's) are transnational in themselves. Therefore, it might be difficult to qualify their actions as either national of transnational. Second, the goods or services provided by the corporation and that are connected to the crimes could have some transnational element. Goods can cross borders. Illegal trafficking of e-waste is a well known example (Gibbs et al. 2010). Services could also be transnational in their effect, such as financial transactions to transfer money to off shore jurisdictions. Third, the victimization of corporate crime could be transnational. The time-space gap in victimizations is typical for many instances of corporate crime: victimization occurs long after or far away from the corporate boardroom at which the decision is made that has led to the victimization (Vande-Walle 2007).

Often, globalization is presented as a cause for (the observed increase of) transnational corporate crime (Passas 1999). However, the historical cases discussed in this chapter show that early accounts of corporate crime were also transnational. This raises the questions whether globalization is new and whether it is the cause of a transnationalization of corporate crime.

This chapter will first address some historical—pre-World War II—accounts of business related crime, to illustrate that it are not a strictly contemporary phenomenon. Second, corporate complicity to transnational organized crime will be discussed, as the latter is a product of the twentieth century, or at least its social construction is. Third, several contemporary forms of corporate transnational crime and corporate complicity to organized crime will be discussed to further illustrate the blurrification of corporate and organized crime: money laundering, corruption, environmental crime, and human rights abuses. By doing so, this chapter will roughly follow a chronological timeline from the seventeenth till the twenty-first century. Although this chapter is on corporations and *transnational* crime, it will mostly draw upon English written literature, and will therefore have a focus on Western industrialized societies. The chapter will end with some conclusions regarding the lessons history teaches about the transnationality of corporate crime and recommendations for future research.

Transnational Corporate Crime Before World War II

As long as there have been business and regulation of business, there has been business related crime. The first known written legislation, the Codex of the Babylonian king Hammurabi of about 1770 BC, already contained provisions on unfair trade practices. For instance, when a merchant's agent did not return with a profit after a trade mission, he had to pay a hefty fine for it was assumed that the agent must have defrauded his principal. If it was proven, however, that the merchant had wrongly accused the agent, the merchant had to pay a six fold amount to the agent (Driver and Miles 2007). Also Roman Law contained provisions about unfair trading practices and punishment. In Europe, Roman law was used to regulate civil society and business transactions well into the middle ages (Feenstra 1984). Only after the middle ages, during the European overseas expansion, business corporations in the modern sense were created to finance and execute this expansion and the trade that came with it.

The East India Companies The trading companies set up in the seventeenth century to conduct trade with and exploit natural resources found in the newly discovered territories in Asia and the America's are often seen as the first transnational corporations. The two most prominent examples are the British *East India Company* and the Dutch *Vereenigde Oost-Indische Compagnie* (VOC).The East India Company was established by Queen Elizabeth I in 1600. The Dutch East Indies company VOC was established by States-General of the Republic of The Netherlands in 1602. Both companies started as speculative companies to import spices from South-East Asia and gradually obtained tremendous wealth and power. The East India Company grew to rule one-fifth of the world's population. In the eighteenth century, the VOC employed over 20,000 people (Gaastra 2003).

The Netherlands States-General awarded the VOC a patent for trade between the Cape of Good Hope and Cape Horn. This patent meant that the company had a monopoly to trade on behalf of the Republic in this region. Also, the company had the right to sign treaties, build fortifications, install local authorities, and wage war on behalf of the Republic. In other words, the VOC obtained the rights that normally belong to sovereign states. Another major innovation was that the capital in shares was not returned to the shareholders after each successful expedition, but it was used to finance following expeditions. In 1602 6.424.588 Dutch Florint in private capital was invested in shares of the VOC. Investors differed from household maids to rich merchants. Shares in the company could be sold. So with founding the VOC, also the securities exchange was born.

When the former prime-minister of the Netherlands pleaded for a return of the "VOC-mentality" of entrepreneurship in Dutch economy in 2006, many critics responded to his call with memorizing the misconduct and crimes committed by the company and its agents. Among the most prominent cases of colonial violence are the killing, dispersal, and abduction of at least 10,000 inhabitants of the Banda Islands in nowadays Indonesia by troops of the VOC in 1621 (Raben 2012). Also, although not being formally illegal at the time, the company was involved in slave

trade (slave trade was, however, mainly conducted by the Dutch West Indies Company, *WIC*).

Furthermore, widespread fraud and corruption have been related to the VOC, especially toward its end. Even after the fourth war with England (1780–1784), when the cash register was empty, the company kept on returning dividend of 12.5% to shareholders, presumably to maintain the impression of creditworthiness. To maintain this policy, the company had to run into debt even more, by issuing bonds and buying short term loans. While in Dutch history, it was generally assumed that the VOC went down because of the widespread corruption, recent research showed that this corruption was the consequence, rather than the cause, of the financial problems of the company. During its downfall, the company accepted higher and higher injections of private capital to finance the return trips of the ships returning from the East. Because of this, these private investors—often being agents of the company itself—became more powerful. For the company administration, it became more and more difficult to control these investors and to safeguard the companies' monopoly on the trade. Increasingly, the company turned a blind eye to the illicit trade on the side—the so-called "lorrendraaien"—the company's agents were conducting for their own benefit, breaching the company's monopoly (Nierstrasz 2007). Because of its bankruptcy, the VOC had to be bailed out by the Republic of the Netherlands, and in 1795 the VOC was nationalized.

Just like the VOC, the British East India Company has been connected to atrocities and other forms of misconduct. For instance, after taking full control over Bengal in 1765, the company introduced a British taxing system, securing large tax revenues for the Company's shareholders. Just 5 years later, revenues from the land tax had already tripled, impoverishing the people. These conditions helped to turn one of Bengal's periodic droughts in 1769 into a famine. An estimated 10 million people—or one-third of the population—died. Also, many of its officials and traders privately exploited the situation: grain was seized by force from peasants and sold at inflated prices in the cities (Robins 2002). Like the VOC, the officials of the East India Company personally profited from illicit trade. Because of distance and poor communications, the London board often had little real control over the actions of the private enterprise imperialists. Robert Clive for instance, a British officer who established the military and political supremacy of the East India Company in Bengal, obtained almost a quarter of a million pounds and told a House of Commons enquiry into suspected corruption that he was "astounded" at his own moderation at not taking more (Robins 2002).

The disastrous consequences of company rule led to many uprisings and rebellion in India. While these were put down, they were characterized by extreme savagery on both sides. Such atrocities would nowadays probably constitute as breaches of international criminal law, such as crimes against humanity and perhaps even genocide. In the 1850s, the massacre of East India Company personnel and other Europeans had generated a ferocious bloodlust in British society and because of its apparent inability to stop these, popular sentiments turned against the Company. On 1 November 1858, the East India Company was abolished and direct rule by Queen

and Parliament was introduced. “India was no longer ruled from a City boardroom but from the imperial elegance of Whitehall.” (Robins 2002).

Rubber Trade in the Congo Free State While the trading companies acted as *de facto* governments and lay the foundations for colonization, the formal colonization of large parts of Asia and Africa only began after the nationalization of the trading companies and their territories. In recent times, the colonization itself and many of the practices executed in the name of colonization have been deemed as wrong and even criminal. Although the blame is mainly aimed at European colonial governments, also business entities had a role to play in what nowadays would constitute gross human rights violations and international crimes (Huisman 2010).

An example that has been the topic of criminological study is the Congo Free State (Ward 2005). Recently, the Democratic Republic of Congo was the scene of what is called by some the “first African world war”. For decades, the country has been suffering armed conflict and gross human rights violations. This was fuelled by or even motivated by the control over the countries rich natural resources (such as gold, koltan, and cobalt), for which several multinational companies has been accused of complicity, as will be discussed later in this chapter. In a way, history is repeating itself. From 1885–1908 the country—then known as the Congo Free State—was independent from Belgium but the Belgian King, Leopold II, was its absolute monarch. While the Berlin Act of 1885 obliged him “to watch over the preservation of the native tribes, and to care for the improvement of the conditions of their moral and material well-being, and to help suppressing slavery”, the country mainly served for the enrichment of the King and the commercial enterprises he controlled in the exploitation of the Congo’s natural resources (then mainly ivory and rubber) (Ward 2005, p. 436).

In furthering this goal, massacres, hostage-taking, rape, death by starvation, and extremes of physical cruelty were common occurrences. These were not committed by only colonial officials. Particularly for employees of the companies, terror, and atrocities became standard business practices. Following the remarkably early “criminological” analysis by the journalist and witness Morel (1904), Ward offers a contemporize analyses of this case of state-corporate crime. “It was Morel’s realization, while working as a shipping clerk, that the Free State’s accounts were fraudulent, that alerted him to the criminal nature of its operations.” (Ward 2002, p. 436).

Ward argues that the excesses were committed in circumstances where it is rational for organizations and individual actors to minimize the costs of cruelty, such as the loss of labor force. Ward uses Merton’s anomie (1938) theory and Sutherland’s differential association theory (1949) to explain why economically motivated violence can escalate to seemingly irrational levels. According to Ward, by 1890 King Leopold was willing to resort to any method necessary to cope with the financial crisis facing his colony. Leopold seized the opportunity for profit afforded by the new demand for rubber. The company agents faced a classic situation of “strain”, as described in anomie theory: under the acute pressure to meet their legitimate goal of meeting production targets and unable to achieve this by legitimate means, they were driven to innovate and use illegitimate means to force African workers

to harvest more rubber. Ward quotes a district commissioner: "To gather rubber… one must cut of hands, noses and ears" (Ward 2002, p. 440). Differential association includes diffusion of illegal practices among firms and isolation from definitions unfavorable to such illegal practices. Using differential association theory, Ward argues that each act of violence that the occupational culture condones makes further acts of violence easier to commit and less likely to incur censure.

While no laws or treaties existed to prosecute or sanction King Leopold or the companies, the atrocities did cause moral outrage and public campaigns in Europe. Ward even quotes a remarkably prescient journalist, who argued that "an international assize court" should be established at The Hague to try the King (Ward 2002, p. 437). In a show trial, one rubber company agent was sentenced to 15 years imprisonment for the murder of 122 natives.

Trading with the Enemy In daily speech and criminology, white-collar crime is the term most commonly used for crimes committed in a business context. The term was coined by Edwin Sutherland in 1939, during his presidential address to the American Sociological Society. Ten years later, Sutherland published his book "White-collar crime" with the results of his study of lawbreaking by America's 70 largest corporations (Sutherland 1949). It is not a coincidence that Sutherland is also the founding father of the differential association theory. Sutherland (1949, p. 234) wrote that the "data at hand suggest that white collar crime has its genesis in the same general process as other criminal behavior, namely, differential association." Sutherland's book contained chapters on restraint of trade, discriminatory rebates, infringement of patents, trademarks and copyrights, misrepresentation in advertising, unfair labor practices, financial manipulations, offenses of power and light firms, and war crimes. Sutherland explained that this last offense type contained many of the other offenses when committed during World War I and II. In a recent analysis of the original "war crime" data of Sutherland, Galliher and Guess (2009) distinguish three categories of industry that can be distinguished in Sutherland's files of corporate war crimes: merchandisers of finished products including food and beverage processors and distributors, manufacturers, and corporations selling raw materials. Many of the cases boil down to war profiteering, for instance by providing inferior products and overcharging products. War effort creates an acute and huge demand while there is no time for public tendering procedures and negotiation. Companies can easily exploit these "no-bid" contracts. These practices also occur in recent wars. Recently, the multibillion dollar company Halliburton, has come under scrutiny for allegedly massive overbilling the US Military for their services in Operation Restoring Freedom in Iraq and for systematically charging for services that were never provided (Rothe 2006).

Sutherland also noted how war attributed to the opportunity to commit antitrust offences, by misusing monopolies to inflate prices because of the increased demand due to the war production. Some US companies even engaged in price fixing with the enemy. For example, when General Electric and Krupp (in Nazi Germany) signed an agreement the price of the raw material *tungsten carbide* jumped from US$ 48 per pound to US$ 453 per pound (Galliher and Gues 2009). Controlling

production in this manner was profitable for business on both sides of the military divide. GE paid royalties to the Nazis on every pound produced, thereby helping the German economy, and they informed the Nazis exactly how much the US government was using in its build-up for war. In a court case GE was fined only US$ 20,000.

Matthews (2006) conducted a case-study of five American corporations that conducted business with Nazi Germany through their German subsidiaries: Ford Motor Company, General Motors, IBM, Kodak and Chase-Manhattan. He found two types of involvement of American companies with Nazi crimes: supplying goods and materials used for the German war effort and contributing to genocide and crimes against humanity. This last type existed in cases where German subsidiaries of the American companies used slave labor or contributed to the Holocaust in a different way. IBM, for example, produced Hollerith machines and cards used for the purpose of identification, expropriation, deportation, and destruction of Jews (Black 2001).[1]

After the war, the companies tried to justify the complicity of their German subsidiaries by referring to the threat of being expropriated or by stating the American companies had no effective control over their subsidiaries overseas. Matthews alleged, however, that it was the capitalist emphasis on profit maximization and the business opportunities of trading with the enemy that made these corporations collaborate with the enemy. According to Matthews, the products these firms manufactured were essential to the German war effort. Several American companies even out-produced their German counterparts. One can only image the surprise of the US troops landing on the shores of Normandy to find the enemy driving Ford and GM vehicles. (Matthews 2006).

Corporations and Transnational Organized Crime

Although Sutherland introduced the concept of white-collar crime, he was not the first academic to raise attention to the criminal behavior of corporations and their managers. At the beginning of the twentieth century, the Dutch criminologist Willem Bonger (1916) introduced the concept of "crime in the suites" as opposed to "crime in the streets". Bonger argued that a criminal attitude arises among the bourgeoisie from the avarice fostered when capitalism thrives. This author is considered to have had a crucial influence on the formulation of Sutherland's theory of white collar crime (Braithwaite 1985, p. 2). Sutherland was also inspired by the sociologist Ross, who promoted the notion of "the criminaloid" a few decades earlier, which referred to the businessman who committed exploitative act out of a uninhibited desire to maximize profit and hiding behind a façade of respectability (Friedrichs 2010, p. 3; Geis 2007, p. 12). According to Ross, the criminaloid is: "The man

[1] Later, in this chapter, corporate complicity to the Holocaust by German transnational companies will be discussed.

who picks pockets with a railway rebate, murders with an adulterant instead of a bludgeon, burglarizes with a "rake-off" instead of a jimmy, cheats with a company prospectus instead of a deck of cards, or scuttles his town instead of his ship, does not feel on his brow the brand of a malefactor." (Ross 1907, p. 7). Ross's wrath was provoked by the "aggressive capitalism of the robber barons" that dominated America's economy in the late 1800s. This even led to his forced departure from Stanford University, as the widow of the railroad robber baron Leland Stanford was upset by his writings. During the same period, the journalistic movement of the so-called muckrakers was aimed at exposing wrongdoing by the powerful and the privileged, reporting on high-level corruption, unethical actions of oil companies and the exploitation of workers (Friedrichs 2010, p. 25)

The above shows that the way business related crime is framed is related to the way it manifests itself in a certain era. As a response to the well-documented rise of organized crime in the USA during the Prohibition in the 1930s and the start of the drug trade in the 1950s, Senate and Presidential Committees acknowledged and framed the problem of organized crime in the USA. A Senate investigating committee set up in 1951 (Kefauver committee) and a President's commission on Law Enforcement and the Administration of Justice in1967 portrayed organized crime as an alien conspiracy, a problem of mainly Italian origin, imported in the USA. Further, the criminologist Cressey who advised the latter commission, compared the organization of criminal syndicates with those of corporations: largely formal, hierarchical structures (Cressey 1969).

This framing of the organized crime problem has led to a distinction in conceptualization between "organized crime" and "corporate crime" that, although strongly criticized by some criminologists, is still made today, both in academic criminology as well as in criminal justice policy. One of the reasons that this distinction is being criticized is because the criminal activities and their organization overlap (Block and Chambliss 1981). Traditional activities of organized crime are vices and racketeering. *Vices* refers to providing illegal services or goods for which there is a public demand, such as drugs, prostitution and gambling. *Racketeering* refers to illegal operations in, or control of, legitimate economic sectors, for instance by extortion or corruption. As racketeering occurs on legal markets and criminal organizations often operate from the legal façade of companies in these markets, distinctions between organized and corporate crime are often hard to make. Most traditional organized crime groups (Cosa Nostra, Yakuza, Russian *Mafia* etc) have some level of control over or operate as legitimate corporations, mostly parasitical but often symbiotic. Early twentieth century members of American Cosa Nostra used trading companies as a cover for their criminal activities, while also importing olive oil, citrus fruits, and wine from Sicily (Dickie 2004). 2008 revisions in the Japanese Organized Crime Countermeasure Laws even made it clear that designated organized crimes groups function like a Japanese company, and therefore the people at the top have employer liability (Adelstein 2012). Russian organized crime groups acquired control over many sectors of the economy after the introduction of the free market economy in Russia and they strive for the combination of legal and illegal forms of business (Shelley 2004, p. 572; Gilinskiy and Kostjukovsky 2004, p. 200).

Especially on a transnational level, the distinction between organized crime and corporate crime disappears for both activities. In the field of vices, scholars have continued studying various local markets of illegal products and services, ranging from drugs and prostitution to gambling, numbers, and loan sharking (e.g., Reuter 1983). However, production countries and consumer markets are often not the same. Therefore, much organized crime can also be labeled as "transit crime" as it involves cross-border trafficking and smuggling of drugs, weapons, and victims of sex trafficking (Kleemans 2014). Studies of transit crime show that many regular businesses are involved in the logistics of transit crime, such as transport companies, expedition companies, travel agents, etc. Furthermore, as will be discussed in the next section, the banks and other actors in the financial industry are involved in transnational money laundering schemes.

A transnational perspective also blurs the distinction between legal and illegal markets, and so between vices and racketeering. When criminals operate in a country where gambling and prostitution is illegal, these activities may be labeled as vices. In other countries, such activities may be legal, yet criminal organizations might deploy racketeering practices, for instance by loan sharking and pimping. When in transnational supply chains goods are legal in one country and illegal in another, entrepreneurs might present themselves as legitimate businessmen or operate under the veil of legitimate companies. A good example is Victor Bout, whose transport companies even served the United Nations in peacekeeping operations, but who was seen by criminal justice agencies as one of the world's major illegal arms dealers (Farah and Braun 2008).

Processes of criminalization and decriminalization can change legal markets into illegal ones and vice versa. Therefore, adopting a historical perspective leads to a further blurification of the distinction between organized and corporate crime, as laws on prohibition have changed overtime. Criminalization of previously legitimate business activities creates corporate crime when these businesses continue these activities, as such has often occurred with environmental pollution (DiMento 1986). On the other hand, such criminalization might force legitimate companies out of the market and provide opportunities for criminal networks to take over the businesses, as has happened with the liquor industry in the USA during Prohibition. Also, before the criminalization of narcotics, regular pharmaceutical companies were producing drugs, such as the *Nederlandsche Cocaïnefabriek* in Amsterdam that produced 20 % of the world's supply in cocaine in the 1920s and that was taken over by AkzoNobel in 1970 (Bosman 2012).

Decriminalization might provide organized criminals with the opportunity to become legitimate entrepreneurs. However, getting licensed does not necessarily mean these entrepreneurs clean up their business, as is illustrated by the legalization and regulation of the prostitution sector in the Netherlands. The Dutch government hoped that making sex work a "normal" profession and licensing brothel operators would drive out organized crime. However, recent evaluation studies show that much of the sex traffickers in the Dutch prostitution market have changed colors from vices to racketeering and that the licensed brothels serve as a legalized outlet for victims of transnational sex trafficking (Huisman and Kleemans 2014).

Money Laundering

A clear example of a transnational criminal activity in which legal corporations facilitate criminal organizations is money laundering. Money laundering refers to concealing the illegal source by which money is made, often by suggesting a legitimate source of income (Reuter and Truman 2004). From studying the principal offences by which such money is made, such as drug trafficking and human smuggling, one might view this money laundering as part of organized crime. However, from studying the involvement of companies in the laundering of criminal proceeds, this might be viewed as a form of corporate crime. In most countries, money laundering is a criminal offence (Reuter and Truman 2004). Additionally however, due to international agreements many countries have created reporting duties for irregular or suspicious financial transactions for the financial industry and other economic sectors, making noncompliance with these provision regulatory offences.

According to popular belief, the term money laundering comes from the launderettes the Chicago organized crime boss Al Capone was using in the 1930s to justify his earnings of criminal activities such as bootlegging and drug trade. As a metaphor it refers to "dirty money", being proceeds of crime, that needs to be "laundered" to "clean money", with a apparent legitimate origin. The term only came to use since the Watergate scandal and money laundering was only seen as a serious problem of organized crime since the 1980s. This was not only because of the realization of the enormous amounts of money that were made by—especially—international drug trafficking that needed to be laundered, but also because of various scandals of international banks that were found to play a crucial role in transnational money laundering schemes.

The most notorious case is that of the *Bank of Credit and Commerce International* (BCCI). This bank was founded in 1972 by the Pakistani financier Agha Hasan Abedi, it was headquartered in Luxembourg but had branches in 78 countries and it was the world's 7th largest private bank in assets. Due to concerns about poor internal regulation and monitoring, several financial regulators and criminal investigations services started investigations into the banks operations. They found that that besides funding disreputable clients such as dictators, terrorists, paramilitaries, and secret service agencies, the bank was involved in massive money laundering of criminal proceeds, among which for the Colombian Medellin drug cartel (Passas 1996; Punch 1996). In 1991, a Luxembourg court ordered the liquidation of the bank and financial regulators in five countries shut down the offices of BCCI. Abedi, along with other executives, was indicted in the USA, but he died in Pakistan in 1995 before standing trial.

Another landmark case of a reputable bank that was found laundering money for organized crime, was *Banco Ambrosiano*. This case is particularly known because the chairman of the bank, Roberto Calvi, was found murdered, hanging from Blackfriars bridge in London. Allegedly, Calvi and his bank were laundering money for Italian mafia in a scheme in which also an influenced Masonic lodge and the Vatican bank were involved and that is still covered in mystery (Punch 1996). Besides these

two well documented cases, several other banks have been found to be involved in laundering the proceeds of transnational organized crime (Reuter and Truman 2004).

As a response to the increasing international concern about the problem of transnational money laundering, in 1989 the Financial Action Task Force (FATF) was formed as an intergovernmental body to combat transnational money laundering. The FATF generates legislative and regulatory reforms, in the form of recommendations to be implemented by the member's states. The initial recommendations all concerned preventing money laundering in the context transnational organized crime and created the duty for banks to report suspicious financial transactions to the national financial intelligence units. Later, the coverage of these duties was expanded to other economic sectors that deal which large sums of cash money, such as antiquities trade and legal professions. Effects of displacement from the financial sector to these sectors were alleged.

Furthermore, a net widening effect can be observed regarding the concept of money laundering and the reporting duties of companies (Van der Schoot 2006). After the terrorist attacks of 9/11, not only were resources of criminal intelligence and investigation agencies dramatically shifted from fighting organized crime to fighting terrorism, but the FATF recommendations were also expanded again to include terrorist finance. As a result, recent cases in which banks are being blamed and sanctioned for "money laundering" actually constitute processing financial transactions with countries suspected of supporting terrorism. A big British bank, Standard Chartered, agreed to pay $ 340 million after the SEC investigated the banks transactions with Iran. The US Treasury Department has reached a $ 619 million settlement with the Dutch ING Bank for similar violations. This is the largest fine a bank has paid to settle accusations of sanctions violations. Credit Suisse, Lloyds and Barclays have also recently paid fines in the hundreds of millions of dollars to settle the US accusations that they facilitated prohibited financial transactions. Although technically these cases constitute violations of the US sanctions regulations against countries suspected of financing terrorist groups, these cases were framed as "money laundering" in the media.

Finally, "dirty" money might not only originate from organized crime or terrorism, but also from "conventional" corporate crimes such as price fixing, accounting fraud, and bribery. Handling the proceeds of these crimes is also being labeled as "money laundering". While this might be conceptually right, this contributes to a further net widening of the meaning of money laundering, in which all transactions with proceeds of crimes constitute money laundering.

Environmental Crime

Like money laundering, environmental crime is a fairly recent crime phenomenon partly created by legislation. Environmental pollution is not new at all. It has always been a detrimental effect of industrial production. Serious and wide-spread pollu-

tion and the destruction of natural resources started with industrial revolution in the nineteenth century. For instance, chemicals used by tanneries and textile factories created so much water pollution that serious health problems and degradation have existed at those area's for many decades later (Huisman 2001). With the absence of legislation prohibiting this, such pollution could not be considered a crime, although the recent "green criminology" movement takes environmental harm as a criterion for defining this harm as "crime" (Lynch and Stretesky 2014). In that sense, all major pollution resulting from industrialization might be considered as crime.

If we take a legal definition of crime, environmental crime is the result of the introduction of environmental regulation that aims to restrain and prevent such pollution. Such regulation is, therefore, mainly aimed at corporations. While also being administrative or civil law offences, the violation of environmental regulation is criminalized in most countries. European legislation forces member states to criminalize the violation of environmental regulation. Attempt to criminalize "ecocide" in international criminal law have failed so far (Higgins et al. 2013).

With the introduction of environmental legislation in the twentieth century, cases of environmental crime have started to emerge. In most Western countries cases of serious environmental crime occurred in the second half of the twentieth century, when victims started to unite and claim compensation, NGOs raised awareness and criminal justice agencies started to prosecute environmental crime. A landmark case of corporate pollution in the USA is the Love Canal case. In the 1940s the Hooker Chemical company started to dump highly toxic waste into this canal near Niagara Falls. Later, houses and a school were build on the site School children and residents were exposed to the noxious fumes and surfacing chemicals, allegedly resulting in disproportionately high numbers of miscarriages, birth defects, psychological disorders, and cancer (Mokhiber 1989). A European case that led to the first large scale criminal investigation and prosecution of environmental crime in the Netherlands was that of *Tanker Cleaning Rotterdam* (TCR). Located in one of the biggest ports of the world, TCR had the monopoly to process all the chemical waste ships had to get rid of in the port. However, instead of processing this waste properly, the company was found to dump much of the chemical into the open water front (Van de Bunt and Huisman 2007). Italy has its own share of cases of dumping chemical waste by companies which have often ties with mafia-groups (Paoli 2004, p. 286–287). While in these cases obviously serious environmental damage was done, the legal reality is much more ambiguous. Because legislation was still unclear (and still partly is) about what the substantive norms are and when a company is liable for breaking them, the lawsuits concerning these cases often focus on the question whether actually crimes had been committed.

Environmental crime encompasses a broad range of illegal behaviors. The first main category is the pollution of the air, seas, and land. Examples are dumping waste or blending it with other goods, and importing and using illicit pesticides. The second main category concerns illegal acts causing direct harm to flora and fauna, for instance illegal deforestation and the poaching of and trading in protected wildlife (Spapens and Huisman 2015). The past decades have seen the development of an elaborate international legal framework to fight transnational environmental

crime, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the International Convention for the Prevention of Pollution from Ships (MARPOL), and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. Also, the European Union drafted regulations for the prevention of environmental harm and pollution, such as the European Waste Shipment Regulation (EWSR).

The impact of environmental crime and environmental harm has become more transnational in recent decades. Two main factors explain this development. The first is that the Western industrialized states have implemented more stringent regulations since the 1970s, causing environmental harmful practices to shift to other parts of the world without such legislation or without implementation and enforcement. Perhaps it is no surprise that of the most serious industrial disaster happened at a subsidiary of a US chemical corporation in Bhopal, India. In December 1984, a massive gas leak killed thousands in and around a Union Carbide chemical plant. Tens of thousands have died since, and many more have had their lives and livelihoods devastated. While after almost 30 years, local Indian plant managers have been convicted for criminal negligence, the US-based company and its then chairman remain absconders from Indian justice (Pearce and Tombs 2012). Also as a result of environmental regulation in the West, industrial as well as domestic waste, often hazardous, is now trafficked to less affluent regions, to be dumped or recycled in ways that harm both people and habitats. Actually, regulation on the disposal of waste has created tradable commodity. In that sense, environmental criminal law has created a criminal market.

The second explanation for the internationalization of environmental crime is the increasing level of social and economic globalization and mobility. This has led to a growing demand for wildlife products in Asia, for example for ivory and rhinoceros horn, and for exotic pets such as tropical birds and reptiles in Western countries. Together, these two developments have created what Passas called "criminogenic assymmetries" (Passas 1999). These are "structural disjunctions, mismatches and inequalities in the spheres of politics, culture, the economy and the law". These are criminogenic in that they offer illegal opportunities, create motives to use these opportunities and make it possible for offenders to get away with it. For instance, globalization created the possibilities to transport toxic waste to Third World countries where it could be disposed of at a fraction of the costs and without the threat of law enforcement. Illicit opportunities are produced by the fragmentation of enterprises and transactions over more than one country. Price asymmetries create the incentive to move hazardous business activities to other countries. In addition, regulatory asymmetries create the opportunity to cut costs on environmental management and labor conditions while law enforcement asymmetries weaken social controls. Even more, globalization has fostered "competitive deregulation". Competition on global markets has driven corporations to a "race to the bottom" to find low cost services provided through poor environmental standards, low wages, and poor working conditions. As a consequence, large transnational corporations are relocating their production to countries offering more favorable terms. Developing countries which need regulation protecting their natural resources, the health and safety of its work-

ing population, and the integrity of its financial system; instead try to attract foreign corporations by regulating less tightly than other countries.

So while "green criminologists" would qualify all serious harm to the environment as crime, legal criminalizations have been introduced to prevent environmental pollution. But while there is no sound empirical proof of the effectiveness of such criminalization (as with all forms of corporate crime: Simpson 2006), environmental legislation has created black markets for the illegal transnational trafficking of waste.

Corruption

In contrast to environmental crime and money laundering, corruption has been present throughout history, as was also illustrated in the section on the East India Trading companies (Bardhan 1997). Nowadays, corruption is seen not only as a national but also an international problem in scope, substance, and consequences (Argadoña 2005). Again, globalization could be seen as a driving force: not only because of the opportunity for MNC's to bribe corrupt politicians and officials in countries less strong on the Rule of Law, but also because it leads to an increased importance of a fair "level-playing-field" for MNC's and the integrity of international markets. As a result, also the fight against corruption has become global (Posadas 2000). The last two decades, international corruption legislation became increasingly stringent, criminalizing not just bribery of foreign officials, but also corruption that takes place between corporations.

The international fight against corruption has been pushed forward by the international nongovernmental organization Transparancy International, which defines corruption as "the abuse of entrusted power for private gain". While this broad definition has been criticized and may include many acts, bribery is seen as the clearest example of corruption that is criminalized in most countries. Bribery is based on the interaction between at least two parties. The "corruptor" offers, gives or promises a gift, the "corruptee" asks, accepts or expects the bribe (Huberts and Nelen 2005). In the criminological literature, the former is called active bribery, the latter passive bribery (Huisman and VandeWalle 2010). Corporations can commit both passive and active bribery. Other important distinctions are public versus private and national versus international corruption. Public corruption occurs when one of the parties is a public official. Private corruption takes place within and between companies (Rabl 2008). In public–private corruption the corruptor is usually an employee from a private company and the corruptee is a public official. Corruption can be confined to the territory of a single country, or it can be international, when the parties involved come from different countries, the payment is made in another country or through intermediaries in another country (Argadoña 2005).

The first anti-bribery legislation with transnational reach was the *United States Foreign Corrupt Practices Act* (FCPA) of 1977. This law criminalized foreign bribery of public officials by the US companies (Kaczmarek and Newman 2011). Note-

worthy is that not all payments to foreign officials are prohibited by the FPCA: the Act excludes facilitation payments, i.e., small bribes paid to "get things done" (Cleveland et al. 2009).

The reason for the USA to develop corruption laws with international reach was the occurrence of several corruption scandals, revealed by the post-Watergate Securities and Exchange Commission (SEC). In the mid 1970s, bribery charges against Lockheed, a major aerospace company, became headline news (Goodman 2013). To secure sales, Lockheed, and many other American corporations, were making payments to senior civil servants and heads of state (Beenstock 1979). The aerospace company paid for example more than $ 1 million in illegal payments to Prince Bernhard, husband of the Queen of The Netherlands (Berkman 1977).

Until the 1990s, the USA was the only country with an international prohibition against bribery, which led the US firms to complain about competitive disadvantages because corruption was a widespread feature of global business (Kaczmarek and Newman 2011). This was illustrated by many cases, among which the case of the French oil company Elf, of which three former managers have been convicted for corruption. In two long interviews in *Le Figaro* and *Le Parisien*, Elf's former chairman Le Floch-Prigent, showed the systematic way in which Elf paid large bribes to obtain oil contracts from statesmen (McMillan 2005). Both President Mitterand and the then prime minister Chirac knew of these bribes, *inter alia* because Le Floch-Prigent went each year to the Elysée Palace to explain the annual reports, including "Commission paid". Bribery had become the standard operating procedure and was also seen as necessary in order to outbid the competing oil corporations and to secure French interests. Former Elf executive Le Floch-Prigent, in reaction to the prosecution of the corporation for bribing statesmen, stated that all his predecessors did exactly the same as he did and that all his successors would do the same.

In some European countries bribe payments were even tax deductible, as for example in Germany, France, and The Netherlands. But when bribery scandals and economic crises provided growing evidence for the detrimental consequences of corruption, the Organization of Economic Cooperation and Development (OECD) became an advocate of anti-bribery measures (Cleveland et al. 2009). In 1997, members of the OECD adopted the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Because the OECD Convention is not self-executing, since the OECD has no direct enforcement power, it requires nations that signed the Convention to adopt their own legislation prohibiting international bribery (Cleveland et al. 2009).

In 2003, the *United Nations Convention Against Corruption* (UNCAC) was ratified by 154 countries, including Russia, China, and India, who are not signatories of the OECD Convention. The UNCAC requires states to criminalize a wide range of corrupt acts and to introduce effective policies for the prevention of corruption (Cleveland et al. 2009).

In 2008, the United Kingdom was strongly criticized by the OECD for failing to bring anti-bribery laws in line with its international obligation under the OECD Convention. The turning point became the corruption case of BAE System PIc's, a multinational defense, security, and aerospace company headquartered in London.

BAE was suspected of paying more than $ 2 billion in bribes to Saudi Prince Bandar bin Sultan and others in the 1980s, allegedly to secure an arms deal. Although Britain's Serious Fraud Office had not filed a prosecution, the USA began its own case. In 2010, BAE agreed to pay $ 400 million (Kaczmarek and Newman 2011). In response to the US case, the British media and the political opposition asked for greater enforcement of corruption regulations. The British government promised stringent new anti-bribery legislation, leading to the development of the *United Kingdom Bribery Act* (Kaczmarek and Newman 2011).

The UK Bribery Act of 2011 is among the strictest legislation internationally on bribery. It criminalizes public and private, active and passive, and national and international bribery. A corporation can be held liable when it fails to prevent bribery on its behalf by a person who is associated to the company, i.e., who performs services for the organization. The only defense available to the company is proving that it had "adequate procedures" in place designed to prevent bribery from being committed (Ministry of Justice [MOJ] 2010).

In the last decades, several corruption scandals in interstate commerce led to the development of international corruption legislation. Whether the increasingly tough corruption laws are an effective tool in combating and preventing international bribery by corporations is a question that needs further research. The recent allegations against Royal Dutch Shell, for paying 1.3 $ billion to a Nigerian minister for oil concessions show that transnational corruption is at least still a problem (Daly 2013).

Corporate Involvement in Gross Human Rights Violations

This chapter shows a clear historical trend of increasing awareness of the (potential) adverse corporate impact on societies and (groups of) people. This is also the case for possible negative corporate impact on human rights, as well as corporate involvement in violations of international humanitarian law and international crimes. This chapter has already shown some examples that fall in this category: The wrongdoings by the East India Companies and in the Congo Free State would now be seen as breaching most major human rights treaties as well as the Geneva conventions. The crimes committed in these cases might nowadays even give rise to an investigation by the International Criminal Court (ICC). (Anderson and Cabanagh 2000).

The role of corporations in violations of international laws and treaties is clearly not only a contemporary phenomenon. Concerns about the perceived increasing power and influence[2] of especially large multinationals increased drastically the past few decades. The NGOs have published many allegations of corporate miscon-

[2] See and De Grauwe and Camerman (2003) ['among the hundred biggest 'economies' in the world 51 are corporations and only 49 are countries' (Anderson and Cabanagh 2000 cited in De Grauwe and Camerman 2003). Anderson and Cavanagh (2000) 'The rise of corporate global power', Institute for Policy Studies].

duct related to human rights violations and conflict situations. A review of historical and contemporary case studies shows that corporations can (and do) form a crucial link in the causation of gross human rights violations and international crimes either directly or through the principal perpetrator of these crimes (Huisman 2010). The possible negative impact is generally largest for big multinational corporations, especially those operating in conflict situations and(/or) states with weak governments. Also, corporations in countries with oppressive regimes and or violent rebel groups risk involvement in their harmful policies and actions.

Sutherland had already written about corporate wrongdoing during World War I (Sutherland 1949) but it was during and after the Nuremberg trials that the role and involvement of corporations and businessmen in warfare, crimes against humanity and war crimes was emphasized. Although it was not the German business sector that had put Hitler into power (Barkai 1991)—a popular conception of the first decades after the war (Turner 1985)—it were the large German multinational companies such as IG Farben (Hayes 1987) and Krupp that made it possible for the Nazi regime to wage war throughout Europe for almost 6 years (Huener and Nicosia 2004). Through aryanization and expansion many German corporations took over branches in occupied territories. German corporations produced the vehicles, synthetic fuel, weapons, and ammunition that were essential to the war effort. In addition, it is safe to say that the Holocaust, only halted by the end of the Second World War, could not have been carried out the way that it was without the products and services of German corporations. Moreover, all major German corporations, including IG Farben, Flick, and Krupp took advantage of (in total) millions of forced and enslaved laborers throughout the Third Reich (Allen 2002).

To give another example, in South Africa multinationals operating transnationally enabled the Apartheid regime to carry out their discriminatory policies of racial segregation and oppression between 1948 and 1994. Foreign investment was crucial to the South African economy, and thereby to the prolongation of the system of apartheid. Moreover, subsidiaries and affiliates of the USA and European corporations followed the official segregation policies, complied with laws oppression the black and colored population and supported the migrant labour system (Seidman 2003). It was not until the US economic sanctions of 1986 that foreign corporations started to pull out and, eventually, the regime fell.

More recently corporations operating in conflict areas such as the Democratic Republic of Congo have been heavily criticized. Anvil Mining, for example was accused for providing logistical assistance in the violent repression of a peaceful protest in 2004. For this a criminal investigation was started against the company in Australia, and some of its (expat!) managers have been prosecuted in Congo. Corporations concerned with the extraction of natural resources are heavily overrepresented in such accusations, as they often find their business in countries ruled by suppressive dictators or in a state of armed conflict (Huisman 2010). Corporations can also become involved in conflict by hiring security personnel that subsequently commits violations of international law or because of paying taxes or concessions that are used to finance the conflict. In The Netherlands, the Dutch manager of the Indonesian–Malaysian owned Oriental Timber Corporation was prosecuted for

complicity to war crimes committed in Liberia, because of the alleged atrocities committed by the companies' security staff. Besides as personal bribes, the concessions paid by OTC were allegedly used by Liberian president Charles Taylor, to finance the war in neighboring Sierra Leone, in which many atrocities have been committed (Huisman and Van Sliedregt 2010).

Empirically, the role of corporations in the causation of gross human rights violations is clear. Holding them accountable is something else. Because of the transnational character of the corporate involvement in these types of crimes, remedy and compensation mechanisms for victims are still very ineffective (Kaleck and Saage-Maaß 2010). The regulation of corporate behavior has not internationalized as much as corporate activity itself, causing a governance gap that is unlikely to close up any time soon (Ruggie 2013). For some time the Alien Tort Statute seemed a way to hold corporations accountable for involvement in violations of international law. This 1789 Statute enables the US district court jurisdiction of "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States". Nevertheless, while some of the cases were settled, none of the many Alien Tort Claims Act (ATCA) cases ever led to a final verdict. A recent US Supreme Court decision stating that the US federal statutes do not have extraterritorial reach significantly limited the scope of the ATCA as a successful tool to hold corporations accountable (Holland 2013)[3].

Corporations do not fall under jurisdiction of the International Criminal Court so supranational prosecution of corporate involvement in international crimes is not possible (Kyriakakis 2009). The only way corporations could be held criminally liable is through domestic prosecution of international crimes in countries that ratified the Rome Statute and criminal jurisdiction includes legal persons (Kyriakakis 2007; Ramasastry and Thompson 2006) but such investigations are very rare. The case against the Dutch leaser of construction equipment Riwal, for example, was dropped by the Dutch prosecutor[4]. Riwal was accused of involvement in the destruction and appropriation of Palestinian property illegal under international humanitarian law. The Australian criminal investigation against Anvil Mining was also dropped.

There have been a number of international soft-law developments such as the 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises by the International Labour Organization (ILO) Guidelines for Multinational Enterprises by the Organization for Economic Cooperation and Development (OECD) of 1976, and the UN Global Compact, initiated by UN General Secretary Kofi Annan in 2000 (Kaleck and Saage-Maaß 2010). While initiatives such as Global Compact has been evaluated by critics as unsuccessful because it was too voluntary in nature, more binding UN Norms failed because a lack of support by member states. The

[3] See also http://www.business-humanrights.org/Documents/SupremeCourtATCAReview.

[4] The case was dropped because the contribution was considered to be limited, the mother corporation Lima Holding B.V. has taken far reaching steps to terminate activities in Israel and/or the occupied territories and the effects of the investigation as well as the media attention were deemed already serious. http://www.om.nl/onderwerpen/internationale/map/concerning/.

recent UN Guiding Principles in Business and Human Rights (Ruggie 2013) seem more promising as the business community is responding positively and the United Nations Human Rights Council unanimously endorsed them. Nevertheless, like all soft law initiatives, these Guiding Principles are voluntary and do not have an enforcement mechanism, which raises serious questions on how they will be efficient in countering corporate involvement in conflict situations and oppressive regimes.

Conclusion

The aim of this chapter was to study the historical origins of business related crime, to get a better understanding of the historical context and recent developments of transnational corporate crime. This chapter has illustrated the rise of transnational corporate crime in the last decades. A number of causes can be found. First, the rise of transnational organized crime, especially in the second half of the twentieth century. Organized crime needs the services of legitimate companies, such as for money laundering. Also, organized crime often takes the appearance of legitimate business(es), facilitated by the asymmetries in the national regulation of transnational business activities. Second, modern era globalization can be related to transnational organized crime, such as MNC's getting involved in corruption, environmental pollution, and gross human rights violations in developing economies. Third, globalization has increased the awareness of corporate wrongdoing abroad. Developments in transportation and communication technology have enabled regulatory agencies as well as nongovernmental organizations to monitor corporations and their actions all over the world.

Nevertheless, the historical focus of this chapter has also nuanced the tendency to view transnational corporate crime as a new phenomenon, created by globalization. The historical cases discussed in this chapter create the impression that unfair trading practices and other abuses constitute the dark side of the accumulation of profit and the competition of scarce resources (Box 1983; Coleman 1987).

Furthermore, this chapter has shown that problems of transnational and business related crime are framed depending on their contemporary manifestations. The appearance of corporate crime seems to reflect the scandals and cases of misconduct that outrage the public and make good media attention (Levi 2006): from the muckrakers exposure of the robber barons at the beginning of the twentieth century, to trading with the enemy after World War II, consumer related crimes in the 1970s (e.g., the birth defects due to the drug Thalomide and the preservative Dalkon Shield and the death and injuries due to the explosive car Ford Pinto; Punch 1996), insider trading at Wall Street in the 1980s, the Savings and Loans crisis 1990s (Calavita et al. 1997) and the big accounting fraud scandals in the new Millenium (e.g., ENRON, Worldcom, Tyco, etc). These are all US cases[5], but other countries also

[5] This chapter did not discuss all of these (see for a more complete oversights; Rosoff et al. 2014; Friedrichs 2010).

have their landmark cases. Due to these cases, the problem of organized crime in a certain era might be framed differently between countries, although the manifestation of corporate crime in literature is dominated by the US cases. For instance in the Netherlands attention in the 1970s focused on cases of corporate tax fraud while in the 1980s environmental crime came into the spotlight due to cases of serious pollution (Van de Bunt and Huisman 2007). But besides these differences, the similarities of occurrences of corporate crime in different countries in the same timeframe stand out. For instance, the wave of accounting fraud cases in the new millennium was not limited to the US, as was shown by the large-scale accounting frauds at the multinational Italian ***dairy*** and food producer Parmalat and at the grocery giant Ahold, dubbed by *The Economist* as "Europe's ENRON" (March 27 2003). And due to the increased intertwinement of economies, as a result of globalization and the dominance of the US economy in this, big cases of corporate fraud can have a transnational or even global fall-out. For instance, its complicity to the ENRON-fraud case led to the downfall of accounting firm Arthur Andersen, which had over 85,000 employees in more than 80 countries. According to various criminologists, the global financial crisis of 2008 was the result of large scale subprime-mortgages frauds in the USA, and especially in de state of California (Nguyen and Pontell 2010; Friedrichs 2010).

Finally, this chapter shows two mechanisms in the "production" of transnational corporate crime. Law has a central role to play in this. In the first production mechanism the law is codifying changes in moral beliefs on what are tolerable business practices. In certain eras and certain contexts practices such as forced labor, environmental pollution, corruption, and insider trading were standard business practices and considered normal. For reasons that deserve further study, moral judgment changed and these practices were viewed by public, politics and perhaps business itself as intolerable and even criminal. Public outrage over cases of such behavior led to scandals. Scandals led to official inquiries. Inquiries led to regulation and criminalization. In the second mechanism, law is used as an instrument to change moral, in order to influence human or corporate behavior. Harmful behavior is prohibited or restrained by regulation to change this behavior. But this regulation and especially criminalization can also create criminal markets. This mechanism can lead to a shift from corporate crime to organized crime, or a close collaboration of the two. Environmental regulation has created a market for illicit waste disposal services, depending on local circumstances provided by organized crime groups or legitimate waste processing firms. Increasing taxes on cigarettes had led to cases in which tobacco companies collaborate with organized cigarette smuggling, to retain their market share. Whether the legal construction of corporate crime leads to an increase or decrease of the actual crimes, is still a question for empirical research. These codifying and instrumental functions of the law make good starting points for further study into the history of transnational corporate crime.

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