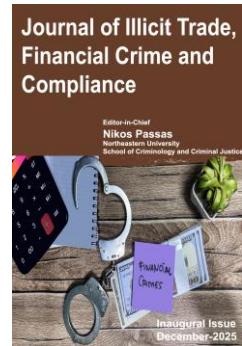


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Rebooting International Criminal Justice Cooperation Against Illicit Trade and Financial Crime

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ABSTRACT

With the wavering commitment of many states to the rule of law and their diminishing support for multilateral institutions, rule-based international cooperation against illicit trade and financial crime has become more transactional and problematic. Incentives for engaging in long-term, multilateral, rule-based formal agreements are rapidly vanishing. Yet, international cooperation remains essential to any effective action against illicit trade and financial crime. A fresh approach to international criminal justice cooperation is required, but at present the leadership needed for such a transformation is missing. Despite ongoing work at the global level to develop new cooperation treaties – for example with respect to cybercrime or crime against the environment – states seem to have lost faith in the value of working together at that level. Some states are attempting to redefine the rules that will guide them, as well as how and with whom they will cooperate in the future. If illicit trade and transnational crime are thought to be out of control and democracies seen as incapable of countering those threats, what are the prospects for a different international cooperation architecture? Global cooperation against transnational crime and illicit trade can prevail over global dysfunction if states and their leaders are willing to change course. That new course of action, however, has yet to be traced.

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1. Introduction

One obviously expected the inaugural issue of this journal to raise the question of international law enforcement cooperation in countering illicit trade and financial crime. Given the globalization of trade, one must assume that any effort to control illicit trade must also be transnational and therefore must rely on various forms of international cooperation. The security and development challenges posed by illicit economies, financial crime and corruption seem only to diversify and intensify [1]. The cooperation issue is unavoidable, yet seemingly intractable under the current geopolitical circumstances.

International commitment to the rule of law has eroded. As Anne Applebaum puts it, "dictators who want to run the world try to demonstrate that the old rules of international behaviour no longer hold" [2]. In the meantime, illicit trade and financial crime flourish while criminal networks demonstrate a level of transnational collaboration that states and law enforcement organizations struggle to imitate. In fact, international cooperation of any kind is in short supply, and the weakening of multilateral cooperation regimes is certainly not unique to the law enforcement and criminal justice sector.

With the States' wavering commitment to the rule of law and diminishing support for multilateralism, rule-based international cooperation against illicit trade and financial crime becomes more improbable. States are already looking for less constraining alternatives that may serve their immediate needs [3]. This is a worrisome trend.

2. Flailing International Cooperation

Officials and experts may have expected the world to eventually coalesce rather than fragment, as it unfortunately did in the face of a once-in-a-century pandemic [4]. That was a miscalculation. Deep but still uncertain geopolitical changes and the decline of the rule-based liberal order have seemingly led to a gradual retreat from the rule of law and shrunk states' commitment to the implementation of a comprehensive rule-based international cooperation regime against illicit trade, financial crime and corruption.

Gordon Brown, a former UK prime minister, summarized the challenge we face as follows: "There is a huge disconnect between where we are physically—more interconnected, more independent, more integrated than ever before—and where we are geopolitically—tribal, protectionist and disconnected" [5].

A few years ago, my colleague Jessica Jahn and I indulged in a strategic forecasting exercise to identify distinct scenarios concerning the future of international criminal justice cooperation [6]. We identified five interconnected scenarios: (1) "together" forecasted a situation where states forge the political will and willingness to compromise toward refashioning the existing cooperation mechanisms; (2) "unbound" which anticipated an increased states' reliance on bilateral or regional cooperation frameworks, possibly leading to new cooperation zones; (3) "going alone" which predicted greater use of unilateral actions by states to achieve their aim, bypassing existing cooperation mechanisms and agreements; (4) "retreat" which foresaw the accelerated use of informal cooperation arrangements or alternatives to the potential detriment of the rule of law and human rights; and (5) "renewal" which envisioned that states would be compelled to reimagine the current international cooperation regime and undertake radical reforms, possibly including as suggested by Sadoff [7] the establishment of a binding arbitration mechanism to resolve disputes.

Since then, one was able to observe growing and often thuggish unilateralism and a distinct preference for regional or sub-regional arrangements, as well as informal or strictly transactional practices. The deterioration of trust, reciprocity and predictability in the control of illicit markets and financial crime does not augur well for effective and concerted action against transnational crime, corruption and illegal markets at the global level.

2.1. Cooperation is Becoming Increasingly Transactional

The principle of reciprocity is a cornerstone of international cooperation in criminal matters. Reciprocity is determined in part by a state's capacity and willingness to cooperate, but also by its capacity to compel others to cooperate and to respond firmly to noncompliance with existing agreements. However, reciprocity is being

redefined in an ad-hoc and mostly transactional manner, without reference necessarily to a broader normative framework. Power asymmetries among participating states largely determine the kind of reciprocity that is possible or the cooperation that is sought or obtained by each state [8].

Many states increasingly prefer non-binding agreements and other informal approaches to cooperation that reaffirm their sovereignty but are not necessarily tethered to the rule of law and human rights. Cyber-insecurity, for instance, is especially revealing of states' unwillingness to sacrifice sovereignty in favour of effective criminal justice cooperation. Similarly, cooperation against money laundering essentially involves a risk-based prevention approach with minimal encroachments on state sovereignty. It is centered on participation in the Financial Action Task Force (FATF), a standards setter and assessment body focused on ensuring states' technical compliance with standards through mutual evaluations rather than on concerted action that may affect a state's sovereignty.

Informal arrangements make renegotiating easier and less costly in the short term. Moreover, in the presence of uncertainty and shifting power, that preference can also be explained in terms of an interest in leaving the door constantly open to renegotiation [9]. Indeed, unilateral noncompliance may also be used as a renegotiating strategy. Some states calculate that, by acting in ways that others consider unlawful or contrary to existing agreements, they may bring about desired changes to legal rules going forward [9].

Some states are also willing to use trade restrictions, tariffs, or even security pressures to force others to cooperate in criminal matters, sometimes in ways that may not align with existing bilateral or multilateral cooperation agreements. In the short term, unilateralism may be an attractive option mostly for powerful states that are less concerned about the long-term consequences of their tactics. Powerful states can be expected to leverage their material capabilities, relationships, and information and this is typically taking place largely outside of multilateral institutions and mechanisms [10].

All these international dynamics create long-term costs for states that can inhibit short-term cooperation [9]. Incentives for engaging in long-term, multilateral, rule-based formal agreements are vanishing. Indeed, what is the point of negotiating and concluding a cooperation agreement with countries that have already signaled that they have either no intention of honouring it or every intention of demanding further concessions when cooperation is requested?

Participation in and compliance with multilateral agreements, including their specific terms, are essentially imposed by powerful and influential states on others. However, these multilateral undertakings quickly fall into desuetude when some of the key players either lose interest or decide to proceed unilaterally or bilaterally.

Admittedly, there are many benefits to an informal, flexible, mostly transactional approach to international cooperation in controlling illicit trade and financial crime, but they are mostly short-term benefits [11]. They include avoiding any unnecessary loss of national sovereignty and limits on national policy choices, as well as avoiding publicity and transparency, public scrutiny and accountability, and in some cases allowing the executive branch of government to act without legislative or judicial authorization. However, these transactional arrangements tend to be lopsided and unsustainable. They rely on other factors – political, diplomatic, economic, practical – to support reciprocity, predictability, and coherent applications.

3. Rekindling States' Commitment to Treaty-based Cooperation

That states are retreating from a cooperation system based on the rule of law is perhaps not that surprising and neither is the emergence of alternatives to that system. As Fareed Zakaria reminds us all, "nations have created mechanisms and institutions to cooperate and solve problems. But in the end, in extremis, they walk alone" [12].

Despite ongoing work at the global level to develop new cooperation agreements – for example with respect to cybercrime or crime against the environment – states are seemingly losing faith in the value of working together at that level. This was particularly evident during the protracted negotiations that led to the adoption of the UN

Convention against Cybercrime, the Hanoi Convention,¹ given the suspicion shared by many states that the risks caused by such a treaty, in terms of human rights, the rule of law, information security and a free and open internet, would outweigh the benefits [13]. As the competition between “cyber great powers” is stepping up [14], other states essentially face a choice between two competing cyber-security cooperation paradigms. Because of that tension, the most practical aspects of cooperation against cybercrime, including provisions on direct cooperation with service providers or the disclosure of content in emergency situations, have not been incorporated into the Hanoi Convention. At times, it is hard to decide whether states are engaging in self-delusion or dissembling, and it is difficult to tell where one ends and the other starts.

One may justifiably fear that multilateral engagement as it relates to international criminal justice cooperation may amount to little more than a superficial narrative-shaping exercise, some of it solely meant to prevent other states to capture the space in which multilateral cooperation is discussed. States' commitments to a multilateral cooperation framework needs to be redefined against a backdrop of deepening multipolarity – less about championing greater cooperation and more about strategic cooperation.

3.1. A Way Forward

Clearly, there is a pressing need for stronger multilateral cooperation. Yet states, preoccupied as they are with trade restrictions and supply chains disruptions, continue to demonstrate a rather myopic view of the challenges that lie ahead in terms of transnational crime and illicit trade [3]. Yet, the way forward is not very clear, in part because of the conundrum in which many international institutions find themselves. These institutions – ostensibly foundational to a rule-based international criminal justice cooperation regime – are not as effective as they ought to be at ensuring that multilateral agreements are fully implemented and complied with. As a result, many states are forced to re-evaluate their commitment to the treaty-based international criminal justice framework. Some of them are attempting to redefine the rules that will guide them — if not multilateral and bilateral treaties and conventions — as well as how and with whom they will cooperate in the future [15].

For instance, the G7 is expanding its role (Summit, June 2025) and in some ways is trying to create a new platform for cooperation against some serious criminal threats. China is positioning its Global Security Initiative (GSI) as a global framework for cooperation which can encompass bilateral and regional security activities like counterterrorism partnerships, policing assistance, and cybersecurity cooperation [16], although many aspects of the GSI remain unclear.

As for the United Nations (UN), as Falk and von Sponeck [17] argue, there is a fear that as great-power rivalry is intensifying again superpower competition may once again paralyze that organization. As in the past, the UN will be unable to tackle issues that directly implicate core interests of the great powers [18]. A UN fit for the current challenges may need to scale down its ambitions [19], but fighting illicit trade, financial crime and corruption is something that will still require the kind of coordination that is only possible at the UN.

At the 2025 UN General Assembly, as the UN was celebrating its 80th anniversary, world leaders emphasized the UN's vital role in addressing global threats, though opinions diverged sharply on its effectiveness and future direction. Secretary-General António Guterres acknowledged that there are presently global “stress tests of our systems, our solidarity and our resolve” and called on world leaders to choose cooperation over chaos, peace over conflict, and law over lawlessness [20]. His central message was to urge leaders to make decisive choices for a better future, contrasting a world of raw power and self-interest with one that embraces cooperation. Yet, at the same meeting, other leaders, including President Trump, seem to laud various actions that can destroy the presumption of international cooperation on which the UN is based [21]. One may wonder whether future progress towards effective cooperation will remain marred by a “trust recession” in global institutions [22].

¹ United Nations Convention against Cybercrime; Strengthening International Cooperation for Combating Certain Crimes Committed by Means of Information and Communications Technology Systems and for the Sharing of Evidence in Electronic Form of Serious Crimes.

4. Alliances Based on Reciprocity

A more strategic and global response to transnational crime and illicit trade is urgently needed [23]. Without such a strategic approach, national responses to crime and illicit markets will continue to be reactive and international responses will remain handicapped by sluggish procedures and unpredictable cooperation.

As transnational crime and illegal markets are perceived as out of control and democracy seen as incapable of mitigating those threats, what are the prospects for an entirely different cooperation architecture? Global cooperation against transnational crime and illicit trade, as well as related security threats, can prevail over global dysfunction if states and their leaders are willing to change course. These leaders must clearly identify areas in which their national interests merge or are at least compatible. This includes acknowledging the deep roots of illicit markets in the political economy of their country [24].

International co-operation guided by predictability and made possible by reciprocity remains key to effectively combating transborder crime. Without such conditions, states will increasingly find themselves vulnerable to an even more dangerous set of rules: those of countries intent on an imperial quest [15].

The Convention on Cybercrime (Budapest Convention, ETS No. 185) and its Protocols provide a promising example of strategic cooperation among likeminded states. It offers not only a means to standardized national responses to cybercrime, but also a framework for cooperation. The Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence (CETS No. 224), opened for signature since May 2022, comprises efficient and effective means for cooperation to obtain electronic evidence across borders, including in emergency situations and through direct cooperation with private sector entities. According to the Cybercrime Convention Committee (T-CY) parties to that convention have described improvements to their ability to obtain formal and informal mutual assistance after they became Parties due to the large network of practitioners participating in the Committee and the 24/7 network [25]. As it evolves, that whole framework resembles a practical alliance based on realistic reciprocity, that may eventually exclude those who are not willing to fulfill the same obligations. Oren Cass asks: "What happens to a liberal world order 'open to all' when some accept the invitation to join but not the terms of membership?" [26]. There are lessons which have yet to be drawn from all that.

One understands why international cooperation against transnational crime and illicit trade is perpetually in an unstable state, because it is essentially political and dependent on so many other complex factors. However, what is troubling is that the world is not getting closer to a clear vision of what an acceptable end state might embody to counter transnational criminal threats.

A fresh approach to international cooperation in controlling illicit markets and preventing financial crime is required, but at present the leadership needed to lead states through such a transformation is lacking [27]. One wonders whether civil society may be able to overcome bureaucratic inertia and provide some leadership in formulating fresh new approaches and incentives to reboot such cooperation.

Conflict of Interest

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