This volume offers a diverse set of perspectives on transnational crime. Providing a wide-ranging overview of the legal and policy issues that arise in connection with various forms of transnational crime, the authors outline the criminal justice responses adopted across different jurisdictions. Including contributions from high profile Chinese and European academics and practitioners across a variety of disciplines and methodological backgrounds, the authors address some of the hitherto underexplored issues related to transnational crime. These range from trafficking in cultural objects derived from illicit metal-detecting and metal-detecting tourism in China to the European approaches to criminalising the denial of historical truth. The central theme of the book is that useful lessons can be drawn from each other’s experiences, and that a cross-fertilisation of domestic approaches to transnational crime is essential to effective cooperation.

This book will be of use to students and academics of comparative criminal justice and anyone interested in transnational crime.

Valsamis Mitsilegas is Professor of European Criminal Law, head of the Department of Law and co-director of the Criminal Justice Centre at Queen Mary University of London.

Saskia Hufnagel is a senior lecturer in Criminal Law and co-director of the Criminal Justice Centre at Queen Mary University of London.

Anton Moiseienko is a research analyst at the Centre for Financial Crime & Security Studies of the Royal United Services Institute, UK.

Shi Yanan is a professor at the Law School of the Renmin University of China.

Liu Mingxiang is a professor at the Research Centre for Criminal Justice of the Renmin University of China.
The Queen Mary-Renmin Series on Comparative Criminal Justice Issues
Series Editors:
Valsamis Mitsilegas, Queen Mary University of London, UK
Saskia Hufnagel, Queen Mary University of London, UK
Shi Yanan, Renmin University, China
Liu Mingxiang, Renmin University, China

This series presents the results of the annual Queen Mary-Renmin Criminal Justice Conferences arising from the partnership between the Criminal Justice Centres of Queen Mary University of London (QMUL), School of Law and Renmin University of China, School of Law.

The series gathers together the different views from two systems on one common legal topic to inform in a comparative way the theory and practice in both systems. Academics and practitioners from a variety of disciplines and institutions come together to develop a practice-focused, cross-cultural dialogue on a variety of different criminal justice related topics.

Titles in the series:

Transnational Crime
European and Chinese Perspectives
Edited by Valsamis Mitsilegas, Saskia Hufnagel, Anton Moiseienko, Shi Yanan and Liu Mingxiang

Transnational Crime
European and Chinese Perspectives

Edited by Valsamis Mitsilegas, Saskia Hufnagel, Anton Moiseienko, Shi Yanan and Liu Mingxiang
First published 2019
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2019 selection and editorial matter, Valsamis Mitsilegas, Saskia Hufnagel, Anton Moiseienko, Shi Yanan and Liu Mingxiang; individual chapters, the contributors

The right of Valsamis Mitsilegas, Saskia Hufnagel, Anton Moiseienko, Shi Yanan and Liu Mingxiang to be identified as the authors of the editorial material, and of the authors for their individual chapters, has been asserted in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Trademark notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

British Library Cataloguing-in-Publication Data
A catalogue record for this book is available from the British Library

Library of Congress Cataloguing-in-Publication Data
Title: Transnational crime : European and Chinese perspectives / edited by Valsamis Mitsilegas, Saskia Hufnagel and Anton Moiseienko.
Description: Abingdon, Oxon ; New York, NY : Routledge, 2019. | Series: The Queen Mary-Remin series on comparative criminal justice issues | Includes index. | “This edited collection inaugurates a book series on European and Chinese approaches to criminal justice, which was launched in partnership by the Criminal Justice Centres of Queen Mary University of London (QMUL) and the School of Law of Renmin University of China. It draws together papers from a number of conferences jointly conducted...”
Classification: LCC K5014.8 .T734 2019 | DDC 345.4/02--dc23
LC record available at https://lccn.loc.gov/2018022016

ISBN: 978-1-351-02682-6 (ebk)

Typeset in Galliard
by Swales & Willis Ltd, Exeter, UK
Contents

List of Contributors viii

1 Introduction 1
VALSAMIS MITSILEGAS, SASKIA HUFNAGEL AND ANTON MOISEIENKO

2 The global governance of transnational crime: Implications for justice and the rule of law 5
VALSAMIS MITSILEGAS

PART I
Money laundering, terrorist financing and cybercrime 27

3 Introduction to anti-money laundering regulation in China: Institutions, legal framework and practices 29
SHI YANAN

4 Acts of charity and acts of terrorism: Regulation and prosecution 46
CLIVE WALKER

5 On the improvement of criminal legislation and criminal policy to deter cross-border money laundering in China 65
WANG WENHUA

6 Transnational cybercrime and cybercrime by transnational organisations 86
PETTER GOTTSCHALK
<table>
<thead>
<tr>
<th>PART II</th>
<th>Art crime and historical memory</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>‘Paint it black’: ‘Simple’ and increasingly ‘professional’ looting of antiquities with metal-detectors in East Asia</td>
</tr>
<tr>
<td></td>
<td>SAMUEL HARDY</td>
</tr>
<tr>
<td>8</td>
<td>From canvas to ashes: Understanding the implications of the Westfries Museum and Kunsthal thefts for the Dutch art world</td>
</tr>
<tr>
<td></td>
<td>NAOMI OOSTERMAN</td>
</tr>
<tr>
<td>9</td>
<td>Expression crimes and the creation and protection of historical memory by means of criminal law</td>
</tr>
<tr>
<td></td>
<td>EMMANOUIL BILLIS</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PART III</th>
<th>Comparative perspectives on corruption and financial crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Relocating bribery: Facilitation payments as a crime against the market?</td>
</tr>
<tr>
<td></td>
<td>SIMON BRONITT</td>
</tr>
<tr>
<td>11</td>
<td>Credit card fraud in Chinese criminal law</td>
</tr>
<tr>
<td></td>
<td>LIU MINGXIANG</td>
</tr>
<tr>
<td>12</td>
<td>China’s legal framework and challenges of the freezing, seizure and confiscation of financial crime proceeds</td>
</tr>
<tr>
<td></td>
<td>CHENG LEI</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PART IV</th>
<th>Environmental crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>Targeting transnational environmental crime through a multifaceted approach: Towards an inclusive governance of serious threats to sustainable development</td>
</tr>
<tr>
<td></td>
<td>GRAZIA MARIA VAGLIASINDI</td>
</tr>
<tr>
<td>14</td>
<td>Preventing illicit waste-exports from the Netherlands to China</td>
</tr>
<tr>
<td></td>
<td>TOINE SPAPENS, SHANNA MEHLBAUM AND RUDIE NEVE</td>
</tr>
</tbody>
</table>
Contents

15 Motivators for IUU fishing in the Indo-Pacific 235
ERIKA J. TECHERA AND JADE LINDLEY

Index 252
Contributors

Dr Emmanouil Billis, LLM, is a senior researcher at the Max Planck Institute for Foreign and International Criminal Law in Freiburg (Germany) and a lawyer in Athens (Greece).

Simon Bronitt is a Professor of Law in TC Beirne School of Law, The University of Queensland, where he serves as Deputy Head of School and Deputy Dean Research. Before joining UQ he was the director of the Australian Research Council Centre of Excellence in Policing and Security (2009–2014). Before moving to Queensland in 2009, he was a member of the Law School at The Australian National University (1991–2009). His research primarily focuses on criminal law and policing issues, having published widely on comparative criminal justice, with a growing interest in transnational forms of corporate crime. His key publications include two leading textbooks, Principles of Criminal Law (4th edn, Thomson Reuters, 2017) and Law in Context (4th edn, Federation Press, 2012).

Cheng Lei is an associate professor at the Law School of the Renmin University of China.

Petter Gottschalk is a professor in the Department of Leadership and Organizational Behavior at BI Norwegian Business School, Oslo, Norway. Dr Gottschalk has published extensively on knowledge management, fraud investigations, white-collar crime and criminal organisations.

Samuel Hardy is an honorary research associate at the Institute of Archaeology, University College London, and an adjunct professor at the American University of Rome. He blogs at https://conflictantiquities.wordpress.com/.

Saskia Hufnagel is a senior lecturer in Criminal Law and co-director of the Criminal Justice Centre at Queen Mary University of London.

Dr Jade Lindley is a criminologist at the University of Western Australia Law School and UWA Oceans Institute. Her research focuses on the intersection of transnational crimes, international law and regulation. She is particularly interested in marine-based crimes such as maritime piracy and illegal fishing.
Liu Mingxiang is a professor at the Research Centre for Criminal Justice of the Renmin University of China.

Shanna Mehlbaum is a researcher who focuses on environmental crime, in particular on waste crime. Her projects included waste trafficking (EU-project BlockWaste) and dumping of chemical waste from synthetic drugs laboratories in the Netherlands. She is currently working on her PhD at Tilburg University.

Valsamis Mitsilegas is Professor of European Criminal Law, head of the Department of Law and co-director of the Criminal Justice Centre at Queen Mary University of London.

Anton Moiseienko is a research analyst at the Centre for Financial Crime & Security Studies of the Royal United Services Institute, UK. He holds a PhD from Queen Mary University of London, where he wrote his thesis about the use of entry sanctions against individuals suspected of corruption.

Rudie Neve is a senior researcher at the Analysis and Research Department of the National Police of the Netherlands. He published reports on organised crime, terrorism and environmental crime.

Naomi Oosterman is a PhD candidate at the Department of Sociology at City, University of London and a lecturer at the Department of Arts & Culture Studies at Erasmus University, Rotterdam. She studies the criminal dynamics of art crime in a European context and is specialised in the analysis of crime data.

Shi Yanan is a professor at the Law School of the Renmin University of China.

Toine Spapens is a full professor of Criminology at Tilburg University, the Netherlands. He specialises in research on organised crime, environmental crime and cross-border enforcement cooperation.

Dr Erika J. Techera is a Professor of Environmental Law at the University of Western Australia Law School and UWA Oceans Institute. Her research focuses on International and comparative environmental law particularly in relation to marine governance and small island states.

Grazia Maria Vagliasindi is Associate Professor of Criminal Law at the University of Catania, Italy, Department of Law.

Clive Walker is Professor Emeritus of Criminal Justice Studies at the School of Law, University of Leeds, where he has served as the Director of the Centre for Criminal Justice Studies (1987–2000) and as Head of School (2000–2005, 2010). He has written extensively on terrorism issues, with many published papers and books not only in the UK but also in several other jurisdictions, especially the USA. In 2003, he was a special adviser to the UK Parliamentary select committee, which scrutinised what became the Civil Contingencies Act 2004, from which experience he published *The Civil Contingencies Act 2004: Risk, Resilience and the Law in the United Kingdom* (Oxford University Press, 2006). His books on terrorism are recognised and cited widely and include

Wang Wenhua is the Vice Dean and Professor at the Law School of Beijing Foreign Studies University.
1 Introduction

Valsamis Mitsilegas, Saskia Hufnagel and Anton Moiseienko

This edited collection inaugurates a book series on European and Chinese approaches to criminal justice, which was launched in partnership by the Criminal Justice Centres of Queen Mary University of London (QMUL) and the School of Law of Renmin University of China. It draws together papers from a number of conferences jointly conducted over the course of the last five years by the two research centres. While the types of crime discussed in the chapters vary, the focus of the present volume is specifically on transnational crime. Different types of crime are reflected, under the umbrella of transnational crime, in the different parts of this volume. As the first book in a series, it aims to provide a wide-ranging – although, inevitably, not comprehensive – overview of the legal and policy issues that arise in connection with various forms of transnational crime, as well as outline the criminal justice responses adopted across different jurisdictions. It is hoped that this approach will be of use to students of comparative criminal justice and anyone interested in transnational crime.

The collaboration between QMUL and the Renmin University of China began in the form of a series of annual joint conferences that date from 2013. The first such conference was convened at Renmin University in October 2013 to discuss the legal regulation of organised crime in Europe and China. Subsequent conferences focused on financial crime (London 2014), corruption (Beijing 2015), transnational crime (London 2016) and cybercrime (Beijing 2017). Notwithstanding the particular emphasis on Chinese and European experiences, each instalment of the conference also brought together a diverse range of scholars and practitioners from elsewhere, including the US, Canada, Australia, Russia and South Africa.

The publication of a joint book series was conceived as a means of promoting the understanding of the Chinese legal system among English-speaking scholars, but also as a valuable tool of highlighting the similarities and differences in approaches to various forms of crime. In order to ensure consistent quality and the balanced representation of Chinese and European perspectives on criminal justice, the book series is co-edited by Professor Shi Yanan and Professor Liu Mingxiang (Renmin University of China) and Professor Valsamis Mitsilegas and Dr Saskia Hufnagel (QMUL).
While there is a growing body of literature on Chinese criminal law and criminal justice, few works so far have attempted the task of juxtaposing Chinese and European perspectives within a single volume focused on a specific type of criminality. With many specialised publications on Chinese criminal law only being available in Chinese, it is hoped that a series of such books will facilitate a fruitful dialogue between academics and policy-makers. The need for such dialogue is particularly evident in the area of criminal justice, with issues such as financial crime and cybercrime acquiring ever-increasing prominence as China undergoes rapid economic and technological development.

Furthermore, as the papers in this volume were presented at international and interdisciplinary conferences, their content has already undergone the scrutiny of peer assessment, or, more generally, has been subjected to the views of ‘outsiders’ to the jurisdictions discussed. This has enabled authors to address questions arising in relation to work in an international context, making the chapters more accessible to readers unfamiliar with the jurisdictional issues discussed.

In line with the overarching purpose of the series, this volume offers a diverse set of perspectives on transnational crime. With contributors coming from a variety of disciplines and methodological backgrounds, efforts have been taken to address, amongst other things, some of the hitherto underexplored issues related to transnational crime from different international perspectives. These range from trafficking in cultural objects derived from illicit metal-detecting and metal-detecting tourism in China to the European approaches to criminalising the denial of historical truth. For all the diversity of the contributions and issues raised by the contributors, the central theme of the book is the notion that useful lessons can be drawn from each other’s experiences, and that a cross-fertilisation of domestic approaches to transnational crime is essential to effective cooperation.

The book begins with a chapter by Valsamis Mitsilegas on the global governance of transnational crime. Mitsilegas offers an account of the various types of international responses to transnational crime, ranging from international treaties to ‘soft law’ to the decisions of the UN Security Council, and questions whether the democratic deficit surrounding their adoption makes them unfit for purpose. The chapter sets the stage for the rest of the material in the book. By looking specifically at the informal norm-making by the Financial Action Task Force (FATF), the global standard-setter in anti-money laundering and counter-terrorist financing (AML/CTF), as well as terrorist-financing sanctions lists promulgated by the UN Security Council, Mitsilegas’s chapter also serves as an appropriate introduction to the section of the book that deals with money laundering, terrorist financing and cybercrime.

It opens with Shi Yanan’s chapter on the Chinese AML legal framework. Shi’s comprehensive account of the evolution and functions of Chinese institutions entrusted with AML functions clearly demonstrates the policy attention that the issue of money laundering has received in China in recent years. As such, it is a welcome contribution to the predominantly Western-centric literature on AML laws and regulations.
The following chapter by Clive Walker focuses on the use of UK charities for terrorist financing and the evolution of regulatory responses to the phenomenon. By zooming in on one specific sector, Walker’s contribution highlights the importance of political will and practical resources in the fight against money laundering and terrorist financing. It shows how a reform of one particular agency – Charity Commission – has dramatically expanded its capacity to tackle terrorist financing. Wang Wenhua’s chapter identifies specific legal and policy issues that should be addressed in order to bolster China’s efforts against cross-border money laundering, ranging from legislative questions, such whether money laundering should be criminalised on an ‘all crimes’ basis, to the challenges of international cooperation. Her practice-focused contribution is therefore a useful complement to Shi’s comprehensive overview of the Chinese AML regulation. A more theoretical approach to the challenges of fighting transnational crime is represented in Petter Gottschalk’s chapter on cybercrime, which looks at several case studies to discuss the characteristics of cybercriminals, ranging from fraudsters to biker gangs that engage in cybercrime.

The next section of the book could be more broadly described as the ‘history’ part of this volume. It brings together contributions that deal with cultural heritage crime and the protection of historical memory. Samuel Hardy provides an insight into the world of illicit metal detectorists who unlawfully appropriate antiquities in East Asian countries, including China. His meticulous and highly original empirical research, which is based on analysing open sources such as web forums and Facebook groups, sheds light on one form of transnational crime that may not be highly organised or centralised but, nevertheless, inflicts substantial damage on communities where it takes place. The issue of cultural and social significance of art crime is addressed in detail, albeit in a different context, by Naomi Oosterman in her chapter on the societal implications of two notable art thefts from Dutch museums, namely the Westfries Museum and Kunsthal. As she demonstrates, the consequences of these crimes reverberated beyond the Dutch art world and even had effect on the country’s political discourse and foreign relations. In a variation on the theme developed by Oosterman, Emmanouil Billis critically examines the criminal law regulations concerning a somewhat different type of heritage, namely historical truth. By examining the trial in Greece of the German history professor Heinz Richter, he confronts the vexed issue of how far the reach of criminal law may extend when free speech and the freedom of academic research are at stake.

The following section of the book deals with financial crime and corruption. Relying on examples from Australian, UK and US laws, Simon Bronitt argues that the legitimacy and practical efficiency of anti-corruption rules should be of greater concern for legal scholarship than the minutiae of the legislation. The theme of legislative efficiency is also present in the next two chapters, which provide an overview of some of the major issues of financial crime legislation in China and will therefore be of particular interest to those readers who seek up-to-date information on the Chinese legislation and scholarly debates in the area. Liu Mingxiang’s chapter deals with the law on credit card fraud in China. In addition to providing a thorough account of the existing legislation and practical challenges of its enforcement, the
chapter elucidates some of the doctrinal debates as to whether a separate offence of credit card fraud is at all necessary, as well as highlights the occasional inconsistencies between criminal and banking laws. Cheng Lei’s chapter offers a concise and accessible guide to the Chinese legislation on confiscation of the proceeds of financial crime. By analysing the challenges of confiscation, which is an indispensable criminal justice response to financial crime, the chapter complements and expands on Shi’s and Liu’s contributions.

The book concludes with three chapters on environmental crime, which is clearly a subject of growing concern around the world. The chapters in this section amply demonstrate the global nature of the threat, as well as the interconnectedness of modern states and need for international cooperation. Grazia Maria Vagliasindi offers a tour d’horizon of international responses to environmental crime, ranging from treaties such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora to non-binding declarations to arrangements for international cooperation and information sharing. As Vagliasindi makes clear, there is no silver bullet to environmental crime and solutions must include a range of coordinated responses aimed at changing the underlying economic dynamics of supply and demand, as well as addressing the links of environmental crime with other types of crime and removing the challenges to international cooperation. Toine Spapens, Shanna Mehlbaum and Rudi Neve analyse the data from 13 major criminal investigations that involved the illicit export of waste materials from the Netherlands to China. The authors of the contribution combine academic and police experience. Among the major hindrances to the successful investigation of such cases is the lack of adequate information exchange between Dutch and Chinese authorities, and even the spontaneous information sharing in the EU is hardly always adequate – something that is ripe for change in view of the shared interest of states in preventing environmental crime. Finally, the chapter by Erika J. Techera and Jade Lindley is unique for this book in its focus on the Indo-Pacific ocean areas. Looking at illegal, unregulated and unreported (IUU) fishing through the lens of crime opportunity theory, it advocates multi-faceted regional responses grounded in the understanding of the economy of IUU. Once again, international cooperation is of essence, although at the same time the authors acknowledge its limits and underscore the necessity of understanding the motivations of states in addressing or not addressing IUU.

The study of transnational crime demands that we look beyond our national jurisdictions and consider causes and effects of crime, as well as criminal law and procedure, in other parts of the world. This book is intended to set the scene and awaken interest in European and Chinese issues. However, there are many more topics to consider for joint research than transnational crimes. Doctrinal legal comparisons of Chinese and European legal problems can be as enlightening as cross-border issues. The future books in this series will aim to delve even deeper into this world of similarities and differences and attempts to compare problems and solutions in two parts of the worlds that might have more in common in this field than previously thought.