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Transnational Criminal Law, Sovereignty and International Justice: Harmonization Challenges and Policy Evolution

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Abstract

Transnational criminal law (TCL) is at the forefront of contemporary legal scholarship, addressing the increasing complexity of crimes that transcend national borders, including organized crime, terrorism, human trafficking and corruption. This article critically examines the historical evolution and current challenges of TCL, with a focus on the interplay between international cooperation, national sovereignty and the harmonization of legal standards. Using the exile of Napoleon Bonaparte as a historical case study, the article traces the transformation of international criminal responsibility from the *ad hoc* political mechanisms of the nineteenth century to the codified procedures of the International Criminal Court and the Rome Statute and then to treaty-based global counteraction of crime. The analysis highlights persistent fragmentation in TCL, including inconsistencies in liability, corporate responsibility and sentencing, particularly in transitional and post-conflict societies. Special emphasis is placed on the necessity for legal harmonization, the protection of human rights and the development of effective enforcement mechanisms to address cross-border crime. The article employs comparative legal analysis, doctrinal research and policy evaluation to propose pathways for reform, including enhanced international cooperation, unified legal definitions and the integration of international human rights standards. The findings underscore the urgent need for a cohesive global framework to ensure justice, security and accountability in the face of evolving transnational threats.

Keywords: transnational criminal law; international criminal law; criminal policy; harmonization; legal fragmentation; international justice; sovereignty; International Criminal Court; corporate liability; organized crime; cross-border crime; human rights; transitional justice; global security

Introduction: From Usurper to Exile – Napoleon and the European Order (1814–1825)

The collapse of the Napoleonic Empire in 1814 presented European States with an unprecedented challenge: how to deal with a man who had shaken the very foundations of the continent for two decades?

The Treaty of Fontainebleau of 11 April 1814 was the first attempt at a civilized resolution of this problem. Napoleon abdicated the thrones of France and Italy but, in return, received sovereignty over the island of Elba with the retention of his imperial title. This document, signed by representatives of Russia, Austria, Prussia and Great Britain, was a political compromise rather than an act of punishment. Formally, the Allies recognized Napoleon's right to a dignified existence and even a degree of autonomy. He was guaranteed personal inviolability and an annual pension of two million francs (equivalent to approximately 12–15 million euros in today's terms). This decision reflected the coalition's pragmatic approach: to avoid martyring Napoleon and ensure a peaceful transfer of power in France to the restored Bourbons (Chesney 1868).

The term "usurper", constantly applied to Napoleon by European monarchs, had deep ideological roots. Napoleon came to power through the military coup of 18 Brumaire (9 November 1799) and then proclaimed himself emperor via plebiscite. For traditional European monarchies, based on the principle of divine right and hereditary legitimacy, such a path to power was unacceptable. Napoleon not only usurped power in France, but he also destroyed the very system of European States, abolishing the Holy Roman Empire and placing his relatives on thrones from Naples to Westphalia.

Napoleon's return from Elba in March 1815 fundamentally altered the legal situation. By violating the Treaty of Fontainebleau, he automatically lost all guarantees and privileges. The Allies declared him an outlaw, and his defeat at Waterloo turned the former emperor into a prisoner of war. The legal grounds for his second exile were fundamentally different. The act of deposition in July 1815 recognized no rights for Napoleon. The Allied Council's decision to imprison him for life on the island of Saint Helena was based not on a treaty but on the rights of the victors and the need to ensure European security. The British assumed full responsibility for the detention of a prisoner who no longer possessed any title or sovereignty (Las Cases 1823).

Whilst Napoleon languished on Saint Helena, Europe underwent a grand reconstruction. The Congress of Vienna (1814–1815) created a new system of international relations based on the principles of balance of power and legitimacy. Alexander I, Metternich, Castlereagh and Talleyrand redrew the continent's map, seeking to prevent the emergence of new usurpers. The Holy Alliance, initiated by the Russian emperor, was intended to cement the Christian foundations of European politics. The Quadruple Alliance (later the Quintuple Alliance with France included) created a mechanism of collective security. Regular congresses in Aachen (1818), Troppau (1820), Laibach (1821) and Verona (1822) turned Europe into a kind of confederation of monarchies.

The 1820s revealed the vulnerability of the Vienna system. Revolutions in Spain, Naples, Piedmont and Portugal, the Decembrist uprising in Russia, and the beginning of the Greek War of Independence, all were events that demonstrated that Napoleonic ideas had outlived their creator. Napoleon's death in Saint Helena

in 1821 did not end his influence on European history. The Napoleonic legend, the cult of the great man, and the ideas of national sovereignty and civil equality continued to undermine the foundations of the Vienna system. The July Revolution of 1830 in France, the rise of national movements in Germany and Italy, and the Polish uprising of 1830–1831 were distant echoes of the revolution embodied by the Corsican usurper.

Paradoxically, the attempt by European monarchs to isolate and forget Napoleon led to the opposite result. Saint Helena became a place of pilgrimage, and the emperor's memoirs, dictated in exile, shaped public opinion for generations. In his notes, Napoleon proclaimed: "I closed the abyss of anarchy and untangled chaos. I purified the revolution, ennobled peoples, and strengthened kings." He presented himself as a defender of popular sovereignty against the coalition of old despotisms: "I fought against a coalition of kings armed against the rights of peoples" (Las Cases 1823). These words became a manifesto for a new generation of European revolutionaries, who saw Napoleon as a symbol of the struggle against legitimist reaction.

The fate of Napoleon Bonaparte, viewed through the prism of modern international criminal law (ICL), acquires new dimensions. The Treaty of Fontainebleau (1814), with its guarantees of sovereignty and immunity, embodies an archaic yet progressive model of "civilized exile" for its time. This practice, the precursor of modern mechanisms of political asylum, contrasts with the principle of universal jurisdiction enshrined in the Rome Statute of the International Criminal Court (Article 27 of the Rome Statute of the International Criminal Court, see International Criminal Court 1998). If Napoleon had acted in our time, his military campaigns of 1805–1812 could have been the subject of proceedings in The Hague for crimes against peace and war crimes, as happened with Slobodan Milošević and Omar al-Bashir.

The Vienna system of 1815, creating a prototype of collective security, laid the foundations for the modern world order, but with critical differences: monarchic legitimism gave way to sovereign equality (Article 2 of the United Nations (UN) Charter), the right of the strong was transformed into the rule of law through the mechanisms of Chapter VII of the UN Charter (United Nations 1945), and the balance of power evolved into a system of multilateral sanctions. Paradoxically, it was Napoleon's exile that became the first step towards the rejection of absolute immunity for heads of state. Modern law, following the logic of the Nuremberg Tribunal, has finally enshrined the principle: "People, not abstractions, commit crimes" (International Military Tribunal 1946). If, in 1815, exile to Saint Helena was justified by the right of the victors, today, similar decisions require compliance with procedural guarantees (Article 14 of the International Covenant on Civil and Political Rights; ICCPR) and proof of individual criminal responsibility (United Nations 1966). The legacy of the Napoleonic era manifests itself in three key aspects of the modern world order (Kissinger 1957): the primacy of law over politics (the experience of the Hundred Days showed the need for legal constraints on former rulers); the internationalization of human rights (the abolition of feudal privileges anticipated the 1948 Universal Declaration); and the precedent of international justice (the fate of Bonaparte became a prototype for the cases of Pinochet and Milošević). As Antonio Cassese aptly noted: "Saint Helena was the first Hague prison" (Cassese 2013). This historical paradox – from the exile of a usurper to tribunals over dictators – reflects the centuries-long evolution from the realism of

power to the idealism of law. Napoleon unwittingly became the catalyst for a process that, two centuries later, led to the creation of the International Criminal Court – an institution designed to guarantee that “no one is above the law” (Article 27 of the Rome Statute of the International Criminal Court, see International Criminal Court 1998). The usurper in exile proved more dangerous than the emperor on the throne, and his tragic fate remains an eternal reminder: in the era of globalization, even emperors cannot escape the verdict of history.

In international law, exile as a form of individual responsibility is often associated with a forced political decision that precedes formalized legal procedures (Koskenniemi 2001). Notably, Napoleon, recognizing himself as the only subject equal to the monarchs of Europe, challenged his exile as a violation of his sovereignty, demonstrating even then a certain form of discourse on the political rights of the individual. In Napoleon’s memoirs, recorded in the “Memorial of Saint Helena”, exile appears as an act of lawlessness, humiliation and moral reprisal. However, from a legal perspective, Napoleon’s exile became a *de facto* substitute for a judicial process aimed at ensuring peace in Europe.

As Cassese (2013) notes, ICL arises precisely at those moments when a State or coalition decides to hold a person accountable not by national but by universal human criteria of violation. In the case of Napoleon, the international community (in the narrow format of the great powers) applied a political, not a legal, mechanism. However, it is this choice that demonstrates the germ of the modern concept of “the leader’s responsibility”, which would later be codified in the 1998 Statute of the International Criminal Court. The absence of a trial in 1815 was compensated by a symbolic sanction: exile, which had a lasting effect of neutralizing the threat to international peace.

In this sense, Saint Helena indeed serves as the world’s first “Hague prison” – a place of detention for individuals who have violated the principles of international peace and security, without an institutional court but with an international mandate. The analogy with future tribunals in Nuremberg, The Hague or Rwanda provides grounds for seeing here a prototype of personalized international punishment.

In his memoirs, Napoleon presents himself as a victim of monarchical reaction, exiled for attempting to bring freedom to the peoples of Europe (Las Cases 1823). This narrative complicates the legal assessment of exile, as it transforms the aggressor into a martyr. The precedent of Napoleon became a source of ideological tools for future leaders who appealed to their moral justification in the face of defeat.

However, from a legal perspective, in the twentieth century, figures such as Slobodan Milošević and Charles Taylor could no longer avoid trial through political agreements – their fates were decided within clearly established procedures of international criminal justice. The same awaits the new generation of international criminals.

Methodology

This study employs an integrative, multi-methodological framework developed to analyse the complex jurisprudential tensions that arise at the intersection of international conventions in the field of crime prevention and national law enforcement practices. The methodology synthesizes doctrinal legal analysis, a

comparative study of case law and an examination of the political–legal context to achieve a holistic understanding of how international judicial bodies interpret and resolve conflicts in the field of jurisdiction in cases related to cross-border crime. In this issue, the primary technical tool of scientific analysis is the comparative legal method, which enables a comprehensive study of the evolution and current state of transnational criminal law (TCL) about ICL, as well as supranational legal systems. The comparative method was chosen due to the interdisciplinary and cross-border nature of the research subject. TCL develops at the intersection of international and national law, and the influence of diverse legal traditions, political regimes and international obligations shapes its norms. It is precisely comparative analysis that allows the identification of common features and differences in approaches to the criminalization of transnational acts; analysis of the effectiveness of various models of liability (individual, collective, corporate); assessment of the degree of harmonization and unification of legal norms in the field of combatting transnational crime; and the identification of gaps and conflicts arising in the process of implementing international standards into national legal systems.

A diachronic analysis is conducted of the evolution of approaches to jurisdiction in cases of cross-border crime, particularly changes in the interpretation of criminalization resulting from global challenges such as mass irregular migration and the spread of transnational criminal networks. Alongside doctrinal and comparative analysis, the study situates the results obtained within a broader political landscape, enabling a deeper understanding of the interplay between security imperatives and human rights requirements.

Special attention is paid to the impact of international standards for the protection of vulnerable groups on the development of judicial practice and law enforcement policy in the field of combatting organized crime. This methodological combination of doctrinal, comparative and policy-oriented approaches ensures a multidimensional study of the legal regulation of jurisdiction in cases of cross-border crime. Through the triangulation of results – by analysing legal norms, case law and the political context – the research not only highlights existing interpretative conflicts but also proposes possible ways to harmonize international public law standards in the field of crime prevention.

Results and Discussion

Pathways of Development

The gradual evolution of ICL, initiated by responses to crimes that threatened global security, from the exile of Napoleon to the Nuremberg Trials, has formed the legal foundation upon which modern concepts of international responsibility for crimes against humanity, genocide and war crimes have arisen. However, this approach was predominantly focused on the gravest violations associated with armed conflicts and authoritarian rule.

At the turn of the twentieth and twenty-first centuries, the paradigm of international criminal justice began to shift. The international community faced new challenges: the proliferation of transnational organized crime, cybercrime, terrorism, human trafficking and environmental offences (Duffy 2015). These

phenomena, which are not confined to a single jurisdiction, demanded new legal instruments and mechanisms of cooperation. In this context, TCL has emerged as an independent field aimed at bridging the gap between international and national legal systems and ensuring the effective prosecution of crimes with a cross-border dimension (Ryngaert 2015).

TCL and ICL represent two distinct yet increasingly interdependent branches of public international law. TCL operates at the intersection of international cooperation and domestic enforcement, targeting crimes that have cross-border dimensions but do not necessarily constitute the “core crimes” addressed by ICL – namely genocide, crimes against humanity, war crimes and the crime of aggression (Cassese 2013). In contrast, ICL functions as a normative framework aimed at prosecuting egregious violations of international norms that shock the conscience of humanity (Boister 2018).

However, the traditional separation between these domains is becoming less tenable. The globalization of criminal conduct, the expansion of hybrid conflicts and the proliferation of non-state actors have led to an increasing overlap between transnational and international crimes. Human trafficking, terrorism, environmental crimes and organized crime, while typically categorized as transnational offences, often involve patterns of violence, state complicity or systematic abuse that align them, at least morally or politically, with international crimes. In practice, this convergence challenges legal systems to reconsider the limits of both enforcement models and normative hierarchies (De Jonge 2022).

From a normative perspective, ICL derives its legitimacy from its moral gravity and universal condemnation, as codified in international treaties (e.g. the Rome Statute) and customary international law. It is enforced through international criminal tribunals, such as the International Criminal Court, or *ad hoc* tribunals, like the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, and increasingly through hybrid or domestic courts with international assistance. TCL, on the other hand, is more decentralized. It relies on a network of bilateral and multilateral treaties (e.g. the UN Convention against Transnational Organized Crime (UNTOC); UN Office on Drugs and Crime 2000), mutual legal assistance (MLA) frameworks, extradition agreements and regional cooperation mechanisms like Europol or the OECD (Organisation for Economic Co-operation and Development) anti-bribery regime (Boister 2018). As such, TCL lacks a centralized adjudicative body and instead emphasizes intergovernmental collaboration.

However, TCL reflects the evolving necessity for States to cooperate beyond their borders in the face of crimes that no single jurisdiction can effectively tackle. This functionalist logic has led to the diffusion of international legal norms into national systems, blurring the boundary between domestic law enforcement and international criminal accountability. States are increasingly adopting universal jurisdiction over transnational offences, establishing extraterritorial competence, or participating in joint investigation teams, thereby effectively integrating elements of international criminal justice into their domestic prosecutorial strategies (Ryngaert 2015). This blurring of categories is particularly evident in post-conflict and fragile state contexts, where transnational crimes like illicit resource extraction or arms trafficking fuel violence and destabilize governance structures, thus contributing indirectly to the

commission of core international crimes. In such scenarios, TCL enforcement serves as a preventive mechanism for ICL violations. Conversely, certain ICL crimes are prosecuted under transnational frameworks when political or institutional limitations preclude recourse to international tribunals (Bassiouni 2008).

Moreover, hybrid crimes such as terrorism and piracy expose the conceptual fragility of the TCL–ICL divide. Terrorism, for example, is prosecuted under transnational legal instruments (e.g. UN terrorism conventions) but often entails mass atrocities, ideological persecution and violations of humanitarian-law elements traditionally associated with ICL (Schabas 2021). The response to piracy likewise exemplifies the hybrid nature of enforcement, combining universal jurisdiction with transnational coordination.

At a deeper level, the tension between state sovereignty and international accountability also manifests in the collision between TCL and ICL. TCL prioritizes state consent and operational cooperation, preserving national discretion in prosecution and punishment. ICL, in contrast, asserts the supranational imperative to punish crimes that offend the international community as a whole, sometimes in opposition to national interests or legal traditions. This dichotomy raises fundamental questions about legitimacy, selectivity and enforcement asymmetries – especially when powerful States invoke TCL to pursue strategic objectives while resisting ICL scrutiny (Slaughter 2004).

From a legal harmonization perspective, there is a growing call among scholars and practitioners to bridge the normative and procedural gaps between the Convention on the Conservation of the African Elephant and the International Convention on the Conservation of Nature. Proposals include enhancing the role of international cooperation networks, expanding the jurisdiction of hybrid courts to cover both transnational and international crimes, and promoting the harmonization of definitions, evidentiary standards and sentencing principles across legal systems (Simpson 2007). In conclusion, while TCL and ICL were originally conceived as distinct legal frameworks – one horizontal and cooperative, the other vertical and adjudicative – their increasing overlap reflects the evolving landscape of global criminality.

The convergence of these fields invites a re-evaluation of how international law categorizes crimes, balances sovereignty and accountability, and organizes collective responses to threats that transcend borders and legal traditions. The challenge ahead lies not in preserving rigid distinctions but in designing adaptable legal mechanisms that respond to the complexities of twenty-first-century criminal phenomena with coherence, legitimacy and justice.

Fragmentation of TCL

The fragmentation of TCL remains a key problem. Despite the existence of numerous conventions (the UN Convention against Transnational Organized Crime, the UN Convention against Corruption, conventions on the suppression of terrorism, among others), there is no unified codification of the general part of TCL. This leads to inconsistencies in the application of fundamental legal concepts, including forms of guilt, grounds for excluding criminality, rules of liability for legal persons and sentencing standards. The absence of harmonized approaches

complicates international cooperation, creates obstacles to extradition and increases the risk of impunity for perpetrators. One of the most problematic issues is the responsibility of legal persons. In many legal systems, the criminal liability of corporations is either absent or limited to administrative sanctions. This creates loopholes for transnational criminal groups, which often operate under the guise of legal entities. The harmonization of standards for corporate liability, including the introduction of effective mechanisms for confiscating assets and disqualifying managers, is a necessary condition for combatting financial crimes and corruption (Boister 2025).

Another challenge is the protection of human rights during international cooperation in criminal matters (Tuliakov and Savinova 2024). The expansion of MLA, extradition and joint investigation teams must be accompanied by guarantees of fair trial, protection against torture and inhuman treatment, and respect for the rights of victims. The jurisprudence of the European Court of Human Rights and the UN Human Rights Committee sets high standards, but their implementation in national practice remains inconsistent.

The experience of countries in transition, as well as terrorist States in the “Global Evil axis” from the Russian Federation to North Korea, illustrates the complexity of adapting national criminal law to international requirements. The reform of penal policies, the introduction of new forms of liability, and the harmonization of procedural guarantees with European standards are ongoing processes that require comprehensive scientific support and international dialogue on both sides. Another path is the continuous occurrence of human rights violations and abuse of power (Gless and Vervaele 2013).

The analysis of TCL’s development reveals that the effectiveness of international cooperation in combatting cross-border crime depends directly on the degree of harmonization between substantive and procedural norms. The lack of a unified General Part of TCL leads to legal uncertainty, forum shopping and the risk of double jeopardy or, conversely, impunity for offenders.

The practical implementation of international standards is complicated by the diversity of legal traditions (continental, common law, mixed systems), differences in the understanding of the concept of criminal liability, and the specifics of national legal cultures. For example, the Anglo-Saxon model, which is based on precedent and broad judicial discretion, differs significantly from the codified approach of continental Europe, where the principle of legality and the strict definition of offences and penalties prevail.

Differentiation and Fragmentation in TCL: A Unified Analytical Narrative

Criminal law stands at the intersection of culture, governance and identity (Tuliakov 2025). As such, it resists uniformity, reflecting diverse historical legacies and socio-political frameworks. In the current era of transnational threats and international cooperation, criminal law simultaneously serves as a conduit for global norms and a repository of regional specificity. This dual function generates a persistent tension between harmonization and differentiation, as the unifying impulse of TCL clashes with the fragmenting force of regional legal paradigms.

Differentiation begins with foundational conceptions of crime itself. In European legal thought, crime is typically viewed as a violation of codified norms that protect individual rights and maintain public order. In contrast, East Asian traditions often perceive crime as a disruption of social harmony and moral order, while Islamic criminal law interprets it through a theological lens as a breach of divine and human justice. African customary systems view crime as a disruption of communal balance, requiring collective reparation. These divergent ontologies of crime necessitate different legal constructions and penal responses.

This plurality extends to punishment. The European model balances retribution, deterrence and rehabilitation, placing a heavy emphasis on incarceration. Asian systems, particularly in Japan and China, prioritize reintegration, shame-based accountability or political stability. Islamic systems employ a tripartite classification of punishments, comprising fixed, retaliatory and discretionary penalties, each grounded in theological doctrine. African justice, grounded in restitution and reconciliation, often operates outside formal state apparatuses. These disparate logics defy simple alignment with universal penal doctrines.

Victim participation further illustrates differentiation. While many Western systems marginalize victims in adversarial proceedings, Islamic jurisprudence empowers them in *qisas* cases. African and East Asian traditions often foreground reconciliation and mediation, giving the victim a central role in determining outcomes. Modern restorative justice reforms in the Global North increasingly emulate these traditional approaches, revealing a complex cycle of cross-cultural influence.

Legal pluralism, both within and across States, reinforces the fragmentation of law. Latin America, for instance, exemplifies the hybridization of Iberian codes, indigenous customs and international human rights standards. In Africa and South Asia, formal law coexists with religious and customary regimes, resulting in a layered normative structure. These internal pluralisms complicate efforts to apply transnational norms uniformly, raising questions about jurisdiction, procedure and legitimacy.

Globalization, although often perceived as a centripetal force, has paradoxically intensified legal differentiation. Transnational crimes – human trafficking, cybercrime and terrorism – demand coordinated responses. However, States diverge in their definitions, investigative tools and evidentiary standards. Attempts at convergence, such as through UN conventions or European Union (EU) jurisprudence, are met with resistance from States that cite cultural sovereignty, legal tradition or political autonomy (Keitner n.d.). The fragmentation of criminal law is further sharpened by the North–South divide. Northern States promote a vision of the rule of law rooted in proceduralism, legality and individual rights. Southern States, grappling with postcolonial legacies and developmental imperatives, often prioritize substantive justice and social cohesion. The imposition of universal norms, particularly through international institutions, is criticized as legal imperialism that overlooks local values and capacities. The clash becomes visible in debates over the death penalty, corporal punishment and plural legal orders.

Notably, the legacy of the Byzantine–Soviet paradigm persists as an overlooked yet influential strand in global legal pluralism. Systems shaped by Soviet legal ideology continue to frame criminal law as a tool of state engineering rather than a rights-based instrument. This model, found in parts of Eurasia, Africa and Latin

America, intensifies the difficulty of global normative alignment, particularly regarding state crimes and individual accountability.

Despite these divergences, TCL aims to establish a shared normative framework. Principles such as legality, proportionality and the protection of human dignity now transcend borders. However, their operationalization remains deeply contextual. Differentiation within fragmentation thus emerges not as a flaw but as a structural condition of modern criminal law (Gless and Vervaele 2013).

Rather than aiming for full harmonization, international legal discourse should adopt a managed pluralism approach. Legal convergence should be dialogic, adaptive and respectful of normative diversity. Hybrid models, blending global standards with local traditions, can offer functional alternatives. Regional human rights systems, such as the African and Inter-American frameworks, exemplify this approach.

In conclusion, differentiation is not an obstacle to TCL; it is its defining reality. Understanding and engaging with fragmentation allows for more legitimate, effective and inclusive justice. The challenge lies not in erasing legal differences but in coordinating across them with humility, clarity and mutual recognition.

A separate issue is the criminalization of acts that are not universally recognized as criminal offences. For instance, the criminalization of illicit enrichment, environmental crimes or certain forms of cybercrime varies significantly across jurisdictions. This creates difficulties in mutual recognition of judgments, extradition and enforcement of sentences.

Prospects for Harmonization

The harmonization of TCL requires a comprehensive approach that combines the unification of legal definitions, the development of model laws and the strengthening of mechanisms for judicial cooperation. The experience of the EU, which has developed a system of framework decisions, directives and mutual recognition instruments, may serve as a model for other regions (Mitsilegas 2016). At the global level, the creation of a universal Model Criminal Code or the adoption of a UN Convention on the General Part of Criminal Law could significantly enhance the effectiveness of international cooperation. Such an instrument should include clear definitions of forms of guilt, grounds for excluding criminality, rules of liability for legal persons, and standards for sentencing and confiscation of assets.

A crucial aspect of harmonization is the protection of human rights. The expansion of international cooperation must not undermine procedural guarantees, the right to a fair trial or the principle of non-refoulement. The development of mechanisms for independent monitoring, the introduction of remedies for victims of cross-border crime, and the strengthening of the role of civil society in the process of criminal policy formation are necessary steps towards a more just and effective TCL system.

In his book, *Global Criminal Law*, Nieto Martín (2022) thoroughly examines two key pillars that underlie the development of global criminal law. The first concept is sovereignty, traditionally understood as the State's absolute authority over its territory and internal affairs. However, globalization has complicated this idea by introducing transnational laws and regulations that often supersede national sovereignty, particularly in areas such as human rights, environmental law and global security.

The second concept emphasized by Nieto Martín is security. He argues that security, particularly in the context of global criminal law, serves as a driving force behind many contemporary legal systems. Security has evolved from a purely national issue into a multifaceted concept that encompasses both domestic and international dimensions. In today's interconnected world, threats such as terrorism, cybercrime and organized crime often transcend borders, necessitating a collective global response that complicates traditional notions of sovereignty.

Nieto Martín examines how countries today balance protecting their citizens with contributing to global security – a dynamic that blurs the lines between national and international law. Thus, the interdependence between internal and external security has become a central theme in global criminal law. The tension between these two concepts, sovereignty and security, reflects the complexity of implementing global criminal law, where ensuring global security may sometimes require compromises with traditional notions of state sovereignty (Nieto Martín 2022).

In the EU, the tension between national sovereignty and transnationalism is particularly pronounced. Instruments such as the European Arrest Warrant (EAW) embody the move towards mutual recognition of judicial decisions among Member States. The EAW simplifies extradition procedures by requiring Member States to trust each other's legal systems while simultaneously raising questions about the protection of national legal traditions and procedural safeguards.

For example, the principle of proportionality has become a critical mechanism to ensure that EU-level interventions respect the autonomy of individual Member States while effectively addressing cross-border issues. The principle of subsidiarity, an integral element of EU governance, aims to achieve balance by ensuring that decisions are made at the most appropriate level – local, national or supranational. In criminal law, this principle mitigates the risks of over-criminalization and preserves the diversity of national legal cultures. However, the growing scale of transnational crime challenges the practical application of subsidiarity, demanding innovative solutions to maintain this delicate balance.

The Future of Supranational Criminal Law

In the pursuit of harmony between globalization and fragmentation in European criminal law, European legislators focus not on conflicts between Articles 83, 114 and 325 of the Lisbon Treaty regarding the allocation of competencies between the EU and Member States in criminalizing certain acts – especially in combatting crime, harmonizing legislation and protecting the EU's financial interests – but rather on general issues of harmonizing criminal liability at the European level. Thus, at its meeting on 13–14 June 2024, the EU Justice and Home Affairs Council adopted conclusions on “The Future of EU Criminal Law: Recommendations for Further Action”. These conclusions address the quality of EU criminal legislation and ways to improve it (Wahl 2024).

They clarify that EU criminal legislation should be guided by three considerations: respect for widely recognized principles of criminal law, such as the principle of legality and the principle of *ultima ratio*, as well as the protection of fundamental human rights overall; the necessity to ensure internal coherence of EU criminal legislation; and respect for the different legal systems and traditions of

Member States and providing EU norms with the necessary flexibility to be implemented in a way that does not disrupt the system and consistency of national criminal law. In light of this, the Council initiates work on creating modernized model provisions of EU criminal law, including minimum rules on penalties for natural and legal persons, liability of legal persons, aggravating and mitigating circumstances, incitement, aiding and abetting and attempt, jurisdiction, limitation periods, the availability at the national level of effective and proportionate investigative tools, and statistical data (Wahl 2024).

These model provisions should be incorporated into future European legislation to the extent that it is deemed necessary to address each specific issue covered by them in a particular legislative act. Regarding institutional aspects, the Commission is called upon to ensure respect for the principle of *ultima ratio* in its proposals and to prepare carefully developed and detailed impact assessments. The needs of Member States to ensure coherence and preserve the fundamental principles of their national legal systems must be taken into account by the Union's legislative body during future legislative negotiations.

Best practices for achieving unified frameworks include promoting dialogue between countries, utilizing existing regional agreements and investing in capacity-building initiatives. The EU offers a valuable model through the integration of policies in the field of criminal justice. Although the EU's approach cannot be directly transferred to other regions, its emphasis on mutual recognition, proportionality and subsidiarity provides important examples of global efforts towards harmonization. Future legislative negotiations must carefully consider the needs of Member States and candidate States to ensure coherence and preserve fundamental legal principles (Draft of the New Criminal Code of Ukraine 2024).

Towards a Unified TCL System

Despite significant progress achieved through international treaties and conventions, TCL remains fragmented. To overcome this fragmentation, it is essential to foster dialogue among countries, leverage existing regional agreements, and invest in capacity-building initiatives that promote mutual understanding and cooperation. The EU offers a valuable model through the integration of criminal justice policies. Although the EU approach cannot be directly applied in other regions, its focus on mutual recognition, proportionality and subsidiarity offers important lessons for global harmonization efforts. Legal diversity, cultural differences and varying levels of economic development pose significant obstacles to this goal. However, the benefits of a unified system are compelling. Standardizing definitions, procedures and penalties across jurisdictions will enhance legal certainty and promote international cooperation. As criminal law continues to adapt to new realities, its ability to balance competing interests and priorities will determine its effectiveness in addressing both national and global challenges (Mitsilegas 2016).

The future of criminal law lies not in the dominance of one paradigm over another but in their coexistence, fostering the development of a dynamic legal system that reflects the diverse needs and aspirations of societies worldwide.

Doctrinal Renewal of TCL System

Modern criminal law increasingly encounters borderline situations that do not fit within the framework of positivist thinking. This is why interest is growing in radical philosophical concepts as a potential resource for the doctrinal renewal of criminal law paradigms (Tuliakov 2025). Such an approach allows not only for the renewal of the norm but also for the rethinking of normative rationality itself. In this context, an integrative analysis of the ideas of Georges Bataille, Michel Foucault, as well as the conceptual approaches of Leon Petrażycki and Pitirim Sorokin, is appropriate (Bataille 2021; Foucault 1998; Petrazhytsky 1907; Sorokin 1937).

A key analytical framework in law is the paradigmatic approach, within which doctrine is considered a primary source of criminal law (see Article 7 of the European Convention on Human Rights (ECHR); Alexy 2018). Furthermore, the results of the EU crimes reform project for the renewal of penal legislation demonstrate an attempt to implement Western European models of normative sensitivity, flexibility and axiological orientation, which correlates with the proposed philosophical analysis (Draft of the New Criminal Code of Ukraine 2024; Tuliakov and Savinova 2024).

According to Georges Bataille, the “black sun” is a metaphor for the ecstatic and destructive experience of transgression: a crossing of the boundaries of the permissible. This sun does not give light but absorbs it; it destroys subjectivity, legal order and moral structure (Bataille 2021). This concept allows us to identify points where the legal norm loses its ability to justify its moral legitimacy. Transgression as an event questions the fundamental foundations of punitive thinking. Such an approach becomes particularly relevant in the context of novel existential crimes: euthanasia, war trauma, ecological catastrophes, etc. In this vein, the new drafting should seek to overcome blind repressiveness and integrate the notion of “value exceptions” for the assessment of borderline situations.

In *Discipline and Punish*, Foucault reveals the mechanisms of subject formation through discipline, control and normalization (Foucault 1998). Criminal law, according to this logic, appears as part of the architecture of biopower that eliminates otherness, transgression and non-normativity. Thus, law loses its ethical dimension and becomes an instrument for the production of docile bodies. Rethinking this paradigm opens space for the humanization of criminal policy and the introduction of alternative response practices. This is especially evident in the Westernized approach to drafting the new Ukrainian Criminal Code, which proposes response systems oriented toward minimizing intervention and promoting rehabilitation and resocialization. In this logic, transgression is not a threat but a methodological opportunity for transition to a new way of thinking. Thus, the “black sun” in the activity-based perspective is not a source of chaos but an impetus for creative law-making. In the revised penal codes, designed as an open and dynamic document, the possibility of rapid institutional adaptation to new social challenges is envisioned through mechanisms for reviewing norms and principles.

Petrażycki’s Psychological Theory of Law considered legal experiences (emotionally intuitive imperative–attributive representations) as the primary form of law, from which positive legal norms subsequently develop (Petrazhytsky 1907). This view allows for a new understanding of the boundary between law and crime: crime

becomes not only an act of violation but also an act of deep conflict of legal emotions. Pitirim Sorokin's *Sociocultural Dynamics*, in turn, emphasized the cyclicity of cultural types (ideational, idealistic and sensate) and the change in the type of morality and law that depends on the phase of cultural dynamics (Sorokin 1937). In contemporary criminal law, this is expressed in the concept of intuitive criminal law, where law enforcement officials increasingly appeal to social empathy, affect and a contextual understanding of the individual's motives. This approach considers crime not only as a violation of the norm but as a complex ethical situation requiring psychological, cultural and emotional interpretation (Robinson 2013).

Hence, the Westernization of penal codes facilitates the inclusion of culturally sensitive provisions and norms that align with the concept of the variability of legal consciousness in a multicultural society (Tuliakov and Savinova 2024). Modern approaches in narrative criminology, discussed within the framework of the EUROCRIM 2025 preparatory seminar, reveal crime not as a fact but as a process of narrative – a constructed event in interaction, particularly under conditions of power, identity and context (Poppi 2025; Sandberg 2022). Criminal action is analysed through the structure of narrative, emotional tensions, the unspoken, as well as the style and rhetoric of self-presentation (Poppi 2025). In this context, the “black sun” emerges not only as a philosophical metaphor but as a narrative strategy for articulating trauma, identity and borderline experience, which should be considered in the formation of criminal law doctrines. This aligns with the theoretical neuro-criminology provisions on considering “the specifics of the offender's motivation” as part of the structure of guilt.

In the context of Ukraine, where war and social transformations have led to new forms of crime and deviance, narrative criminology can become a key tool for understanding and reforming criminal law. For example, studies of the narratives of war veterans who have committed crimes can reveal how traumatic experience influences their actions and perceptions of legal norms. This, in turn, can inform the development of new approaches to criminal responsibility and rehabilitation. Under wartime conditions in Ukraine, new forms of crime arise associated with combat experience, post-traumatic stress disorder and social maladaptation. For example, cases of domestic violence committed by veterans (actually rising by 40% in the last year) may result not only from individual psychological problems but also from broader social narratives about masculinity, strength and the role of men in war. Analysing such narratives can help identify how social expectations and cultural attitudes influence individual behaviour and how criminal law can adapt to these realities. This is especially relevant in the context of reforming the Criminal Code of Ukraine, where new social challenges and transformations must be considered in light of the theory of desert. In his theory of criminal law, Paul H. Robinson insists that punishment should be not only effective but also just from the perspective of the offender's desert. He contrasts utilitarianism with intuitive moral perceptions of justice. This opens the way for a new role of doctrine: it should not only interpret the law but also serve as a conduit for society's conception of just punishment (Robinson 2013).

From this perspective, the ideas of Bataille and Foucault can serve as tools for critiquing formal justice in favour of real justice based on institutionally articulated doctrine. This approach is especially relevant in wartime, where traditional law often

cannot provide answers to existential-level questions notwithstanding doctrinal ones. The paradigmatic approach in law recognizes that doctrine can be a source of criminal law, provided it is verifiable, stable and clear to the subject (Alexy 2018). Article 7 of the ECHR does not exclude such a source if its foreseeability is ensured by professional, scientific consensus. Modern legal thought acknowledges the multifaceted nature of criminal law sources. In the paradigmatic approach, which is actively developing within the continental tradition, doctrine serves as a normative source of authority. This is especially important in situations where positive law does not keep pace with social transformations, such as in matters like the criminalization of artificial intelligence, post-traumatic stress disorder reactions in wartime and bioethical conflicts (Ambos 2013). In this sense, Article 7 of the ECHR does not preclude a doctrinal source if it ensures foreseeability (i.e. it is systematic and verifiable), clarity (i.e. understandable to the addressee) and stability (i.e. based on professional, scientific consensus) (Alexy 2018; Ambos 2013). In this context, the doctrine that integrates radical philosophical concepts, narrative strategies and psychological theories can serve as a means of modernizing criminal law as a system based on activity. Therefore, the regulatory function of criminal law should shift from formal punishment to ensuring justice as a core value. Institutional reform should be carried out through the lens of human rights, as substantiated in the work of Tuliakov and Savinova (2024), who emphasize the need to decolonize criminal law. The draft of the new Criminal Code of Ukraine reflects this position through ideas of functional codification, strengthening the role of principles, reducing formalism and increasing the influence of academic doctrine as a source of law (Draft of the New Criminal Code of Ukraine 2024).

In a globalized world, criminal law is no longer an exclusively internal affair of the State. International standards, decisions of the ECHR, positions of the UN and the International Criminal Court form a matrix of international and transnational criminal policy. In this context, doctrine serves as an integrative platform that aligns local legal systems with the global requirements of humanism, human rights and post-conflict justice (Ambos 2013).

The above-named philosophical concepts not only reveal the internal contradictions of traditional normativity but also contribute to the formation of new axiomatics of criminal law. They allow for a different perspective on the boundaries of the punitive, the meaning of legal response and the function of justice in postmodern culture. The new EU penal policy, oriented toward approximation of European standards, largely implements these approaches: it reduces the rigidity of institutions, increases the role of principles and opens space for doctrinal influence.

Thus, philosophical radicalism becomes not a threat but a resource for legal transformation. Criminal law must be sensitive to transgression, emotion, narrative and social pain while maintaining the rational capacity for self-reflection and structural critique.

Underdeveloped Elements of the General Part of TCL

Forms of Liability and Individual Criminal Responsibility

A significant shortcoming in the current system of TCL is the lack of standardized definitions for forms of liability, including command responsibility, joint criminal

enterprise, aiding and abetting, and incitement. This lack leads to inconsistencies in prosecuting individuals involved in transnational crimes, as different jurisdictions may interpret these concepts differently. Establishing clear, widely accepted definitions is crucial for ensuring accountability and promoting international cooperation.

Defences and Justifications

The General Part of TCL also lacks a harmonized approach to defences and justifications such as duress, necessity or obedience to orders. Without a unified system of circumstances excluding unlawful conduct, defendants may face unequal treatment across jurisdictions, thereby undermining the fairness of international criminal proceedings. Developing a standardized set of defences would foster consistency and safeguard the rights of the accused.

Inchoate Offences

Another area requiring attention is the treatment of attempts and other forms of preparatory criminal conduct. Currently, there is no consensus on how to respond to preparatory acts that may not culminate in the commission of a crime but still pose a significant threat. A harmonized approach would enable law enforcement to intervene proactively while respecting legal safeguards and protections, including corporate criminal liability.

Role of Legal Entities

The role of legal entities in transnational crimes such as money laundering and human trafficking is becoming increasingly prominent. However, the General Part of TCL does not adequately regulate corporate criminal liability, resulting in enforcement gaps. Incorporating provisions on corporate responsibility would enhance the overall effectiveness of TCL.

Sentencing Guidelines

Differences in sentencing for transnational crimes across jurisdictions can lead to perceptions of injustice and hinder the exchange of MLA. Establishing common sentencing guidelines within the General Part of TCL would promote fairness and facilitate cooperation among States (Boister 2025).

Implications for Transition Economies

For transition economies such as Ukraine, the underdevelopment of the General Part of TCL presents both challenges and opportunities. On one hand, the absence of standardized legal concepts complicates the drafting of new criminal codes and their alignment with international norms. On the other hand, these countries have the opportunity to contribute to the development of TCL by adopting and promoting best practices.

By addressing gaps in the General Part of the TCL, transition States can enhance their legal frameworks, improve international cooperation and strengthen the rule

of law. This process requires collaboration with international organizations, legal scholars and other States to develop comprehensive and consistent legal standards.

It is also important to consider the growing trend of fragmentation in criminal policy within a multipolar world. This fragmentation is evident in both jurisdictional competition and divergent interpretations of fundamental concepts, such as justice, legality and sovereignty, among different legal systems. An illustrative example is the Open Letter from the Heads of Nine European States to the European Court of Human Rights (Frederiksen et al. 2025), in which Presidents and Prime Ministers of Council of Europe Member States urged the Court not to maintain functional consistency in interpreting universal legal principles, thus representing open pressure from certain States to nationalize humanitarian law in their interests. Specifically, the letter calls for three things:

We must have more room at the national level to decide when to expel criminal foreign nationals, for example, in cases involving serious violent crimes or drug-related offences. By their nature, such crimes always have serious consequences for victims. We need greater freedom to decide how our authorities can monitor, for example, criminal foreigners who cannot be deported from our territories. Criminals cannot be deported, even if they have used our hospitality to commit crimes and make others feel unsafe. We must have the ability to take effective measures to counter hostile states that seek to use our values and rights against us. For example, by instrumentalizing migrants at our borders (Frederiksen et al. 2025).

In contrast, TCL should operate at the intersection of international cooperation, human rights protection, national sovereignty and the imperative to combat crimes that transcend national borders. While its primary aim is to facilitate effective prosecution of transnational crime, TCL frameworks are also acutely aware of the need to safeguard human rights.

However, the protection of human rights within TCL remains a complex and evolving challenge. Despite the proliferation of international treaties and conventions, such as the UN Convention against Transnational Organized Crime and the UN Convention against Corruption, TCL remains fragmented. There are significant divergences in legal definitions, enforcement mechanisms and, crucially, in the guarantees of human rights protection. This fragmentation leads to inconsistencies in the right to a fair trial, protection against torture or inhuman treatment, and the rights of victims and suspects during extradition, MLA and joint investigations (The Ljubljana–The Hague Convention on International Cooperation in the Investigation and Prosecution of Genocide, Crimes against Humanity, War Crimes and other International Crimes, see MLA Diplomatic Conference 2023). As a result, individuals subject to transnational proceedings may experience varying levels of protection depending on the jurisdictions involved in the proceedings.

Key human rights concerns in TCL include the need for fair-trial guarantees, the principle of non-refoulement and the risk of double jeopardy. International cooperation in criminal matters – such as extradition, transfer of proceedings and MLA – must comply with fair-trial standards as articulated in the International Covenant on Civil and Political Rights and the ECHR. Nevertheless, differences in

procedural rights, evidentiary standards and access to legal counsel can undermine these guarantees. Extradition and mutual assistance must not result in individuals being sent to countries where they risk torture, inhuman or degrading treatment, or unfair trials, as enshrined in international law, yet this is not always uniformly applied in practice. The risk of double prosecution for the same conduct arises in transnational cases and while many international instruments prohibit double jeopardy, the lack of harmonization can result in conflicting outcomes. The expansion of corporate liability in TCL also raises concerns about ensuring due process for legal persons, including clear standards for evidence, defence rights and proportionality of sanctions.

Human rights limitations are addressed within TCL frameworks through a combination of international standards, treaty safeguards, judicial oversight and national implementation. International bodies such as the European Court of Human Rights and the UN Human Rights Committee set high standards for the protection of rights in criminal proceedings, including those with a transnational dimension. In the EU, the mutual recognition of judicial decisions is contingent upon respect for fundamental rights, allowing States to refuse cooperation if there is a serious risk of rights violations. Most modern conventions include explicit provisions requiring respect for fundamental rights during cooperation, and States are required to implement TCL treaties in a manner consistent with their constitutional and human rights obligations. National courts play a crucial role in reviewing requests for cooperation to ensure compliance with human rights standards, while civil society organizations and independent monitoring bodies contribute to oversight, reporting on abuses and advocating for stronger protections.

Despite these mechanisms, significant challenges remain due to fragmentation, differing legal traditions and uneven enforcement. The lack of a unified “General Part” of TCL creates legal uncertainty and risks to human rights. Harmonization efforts, such as model laws, best-practice guidelines and regional instruments, are crucial for standardizing definitions and procedures, ensuring the consistent application of rights, and facilitating effective, rights-respecting cross-border cooperation. Ongoing harmonization and vigilant oversight are essential to ensure that the imperative to combat cross-border crime does not come at the expense of fundamental human rights.

Conclusions

TCL stands at a critical juncture. The growing interconnectedness of the world, the emergence of new forms of crime, and the need to protect human rights require a rethinking of the foundations of criminal policy at both national and international levels. The harmonization of the General Part of TCL, the development of effective mechanisms for corporate liability and the strengthening of procedural guarantees are key tasks for the coming decades.

The gradual evolution of ICL, initiated by responses to crimes threatening global security, from the exile of Napoleon to the Nuremberg Trials, has formed the legal foundation upon which modern concepts of international responsibility for crimes against humanity, genocide and war crimes have arisen. However, this approach

was predominantly focused on the gravest violations associated with armed conflicts and authoritarian rule. At the turn of the twentieth and twenty-first centuries, the paradigm of international criminal justice began to shift. New challenges have emerged, including the proliferation of transnational organized crime, cybercrime, terrorism, human trafficking and environmental offences. These phenomena demanded new legal instruments and mechanisms of cooperation. In this context, TCL has emerged as an independent field that aims to bridge the gap between international and national legal systems, ensuring the effective prosecution of crimes with a cross-border dimension.

Drawing on Nieto Martín's *Global Criminal Law* (2022), we observe that sovereignty and security represent two foundational pillars that shape the trajectory of TCL. Traditionally, sovereignty has been understood as the absolute authority of a State over its territory and internal affairs. However, globalization has complicated this idea by introducing transnational laws and regulations that often supersede national sovereignty, particularly in areas such as human rights, environmental law and global security. Security has evolved into a complex concept that encompasses both domestic and international dimensions. In today's interconnected world, threats such as terrorism, cybercrime and organized crime frequently transcend borders, requiring a collective global response. This dynamic blurs the lines between national and international law, reshaping the contours of sovereignty itself.

Thus, the interdependence between internal and external security becomes a central theme in global criminal law. The tension between sovereignty and security reflects the complexity of implementing global criminal law, where ensuring global security may sometimes require compromises with traditional notions of state sovereignty.

Despite numerous conventions (e.g. the UN Convention against Transnational Organized Crime and the UN Convention against Corruption), there is no unified codification of TCL. This leads to inconsistencies in basic legal concepts such as forms of guilt, grounds for excluding criminality, rules of liability for legal persons and sentencing standards. Fragmentation complicates international cooperation, creates obstacles to extradition and increases the risk of impunity. Harmonizing standards for transnational liability, including asset confiscation and managerial disqualification, is essential for combatting financial crimes and corruption.

Human rights protection during international cooperation must also evolve. MLA, extradition and joint investigations require procedural guarantees, including fair-trial rights, protection from torture and respect for the rights of victims. While regional courts, such as the European Court of Human Rights, set high standards, their implementation varies across jurisdictions (United Nations 2024).

Therefore, the history of ICL and TCL – from the exile of Napoleon to the tribunals in The Ljubljana–The Hague Convention – demonstrates that justice is not static; it evolves in response to the challenges of the time. In the era of globalization, the effectiveness of criminal justice depends on the ability of States to cooperate, adapt and uphold the rule of law. Only through joint efforts can the international community ensure that no crime remains unpunished and that the rights and dignity of every individual are protected.

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Translated Abstracts

Abstracto

El derecho penal transnacional (DPT) se encuentra a la vanguardia de la investigación jurídica contemporánea, abordando la creciente complejidad de los delitos que trascienden las fronteras nacionales, como el crimen organizado, el terrorismo, la trata de personas y la corrupción. Este artículo examina críticamente la evolución histórica y los desafíos actuales del DPT, con un enfoque en la interacción entre la cooperación internacional, la soberanía nacional y la armonización de estándares legales. Utilizando el exilio de Napoleón Bonaparte como estudio de caso histórico, el artículo traza la transformación de la responsabilidad penal internacional, desde los mecanismos políticos ad hoc del siglo XIX hasta los procedimientos codificados de la Corte Penal Internacional (CPI) y el Estatuto de Roma, y posteriormente hasta la lucha global contra el crimen basada en tratados. El análisis destaca la fragmentación persistente en el DPT, incluyendo inconsistencias en la responsabilidad, la responsabilidad corporativa y las sentencias, particularmente en sociedades de transición y post-conflicto. Se pone especial énfasis en la necesidad de armonización legal, la protección de los derechos humanos y el desarrollo de mecanismos efectivos de aplicación para abordar el crimen transfronterizo. El artículo emplea análisis legal comparativo, investigación doctrinal y evaluación de políticas para proponer vías de reforma, incluyendo cooperación internacional mejorada, definiciones legales unificadas y la integración de estándares internacionales de derechos humanos. Los hallazgos subrayan la necesidad urgente de un marco global cohesivo para asegurar justicia, seguridad y rendición de cuentas frente a las amenazas transnacionales en evolución.

Palabras clave: derecho penal transnacional; derecho penal internacional; política criminal; armonización; fragmentación legal; justicia internacional; soberanía; Corte Penal Internacional; responsabilidad corporativa; crimen organizado; delito transfronterizo; derechos humanos; justicia transicional; seguridad global

Abstrait

Le droit pénal transnational (DPT) se trouve à l'avant-garde de la recherche juridique contemporaine, abordant la complexité croissante des crimes qui transcendent les frontières nationales, tels que le crime organisé, le terrorisme, la traite des êtres humains et la corruption. Cet article examine de manière critique l'évolution historique et les défis actuels du DPT, en mettant l'accent sur l'interaction entre la coopération internationale, la souveraineté nationale et l'harmonisation des normes juridiques. En utilisant l'exil de Napoléon Bonaparte comme étude de cas historique, l'article retrace la transformation de la responsabilité pénale internationale, depuis les mécanismes politiques ad hoc du XIX^e siècle jusqu'aux procédures codifiées de la Cour pénale internationale (CPI) et du Statut de Rome, puis jusqu'à la lutte mondiale contre le crime basée sur des traités. L'analyse met en évidence la fragmentation persistante dans le DPT, y compris les incohérences dans la responsabilité, la responsabilité des entreprises et les condamnations, particulièrement dans les sociétés en transition et post-conflit. Un accent particulier est mis sur la nécessité d'harmonisation juridique, la protection des droits de l'homme et le développement de mécanismes d'application efficaces pour lutter contre la criminalité transfrontalière. L'article emploie l'analyse juridique comparative, la recherche doctrinale et l'évaluation des politiques pour proposer des voies de réforme, incluant une coopération internationale renforcée, des définitions juridiques unifiées et l'intégration des normes internationales des droits de l'homme. Les conclusions soulignent le besoin urgent d'un cadre mondial cohésif pour assurer la justice, la sécurité et la responsabilité face aux menaces transnationales en évolution.

Mots-clés: droit pénal transnational; droit pénal international; politique criminelle; harmonisation; fragmentation juridique; justice internationale; souveraineté; Cour pénale internationale; responsabilité des entreprises; crime organisé; criminalité transfrontalière; droits de l'homme; justice transitionnelle; sécurité mondiale

摘要

跨国刑法（TCL）处于当代法学研究的前沿，旨在解决日益复杂的跨国界犯罪问题，如有组织犯罪、恐怖主义、人口贩卖和腐败等。本文批判性地审视了跨国刑法的历史演进和当前挑战，重点关注国际合作、国家主权和法律标准协调之间的相互作用。本文以拿破仑·波拿巴的流放为历史案例研究，追溯了国际刑事责任的转变过程，从19世纪的临时政治机制到国际刑事法院（ICC）和《罗马规约》的成文程序，再到基于条约的全球犯罪对策。分析强调了跨国刑法中持续存在的碎片化问题，包括责任认定、企业责任和量刑方面的一致性，特别是在转型期和冲突后社会中。文章特别强调了法律协调的必要性、人权保护以及发展有效执法机制以应对跨境犯罪的重要性。本文采用比较法律分析、理论研究和政策评估方法，提出改革路径，包括加强国际合作、统一法律定义以及整合国际人权标准。研究结果强调，面对不断演变的跨国威胁，迫切需要建立一个连贯的全球框架来确保正义、安全和问责制。

关键词： 跨国刑法；国际刑法；刑事政策；协调；法律碎片化；国际司法；主权；国际刑事法院；企业责任；有组织犯罪；跨境犯罪；人权；转型正义；全球安全

المخلص

يقف القانون الجنائي عبر الوطني في مقدمة البحوث القانونية المعاصرة، حيث يتناول التعقيد المتزايد للجرائم التي تتجاوز الحدود الوطنية، مثل الجريمة المنظمة والإرهاب والاتجار بالبشر والفساد. تفحص هذه المقالة بطريقة نقدية التطور التاريخي والتحديات الحالية للقانون الجنائي عبر الوطني، مع التركيز على التفاعل بين التعاون الدولي والسيادة الوطنية وتنسيق المعايير القانونية. باستخدام نفي نابليون بونابرت كدراسة حالة تاريخية، تنتبج المقالة تحول المسؤولية الجنائية الدولية، من الآليات السياسية المؤقتة في القرن التاسع عشر إلى الإجراءات المدونة للمحكمة الجنائية الدولية ونظام روما الأساسي، ثم إلى مكافحة الجريمة العالمية القائمة على المعاهدات. يسلط التحليل الضوء على التشرذم المستمر في القانون الجنائي عبر الوطني، بما في ذلك التناقضات في المسؤولية والمسؤولية المؤسسية والأحكام، خاصة في المجتمعات الانتقالية وما بعد الصراع. يتم التركيز بشكل خاص على ضرورة التنسيق القانوني وحماية حقوق الإنسان وتطوير آليات إنفاذ فعالة لمعالجة الجريمة عبر الحدود. تستخدم المقالة التحليل القانوني المقارن والبحث الفقهي وتقييم السياسات لاقتراح مسارات للإصلاح، بما في ذلك تعزيز التعاون الدولي والتعريفات القانونية الموحدة ودمج معايير حقوق الإنسان الدولية. تؤكد النتائج على الحاجة الملحة لإطار عالمي متماسك لضمان العدالة والأمن والمساءلة في مواجهة التهديدات عبر الوطنية المتطورة.

الكلمات المفتاحية: القانون الجنائي عبر الوطني؛ القانون الجنائي الدولي؛ السياسة الجنائية؛ التنسيق؛ التشرذم القانوني؛ العدالة الدولية؛ السيادة؛ المحكمة الجنائية الدولية؛ المسؤولية المؤسسية؛ الجريمة المنظمة؛ الجريمة عبر الحدود؛ حقوق الإنسان؛ العدالة الانتقالية؛ الأمن العالمي

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