CHAPTER 27

The 2012 Protocol on the Illicit Trade in Tobacco: Signpost to the Future of Transnational Criminal Law?

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1 Introduction

More than two decades ago, Professor Roger Clark pioneered the analysis of harmonising trends in doctrinal development across a range of diverse global crime control treaties (hereinafter ‘suppression conventions’).1 His work suggested the application of comparable rules across the sample of treaties he had made and he recommended further analysis.2 Clark’s innovative work did not confront the question of whether the similarities in rules in the suppression conventions suggested a broader system of some kind. Inspired, I recklessly suggested there is a systemic nature to what I called transnational criminal law,3 although I recognise that the meaning of the concept is not yet settled.4 Clark did note that little work had been done in order to discover whether there were significant trends towards general principles revealed through the provisions of the suppression conventions.5

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2 Ibid 86.
5 Clark, “Offenses of International Concern: Multilateral State Treaty Practice in the Forty Years Since Nuremberg” (n 1) 72ff.
criminal law, and recent research has emphasised the need for a set of principles to govern transnational criminal law. Commentators highlight the fact that law does not always govern the application of official power to individuals in the transnational space where states cooperate in the suppression of criminal activity.

This chapter employs selected provisions of a recently developed suppression convention as a vehicle for engaging in some brief reflections on the nature of transnational criminal law and the principles governing it. The instrument in question is the Protocol on the Illicit Trade in Tobacco Products (the ‘ITP’), adopted in November 2012 by the fifth Conference of the Parties of the World Health Organisation Framework Convention on Tobacco Control (the ‘FCTC’), although not yet in force.

2 The ITP in Brief

The ITP was negotiated to flesh out the general obligations to reduce the illicit trade in tobacco products contained in article 15 of the FCTC. Its substance is concerned with supply chain control. Part III contains provisions on the licensing of the manufacture of and import and export of tobacco products, due diligence obligations on those engaged in the supply chain, provisions for tracking and tracing of tobacco products, and related provisions. Part IV is

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7 See, for example, the various articles in the Special Issue: ‘Law Should Govern: Aspiring General Principles for Transnational Criminal Justice’ (2013) 9 Utrecht Law Review.
8 Gless & Vervale, ‘Law Should Govern: Aspiring General Principles for Transnational Criminal Justice’ (n 4) 2.
12 Art 6.
13 Art 7.
14 Art 8.