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What is Transnational Law and what is the role of the State?

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Introduction

This paper includes the evaluation of the transnational law course. The aim of this paper is trying to formulate an answer on the proposition '*What is transnational law, and what is the role of the state?*'. First of all, the author will objectively discuss the proposition by a **dialogue** of various insights which can be found in the **texts provided within the framework of the transnational law course**. Secondly, since the author of the text is an Erasmus student at the *Catholic University of Leuven* -Belgium- and does not have a law degree but rather a **Criminological Science** background, an attempt is made to answer the proposition using a **criminological perspective**. For this reason, in addition to the seven academic papers, **other relevant academic** texts were used to support the answer to the proposition. Finally, the essay ends with a conclusion that summarizes the most important insights and also reflects on the opinion of the author in connection with the proposition.

Argumentation

The first text that provides interesting insights concerning transnational law deals with the topics '**globalization'** and '**cross-border cooperation'** and was written by **Margherita Russo**. The author Russo (2012, p. 3) tries to analyse how the concept of Transnational law can be useful for transformation of the territorial and nation state law in Europe. First of all, most of the states in Europe are subjected by an aggregation process caused by the States **membership on a supranational level** -**European Union**- and by intra-state **decentralization** processes (Russo, 2012, p. 8). The membership at supranational level on the one hand and the decentralization process on the other hand, challenge the validity of the territorial limits of state-government action (Russo, 2012, p. 8). Secondly, the author highlighted the importance of **globalisation processes** and defines it as "*an organizational and regulatory fragmentation in which the relationship between the different parts does not necessarily respond to a model of integration or convergence*" (Russo, 2012, pp. 5-6). According to Russo (2012, p. 9), those globalisation processes are responsible for the birth of the concept of **'*droit deraciné*,** which is **a law concept** that is characterized by the existence of no single restriction or organic connection with physical or geographical boundaries and therefore suitable in any space/time. Following the author Russo (2012, pp. 9-12) is **cross-border cooperation** a good example of previously mentioned principle.

The author Russo (2012, pp. 9-12) suggests that cross-border cooperation is a set of norms which are created through legal procedures that are not always state made. More specific is there the presence of a broad kind of political, economic, juridical etc. cooperation with **different actors** -state oriented and private organizations- which is happening on a territory belonging not to one state especially, but such a cooperation in a **specific territory belonging to more than one state only (**Russo, 2012, pp. 9-12).

A relevant **criminological** example of **cross-border cooperation** tries to defeat organized crime and is called '**criminal and penal cross-border cooperation in the Euregion Meuse-Rhine region'**. As an introduction to the issue, the context of the situation is first outlined. The **Euregion Meuse-Rhine** consists **of five territorial areas** spread over **three countries**; the region of Aachen in **Germany**, the provinces of Limburg, Liège and the German-speaking community in **Belgium** and the province of Limburg in the **Netherlands** (Van Daele & Peters, 2014, p. 57). The area is populated by four million people and

is connected by major highways, railways and waterways. Both the internationalization of daily life, globalization and cross-border mobility contribute to an increase in transnational **large-scale organized crime (**Van Daele & Peters, 2014, p. 57). Such organized crime mainly includes vehicle theft, drug production and trafficking, but also includes Eastern and South-Eastern European criminal groups which are specialized in asset crime, human trafficking and human smuggling (Van Daele & Peters, 2014, p. 57). Finally, it should be noted that these criminal cooperation networks **operate on a transnational basis** and do not operate in one state only (Van Daele & Peters, 2014, p. 57).

In the Euregion Meuse-Rhine, various cooperative structures are being set up to combat cross-border crime. In order to achieve a coherent approach, there is a need for **strategic police and judicial cooperation**. First of all, **the executive police officers** from the involved regions come together on a systemic way in order to determine specific priorities regarding the fight against organized crime (Van Daele & Peters, 2014, p. 57). Secondly, **a working group of magistrates** from the three different countries was also set up to define guidelines and policy priorities for the problem region (Van Daele & Peters, 2014, p. 57).

In addition to strategic cooperation, there is also **operational cooperation** between the regions of the various countries. For instance, on the border with Belgium, the Netherlands and Germany in the village Kerkrade (the Netherlands), there is a joint commissioner's office where police officers from the three different countries operate together under one roof (Van Daele & Peters, 2014, p. 57). Since the three countries did not agree on the authorization to carry out searches in another country's criminal database, the various databases were grouped together in a single commissioner's office (Van Daele & Peters, 2014, p. 57). The purpose of this commissioner's office is to exchange information and data between the different regions in a simple and quick way. In this way, officers can cooperate and retrieve data from suspects without having to follow bureaucratic procedures (Van Daele & Peters, 2014, p. 57). Finally, it should be stressed that **police authorities, judicial authorities and administrative authorities i**n the various regions must be **interconnected** and considered **to work together** to the best of their ability (Van Daele & Peters, 2014, p. 57). So basically, many different authorities from a different territorial area work constructively together on a cross-border manner.

The example of the cross-border cooperation in the Euregion Meuse-Rhine is following the logic of Russo (2012, pp. 9-12) a good example of transnational law. There is the presence of a **comprehensive territorial base framework** for the development of a certain territory which **doesn't belong to one state only** and is created through legal procedures which are **not always state made procedures,** but created by different cross-border regions (Russo, 2012, pp. 9-12).

Other interesting insights provided to answer the thesis come from the text **of Shaffer and Coye**, **Reimann** and from the **lesson** that discussed **the theme of human rights**. For that reason, will this section of the paper deal with the role of public international law in the **birth and function of human rights**, looked through **transnational** and **criminological frameworks**. More specifically, the text of Shaffer and Coye (2017, pp. 1-2) deals with the interaction between the concepts of public international law, transnational law, transnational legal ordering and transnational legal orders. First of all, the problem is noted that two population groups - the **Maya's** in Belize and the **Ainu** in Japan - suffer from **a lack of human rights** (Shaffer & Coye, 2017, pp. 6-10). The Maya's were driven from their traditional habitat on the one hand, and the Ainu population was not recognized by the government of Japan as an indigenous group, which meant that they enjoyed fewer rights on the other hand (Shaffer & Coye, 2017, pp. 6-10). Nevertheless, Shaffer & Coye (2017, p. 6) suggest that both groups have in common data that the evolving international public law allows them to achieve their objectives – obtain more human rights- through **a transnational process.**

The question now arises, in which way do such **human rights arise**? The first step in the development of human rights is that certain **claims are made by interest groups** (Parmentier & Weitekamp, 2007, p. 88). Such interest groups may be **a specific population group** such as the Maya or Ainu, but they may also include **inter-governmental organizations** (IGO's), **International non-governmental organizations** (NGO's) or simply individuals e.g. Martin Luther King, Nelson Mandela etc. (Parmentier & Weitekamp, 2007, p. 88; Reimann, 2004, p. 403). Step two reads that some interest groups can succeed in having their interests accepted by others (Parmentier & Weitekamp, 2007, p. 88). Right now, those interests are **a source of soft law**. In the lesson, it was

seen that especially international organizations and non-governmental organizations were **active in the creation of soft law**. The author Reimann (2004, p. 403) claims that non-governmental organizations play a significant role in international legal processes such as lobbying and pressuring governments. In the lesson, we saw the example from the ***Interlaken process***. The Interlaken process is a process of high level meetings in a Swiss town. The last meeting was held in Copenhagen 2018 with several state representatives, representatives by the court and several **NGO's representatives** interested in the proper function of European Court of Human Rights. The purpose of the meeting was to adopt a declaration concerning the reform of the European human rights system. During the meeting, the representatives discuss the various issues and decisions were taken. **The private non-governmental organizations attended the meetings and may have a say in the final decision making.** Furthermore**,** the soft law is also an important source of the organization of society and can **become hard law over time**. If the interests become hard law, we move on to steps three and four. In step three, the interests are enforced on the basis of proclamations such as possible **sanctions** (Parmentier & Weitekamp, 2007, p. 88). In step four, the interests are legitimized and **shared** so broadly that they are **recognized** by an entire political community or state (Parmentier & Weitekamp, 2007, p. 88).

Moreover, not only is the development of human rights a transnational process, human rights achieve **four specific transnational functions**. First and foremost, human rights attempt **to challenge the sovereignty of the state** (Claude & Weston, 1989, p. 5). International law, e.g. international human rights, is a complex process of authoritative and controlling decision making on a national and supra-national level with the purpose to maintain world order (Claude & Weston, 1989, p. 5). The classical international law doctrine of **state sovereignty** and its inference of **nonintervention** from the other states, are a risk for this world order and peace (Claude & Weston, 1989, p. 5). For this reason, human rights challenge the sovereignty of the state in both an **internal** and an **external** way. **Internally**, individuals, non-governmental organizations and interest groups can claim their human rights before court, forcing the state to stop its erroneous actions (Claude & Weston, 1989, p. 5). **Externally**, other states or inter-governmental organizations can rebuke to the state in issue the infringement of human rights (Claude & Weston, 1989, p. 5). On this way, states

are prevented to 'do their own thing' and the doctrine of 'mind your own business' expires.

Second, are human rights **an agenda for preferred world policy** (Claude & Weston, 1989, p. 7). Human rights will become a kind of agenda, a checklist to see what is going on in a certain country or on an international level and how policies can be adjusted to go more in the direction of human rights and international law (Claude & Weston, 1989, p. 7)**.** Third, human rights are **a standard for assessing national behavior** (Claude & Weston, 1989, p. 10). Human rights are not only an agenda, but they are also a concrete standard for the evaluation of national practices.

In conclusion, human rights are **a populist worldwide movement influencing international relations** (Claude & Weston, 1989, p. 12). Human rights are also a movement. It is about people who do something for other people, people who unite to defend the rights of others. What is referred to here as populist, is not the negative meaning but the **positive meaning, in the sense that people or private actors unite themselves to do something around human rights** for themselves and others by using the international instruments that already exist or by striving for new ones (Claude & Weston, 1989, p. 13). Especially **international non-governmental organizations** play an important role in this process. It are the international non-governmental groups who are forming a **global** and **systematized** movement for the fighting against human right violations, and for the development of new human rights (Claude & Weston, 1989, pp. 13- 15) . Finally, the increasing **globalization** leads to social and political interactions among organizations and individuals across the world, with the result that the number of people worldwide who are engaged in human rights activities strongly is increased (Claude & Weston, 1989, pp. 13- 15). In the article Claude and Weston (1989, p. 15) describe globalization as: "*a term that refers to the interaction of information technology and the global economy"* (Claude & Weston, 1989, p. 15). **Partly due to these modern manners of communication and transportation technologies, territorial boundaries are no longer impregnable**. The global **communication and the internet** can also beneficial for the pursuit of human rights. The authors Shaffer and Coye (2017, p. 2) also suggest that public international law **informally** has a significant effect through iterative processes engaging international organizations, soft law norms, information sharing and technologies of governance which facilitate

social and political interaction and transnationally shape the law and legal ordering. By supplying a direct and cheap access **to worldwide information** and creating **debate forums** for interest groups in connection with human rights, the internet **can empower community groups** to fight for their rights, and give people an opportunity to participate in solutions to their own misery (Claude & Weston, 1989, p. 14). **No longer does the world consists of independent sovereign states, impenetrable to anything but the influence of other states in direct proportion to the size and resources of such other states** (Claude & Weston, 1989, p. 15). In this way, human rights can be seen as **transnational process and can become transnational law**. This is an example of what **Jessup** wrote "***that international law had become a central component of transnational law and now increasingly permeates states boundaries"*** (Shaffer & Coye, 2017, p. 2).

Conclusion

To complete this English essay, it is clarifying that the answer to the proposition '***What is transnational law, and what is the role of the state***' isn't unambiguous to formulate. First of all, the author of this paper uses his **criminological background** as a starting point to answer the question. For this reason, the importance of **police and judicial cross-border cooperation** within the concept of transnational law was emphasized. Secondly, the importance of international law, e.g. the role of **human rights** within transnational law is explained. The **establishment** of human rights on the one hand, and the **functions** they fulfil on the other hand, are in the opinion of the author an excellent example of transnational law. Mainly the involvement of **non-governmental organizations, private actors and international governmental organizations** in the realization of human rights is central to transnational law. The functions of human rights; **challenging state sovereignty**, and human rights as a **populist worldwide movement** influencing international relations with a specific focus on **globalization** and **new manners of communication**, are following the author the most important and most central concepts within transnational law.

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