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IN GREECE: A HUMAN RIGHTS “WARZONE” DEMANDS EXPANSION OF THE INTERNATIONAL CRIMINAL COURT

Kyriaki Christodoulou*

I. INTRODUCTION

As in Greece, extreme crises exacerbate transnational organized crime, which creates human rights “warzones;” to solve this infringement of human rights, it is necessary to both establish ad hoc ICC courts and expand the statutory reach of the prosecutorial body.

It is difficult to fathom that human and drug trafficking falls outside the scope of the worst crimes among us. Trafficking of both persons and narcotics perpetrates atrocities against vulnerable individuals within vulnerable states and must be met with the same level of aggression that fuels the crime in the first place.¹ The first step to address these horrific crimes is to characterize them as such, and consequently, place them squarely within the jurisdiction of the International Criminal Court (“ICC”). This court has jurisdiction over “the most serious crimes of concern to the international community as a whole.”²

The ICC, headquartered in The Hague, the Netherlands, is a prosecutorial body, which investigates and tries the world’s most hardened criminals.³ Its primary objective is to end global impunity, where criminals escape punishment due to institutional shortcomings, to act in the name of justice.⁴ However, this entity, established to ensure accountability for deprivations of human rights, is falling short of achieving its goal today.⁵ The ICC’s founding treaty, the Rome Statute, was created in 1998 and took effect in 2002 upon ratification by 60 states and was adopted by 120 states, among which is Greece.⁶ In addition to founding the ICC, the treaty codified the crimes with which the Court is charged, including genocide, war crimes, crimes against humanity, and most recently (after a 2010 amendment), the crime of aggression.⁷

For purposes of this paper, genocide and war crimes need not warrant much further discussion. Briefly, genocide requires a specific intent to destroy, in whole or in part, a

* My deepest gratitude to Professor Benjie Louis for her inestimable guidance; to my friends and editors for their attention to detail; and to my family for impressing upon me the significance of the place from where I come.

¹ Clare Moran, *Human Trafficking and the Rome Statute of the International Criminal Court*, THE AGE OF HUMAN RIGHTS JOURNAL, December 2014, at 33 (referencing Rome Statute of the International Criminal Court art. 5(1), July 17, 1998, 2187 U.N.T.S. 90).

² *Id.*

³ *See Rome Statute of the International Criminal Court*, RESOURCE LIBR. (Jul. 1, 2002), <https://www.icc-cpi.int/resource-library#coreICCTexts> (last visited Oct 2, 2018).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

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national, ethnic, racial, or religious group.⁸ War crimes may only be committed in times of armed conflict.⁹ In contrast, crimes of aggression and those against humanity do not require proof of a specific intent to destroy a qualifying group, nor do they require a nexus to an armed conflict.¹⁰ Crimes of aggression are the planning, preparation, initiation or execution, by a political or military leader of an act of aggression, which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.¹¹ An act of aggression is further defined as a use of armed force against a State.¹²

Moreover, a crime against humanity is an act committed as part of a widespread or systematic attack directed against any civilian population.¹³ The acts include murder, extermination, enslavement, deportation, unjust imprisonment, torture, rape (sexual slavery, enforced prostitution, or other forms of sexual violence of comparable gravity), persecution against an identifiable group, enforced disappearance of persons, apartheid, and any other inhumane acts of similar character, causing great suffering or serious bodily or mental injury.¹⁴

Admittedly, it is uncomfortable to think of Greece as anything but *the* destination for fresh food, clear blue waters, and centuries of beautiful history. Unfortunately, this European state has fallen victim to illicit business networks stealthily profiting off of its vulnerabilities.¹⁵ The Greek financial crisis paired with the European refugee crisis has uniquely impacted Greece and its economy, making it easy for criminals to take advantage of the state by smuggling goods through its accessible sixteen ports and 6,000 islands.¹⁶ Further, because Greek authorities are at their maximum capacities attempting to manage the crises and maintain decent standards of living for their citizens, there is little time to address transnational crime, causing criminals to go unnoticed and untouched.¹⁷ Essentially, in prioritizing its other crises, the issue of transnational crime located within Greek borders has fallen to the bottom of the barrel, in terms of items on the to-do list.¹⁸

⁸ Jennifer Smith, *An International Hit Job: Prosecuting Organized Crime Acts as Crimes Against Humanity*, 97 GEO. L.J. 1111 (2009) (referencing Rome Statute of the International Criminal Court art. 5(1), July 17, 1998, 2187 U.N.T.S. 90).

⁹ *Id.*

¹⁰ *Id.*

¹¹ See *The Global Campaign for the Prevention of Aggression: Definition of the Crime of Aggression*, GLOBAL INSTITUTE FOR THE PREVENTION OF AGGRESSION, <https://crimeofaggression.info/role-of-the-icc/definition-of-the-crime-of-aggression/> (explaining that a manifest violation of the Charter of the United Nations refers to "serious forms of illegal use between states").

¹² *Id.*

¹³ See Rome Statute of the International Criminal Court, *supra* note 3.

¹⁴ See *id.*

¹⁵ E.g. Jeffray Calum, *On Tap Europe: Organised Crime and Illicit Trade in Greece: Country Report*, RUSI.ORG (Feb. 20, 2017), <https://rusi.org/publication/occasional-papers/tap-europe-organised-crime-and-illicit-trade-greece-country-report>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

Organized crime is a profit-making endeavor, operating much like licit business.¹⁹ Large organized groups are major participants in global economic activity.²⁰ “By meeting demand for illicit goods and services, transnational organized crime groups reap ‘profits higher than the gross national products of some developing and developed states.’”²¹ The groups make almost \$44 billion annually from human trafficking and as of a 2007 study, make a total of \$2 trillion in the aggregate.²² These crime syndicates often operate “in states that are weak, acquiescent, corrupt or collusive” and whose economic and humanitarian crises contribute to the inability of states to manage crime on their lands.²³ Usually, organized criminal enterprises structure themselves hierarchically having both economic power sourced from their illicit activities, as well as political influence involving corrupt public officials.²⁴ Specifically in Greece, authorities suggest that criminals now organize themselves in accordance with a more flexible enterprise model: smaller organized crime groups (“OCGs”) carry out particular operations to serve the needs of the criminal network as a whole.²⁵ In other words, the smaller groups work much like independent contractors to achieve the greater objective of making profit.²⁶ Due to this modus operandi, authorities claim that it is harder to: detect the networks, delineate different groups, and dismantle the more flexible (and thus more resilient) criminal structures.²⁷ It is because of these structures that international measures, to combat them have proven inadequate, including the United Nations (“UN”) Convention Against Transnational Organized Crime, both from a definitional perspective and lack of a uniform enforcement mechanism.²⁸

The ICC marks a milestone in efforts to create a more just world.²⁹ Ironically, its idealistic goals embody both its strengths and its inadequacies, therefore steps ought to be taken to fulfill its original objectives.³⁰ Where unstable financial and political climates consume State governance, such as in Greece, ad hoc ICC courts, working under the same jurisdiction as the ICC in the Netherlands, need to be erected to better address transnational crime.³¹

This note, using the example of Greece, argues that where countries and regions are burdened with extreme crises, expansion of ICC jurisdiction and establishment of regional ad hoc courts are necessary to combat crime. Greece is offered as a case study to showcase how its financial and refugee crises within the last decade have made it a preferable location out of

¹⁹ JEROME P. BJELOPERA & KRISTEN M. FINKLEA, CONG. RESEARCH SERV., RL 41547, ORGANIZED CRIME: AN EVOLVING CHALLENGE FOR U.S. LAW ENFORCEMENT, at 1 (2012).

²⁰ See Smith, *supra* note 8, at 1115.

²¹ *Id.*

²² See *id.*, at 1111 (citing Julian Borger, *Organised Crime: The \$2 Trillion Threat to the World's Security*, THE GUARDIAN, Sept. 11, 2007, <http://www.guardian.co.uk/world/2007/sep/12/topstories3.mainsection>.)

²³ See Smith, *supra* note 8, at 1116.

²⁴ See *id.*, at 1114.

²⁵ See Calum, *supra* note 15.

²⁶ See *id.*

²⁷ See *id.* (Merriam-Webster Dictionary defines modus operandi as a distinct pattern or method of operation especially that indicates or suggests the work of a single criminal in more than one crime).

²⁸ See Convention Against Transnational Organized Crime, *infra* note 146.

²⁹ See The Global Campaign for the Prevention of Aggression, *supra* note 11.

³⁰ Linda E. Carter, *The Future of the International Criminal Court: Complementarity as a Strength or a Weakness?*, 12 WASH. U. GLOBAL STUD. L. REV. 451, 451 (2013).

³¹ *Id.*

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which organized criminal networks operate, more specifically, how human and narcotics smuggling operations have taken advantage of its vulnerability.³² Part II of this note provides a brief background of the Greek economic and refugee crises in order to emphasize the hardships that make it easy for criminals to go undetected. Part III explores the specific criminal groups, inherent to the development of this thesis, those of human and drug trafficking. Part IV elaborates on the regional and international measures already in place to combat organized crime, suggesting their inadequacies. Part V offers a solution to redress those inadequacies.

II. BACKGROUND

In order to best understand illicit criminal activity in Greece, it is necessary to first become knowledgeable of the factors, which exacerbate crime and permit its quite profitable existence.³³ The Greek financial crisis paired with the refugee crisis plaguing much of Europe presently,³⁴ created a unique set of circumstances that made Greece an ideal location to carry out criminality at the expense of human rights and regional economic security.³⁵ Citizens have adopted coping strategies to overcome these special challenges, but unfortunately, not all strategies abide by the rules of morality, nor the governing law.³⁶

A. The Greek Economy and The Wall Street Implosion

After Wall Street imploded in 2008, it became obvious that Greece was not prepared to enter crisis mode, particularly because of a decade of overspending leading up to 2008.³⁷ Firstly, Greece and Wall Street are connected in the sense that Greece is part of the EU.³⁸ The launch of the euro instilled a sense of foolish confidence in the European Banks, which proved eager to lend to banks within its territories and foreign ones as well.³⁹ European banks beginning in the early 2000s, started lending to American banks, quite recklessly, and to the banks of Spain, Portugal, and Greece.⁴⁰ Lending, in this context, means the buying of American assets, which were dubbed "rigged to fail."⁴¹ Wall Street helped hedge funds

³² *Id.*

³³ See Calum, *supra* note 15.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ See Phillip Inman, *A Decade of Overspending: How Greece Plunged into Economic Crisis*, THE GUARDIAN, (Jul. 03, 2015), <https://www.theguardian.com/world/2015/jul/03/greece-overspending-defence-wages-taxation-economic-crisis>).

³⁸ *Id.*

³⁹ See Chris Arnade, *Blame the Banks*, THE ATLANTIC (Jul. 16, 2015), <https://www.theatlantic.com/business/archive/2015/07/greece-crisis-banks-greedy/398603/> (the euro was an afterthought of European unification, which followed the EU's economic agreement on coal and steel. This initial agreement was created to diminish, through shared economic incentive, the nationalism that sparked world wars in the past. In 1999, unification became a currency union, with the creation of the euro).

⁴⁰ *Id.*

⁴¹ *Id.*

construct specially engineered products for the Europeans to buy, which were made of the most broken and risky subprime mortgages.⁴² In 2008, when the U.S. housing market collapsed, the Europeans lost big, yet continued to buy the debts of hurting countries, like Greece.⁴³ Specifically, despite its conditions, the banks continued to lend to the Greek State.⁴⁴ This allowed Greece to buy more, causing them to grow more, which collapsed the cost of their borrowing, leading them to borrow more, and so on.⁴⁵ Chris Arnade, a former Wall Street trader, quite perfectly coined this a “self-fulfilling feedback loop with the banks at the center.”⁴⁶

Greece found itself exposed after years of living beyond its means, which is why it alerted the EU of its distress, requiring immediate assistance.⁴⁷ Greece was the main recipient of the EU’s investment aid, but funds started to run dry as the union turned its attention to the new Baltic nations preparing to join the coalition of the single European state.⁴⁸ A lack of supervision caused Greece to continue to overspend, actions further concealed by its decision to join the euro in 2001.⁴⁹ The new currency, to Greece’s enjoyment, kept borrowing costs down and made it effortless to secure funds from commercial banks at shockingly low interest rates, thus increasing Greece’s dependence on these inexpensive loans as a means to maintain overspending and the façade of a healthy economy.⁵⁰ The overspending is most visible in the increased public sector wages, rising departmental spending, defense costs, exacerbated by years of tense relations with neighboring Turkey, spending €4.6bn on defense even three years after the crash.⁵¹

After requesting aid, Greece received two international bailouts issued by the Troika—the International Monetary Fund (“IMF”), the European Central Bank (“ECB”) and the European Commission (“EC”)—which would total more than €240 billion.⁵² The bailouts were aimed to provide Greece with time to stabilize its economy by implementing austerity as

⁴² *Id.* (A subprime mortgage is granted to individuals with a poor credit history who as a result, would not be able to qualify for conventional mortgages).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* (Arnade, as a Wall Street bond trader and quantitative analyst, turned social activist, has a relevant and unique perspective on the impacts of the Wall Street financial implosion because of his experience on Wall Street and his photographs and articles commenting on the deplorable conditions throughout society after the crisis).

⁴⁷ See Phillip Inman, *A Decade of Overspending: How Greece Plunged into Economic Crisis*, THE GUARDIAN (Jul. 03, 2015), <https://www.theguardian.com/world/2015/jul/03/greece-overspending-defence-wages-taxation-economic-crisis>.

⁴⁸ *Id.* (Investment aid was provided to Greece by the Troika (EC, ECB and the IMF), in the form of loans in exchange for tax hikes and spending cuts. The term for an increase in taxes and a cut in spending is austerity, which many critics view as a political technique rather than economic tool).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See Liz Alderman et al., *Explaining Greece’s Debt Crisis*, N.Y. TIMES (June 17, 2016), <https://www.nytimes.com/interactive/2016/business/international/greece-debt-crisis-euro.html> (The Troika is the powerhouse threesome responsible for Greece’s financial future within the EU during the financial crisis. The colloquial term, “troika” became a frequent one to refer to the International Monetary Fund, the European Central Bank and the European Commission, which collectively planned and managed the economic decisions of the Greek Government with the hope to aid in recovery).

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a rehabilitative measure and to satisfy creditors.⁵³ The crisis, coupled with the implementation of austerity measures resulted in large socioeconomic changes, deeply burdened the Greek population.⁵⁴ It affected Greek families in ways ranging from income reductions to job losses and business closures.⁵⁵ A 2016 study commissioned by the European Bank for Reconstruction and Development shows that only 58 percent of Greek households who participated in the survey could afford to eat meat, fish, or poultry every second day on a weekly basis, whereas German families could enjoy these protein sources daily, and in Italy, 80 percent of households could afford this consumption.⁵⁶

The debt crisis has had an undeniable impact on local illicit markets.⁵⁷ The reduction in Greeks' purchasing power, as above enumerated, inconsistent with Greek demand, has made the black market much more enticing to consumers.⁵⁸ A reduction in salaries due to business closures and job losses has forced Greeks to look for alternative ways to purchase goods and services.⁵⁹ By the same token, a reduction in resources has left law enforcement ill equipped to respond, particularly in the context of the unprecedented levels of migration into the country since early 2015.⁶⁰

B. The European Migration Crisis

Europe is experiencing "an unprecedented displacement crisis."⁶¹ Natural disasters and crises are forcibly driving more than 65 million people from their home countries.⁶² Of the 65 million refugees, one million have arrived in the EU, either in the escape of conflict or in pursuit of the promise of economic security.⁶³ Though these numbers have decreased since the summer of 2016, tens of thousands are still arriving in need of immediate assistance after life-threatening sea and land journeys.⁶⁴ The civil war in Syria continues to be the most significant impetus compelling migration.⁶⁵ However, ongoing violence in Afghanistan, Iraq,

⁵³ *Id.* (Austerity is a political-economic term that refers to policies aimed to reduce government deficit by implementing spending cuts, steep tax increases, or a combination of both; whether it is an effective approach or more detrimental than helpful is up for debate).

⁵⁴ *Id.*

⁵⁵ *The Impact of the Crisis in Households in Greece*, EUR. BANK FOR RECONSTRUCTION AND DEV. (2016), <http://litsonline-ebd.com/the-crisis-impact-in-greece/>.

⁵⁶ *Id.*

⁵⁷ See Calum, *supra* note 15.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See *Refugee Crisis in Europe*, EUROPEAN COMMISSION, http://ec.europa.eu/echo/node/4115_fr (last updated Jun. 20, 2016).

⁶² See *id.*

⁶³ See *id.* (explaining that refugees are persons who have been displaced from their homes without choice in escape of war, persecution, or natural disaster).

⁶⁴ See *id.* (explaining that refugees, many of whom are young children, have just made the most difficult journeys of their lives, facing extreme malnourishment and therefore immediately require provisions including clean water, health care, emergency shelter, and legal aid).

⁶⁵ See *Migrant crisis: Migration to Europe explained in seven charts*, BBC NEWS (Mar. 04, 2016), <https://www.bbc.com/news/world-europe-34131911> (explaining that the Syrian Civil War broke out and has

and Eritrea and the poverty in Kosovo are contributing factors that leave people willing to put their lives at risk for possible financial security and overall betterment.⁶⁶

Along with its European Agenda for Migration, the EC has taken a comprehensive approach to confront the crisis head-on.⁶⁷ This approach offers assistance to: (1) the Member States, (2) the impacted transit countries such as Greece, Hungary, and Serbia whose own response capacities are not sufficiently equipped to support the influx of migrants, and (3) the major countries and regions from where refugees migrating to the EU originate.⁶⁸ The Commission has stepped up its resources targeted to refugees from €200 million in 2015 to €300 million in 2016.⁶⁹ The funding is funneled into the UN Refugee Agency (“UNHCR”), the World Food Programme (“WFP”), and other organizations, including the Red Cross, to help refugees in and around Syria.⁷⁰ At the donors’ conference in London in February 2016, the EU and its Member States pledged an additional €3 billion to assist the Syrian people who at one point constituted the majority of migrants seeking refuge.⁷¹

Despite promising efforts, EU humanitarian aid does not adequately address the root causes of displacement and migrations, such as civil war, human rights abuse, and economic poverty.⁷² While the assistance provided to persons meeting the necessary criteria is invaluable, it fails to answer the long-term objective of dividing the desperate and suffering from the allure of illicit crime.⁷³

C. The European Migration Crisis: The Greek Experience

For people experiencing the turbulence of the Middle East, as well as South and Central Asia, Greece is an ideal entry point into Europe through the Aegean and Mediterranean Seas.⁷⁴ The strategic position of its islands in the Mediterranean, just west of the Middle East, makes it an “easy” boat ride away.⁷⁵ Syria is right below Turkey, the largest immediate eastern neighbor of Greece and the precise spot from which many of the refugees are fleeing.⁷⁶ The Aegean Sea is the body of water between Greece and Turkey in the northeastern portion of the Mediterranean.⁷⁷ The Aegean contains hundreds of the famed

been ongoing for seven years, and that it is an armed conflict between the Ba’athist Syrian Arab Republic led by President Bashar al-Assad and the rebels in opposition to the government).

⁶⁶ *See id.*

⁶⁷ *See* EUROPEAN COMMISSION, *supra* note 61 (explaining that the European Agenda for Migration is, as it sounds, a migration management system implemented to combat the human tragedies at the EU’s borders, together with its Member-States. With this Agenda, the EU aims to provide its States with tools, primarily through funding of different programs such as the joint search and rescue operations, the safe and legal resettlement of people to Europe, and the Regional Protection and Development Programs).

⁶⁸ *See id.*

⁶⁹ *See id.*

⁷⁰ *See id.*

⁷¹ *See id.*

⁷² *See id.*

⁷³ *See id.*

⁷⁴ *See generally* *Refugees in Limbo: Greece*, INT’L RESCUE COMMITTEE (last visited Sept. 24, 2019), <https://www.rescue.org/country/Greece>.

⁷⁵ *See id.*

⁷⁶ *See id.*

⁷⁷ *See id.*

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Greek islands, including Chios, Mykonos, Santorini, Rhodes, Kos, Naxos, and many more.⁷⁸ According to EU law, asylum-seeking refugees are required to lodge their applications in the first country they enter, thereby halting their trips from the moment they set foot on land.⁷⁹ At this time and for this reason, Greece hosts about 50,000-plus asylum-seeking refugees, who are unable to legally move further into Europe.⁸⁰ About 38,000 are on the mainland and around 11,000 of the refugees are located on the islands of Lesbos, Chios, Kos, Samos and Leros.⁸¹ More than half are women and children and greater than 3,000 traveled alone.⁸²

Contrary to popular belief, the refugee crisis is not a humanitarian crisis, but a political one.⁸³ The EU was founded on a commitment to international law and human rights.⁸⁴ However, the Union has adopted stricter border restrictions in order to contain the influx of migrants seeking sanctuary, despite their vulnerabilities.⁸⁵ Notwithstanding the new policies given its geographic position near Turkey and surrounded by the Aegean, Greece shoulders much of the responsibility for the lives of those who have successfully reached Europe.⁸⁶ To illustrate, with the March 2016 agreement restricting border crossings, some 16,000 refugees traveled to the Greek islands and remain in camps for months or years at a time, until granted asylum.⁸⁷

Assistance to Greece and its refugees comes from a plethora of sources.⁸⁸ The EC and the International Rescue Committee ("IRC") are a few organizations that provide support.⁸⁹ The commission invested an initial €83 million in funding for emergency support to refugees, hosted in over 30 sites.⁹⁰ The IRC approaches relief with the ultimate goal of integration; its relief centers on the idea that access to the workforce is the key to successful integration.⁹¹ The IRC works with local organizations to implement employment readiness programs for refugees.⁹² It also provides information regarding available services, legal rights, and options for asylum, relocation, and family reunification.⁹³ Further, it has created

⁷⁸ See *List of Greek Islands*, SAILING HEAVEN (last visited Sept. 26, 2019), <https://sailingheaven.com/information/list-of-greek-islands/>.

⁷⁹ See Jon Henley, *What is the Current State of the Migration Crisis in Europe*, THE GUARDIAN (Nov. 21, 2018), <https://www.theguardian.com/world/2018/jun/15/what-current-scale-migration-crisis-europe-future-outlook>.

⁸⁰ See *Refugees in Limbo*, *supra* note 74, at 10.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Human Rights and Democracy*, EUROPA (last visited Sept. 26, 2019), https://europa.eu/european-union/topics/human-rights_en.

⁸⁵ See *Refugees in Limbo*, *supra* note 74, at 10.

⁸⁶ *Id.* (It is important to realize that not only Greece, but Italy as well, for similar geographic reasons, bears the burden of safely hosting these new immigrants).

⁸⁷ *Id.* (The camps are set up in relative proximity to the Greek ports, made up of tents, and communal bathrooms and showers, to accommodate the refugees waiting to be granted asylum).

⁸⁸ See EUROPEAN COMMISSION, *supra* note 61, at 9.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ See *Refugees in Limbo*, *supra* note 74, at 10.

⁹² *Id.*

⁹³ *Id.*

safe zones for unaccompanied children and for those separated from their families, providing them with a safe alternative to police detention until shelters or other means of care become available.⁹⁴ The IRC is also collaborating with Greece's ministry of migration policy and humanitarian organizations to address violence against women and girls.⁹⁵

Efforts of such organizations, both local and international, are only partially effective.⁹⁶ While they do provide seemingly God-sent relief to people in dire need, the stealth of organized crime is able to supersede it with its profitable pull.⁹⁷ The refugees more often-than-not fall victim to exploitation, whether caught in the crossfire of narcotics smuggling or human trafficking.⁹⁸

III. HUMAN TRAFFICKING AND DRUG SMUGGLING NETWORKS

Generally speaking, Greece and organized crime have quite the peculiar dynamic in the sense that criminality is not bred in the country. Rather, the EU Member-State serves as a channel through which OCGs are able to operate their business.⁹⁹ Though there is some disagreement, scholars explain that organized crime in Greece is predicated on the idea that it is an "imported phenomenon" and associated with "migrant groups."¹⁰⁰ Embedded in the Greek social consciousness is this idea that organized crime is an external threat with ethnicity being a key variable.¹⁰¹ Even prior to the EU and the influx of migrants, transnational crime has impacted Greece with the idea that the worst of it has been exacerbated by these crises, and is primarily carried out by non-Greeks, although locals get involved in some cases.¹⁰² In the early 1990s, Greece received a large number of immigrants; perhaps it is not random that organized crime began to be viewed, simultaneously with the surge in migration, through this "alien conspiracy" lens.¹⁰³ Given this, it is easy to draw the inference that the refugee crisis of the present-day is linked to the perpetration of crime.¹⁰⁴

Greece's long borders, 14,000 kilometers of coastline and 2,000 islands, are difficult to patrol and are exceptionally vulnerable to smugglers of illicit goods and services.¹⁰⁵ Europol notes that "currently, the largest number of irregular migrants arrives in Greece" and that "significant numbers of smuggling networks facilitate migrants from Turkey and North

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Calum, *supra* note 15 (citing Georgios Antonopoulos & Georgios Papanicolaou, *Unlicensed Capitalism, Greek Style: Illegal Markets and 'Organized Crime' in Greece*, 4 (Wolf Legal Publishers 2014)).

¹⁰⁰ *Id.* at 3.

¹⁰¹ *Id.*

¹⁰² *Id.* at 4.

¹⁰³ Alexandros Christodoulides, *Organized Crime in Greece: An External or Internal Problem?*, KEDISA.GR (Jun. 25, 2018), <https://kedisa.gr/en/organised-crime-in-greece-an-external-or-internal-problem> (explaining alien conspiracy as the theory that organized crime is imported from abroad and is connected to ethnic minorities who corrupt the society of the country to which they immigrate).

¹⁰⁴ *See id.* at 13.

¹⁰⁵ Calum, *supra* note 15, at 4-5.

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Africa to Greece and Italy.”¹⁰⁶ The scale of the refugee crisis and its link to other forms of criminality has proven to be quite the challenge to counter.¹⁰⁷ The uncontrolled flow of migration poses multiple dangers to national and regional security and economy, as human trafficking and drug smuggling organizations maintain control over vulnerable people and corrupt officials as surreptitiously as imaginable.¹⁰⁸

A. Human Trafficking and Crisis

The Greek refugee crisis has created a gold rush of sorts for human traffickers and consequently a daunting problem for Greek authorities and European police units.¹⁰⁹ “Greece has proved to be an exemplary case study in how no money leads to more problems, and its latest problem is sex trafficking,” says reporter Gregory Frye.¹¹⁰ “Suddenly, people find themselves dodging rubber bullets; taking devastating drugs...while their government’s look on, wondering how to salvage the situation.”¹¹¹ European officials have observed the picture of the far-flung organized crime networks that are gaining from the despair of Syrian, Iraqi and Afghan migrants fleeing to Greece to escape civil unrest and oppression in their home countries.¹¹² Professional traffickers prey on vulnerable refugees, predominantly female, through false job adverts, who then are emotionally manipulated or physically threatened into the sex trade.¹¹³ The latest ploy in Greece by foreign traffickers, largely from Turkey, Albania, Africa, and Italy, seek to threaten the women and their families with spiritual juju curses, which are unfortunately compelling.¹¹⁴ There are additional concerns regarding the safety of migrant children.¹¹⁵ Police worry many children have also fallen victim to the trade given their disappearance from reception centers across the country.¹¹⁶

Pimps and traffickers are another group that are benefitting from the Greek financial crisis.¹¹⁷ This modern-day spin on slavery counts for an estimated \$32 billion industry-wide.¹¹⁸ Victims of human trafficking are poor, isolated, and marginalized and the problem is

¹⁰⁶ *Id.* at 4 (citing Europol, *Migrant Smuggling in the EU*, Feb. 2016, at 5) (Europol is a policing agency of the EU, charged with handling criminal intelligence and combating organized crime and terrorism through cooperation among Member-States).

¹⁰⁷ Christodoulides, *supra* note 103, at 14.

¹⁰⁸ *Id.*

¹⁰⁹ See Jaime Dettmer, *Europe's Migration Crisis A Boon for Organized Crime*, VOA NEWS (Sept. 08, 2015), <https://www.voanews.com/a/europe-migration-crisis-a-boon-for-organized-crime/2952482.html>.

¹¹⁰ See Gregory Frye, *Women from all over the world are being sex-trafficked into Greece*, VICE (Oct. 25, 2013), <https://www.vice.com/sv/article/exmddm/the-attendants-the-key-players-in-greeces-sex-trafficking-crisis>.

¹¹¹ Frye, *supra* note 110.

¹¹² Dettmer, *supra* note 109.

¹¹³ Frye, *supra* note 110.

¹¹⁴ *Id.*

¹¹⁵ Dettmer, *supra* note 109.

¹¹⁶ *Id.*

¹¹⁷ See Jameela Freitas, *The tragedy of young migrants in austerity-hit Greece*, NEW INTERNATIONALIST (Jul. 20, 2015), <https://newint.org/features/web-exclusive/2015/07/30/world-day-against-trafficking-migrants-austerity-greece>.

¹¹⁸ *Id.*

further exacerbated by the poor economic state.¹¹⁹ No group is more isolated than rootless, undocumented migrants fleeing conflict and risking everything for a better life, particularly in Greece. The country's economic crisis, with crippling Greek citizens, pushes refugees further to the bottom of the barrel.¹²⁰ Their vulnerability coupled with Greece's overwhelming porous borders and suffering economy, is an opportunistic environment for traffickers to exploit migrants' aspirations in hopes for better financial realities.¹²¹

B. Narcotics Smuggling and Crisis

Greece's geographical position and its role as a gateway between the East and the West makes it a strategic route for global drug trade, the most lucrative of the international criminal trades.¹²² The global drug smuggling networks profits account for almost half of the revenue of the world's organized crime.¹²³ According to a report by the Center for the Study of Democracy, "due to its geographical position Greece is ideal for cocaine trafficking by sea, either directly from the producing countries of South America or indirectly through the ports of Spain and Italy."¹²⁴ Greece therefore represents "a key entry point for cocaine directed to South-eastern Europe."¹²⁵ The center calls Greece a "gateway to Europe for traffickers smuggling cannabis and heroin from the Middle East and Southwest Asia to the west."¹²⁶ Greece is a destination country for quantities of cannabis coming from abroad, chiefly Albania, for both domestic consumption and for transportation to the EU.¹²⁷ The various methods to transport cannabis into Greece, is quite creative admittedly.¹²⁸ The methods range from private cars and trucks, to jet skis, and postal parcels.¹²⁹ The majority of cannabis products from outside of Europe come from North Africa and Lebanon, mostly in freighters and fishing boats, while most cannabis produced in Europe travels through either through Greece or Italy.¹³⁰

Furthermore, the country's proximity to other countries that produce and traffic drugs makes it one of the main routes for transporting heroin through both its land and sea borders.¹³¹ More specifically, for heroin in particular, Greece is one of the main transit countries for quantities sent to Europe.¹³² That is why heroin seizures in Greece often involve large quantities.¹³³ For example, a stopped refrigerator truck was found to be transporting 369

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Ana, *Special Report: The Drug Routes through Greece to Europe*, THE NATIONAL HERALD (Oct. 23, 2017), <https://www.thenationalherald.com/179088/special-report-drug-routes-greece-europe/>.

¹²³ *Id.*

¹²⁴ Calum, *supra* note 15.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ See Ana, *supra* note 122.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

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kilos of the drug en route to Belgium and 20 kilos of heroin were discovered on a coach bus arriving from Turkey.¹³⁴

To shed some light on the heroin "business," neighboring Albania acts as the collection point for the drug, where it is then transported by Albanian criminal organizations to destinations such as Greece.¹³⁵ While Greek nationals have been discovered to be involved in the preparation and "cutting" of heroin, Afghan nationals and Pakistanis are often involved in its trafficking.¹³⁶ There are a variety of transportation methods to smuggle drugs across borders; the greatest quantities are moved from the countries where they are produced to Turkey and then through Italy, Greece, or the Balkans, three of the best available routes.¹³⁷

On another note, the drug colloquially known as "shisha" has become representative of the degradation of Greece.¹³⁸ It has been coined the "cocaine for the poor" and due to the financial crisis has increased in both demand and supply.¹³⁹ Depression, drug abuse and crime have risen dramatically due to years of recession.¹⁴⁰ The head of Greece's anti-drug center, Charalampos Pouloupoulos, explains that there is a widespread sense of misery among discouraged workers who are becoming more self-destructive and are turning to cheap drugs to create a feeling of escape.¹⁴¹ Similarly, the refugee crisis has created environments of despair and hopelessness among migrants.¹⁴² Refugees seeking asylum and a better life in economically struggling Greece have turned to drug abuse and desperation to escape misery and conversely for drug lords, to exploit their vulnerability.¹⁴³

IV. REGIONAL COMBATIVE MEASURES

*"If crime crosses borders, so must law enforcement. If the rule of law is undermined not only in one country, but in many, then those who defend it cannot limit themselves to purely national means."*¹⁴⁴

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ See Helena Smith, *Greek addicts turn to deadly shisha drugs as economic crisis deepens*, THE GUARDIAN (May 16, 2013, 3:08 PM), <https://www.theguardian.com/world/2013/may/16/greek-addicts-sisha-drug-crisis>.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² See Ourania Kotsiou et al., *Impact of the Refugee Crisis on the Greek Healthcare System: A Long Road to Ithaca*, 15(8) INT'L J. OF ENVTL. RES. PUB. HEALTH 1790 (Aug. 20, 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6121252/pdf/ijerph-15-01790.pdf>.

¹⁴³ *Id.*

¹⁴⁴ Kofi A. Annan, Secretary-General, United Nations, Address at the Opening of the Signing Conference for the United Nations Convention Against Transnational Organized Crime (Dec. 12, 2000), http://www.unodc.org/unodc/en/about-unodc/speeches/speech_2000-12-12_1.html.

A. On Human Trafficking

The European Council and Parliament implemented the Directive on preventing and combatting trafficking in human beings and protecting its victims in April of 2011.¹⁴⁵ The Directive categorizes trafficking in human beings as a serious crime in gross violation of fundamental human rights and promises that elimination and prevention is a priority for the Union and its Member States.¹⁴⁶ It also calls for continued cooperation among law enforcement authorities of the Member States, including the sharing of information, as well as continued open dialogue between police, judicial, and financial authorities.¹⁴⁷ The Directive represents a global initiative that encourages working with civil society organizations, particularly in policy-making initiatives, information and awareness-raising campaigns, research and education programs and in training as well as in monitoring and evaluating the impact of anti-trafficking measures.¹⁴⁸ It also adopts an integrated, holistic, and human rights approach to prevention, prosecution and protection of victims' rights and make the degree of punishment relative to the category of vulnerability.¹⁴⁹

In other words, when the victim's life has been endangered or if the crime involved serious violence, such as rape or torture, the penalty is more severe.¹⁵⁰ In determining punishment, authorities consider specific factors of victim vulnerability, which include gender, pregnancy, state of health, and disability.¹⁵¹

The Directive discusses the process for establishing jurisdiction to carry out the most effective prosecution of international criminal groups.¹⁵² When the center of activity of these groups is in a Member State and the trafficking is carried out in a third country, jurisdiction should be established where the offender is a national of that Member State.¹⁵³ Jurisdiction can also be established where: 1) the offender is a habitual resident of a Member State, 2) the victim is a national or habitual resident of the Member State, or 3) the offense is committed for the benefit of a legal person established in Member State territory and the offense was committed outside of that State.¹⁵⁴ The Directive is also concerned with the rights of the victims before, during, and after criminal proceedings.¹⁵⁵ It recommends assistance and support to be available to them provided by the Member States.¹⁵⁶ These resources should include a minimum set of measures that are necessary to enable the victim to recover and escape from their traffickers.¹⁵⁷ This support, based on the relative needs of each

¹⁴⁵ See Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011, on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision, 2002/629/JHA, 54 O.J. (L 101), 1, 1-11.

¹⁴⁶ *Id.* at 1.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at § 12.

¹⁵¹ *Id.*

¹⁵² *Id.* at § 15.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at § 17.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

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victim, should be provided as soon as reasonable grounds exist to indicate the victim has been trafficked.¹⁵⁸ Where necessary, assistance should continue to be provided even after the proceedings have ended, such as persistent medical attention.¹⁵⁹

The United Nations Convention Against Transnational Organized Crime was established to promote cooperation and combat organized crime in the most efficient manner possible.¹⁶⁰ The Convention first begins by officially criminalizing participation in an organized criminal group.¹⁶¹ Interestingly enough, it also criminalizes corruption and institutes measures to fight it in the form of legislation and others to promote integrity and to prevent, detect, and punish the corruption of public officials.¹⁶² The Directive allows for each State Party to establish jurisdiction over the offenses committed, when the offense is committed in its territory, or on board a vessel flying its flag, when the offense is committed against a national of that State Party, or committed outside the territory with an aim of commission within.¹⁶³ It also permits each State Party to create its own measures to establish jurisdiction, rather than simply extraditing the offender.¹⁶⁴

Though, for an extradition request to be approved for one offender in a specific State Party, the offense for which extradition is sought must be punishable under the domestic law of both the requesting State Party and the requested State Party.¹⁶⁵

B. On Narcotics Smuggling

Offenses involving narcotics were among the first crimes to be recognized under international law, dating back to the Shanghai international opium conference of 1909.¹⁶⁶ This conference translated into legal obligations and since then, thirteen international agreements on drug control have been established along with ten international instruments on drug related issues.¹⁶⁷ The most influential agreements considered on drug crimes include the Single Convention on Narcotic Drugs in 1961, the Convention on Psychotropic Substance in 1971 and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substance in 1988, ("1988 UN Convention"). The UN Convention Against

¹⁵⁸ *Id.* at § 18.

¹⁵⁹ *Id.*

¹⁶⁰ United Nations Convention against Transnational Organized Crime and its Protocols, Nov. 15, 2000, UN Doc A/GA RES/55/383.

¹⁶¹ *Id.* at Art. 5.

¹⁶² *Id.* at Art. 6.

¹⁶³ *Id.* at Art. 15.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ See Andreas Schloenhardt, *Transnational Organised Crime and the International Criminal Court Developments and Debates*, 93 U.O. Law J. (2005) (referencing Neil Boister, *Penal Aspects of the UN Drug Conventions* (Kluwer Law, 2001) 27).

¹⁶⁷ *Id.* (referencing Patrick Robinson, 'The Missing Crimes' in Antonio Cassese, Paola Gaeta and John RWD Jones (eds), *The Rome Statute of the International Criminal Court: A Commentary*, vol. 1 (2000) 497, 498).

Illicit Drug Traffic established a comprehensive regime directed specifically at preventing and suppressing drug trafficking and associated crimes.¹⁶⁸

While there are many treaties and agreements internationally that make attempts to eradicate drug related offenses, none arguably comprehend the impact of the drug trade to the extent that they should.¹⁶⁹ Absent from the general international consensus is the realization of the seriousness of drug crimes and their effect on human rights.¹⁷⁰ The Single Convention on Narcotic Drugs created rules regarding the agricultural production, manufacture, trade and consumption of the four different schedules of drugs.¹⁷¹ The UN's role subsequently was to monitor the members' compliance to the Convention, putting a heavier obligation on the individual sovereign nations than it did on an international institution, which only had an indirect role.¹⁷² It also established the framework for the International Narcotics Control Board ("INCB"), which is the independent, quasi-judicial monitoring body for the implementation of the UN international drug control conventions.¹⁷³ This method emphasizes the UN's role as a supervisor, rather than an enforcer, which was ultimately left up to the individual member states.¹⁷⁴ Eventually, the types of drugs being used began to change from traditional narcotics to psychotropic drugs.¹⁷⁵ The international device established to address this shift in use was the UN Convention on Psychotropic Substances.¹⁷⁶ Similarly to the way the 1961 Single Convention divided substances into different schedules relative to their risks and addictive qualities, so too did the 1971 Psychotropic Convention.¹⁷⁷ It limited the use of substances to medical and scientific uses and attempted to control the manufacture and export of each substance by reliance on prohibition, inspection and licensing.¹⁷⁸

Finally, the 1988 UN Convention is the most recent and most comprehensive of the treaties on drug trafficking.¹⁷⁹ The Convention acknowledges drug trafficking as an international criminal activity.¹⁸⁰ The treaty now requires: parties to criminalize under their national legal systems certain drug-trafficking related offenses; parties to cooperate in the investigation and prosecution of such offenses; and to extradite or prosecute those offenses that occurred in their territory or were committed by their nationals.¹⁸¹ The Convention could

¹⁶⁸ United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988, U.N. Doc. E/CONF.82/15 (1988), 28 I.L.M. 493 (1989) (entered into force Nov. 11, 1990)).

¹⁶⁹ See Juan Carlos Sainz-Borgo, *The International Criminal Court, Drug Trafficking and Crimes against Humanity: A local Interpretation of the Rome Statute*, 15 J. JURIS. 373 (2012).

¹⁷⁰ *Id.*

¹⁷¹ See Heather Kiefer, Note, *Just Say No: The Case Against Expanding the International Criminal Court's Jurisdiction to Include Drug Trafficking*, 31 Loy. L.A. Int'l & Comp. L. Rev. 157, 160 (2009).

¹⁷² *Id.*

¹⁷³ International Narcotics Control Board, Mandate of INCB (2004), <http://www.incb.org/incb/mandate.html>.

¹⁷⁴ See Kiefer, *supra* note 171.

¹⁷⁵ *Id.* (Merriam-Webster's Dictionary defines psychotropic drugs as that which acts on the mind. In other words, it is any drug affecting the mind, body or emotions. For example, cocaine is characterized as a psychotropic drug, as are some legal medications prescribed for bipolar disorder).

¹⁷⁶ *Id.* at 161 (referencing Convention on Psychotropic Substances, Feb. 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175).

¹⁷⁷ See U.N. Convention, *supra* note 168, at art. 5.

¹⁷⁸ *Id.* at art. 8, 13, 15.

¹⁷⁹ Kiefer, *supra* note 171, at 162.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

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be used as a legal basis for extradition.¹⁸² Before the ICC, the UN and its agencies were the only international mechanisms to control drug trafficking and related crimes.¹⁸³ As trafficking and drug abuse continues, especially in vulnerable environments like Greece, a need for change becomes more apparent.¹⁸⁴

V. SOLUTION: PROPOSAL TO EXPAND ICC JURISDICTION AND ALLOW FOR ESTABLISHMENT OF AD HOC COURTS IN TIMES OF CRISIS

*"If the enemies of progress and human rights seek to exploit the openness and opportunities of globalization for their purposes, then we must exploit those very same factors to defend human rights and defeat the forces of crime, corruption and trafficking in human beings."*¹⁸⁵

Much of the legislation on combating organized crime encompasses mere suggestions to Member State governments for the management of human and drug trafficking.¹⁸⁶ These suggestions, which in no way create binding authority to be followed, do not meet the severity and scale of the epidemic.¹⁸⁷ When it comes to these criminal enterprises which wreak havoc on principles of humanity, particularly in times of hardship for specific states, combative efforts must represent a true and authoritative initiative to effectuate an ultimately uniform attempt at defeating criminal networks.¹⁸⁸ This necessary uniformity, which will be embodied by one of the final steps of the management process—the criminal proceedings of the ICC as will herein be proposed—will trickle down to each Member State.¹⁸⁹ Each Member State will then have a duty to modify its legislation to address the specific crime-exacerbating factors within its borders.¹⁹⁰

For example, the Greek experience of human and drug trafficking is different in kind from the French one because of its decade-long financial crisis and its status as a refugee-destination.¹⁹¹ Various context-specific factors—cultural, socio-economic and political—impact the life of organized criminal activity and therefore, preventative and thwarting measures ought to reflect the diversity.¹⁹²

The discussion above surely invites the impression of Greece's vulnerability; the Greek government, burdened with austerity, is attempting to appease European authorities with proof of required policy implementation, while simultaneously, attempting to provide

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Calum, *supra* note 15, at 4.

¹⁸⁵ Convention Against Transnational Organized Crime, *supra* note 160 at art. 3.

¹⁸⁶ *Id.* at 24.

¹⁸⁷ *Id.* at 36.

¹⁸⁸ *Id.* at 11.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ See Philip Gounev & Tihomir Bezlov, *Examining the Links Between Organized Crime and Corruption*, CENTER FOR THE STUDY OF DEMOCRACY (2010), https://ec.europa.eu/homeaffairs/sites/homeaffairs/files/doc_centre/crime/docs/study_on_links_between_organized_crime_and_corruption_en.pdf (last visited Sept. 9, 2019).

¹⁹² *Id.* at 12.

immediate relief to its people.¹⁹³ Given Greece's state, it is best to approach the rectification of the OCG problem with less of a retributivist agenda, in the sense that punishment is not the only objective; efficiency and practicality should be primary goals as well.¹⁹⁴ Severity of punishment should not depend on the type of victim against whom the crime was committed, as the EU Directive suggests, but on the fact that the crime was perpetrated.¹⁹⁵ Make no mistake however; this technique is not solely a fundamental means of punishment, but one that at its core, is a victim's ultimate guardian. It aims to offer those who find themselves inescapably involved, a chance to escape, through expansion and practicality.¹⁹⁶

The most important recommendation in this proposal is to grant the ICC jurisdiction in the punishment of offending peoples perpetrating the relevant crime within the Greek territory, and others' as well.¹⁹⁷ The task is multifold: first, it will be necessary to expand the scope of crimes prosecuted by the ICC; this would necessarily require a bit of persuasion in the characterizing of drug trafficking as a crime against humanity, crimes with which the prosecutorial body is charged.¹⁹⁸ Unlike drug trafficking, trafficking of human beings falls under the umbrella of modern-day slavery, which is already offered within the statutory definition of crimes against humanity.¹⁹⁹ Simply put, this method proposes elevating the threshold of the crimes to that punishable by the ICC as a crime against humanity.²⁰⁰ Thus, catching the offending criminal on domestic territory and requiring the appropriate authorities to extradite him/her to the ICC in the Netherlands to be tried and prosecuted will be the next step, as it would stand at this point.

In a perfect world, catching international criminals who commit transnational crime at a precise domestic location and having them shipped off to The Hague to be tried and prosecuted would be phenomenal, as the ICC now operates, absent the types of crimes with which the note is concerned. However, this process would make it burdensome to serve justice and would even make justice a less likely result, allowing criminals the possibility to slip through the cracks and escape. Thus, there is a more rational and effective solution.

A more practical solution for countries exhibiting crises to such an extent as Greece, is to erect ad hoc ICC courts within specific regions of the world, which would operate in dire times, for the sole purpose of carrying out the work of the bigger Court, though just a little closer to home. These courts would operate under the authority of the ICC, utilizing its rule of law to convict offenders. The courts ought not to be located in each state; one can be erected in Southeast Europe, possibly on Greek territory, and be responsible for the crimes,

¹⁹³ *Id.* at 233.

¹⁹⁴ *Id.* at 234.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ See International Criminal Court, *How the Court Works*, <https://www.icc-cpi.int/about/how-the-court-works> (the ICC's founding treaty, the Rome Statute, grants the court jurisdiction over four main crimes: genocide, crimes against humanity, war crimes, and crimes of aggression. The court, located in The Hague in the Netherlands, may exercise jurisdiction where any of these crimes occur where committed by a State Party national or in the territory of a State Party).

¹⁹⁸ *Id.*

¹⁹⁹ See Moran, *supra* note 1 (Moran and other scholars have also proposed extending the reach of the Rome Statute to the crime of human trafficking, since the crime is as egregious as the others that fall within the remit of the Statute).

²⁰⁰ *Id.*

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which occur within that geographical area. These courts, acting as agents of the ICC would have a greater reach, in the sense that court personnel, including those of lawyers and judges, being from the area of concern, would have a better understanding of the crime and its impact, allowing for appropriate punishment and convictions and sentencing consistent with those of the area of concern. Additionally, courts located within the relative location within which a crime was committed, would fill the cracks of those loopholes that continually allow perpetrators to escape liability. Rather than awaiting extradition to the Netherlands from Greece, which has a calculated distance of anywhere from 2,000-3,000 kilometers, criminals will be detained in State prisons immediately upon conviction and be able to stand trial without a travel requirement.

Transnational organized crime is a domestic phenomenon perpetrated by international criminals with an agenda that has no respect for borders.²⁰¹ In order to match the seriousness of organized crime, a uniform approach to prosecution and international jurisdiction are a necessity if such offenses are ever to be defeated. As with any new idea however, launching smaller judiciaries as agents of the larger ICC requires resources, primarily monetary, and further cooperation among the international community.

Crimes against humanity are deliberately committed as part of a systematic practice on an identifiable part of a civilian population.²⁰² This proposal by no means is meant to undermine such other crimes, as the World War II atrocities for example, but rather expand the meaning to address infringement of human rights in the 21st century: "modernization" of the crime, if you will. The impact of crime on economies and on human rights, and quite cyclically, the exacerbation of crime through weak economies is aggravated when a State government is ill equipped and unable to address it, and as a consequence, victims (individuals and state economies) suffer the worst evils imaginable.²⁰³ Addressing the issue will require codifying a new definition of crimes against humanity within the Rome Treaty to address crimes in dire times. We ought to expand what crimes against humanity normally encompass by considering impact and context and not just nature of the criminal activity. Therefore, human and narcotics trafficking would better be categorized as crimes against humanity, explicitly, because of their tendency to exploit the most vulnerable in the obscenest ways, particularly in suffering political, social, and/or economic climates.

Fundamental principles of human rights and their preservation call for, or rather, demand explicit characterization and codification of human and drug smuggling in the Rome Statute. If the idea of human rights alone fails to provide enough incentive for such codification, it is within the realm of this paper to offer a solution of codification to be implemented in times of extreme crisis. During wartime, integrity of humanity and human rights are the first to falter.²⁰⁴ Much like in times of war, when a nation undergoes social and economic crises, as does Greece, the first to suffer are basic human rights.²⁰⁵ Therefore, it is worth characterizing such extreme refugee and economic crises, similarly to that of a

²⁰¹ Calum, *supra* note 15.

²⁰² United Nations Office on Genocide Prevention and the Responsibility to Protect, Definitions on Crimes Against Humanity, <http://www.un.org/en/genocideprevention/crimes-against-humanity.html>.

²⁰³ Calum, *supra* note 15.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

warzone, where the rules of peacetime are modified to become more suitable to turbulent environments.

In many ways, the solution developed herein suggests a combination of local and international forces joining under the jurisprudence of international criminal law to ward off organized crime and the collateral impacts thereof. Scholar Thomas Boudreau points out in his essay “Law of Nations,” that the state-centered paradigm of international law is no longer a sufficient explanation of emerging legal developments or practices.²²¹ The schema of international law, now more than ever, is reflective of an increasingly globalized and interconnected international community that apportions to an international entity authority over matters of locality.²²² In other words, individual states forego some of their own authority, sovereignty if you will, to sign treaties and implement an international rule of law, especially in cases involving international crime.²²³ This paper offers a novel solution of reapportioning some of that power back to the states, in the form of regional ad hoc international courts. The courts would be operating under the belief that a too remote prosecutorial system makes punishment a mere inaccessible possibility, without a working system in place, crime will flourish, and human rights will not.

A. Trafficking of Persons

The ICC under the Rome Statute has jurisdiction over crimes so egregious in nature that the international community as a whole feels their impact.²²⁴ The limitations to this stipulation of its authority include that the individual be a national of a State Party to the treaty, or that the territory in which the crime was committed was that of a State Party to the Rome Statute, or that the State permit the ICC to exercise jurisdiction over the proceedings.²²⁵ At present, the definition of enslavement within the Statute makes an explicit reference to human trafficking.²²⁶ Enslavement is defined in the context of the Slavery Convention under article 1, noting the importance of the idea of ownership.²²⁷ This definition and the Rome Statute came into being prior to the trafficking protocol, which defines trafficking as “the recruitment, transportation, transfer, harboring or receipt of persons...” later encompassing rape and sexual slavery as reaching the “ownership” threshold.²²⁸ By and large, the Rome Statute has already characterized slavery as a crime against humanity, inclusive of human trafficking.²²⁹

However, Clare Moran sharply addresses the Statute’s inadequacies that could arguably keep human trafficking from its jurisdiction.²³⁰ First, human trafficking only falls

²²¹ See Sainz-Borgo *supra* note 169, at 373 (referencing Thomas Boudreau, *Law of Nations*) (Dr. Thomas Boudreau is a scholar, author and professor at Salisbury University, specializing in the area of international affairs).

²²² *Id.*

²²³ *Id.* at 373-74.

²²⁴ See Moran, *supra* note 1, at 34 (referencing Rome Statute: Art. 7(1)(c)).

²²⁵ *Id.* (referencing Rome Statute: Art. 12(3)).

²²⁶ *Id.* at 33 (referencing Rome Statute: Art. 7(2)(c)).

²²⁷ *Id.* at 35 (referencing Rome Statute: Art. 7(2)(c)).

²²⁸ *Id.*

²²⁹ See Rome Statute of the International Criminal Court, *supra* note 3.

²³⁰ See Moran, *supra* note 1.

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within the reach of the ICC where slavery is conducted as part of a "widespread or systematic attack."²³¹ Moran argues that this requirement does not necessarily preclude human trafficking offenses committed by organized criminal gangs.²³² The most organized gangs are likely to have a system in place that reflects the required "systematic" approach to the crime.²³³ It is highly unlikely that a trafficker would only traffic one refugee woman and end their operation for good.²³⁴ Even still, such a situation would not satisfy the Statute's "widespread or systemic" element necessary to qualify as human trafficking.

Another element of the Statute states that crimes against humanity must be "directed against any civilian population."²³⁵ Moran explains that the inclusion of these words indicates that the Rome Statute targets those who are acting as agents of a state.²³⁶ In other words, "the attack must be carried out 'pursuant to or in furtherance of a State or organizational policy to commit such attack . . . [which] requires that the State or organization actively promote or encourage such an attack against a civilian population.'"²³⁷ This requirement presents a dilemma, because its removal would extend the Statute's jurisdiction beyond that of the "most serious crimes of international concern."²³⁸ The final element requires that the perpetrator have "knowledge of the attack."²³⁹ It would seem to be a baseless argument if a perpetrator claimed that he considered himself the only trafficker within a criminal organization or that he was unaware of the organizational policy under which he served his duties.²⁴⁰ Therefore, this element would not be relevant to the offense of human trafficking.²⁴¹

Due to the difficulty of classifying human trafficking as a crime against humanity in order to achieve ICC jurisdiction, Moran proposes attaching to it the threshold requirements for genocide.²⁴² Genocide requires the mens rea of specific intent, meaning that the crime need not be committed in furtherance of a State or organizational policy.²⁴³ The illegal acts need only take place as a manifest pattern of habitual conduct, or more than one isolated incident.²⁴⁴ As an additional element, she adds that the accused should need intent to profit in some way from obtaining or maintaining control over the victim.²⁴⁵ Thus, for Moran, the most effective way to classify human trafficking as a core international crime within the remit of the ICC is by borrowing the threshold requirements of genocide, with the one

²³¹ *Id.* at 33 (Moran is a columnist for the Age of Human Rights Journal, focusing specifically on human trafficking as one of the greatest deviations from acceptable societal conduct and the need therefore for reform among international enforcement, penal, and legislative entities).

²³² *Id.* at 36.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.* at 40.

²⁴³ *Id.*

²⁴⁴ *Id.* at 41.

²⁴⁵ *Id.*

modification.²⁴⁶ In other contexts, arguments to explicitly categorize human trafficking as a crime against humanity, with no conditions, suffice.²⁴⁷

This essay proposes that the Rome Statute adopt a more nuanced or even flexible understanding of that which constitutes a crime against humanity, specifically in times where States are faced with challenges that create ripe environments for criminals.²⁴⁸ In other words, it argues not only for the expansion of the definition of crimes against humanity (which arguably and contrary to Moran's opinion, encompasses *prima facie* human trafficking), but to do so *especially* in socio-economic and political conditions which aggravate the crime, simply by way of caveat in the statutory language.²⁴⁹ This proposal will relinquish the fears held by the international community regarding the expansion of the threshold far beyond that of the worst crimes. The underlying theory therefore, is that financial and migration crises create such susceptible environments for human rights' violations, that crimes against humanity should be expanded to precisely include human trafficking during times of extreme crisis, which and as events separate of a systematic or organizational policy.

B. Smuggling of Narcotics

Expanding the Rome Statute's scope to include drug trafficking as a crime against humanity has been met with more opposition than a similar proposal for human trafficking.²⁵⁰ In fact, most argue that including drug trafficking would undermine the authority of the ICC, because its precise charge is to prosecute the most serious crimes, which at their core, violate fundamental human rights.²⁵¹ Some scholars on the topic avoid even suggesting that drug trafficking be a considered crime against humanity and opt to codify the collateral crimes of the drug trade as such crimes.²⁵² Specifically, Taylor Baronich opined that the drug trade in Mexico causes deleterious socio-economic effects from which no Member State of the international community is immune.²⁵³ Baronich explains that the violence, kidnappings, corruption and murders resulting directly from the drug trade, work to qualify drug trafficking as a crime against humanity.²⁵⁴

Baronich interestingly takes a position that favors prioritizing the collateral effects of the crime, rather than the nature, in order to categorize it as one of the most horrendous crimes able to be committed.²⁵⁵ The collateral effects of crime are admittedly concerning. The proposal herein similarly recommends that the impact of crime on human rights and the economic makeup of a region is important, but additionally emphasizes the specific circumstances in which crime is carried out as a primary component. These circumstances

²⁴⁶ *Id.*

²⁴⁷ *See id.* at 38.

²⁴⁸ *See* Calum, *supra* note 15, at 4.

²⁴⁹ *Id.*; *see also* Moran, *supra* note 1, at 42.

²⁵⁰ *See* Kiefer, *supra* note 171, at 157.

²⁵¹ *Id.* at 171.

²⁵² *See* Taylor Baronich, *Bleeding Mexico*, 17 OR. REV. INT'L L. 111 (2015).

²⁵³ *Id.* at 146.

²⁵⁴ *Id.* at 112.

²⁵⁵ *Id.* at 155.

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include tragedies of both the economic and social sense, including financial and refugee crises, which in general jeopardize human rights' norms.²⁵⁶ Thus, the context from which the international community observes human trafficking and drug smuggling ought to influence and allow for its categorization as a crime against humanity.

The crime of drug trafficking observed in the context of crisis does not and should not from an international legislative and enforcement standpoint, fall outside the scope of one of the worst crimes against humanity. Arguably since the ICC's jurisdictional treaty was drafted, the international drug trade has grown more aggressive and dangerous.²⁵⁷ Given that individual countries are part of a greater interdependent, international community, it seems logical that the drug trade has become enveloped in the international community, and as such become a severe international crime.²⁵⁸ The trade accounts for billions of dollars' worth of global illicit revenue and has significant impact on health care systems.²⁵⁹ Additionally, it contributes to corruption of government officials, environmental destruction, and destabilization of governments.²⁶⁰ Further, it has devastating human rights consequences including undermining the rights to health and privacy, promoting torture, and damaging the rule of law.²⁶¹ It is worth considering how the drug trade manipulates the vulnerability of weak governments to make profit, thereby multiplying human rights atrocities and magnifying government ineptitude at state management.²⁶² When a country is burdened with significant crises that leave little room for reversing the effects of organized crime, ad hoc ICC courts must be established regionally, to lessen the burden of the individual state, and work to curtail the global impact of drug trafficking. Particularly in difficult times, the crime of drug trafficking undoubtedly is one of the most egregious crimes and should therefore fall within the statutory remit of the ICC.

VI. CONCLUSION

As history illustrates, economic and humanitarian crises occur in an inevitably cyclical pattern.²⁶³ In such times, communities and governments alike can expect to experience the degradation of basic human rights and societal imbalances, as authorities and state governments attempt to reverse their problems.²⁶⁴ To ensure that human rights and general societal welfare maintain their integrity, especially in such calamity, this note proposes to expand the jurisdiction of the ICC to explicitly include human and drug

²⁵⁶ See Calum, *supra* note 15.

²⁵⁷ George S. Yacoubian, Jr., *The Most International of International Crimes: Toward the Incorporation of Drug Trafficking into the Subject Matter Jurisdiction of the International Criminal Court*, 3 INT'L J. OF COMP. CRIMINOLOGY 1, 29 (2004).

²⁵⁸ *Id.* at 4.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ See Drugs and Human Rights, HUMAN RIGHTS WATCH, <https://www.hrw.org/tag/drugs-and-human-rights> (last visited Sept. 9, 2019).

²⁶² Smith, *supra* note 138.

²⁶³ *Id.*

²⁶⁴ *Id.*

trafficking as crimes against humanity.²⁶⁵ Using Greece as a case study to place the aforementioned crimes squarely within the context of crisis, this note suggests that it is in the international community's best interest to grant the ICC such jurisdiction and to erect regional ICC courts, to prosecute criminals and stabilize the scales of justice.²⁶⁶

²⁶⁵ Moran, *supra* note 1, at 42.

²⁶⁶ *Id.* at 33.