Illicit Drug Trafficking between Prevention and Criminal Prosecution in Accordance with the United Nations Convention against Transnational Organized Crime of 2003.

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Received: 09/ 05/ 2026 *Accepted: 27/ 10/ 2026* *Published: 12/ 11/ 2026*

Abstract:

This study examines the crime of illicit drug trafficking as one of the most dangerous forms of transnational organized crime and highlights the international efforts undertaken to combat it under the United Nations Convention against Transnational Organized Crime of 2003. It analyzes the legal relationship between illicit drug trafficking and organized crime, while focusing on the preventive and punitive mechanisms established by the Convention. The study discusses preventive measures such as international cooperation, exchange of information, technical assistance, and training programs aimed at reducing The spread of this crime. It also addresses criminal prosecution mechanisms, including judicial follow-up, confiscation, and seizure of criminal proceeds. The research emphasizes the importance of coordinated

international action in confronting drug trafficking networks and strengthening law enforcement mechanisms. Furthermore, it underlines the role of the Convention in promoting international cooperation while respecting state sovereignty. The study concludes that combating illicit drug trafficking requires integrated legal and institutional frameworks at both national and international levels.

Keywords:
Illicit Drug Trafficking; Transnational Organized Crime; Prevention; Criminal Prosecution; International Cooperation.

Introduction:

Due to the seriousness of transnational crimes, especially drug crimes, and their tremendous rapid spread, and in an effort to combat them, the States Parties hastened to adopt a convention against illicit traffic in narcotic drugs and psychotropic substances at the sixth plenary session held on 19 December 1988, with a set of provisions to combat this crime, complementing the measures stipulated in the Single Convention on Narcotic Drugs of 1961, and in that Convention as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs of 1961, and the Convention on Psychotropic Substances of 1971, in order to confront the gravity, extent, and serious consequences of illicit trafficking that negatively affect the economies of States, especially developing countries.

What increased the continuing concern among the States Parties was its spread across the territories of States, and it became one of the most serious transnational crimes that negatively affect States, especially developing ones, which prompted the international community to combat it through international cooperation across all stages and procedures of combating it, whether before or after its occurrence, while respecting the internal sovereignty of States, which led us to raise the following problem: To what extent have States succeeded in combating the

crime of illicit drug trafficking pursuant to the international texts established for it?

To answer this problem, we will shed light on the procedures for combating it, especially preventive and deterrent (punitive) measures, under the United Nations Convention against Transnational Organized Crime of 2003, through an analytical and comparative study in some aspects as follows:

1- The Legal Basis of the Relationship between Illicit Drug Trafficking and Transnational Organized Crime:

Before referring to the relationship between organized crime and the crime of illicit drug trafficking, it is necessary to address the definition of the two crimes. The first is considered serious conduct committed by a structured criminal group consisting of three or more persons existing for a period of time and acting for the purpose of obtaining, directly or indirectly, a financial or other material benefit, and serious conduct means conduct punishable by deprivation of liberty for a period of at least 4 years or more, such as the death penalty, for example.[1]

As for illicit drug trafficking, it is that serious criminal activity committed for the purpose of producing, manufacturing, extracting, preparing, offering for sale,

[1] See in detail Dr. Zakaria Semghouni and Dr. Sabrina Laifaoui, *Forms of Transnational Organized Crime: An Analytical Study of the Provisions of the United Nations Convention against It*, Journal of Legal and Political Research, Volume 02, Issue 14, Seventh Year, Faculty of Law and Political Science – University of Saida, p. 2.

distributing, delivering, brokering, dispatching, transporting, importing, or exporting narcotic drugs[2] in a manner not designated for them.[3]

In addition to defining the two crimes, it must be pointed out that the preamble is an integral part of the treaty for the purpose of interpretation, in addition to any other document agreed upon by the parties on the occasion of concluding the treaty and related to it, or any subsequent agreement regarding the interpretation of the treaty or the application of its provisions, or any subsequent practice in the field of its application agreed upon by the parties for its interpretation, not to mention the relevant applicable rules of international law.[4]

Based on the foregoing, and by referring to the provisions of the preamble of the United Nations Convention against Transnational Organized Crime, we find that it indicated that the Convention is the instrument and legal framework for combating criminal activities such as illicit trafficking in various types of plants, with the certainty of the States Parties that it is

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[2] See paragraph 1 of Article 3 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, revised edition 2013, United Nations Office, 2014.

[3] See in detail paragraphs 5 and 9 of Article 2 of the Single Convention on Narcotic Drugs as amended by the 1972 Protocol amending the 1961 Single Convention on Narcotic Drugs, United Nations Office on Drugs and Crime, revised edition 2013, United Nations, 2014.

[4] See Article 31 of the Vienna Convention on the Law of Treaties, adopted by the United Nations Conference on the Law of Treaties convened pursuant to United Nations General Assembly Resolutions No. 2166 dated 5 December 1966 and No. 2287 dated 6 December 1967, adopted in May 1969.

undoubtedly a transnational organized crime[5]. Some paragraphs of the preamble of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 also confirmed these links between them, considering illicit trafficking and related criminal activities as organized crimes threatening the stability, security, and sovereignty of States. Paragraph five of the Convention settled this matter and acknowledged that illicit drug trafficking generates enormous profits that help organized criminal organizations corrupt commercial and financial institutions in the State, indicating the seriousness of this crime and its relationship with other organized crimes such as money laundering and corruption crimes.

By referring to the provisions of the two conventions, we find some texts linking the two crimes together. For this purpose, Article Five of the Convention against Organized Crime stipulated the general framework of its forms without restricting them and relied on the criterion of seriousness to describe them. Therefore, it considered every agreement aimed at committing one of the serious crimes for the purpose of obtaining a financial or material benefit, whether directly or indirectly, or any criminal activity carried out by the criminal group for the same aforementioned purpose, whether directly or through supervision, assistance, incitement, facilitation,

[5] See paragraph 11 of the preamble to the United Nations Convention against Transnational Organized Crime and the protocols thereto, United Nations Office on Drugs and Crime, United Nations, 2004.

or providing advice in that regard, as a transnational organized crime[6]. Paragraph "b" of Article Two linked the seriousness of crimes to the criterion of punishment by deprivation of liberty for a period of not less than 4 years.

As for the Convention against Illicit Traffic, it expressly urged States to consider the criminalized conduct in this crime as extremely serious crimes whenever committed within the framework of an organized criminal gang. Here it should be noted that the transition from individual perpetration to collective perpetration makes it a transnational organized crime par excellence[7]. Moreover, it expressly stipulated crimes of transferring, transporting, concealing, or disguising wealth or their illicit source[8], and this conduct in itself was considered by the Convention against Organized Crime as a transnational organized crime[9].

Thus, from the foregoing, the crime under our study is an organized crime within the meaning of the convention governing it (the 1988 Convention) and the United Nations Convention against Transnational Organized Crime, which allows us to address the mechanisms for combating it in the latter convention.

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[6]See paragraphs 1 and 2 of Article 5 of the United Nations Convention against Transnational Organized Crime .

[7] See paragraph 5 of Article 3 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

[8] See items 1 and 2 of subparagraph "b" of Article 3 of the same Convention.

[9] See in detail Article 6 of the United Nations Convention against Transnational Organized Crime.

2- Preventive Mechanisms for Combating It (Prior to Its Commission)

Before speaking about the preventive mechanisms in the United Nations Convention against Transnational Organized Crime, it must be noted that the Convention against Illicit Traffic in Drugs also referred to some mechanisms prior to the occurrence of the crime, represented mainly in a set of cooperation and training procedures between States in accordance with their internal legal and administrative systems. These procedures are particularly represented in coordination between the competent agencies for combating crime by encouraging the exchange of staff and experts[10] and training them with the latest training programs, including customs officers. These programs may include the following:

- Routes and techniques used by suspects, especially in transit countries, in order to detect and prevent them through modern methods.
- Monitoring the movement of import and export of narcotic drugs and psychotropic substances used for legitimate purposes (medical).
- Monitoring in free trade zones and free ports.
- Cooperation among States in planning and implementing the aforementioned training programs in addition to holding joint conferences

[10] See paragraph 2 of Article 9 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

to strengthen cooperation and discuss common problems to find appropriate solutions.

To strengthen the prevention of these crimes, the States Parties urged the necessity of international and regional cooperation within the framework of specialized organizations to assist and support transit States, especially developing countries, through technical cooperation programs to establish anti-drug criminal policy, in addition to assisting them financially in order to increase and structure the basic facilities for monitoring the prevention of illicit trafficking[11].

As for the United Nations Convention against Transnational Organized Crime, it also stipulated, in addition to what was stipulated in the Convention related to illicit trafficking, similar and other additional procedures related also to the preventive aspect, mainly represented in cooperation among States Parties in various fields with the aim of preventing or reducing their occurrence, as follows:

2-1 Cooperation in the Field of Law Enforcement:

This means close cooperation [12]among States in accordance with the domestic law of each State in order to enhance the effectiveness of law enforcement measures aimed at combating organized crimes. This cooperation is particularly represented in intensifying communication channels by establishing them between

[11] To implement these obligations, States undertake to conclude bilateral or multilateral agreements, or amend them where they already exist. If such agreements do not exist, they may adopt the United Nations Convention against Corruption as the basis for cooperation in the field of law enforcement. See in detail paragraph 2 of Article 27.

[12] See Article 10 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

the competent agencies for combating organized crimes in both States for the purpose of accelerating and facilitating the exchange of information in a secure manner. This exchange shall be in all fields related to the crime and related crimes[13], and includes in particular at this stage the following:[14]

- Coordination among the competent authorities in order to encourage the exchange of workers and experts.
- Exchange of information on the means and methods used by criminal groups, especially their fake identities or forged documents, routes and means of transport, or any other means intended to conceal and disguise their criminal activities.
- Exchange of information for the early detection and combating of those crimes.
- Cooperation to confront organized crimes committed through modern technology.

2-2 Exchange of Information on the Nature of Organized Crime

In order to uncover the reasons for the spread of organized crime with the aim of preventing it or avoiding its occurrence and finding solutions[15], States collect and exchange important information about the nature of the

[13] See item (a) of paragraph 1 of Article 27 of the United Nations Convention against Transnational Organized Crime.

[14] See item "b" of paragraph 1 and paragraph 3 of Article 27 of the same Convention.

[15] See in detail the Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime, United Nations Office on Drugs and Crime.

crime in order to analyze it in consultation with scientific and academic circles, especially prevailing trends in organized crime within the territory of States and the surrounding circumstances, in addition to studying the trends of the professional criminal group involved therein and the technologies used for that purpose[16]. For this purpose, States consider:[17]

- Developing analytical expertise related to criminal activities by establishing common definitions and methodologies shared among States in order to achieve a comprehensive and complete understanding of the crime.
- Considering by each State the monitoring of its policies and actual measures for combating it and conducting assessments of the effectiveness and efficiency of those policies and measures.

This element is considered essential in the evidence-based approach. Studying the extent of its spread, the methods of activity of organized criminal groups, and the means they use, especially modern ones, provides the competent law enforcement authority with in-depth insights and enhances its effectiveness. Specialized expertise within academic and scientific circles can also be useful in analyzing trends. Consultation with them provides States with more accurate and useful information regarding organized crime for use in formulating their policies to prevent the spread of crime[18].

[16] See paragraph 1 of Article 28 of the same Convention.

[17] See paragraphs 2 and 3 of the same Article.

[18] See the Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime, p. 232.

2-3 Training and Technical Assistance

This procedure includes improving the level of workers in agencies concerned with law enforcement by establishing training programs or developing them where they exist, such as members of the public prosecution, investigating judges, customs officers, and all workers assigned to combating organized crime[19]. These programs include:[20]

- Secondment and exchange of employees.
- Methods of detecting, preventing, and combating organized crime.
- Studying the methods used by criminal groups and countermeasures.
- Monitoring the movement of prohibited materials.
- How to collect evidence.
- Means of electronic surveillance, controlled delivery, and undercover operations.
- Modern technological methods for combating organized crime.
- Means of protecting victims and witnesses.
- Technical assistance and training capable of facilitating extradition procedures and mutual legal assistance.
- Technical assistance and language training.

3- Deterrent Mechanisms:

3-1 Judicial Prosecution

[19] See paragraph 1 of Article 29 of the same Convention.

[20] See items a, b, c, h, w, z, and h of the same first paragraph of Article 29.

Judicial prosecution is considered a second stage in confronting the crime of illicit drug trafficking. In addition to preventive mechanisms, states must prosecute perpetrators criminally and impose appropriate penalties proportionate to the damages caused by their criminal activities, in order to achieve maximum effectiveness of law enforcement measures while giving due consideration to the necessity of deterring their commission and establishing public policies in accordance with common and parallel standards at this stage.[21] The prosecution measures must comply with important conditions, namely:[22]

- That they be in accordance with the guarantees of a fair trial, including the right of defense. [23]
- Taking into account the nature of the serious crime when granting early or conditional release[24].
- Establishing a long or longer statute of limitations if the offender flees from justice.
- The necessity of ensuring the presence of offenders at trial with regard to decisions of release pending trial.
- The suitability of the prescribed penalties for organized crimes to the nature of their seriousness.

3-2 Confiscation and Seizure

The stages of combating organized crime are integrated stages aimed at establishing a common public policy

[21] See the Legislative Guide for the United Nations Convention against Transnational Organized Crime.

[22] See paragraphs 3, 4, and 5 of Article 11 of the Convention.

[23] See in detail item 317 of the Legislative Guide, p. 113.

[24] Particularly since these criminal activities generate huge financial gains enabling offenders to post bail and avoid detention before trial or before appealing the judgment. See item 319 of the Legislative Guide, p. 114.

among states to prevent the spread of its various forms. Since these crimes in general, and the crime of drug trafficking in particular, aim at obtaining direct or indirect financial benefit, imposing punishment on their perpetrators is not sufficient to combat them because they may still enjoy their gains for personal purposes or use them to continue their criminal activities.

In order to continue combating them, the States Parties had to confront the use of these criminal proceeds, especially their mixing in legitimate financial markets, by considering their confiscation and seizure in accordance with their domestic legal systems and through international cooperation among themselves. Confiscation includes:[25]

- Criminal proceeds or property whose value corresponds to the value of those proceeds.
- Property, equipment, or tools used in the crime or intended for use.

The criminal proceeds in the crime of illicit drug trafficking include the following:[26]

- Proceeds derived from crimes.

[25] See in detail Articles 13 and 18 of the United Nations Convention against Transnational Organized Crime and paragraphs 4 and 5 of Article 5 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

[26] See items a and b of paragraph 1 of Article 5 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

- Narcotic drugs and psychotropic substances, or materials, equipment, or other means used or intended for use.

If the proceeds of crimes are converted or exchanged partially or wholly into other property, the latter shall also be subject to confiscation measures, while taking into account subjecting only the criminal proceeds when mixed with legitimate assets in order to preserve the rights of bona fide third parties[27]. The state may also, for the purpose of confiscation, authorize its judicial authorities to order the submission or seizure of banking, financial, or commercial records without invoking bank secrecy.[28]

Conclusion:

Through our analysis of the provisions of the United Nations Convention against Transnational Organized Crime, it can be said that the latter played a complementary role in combating the crime of illicit drug trafficking in addition to its original role in combating new forms of organized crime, as it was more comprehensive than its predecessor concerned with the matter. In all cases, both conventions are considered among the most important agreements that sought to combat this crime. Accordingly, we propose the following:

- The necessity of finding a solution among states regarding cooperation in combating all forms of

[27] See paragraphs 3 and 4 of Article 12 of the United Nations Convention against Transnational Organized Crime, and paragraph 6 of Article 5 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

[28] See paragraph 6 of the same Article.

organized crime in general and the crime of illicit drug trafficking in particular, especially in cases of conflict with the domestic systems of states.

- Including the crime of illicit drug trafficking explicitly as an organized crime within the provisions of the 2003 United Nations Convention to combat it.
- Adopting the Convention as a model for all forms of cooperation, especially in light of the absence of bilateral cooperation agreements.